

Standard Purchase Terms

1. Scope

Unless otherwise agreed upon, any contract awarded or order placed by SMBK GmbH, Weissandt-Goelzau, Germany ("the Buyer") with any person ("the Seller") for any products ("the Products") and/or services ("the Services") shall be subject to these Standard Purchase Terms. If the Buyer awards any such contract or places any such order in the name and for the account of any third party, these Standard Purchase Terms shall apply to the relationship between said third party and the Seller.

These Standard Purchase Terms shall not apply unless the Seller is a business to which standard terms may be applicable pursuant to Section 310 of the German Civil Code ("the Civil Code"). These Standard Purchase Terms shall equally apply to all future contracts awarded to the Seller by the Buyer or any third party for which the Buyer acts.

2. Contracts

The Seller shall be under no obligation whatsoever to accept any Product or Service, unless the Seller has issued a written contract or order ("the Contract") therefor and any oral contract or order shall be ineffective unless confirmed by the Seller in writing and the terms so confirmed shall apply to any such oral contract or order.

If any Product or Service specification or any other terms are specifically agreed for any Contract ("Special Terms"), the Special Terms shall take precedence over these Standard Purchase Terms in the event of any conflict between the Special Terms and these Standard Purchase Terms.

Any sales terms of the Seller in conflict with any Special Terms and/or these Standard Purchase Terms whether or not referenced by the Seller in any notice relating to the Contract shall be ineffective unless expressly accepted by the Buyer in writing.

Unless the Seller expressly refuses to accept these Standard Purchase Terms or any other terms of the Buyer within one (1) week from the date on which the Seller receives the Buyer's Contract, these Standard Purchase Terms or said other terms shall be deemed to have been accepted by the Seller upon the expiry of said one (1) week or upon the commencement of Contract performance whatever may be earlier provided that the Contract awarded shall expressly state the legal effect described hereinbefore.

3. Price and Payment

No price of any Product or Service ("the Price") shall be valid unless expressly accepted by the Buyer in writing. Each Price shall be firm and shall not be altered by any increase in any Product or Service cost element such as, without limitation, any increase in the cost of materials or labor during the course of the performance of the Contract.

Each Price shall be final and shall be deemed to cover all costs, expenses or charges incurred by the Seller in connection with the performance of the Contract including, but not limited to the costs of ancillary services, the costs of Contract performance in accordance with the state of the art and the costs of all parts and components necessary for Product completion and Product performance in accordance with the state of the art whether or not expressly specified in any proposal, offer or bid by the Seller or in the Contract.

Each Price shall be ex Buyer's premises or ex place of delivery as specified by the Buyer and shall be inclusive of all costs, expenses and other charges incurred for inspection and acceptance, packaging, any transportation insurance and site unloading and site handling.

If any Service is paid for by the Buyer in accordance with any schedule of rates, time spent by the Seller shall be reported by the submission of timesheets to the Buyer. Each such timesheet shall require written approval by properly authorized Buyer personnel. All such timesheets shall be appended to the invoices by which the time reported therein is billed by the Seller to the Buyer.

The Seller shall forward to the Buyer two copies of a shipping advice for each Product shipment promptly upon the completion of all formalities in connection with forwarding said shipment to the Buyer. Each such shipping advice, all shipping documents, the confirmation of each Contract by the Seller and each invoice issued by the Seller to the Buyer shall quote the Contract date, the Contract number and the relevant item number or numbers, the Buyer's job number and the Buyer's material number.

Each invoice issued by the Seller to the Buyer for any Product shall be accompanied by a delivery note for said Product showing times of departure and times of arrival as confirmed by signatures of properly authorized Buyer personnel.

The Buyer shall pay each Product and each Service upon the submission of a written invoice following (and not simultaneously with) the delivery of the Product and/or the Service. A separate invoice shall be submitted by the Seller for delivery under each Contract and each such invoice shall quote the Contract date and the Contract number. Following the receipt of each such invoice, the Buyer shall make payment within one (1) month from the first day of the month following the month of the delivery of the Product or Service and shall if payment is so made be entitled to a cash discount of three percent (3%) of the Price or within sixty (60) days from the first day of the month following the month of the delivery of the Product or Service and shall if payment is so made not be entitled to a discount always provided that the Buyer shall have the right to select the means of payment as the Buyer may deem fit.

The Seller shall not have the right to assign any title to payment it may hold against the Buyer or to have any payment by the Buyer collected by any third party.

4. Dates Agreed for the Delivery of Products or Services

Each date agreed for the delivery of any Product or Service by the Seller shall be binding and any qualification of any such date by the Seller shall be ineffective unless expressly accepted by the Buyer in writing.

Subject to any other right the Buyer may hold against the Seller, the Buyer shall, in the event of any late delivery, be entitled to a penalty of zero decimal five percent (0.5%) of the Price agreed for any Product or Service the delivery of which is delayed for each week or fraction of a week of delay provided however that the sum total of said penalty shall not exceed five percent (5%) of said Price and further provided that the Buyer shall notify the Seller within ten (10) working days from receiving the Product or Service so delayed that it reserves the right to claim said penalty.

The Seller shall give the Buyer prompt notice of any late delivery of any Product or Service.

The Seller shall not deliver any Product or Service prior to the date agreed for the delivery of said Product or Service, unless the Seller has received the Buyer's express written agreement and no such early delivery shall operate to alter any due date for payment which would apply in the event of the delivery of said product or Service exactly on the date agreed for said delivery.

5. Transfer of Risk and Acceptance

The risks associated with any Product or Service shall be transferred from the Seller to the Buyer upon the proper delivery of the Product to or the proper acceptance of the Service by the Buyer at the Buyer's premises or any other place of delivery designated by the Buyer. The acceptance of the delivery of any Product or Service by the Buyer shall be subject to the proviso that the Buyer shall retain all of its rights with respect to any latent defect if notice of any such latent defect is given by the Buyer to the Seller within four (4) weeks from the discovery of any such latent defect in accordance with Section 377, paragraph (3), of the German Commercial Code ("the Commercial Code"). The Buyer shall not be obligated to keep any Product or any asset for which any Service was rendered in custody if the acceptance of said Product or Service is refused by the Buyer and any such custodianship, if any, shall be at the cost and at the risk of the Seller.

6. Setoff and Refusal of Performance by the Seller

The Seller shall not have the right to set off any counterclaim it holds or allegedly holds against the Buyer against any claim or title of the Buyer unless said counterclaim has been accepted by the Buyer or awarded by a judgment from which no appeal can be sought. The Seller shall not have the right to refuse the performance of any Contract unless the Seller is able to demonstrate grossly negligent breach of Contract by the Buyer or a counterclaim allowing refusal of performance that is undisputed or has been awarded by a judgment from which no appeal can be sought or is overdue for decision.

Standard Purchase Terms

7. Rights of the Buyer in the Event of Defect

The Seller warrants, by way of a fitness warranty under the Contract for the period of limitation provided for by law, that each Product will satisfy sound and reasonable quality standards and will, without limitation, consist of materials fit for the purpose and function as intended and each Service will have been performed applying good workmanship.

Each Product and each Service shall be in accordance with the state of the art, all applicable laws, rules and regulations including, but not limited to safety rules, requirements imposed by agencies and authorities, any codes and standards issued by standardization committees and the like such as, but not limited to European standards, German DIN standards and German VDE codes of practice and any specifications issued by the Buyer and shall be fit for the place of use and for the purpose intended by the Buyer provided that the Seller shall be obligated to establish said place of use and said purpose as may be necessary for the Seller to comply with its obligations under this warranty.

Any title of the Buyer with respect to any defect of any Product or Service shall be limited to two (2) years. Said period of limitation shall commence upon the delivery of the Product or the acceptance of the Service provided that in the event that the Seller delivers any Product or Service for integration into a facility, system or plant ("the Plant") to be delivered by the Buyer to any customer of the Buyer ("the Customer") said period of limitation shall commence upon the acceptance of the Plant by the Customer or thirty-six (36) months from the date of the delivery of the Product to or the acceptance of the Service by the Buyer whatever may be earlier.

During said period of limitation, the Buyer shall, in the event of any defect of any Product or Service, be entitled to the remedies granted by law with respect to sales contracts or work contracts as the case may be provided that even if work contract law applies the Buyer shall, notwithstanding any other rights the Buyer may be entitled to, have the right in the event of any defect to opt at its discretion for repair or replacement of the entire work within the limits of what may be reasonable in view of the circumstances of the case.

All costs incurred for removing any defect of any Product or Service such as, but not limited to disassembly and assembly costs shall be borne by the Seller.

Even where sales contract law applies to any Contract, the repair of any defect of any Product or Service by the Buyer shall be governed by work contract law.

8. Liability and Insurance

The liability of the Seller under Contract and at law shall be in accordance with the provisions of law provided that any person retained by the Seller for the performance of the Contract shall be deemed to be an employee or agent of the Seller.

The Seller shall indemnify the Buyer against and save the Buyer harmless from any claim or the like pursued by any third party against the Buyer in connection with the performance of the Contract by the Seller or any of the Seller's agents or employees, if the Seller is liable to said third party under the rule of law in as far as the Buyer has not contributed to any such loss. The Seller shall cover its liability risks under the Contract by adequate liability insurance and shall, at the request of the Buyer, provide evidence of said coverage by submitting the liability insurance policy to the Buyer.

9. Third Party Rights

The Seller warrants that each Product and each Service shall be free from any lien, encumbrance, charge or other adverse third party right of any kind and, more particularly and without limitation, any resale, use or incorporation of any Product or Service by the Buyer will not violate any proprietary or other third party right. If any third party proprietary or other right is violated by any such resale, use or incorporation, then the Seller shall provide adequate compensation to each owner of each such proprietary or other right so that each such Product and Service will be free from all liens, encumbrances, charges and other adverse third party rights and shall indemnify the Buyer against and save the Buyer harmless from any claims or the like of said third party.

10. Confidentiality

The Seller undertakes to keep all technical, commercial, financial and economic information it may become aware of in connection

with the performance of the Contract including, but not limited to information on any Customer and the relationship between the Buyer and the Customer strictly confidential, not to release any such information to any person other than an employee or agent directly involved in the performance of the Contract and to impose on each employee or agent to whom information is so released an obligation to keep such information strictly confidential even beyond the term of the contract between each such employee or agent and the Seller. Unless otherwise agreed upon in any specific case such as, without limitation, a confidentiality obligation not limited in time in the agreement between the Buyer and the Customer, the confidentiality obligation under the Contract shall continue in force for a period of two (2) years commencing on the date of the delivery of the Product to or the date of the acceptance of the Service by the Buyer.

11. Rights of Use and Proprietary Rights

Upon the full or partial delivery of any Product or Service by the Seller to the Buyer under the Contract, the Seller shall assign to the Buyer free of any charge to the Buyer an exclusive right unlimited in time or in scope or by region to use said Product or Service and shall deliver to the Buyer all drawings, specifications or other documents prepared for said Product or Service and shall transfer the full title to all such drawings, specifications or other documents to the Buyer.

Upon the request of the Buyer, the Seller shall, at the cost of the Buyer, apply for the protection of proprietary expertise developed in connection with the performance of the Contract with patent or trademark offices in Germany and/or in any other country. Any rights thereupon acquired by the Seller shall be transferred by the Seller to the Buyer without delay.

The Seller undertakes at the request of the Buyer to claim any inventions or improvements developed by any of the Seller's employees in connection with the Contract in accordance with legislation applicable to employee inventions and to transfer the title to any such inventions or improvements to the Buyer or to make such inventions or improvements otherwise available to the Buyer for exclusive use provided that any remuneration to be paid by the Seller to any such employee for any such invention in accordance with employee invention legislation shall be reimbursed by the Buyer to the Seller.

The Seller shall notify the Buyer promptly by written notice of any expertise developed in connection with the performance of the Contract and any invention or improvement developed by any of its employees in connection with the Contract.

12. Publicity

No written, oral, sound or picture publication in connection with the Contract including, but not limited to publicity in connection therewith shall be made by the Seller or any of its agents or employees unless the express prior written consent of the Buyer has been obtained and the Seller agrees to impose the obligations in this Clause 12 on its agents and employees.

13. Place of Performance and Jurisdiction

Unless otherwise agreed upon between the parties, the place of performance with respect to Products and Services to be supplied by the Seller shall be the place of the registered office of the Buyer or the third party where the Contract has been awarded by the Buyer for a third party. The place of performance for payments shall be W.-Goelzau in Germany or the place of the third party where the Contract has been awarded by the Buyer for a third party. Any dispute arising out of or in connection with the Contract shall be settled by the courts having jurisdiction at the registered office of the Buyer, if the Seller is a business.

14. Amendments and Notices

All modifications of or amendments to the Contract and all notices given in connection with the Contract shall be ineffective unless made in writing.

15. Applicable Law

The Contract shall be governed by and construed and interpreted in accordance with German law provided however that the United Nations Convention on International Contracts for the Sale of Goods shall not apply.