

General Terms of Delivery of SMA Railway Technology GmbH

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I. General Provisions

1. These General Terms of Delivery (hereafter referred to as "GTD") shall apply for all offers, deliveries and services (hereafter referred to as "Deliveries") of SMA Railway Technology GmbH (hereafter referred to as "SMA") to its customers (hereafter referred to as "Customers"). They shall also apply to all future transactions between the parties to the contract without requiring any reference thereto again.
2. The General Terms of Business of the Customer shall only apply insofar as SMA has given its express consent in writing.
3. In the event that provisions diverging from these provisions are agreed upon in writing for particular deliveries, these GTD shall be deemed as subordinate and supplementary.
4. The Customer shall be granted the non-exclusive right to use the standard software with the features of performance as agreed without any alteration. Passing on the software, the sale thereof or using it elsewhere, as well as the reproduction of the software beyond the scope of a security copy shall only be admissible with the written consent of SMA. In the event of any violation thereof, the Customer shall be obliged to compensate SMA for the damage suffered by the latter.
5. SMA shall be entitled to all rights in the offer documentation. All documentation shall be immediately returned upon request by SMA in case the order is not placed. Trade and business secrets must be handled in strict confidentiality.
6. Any documentation, specimen or samples belonging to the offer as well as technical specifications and descriptions in the respective product information or advertising material are non-committal and of purely informational nature. They do not constitute any guarantee of quality or durability for the goods to be supplied or services to be rendered by SMA.

II. Prices – Packing – Terms of Payment

1. Prices are quoted "ex works" and "excluding packing" plus statutory value-added tax at the prevailing rate.
2. All payments shall be effected in EURO within 30 days from the presentation of the invoice free of charge to an account of SMA.
3. Should the Customer's payments be in arrears, or should circumstances become known after conclusion of the contract which may cause doubts as to the Customer's creditworthiness SMA shall be entitled to make the Customer's residual debts due and payable immediately, to demand advance payments or the provision of security or, after expiry of a reasonable grace period, to rescind the contract without prejudice to its other rights. In particular, the Customer's creditworthiness may be doubted if the Customer stops payments, if insolvency proceedings have begun with regard to the Customer's assets or if a petition has been filed to begin insolvency proceedings and these are not implemented due to insufficient assets.
4. The Customer may only set-off such counter-claims against this if they are undisputed, recognized by SMA or have been determined to be final and conclusive by a competent court. The same shall apply to the assertion of retention rights.

III. Delivery – Delivery deadlines – Delay

1. SMA is entitled to carry out partial deliveries and services and to charge for these. SMA is also entitled to change the material of the products to be supplied without prior consent of the Customer as long as this does not change the quality or functionality of the products.
2. The prerequisites for meeting the Delivery deadlines are the timely receipt of all orders, documentation, permits and clearances as well as the observation of the stipulated terms of payment including down-payments and all other obligations required for the delivery. Otherwise, the delivery deadline shall be extended by a reasonable period of time.
3. The Delivery deadline shall be deemed to have been met if the Delivery item has been dispatched by such deadline or if the Customer has been informed that the consignment is ready for dispatch.
4. In case of industrial disputes, action by authorities, force majeure or the occurrence of similar incidents, which are proven to interfere with the ability of SMA to deliver, the Delivery deadline shall be extended by a reasonable period of time.
5. Should the promised service be unavailable because SMA was not supplied by its subcontractors, SMA shall be entitled to offer a service of equal quality and price. Should this also be impossible, SMA may rescind the contract. In such a case, SMA shall notify the Customer of the non-availability without delay and immediately reimburse any payments already made by the Customer.
6. Damage claims by the Customer due to delay in Delivery or damage compensation payments as a replacement for the Delivery are excluded in all cases of delayed Delivery, even after expiry of any deadline set to effect Delivery. This shall not apply in cases of statutory liability based on intentional misconduct, gross negligence or due to injury to life, body or health. Except in the case of defects of quality, the Customer can only rescind the contract if SMA is responsible for the breach of duty. The above provisions shall not involve a change in the burden of proof to the detriment of the Customer.
7. Upon SMA's request, the Customer has the obligation, within a reasonable period of time, to declare whether he wishes to rescind the contract due to delayed delivery or insists on delivery instead.

IV. Risk allocation

1. The Customer assumes all risk once the delivery item has been dispatched or collected, even if carriage paid delivery was agreed upon. Upon the Customer's request, deliveries will be insured against normal transport risks by SMA at the Customer's expense.
2. The means of transport will be chosen by SMA.

V. Retention of Title ("Eigentumsvorbehalt")

1. SMA retains title to the Delivery goods until all claims arising from the business relationship have been satisfied. Prior thereto, the Customer shall not encumber the Delivery goods by pawning or granting other security over the Delivery goods.
2. The Customer is entitled to resell the goods whose title is retained by SMA (reserved goods) in the normal course of business. The Customer hereby assigns all rights to claims against his customers to SMA up to the amount of SMA's claims against the customer. SMA accepts this assignment. The Customer shall remain entitled to collect the assigned claims. This authority to collect shall lapse if the Customer is in arrears or comes into financial collapse.
3. Any treatment or processing of the reserved goods shall be carried out for SMA without the latter incurring any obligations from this. In the case of processing of the reserved goods with third-party products not owned by SMA, SMA shall have co-ownership of the new, resulting product in a proportion equal to that of the invoice value of the reserved goods to the value of the other products at the time of processing. The same shall apply if the Customer acquires sole ownership pursuant to § 947 (2) of the German Civil Code. The new product held free of charge in custody by the Customer for SMA is a reserved good in accordance with this provision. In case the reserved goods are being sold or used for the fulfilment of any contract, the Customer hereby

assigns any purchase price or remuneration claims therefrom to SMA, regardless of whether the reserved goods are passed onto one or several purchasers without or after processing, alone or together with objects of outside sources. Incidental claims in connection with the reserved goods, particularly insurance claims, are also assigned at the same time and to the same extent. SMA accepts this assignment.

4. The Customer shall notify SMA immediately in case of levies of execution, seizures or other orders or interference by third parties.
5. In the case of breaches of duty by the Customer, particularly in the case of a delay in payment, SMA shall be entitled to rescind the contract after the expiration of a reasonable deadline set by SMA for the Customer to meet his obligations, which has expired without the Customer curing the defect. SMA shall then be entitled to take back the reserved goods, and, for this purpose, to enter the premises of the Customer and to use the reserved goods to offset the existing accounts payable in favour of SMA.
6. Insofar as the realistic value of the securities exceeds the claims to be secured by more than 20%, SMA undertakes a commitment to release the existing securities on demand by the Customer.

VI. Defects of Quality ("Sachmängel")

1. The Customer may not refuse acceptance of a delivery due to irrelevant defects. § 377 of the German Commercial Code shall apply subject to the provision that obvious and/or ascertained defects shall be reported in detail in writing at the latest within 8 days after transfer of the goods to the Customer. Undisclosed defects must be reported in writing at the latest eight days after being found.
2. Default claims shall become statute-barred 12 months after the date of the reallocation of risk. This shall not apply if longer periods are required by law and in cases of injury to life, body or health, or in case of a willful or grossly negligent breach of duty by SMA as well as in case of malicious non-disclosure of a fault.
3. SMA may choose to remedy defects free of charge, to effect a new Delivery or render the service again for all of those parts or services showing signs of defects within the statutory period of limitation, insofar as the cause of these defects was in existence at the time of the passing of risk. In the case of software defaults, the instructions for the avoidance of the consequences of the default shall be deemed as adequate remedy.
4. Should the attempt to remedy fail, the Customer shall be entitled to rescind the contract or reasonably reduce the remuneration without prejudice to any damage claim in accordance with section VII.
5. Default claims are excluded in case of irrelevant deviations from the stipulated condition, irrelevant impairment of usability, natural wear or in case of damage arising after the reallocation of risk through incorrect or negligent handling, the use of unsuitable production equipment and facilities, poor construction, overload, lightning damage or similar outside influences, as well as through modifications or repairs not being carried out in the appropriate manner and as well as servicing not being carried out in the proper manner as prescribed by the operating manual and in case of non-reproducible software faults.
6. In case of fault claims, the Customer may only withhold payments to the extent that they are in reasonable proportion to the defects of quality that have occurred. If the fault claim was made wrongfully, SMA is entitled to claim the expenses incurred in connection therewith from the Customer.
7. Claims of the Customer based on expenses, in particular costs of transport, infrastructure, labour and materials, are excluded insofar as such expenses are incurred because the object of the Delivery has been taken to a location other than the office of the Customer, unless this subsequent transfer corresponds to its contractual use.
8. Claims under a right of recourse of the Customer against SMA pursuant to § 478 of the German Civil Code (recourse by the manufacturer) shall only exist as long as the Customer has not concluded any agreements beyond the scope of the statutory default claims with his customer.
9. Otherwise, Section VII (other damage claims) shall apply to damage claims. Fault claims by the Customer against SMA and its vicarious agents that go beyond or are different from those regulated in section VI, shall be excluded.

VII. Other Damage Claims ("Sonstige Schadensersatzansprüche")

1. Damage and reimbursement claims made by the Customer, regardless of the legal reasoning on which they may be based, particularly breach of duty from the relationship under the law of obligations and for tortious acts shall be excluded. This also applies to claims due to breach of precontractual relationship (culpa in contrahendo).
2. This shall not apply in cases where liability is compulsory, e.g. in accordance with the German Product Liability Act, in cases of wrongful intent or gross negligence by SMA or its vicarious agents, for injury to life, body or health or due to malicious non-disclosure of a defect or material breach of contract. Any damage payment for a material breach of contract shall, however, be limited to the foreseeable damage in standard contracts, except in cases of liability for wrongful intent or gross negligence or due to injury to life, body or health. Material contractual obligations are those the fulfillment of which allows for the proper execution of the contract in the first place and the adherence to which the contractual partner can continuously trust.
3. The SMA products may not be used in the field of medicine or aviation without prior written consent.
4. Exemptions from liabilities or limitations of liabilities in favour of SMA shall also apply to the personal liability of the workers, employees, representatives and vicarious agents of SMA.
5. The statute of limitations for the Customer's damage claims under this section VII shall depend on the statute of limitation valid for deficiency claims pursuant to section VI, sub-item 2., sentence 1. The statutory limitation provisions shall apply to damage claims based on the German Product Liability Act. The provisions of § 479 of the German Civil Code shall not be affected.
6. The above provisions shall not cause a shift of the burden of proof to the detriment of the Customer.

VIII. Other Conditions

1. The laws of the Federal Republic of Germany shall apply for all legal relationships between SMA and the Customer arising from or in connection with the contractual relationship excluding the UN convention on contracts for the international sale of goods (CISG). The place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be Kassel. However, SMA is also entitled to start legal action at the court of jurisdiction at the legal business domicile of the Customer.
2. Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected, unless upholding the remainder of the contract constitutes an unreasonable hardship for one of the parties.
3. Customer data within the framework of our mutual business relationships shall be stored in accordance with the Federal law on Data Protection.