

SMT System & Modules Technology AG General Terms and Conditions

1. Scope

These General Terms and Conditions are applicable for deliveries and services of SMT Systems & Modules Technology AG, Wald (hereinafter "SMT") to the client. In case our delivery includes Software and accompanying documentation, the terms of the license agreement are applicable in addition to these General Terms and Conditions. However, in case of disputes, the license agreement shall prevail.

2. Conclusion of the contract

The contract is deemed to be concluded upon receipt of an order confirmation by the client or, upon absence of such confirmation, upon the segregation of the ordered products by SMT. All catalogues, brochures and publications on the Internet are considered to be an invitation to offer and are not binding for SMT.

Modifications or additions to these General Terms and Conditions or to the contract are not valid without written approval by SMT. Orders that deviate from the specifications published by SMT or contain additions or modifications made by the client will only be effective if they have been expressly approved by SMT with an order confirmation.

3. Cancellation of the contract

Orders of products according to catalogue (standard products) may be cancelled by the client until the segregation of the ordered products by SMT provided that SMT has received the statement of cancellation prior to the time of segregation.

Orders of customers' products (special designs etc.) may be cancelled only up to 4 hours after receipt of the order by SMT. In that case, a service charge of 10% of the net order amount will be invoiced to the client.

4. Prices

If not expressly specified otherwise, all price information is net, excluding VAT.

The standard packaging of the ordered products is included in the net price. All other costs, such as for transport, insurance, taxes, customs duties as well as export, import or other necessary approvals will be invoiced as additional charges. The net price does not include any additional services performed by SMT, such as installation, commissioning and compilation of diagrams etc. A small-order fee in the amount of CHF 200 will be charged for orders with a net price of less than CHF 100.

SMT reserves the right to change prices at any time until the conclusion of the contract.

5. Delivery conditions

All times, dates and delivery deadlines are considered non-binding, unless their binding nature has been expressly agreed in writing. Binding delivery deadlines and dates that have been agreed upon in writing are met when the product is made available in the distributing warehouse before the corresponding dates have passed. If SMT has a delay in delivery, it is assumed that the client continues to demand the delivery. Compensation for late delivery or for replacement is excluded.

If not otherwise indicated on the order confirmation, the deliveries are Incoterms® 2010 FCA SMT factory (FCA = Free Carrier).

SMT reserves the right not to deliver the ordered products if they are unavailable; in this case, SMT will immediately notify the client of the non-availability and, if necessary, reimburse any payment already made.

6. Payment conditions

SMT invoices must be paid in full within 30 days after the date of invoice. After the payment deadline, the client will automatically owe SMT a reminder charge of CHF 80.00 or interest for delay to the amount of 7.25% p.a. if the interest for delay exceeds the amount of the reminder charge. If the client is in delay, SMT reserves the right to withhold further deliveries.

The client is not entitled to offset outstanding accounts from SMT with any counterclaims.

7. Use and installation of SMT products

SMT products may only be installed by skilled qualified personnel.

SMT products must be used in accordance with the specifications of the respective currently valid data and assembly sheet.

8. Specifications

Except when otherwise expressly stipulated, the information published by SMT in text or picture form (e.g. illustrations or drawings) in catalogues, brochures, websites, data and assembly sheets or other publications conclusively defines the specific characteristics of the goods delivered by SMT and their application possibilities and does not represent any guarantee for durability or specific characteristics. The specific characteristics of the delivered products can deviate from that of images or samples in respect to material, colour or shape. SMT does not accept any responsibility for the performance or fitness of products for a particular purpose.

The specifications communicated by SMT are only to be regarded as a guideline. SMT reserves the right to change the communicated product specifications or to deliver other products of equal value from third-party suppliers in place of the ordered products.

9. Reservation of title

The title of supplied products remains with SMT until the client has fully paid all invoices.

10. Passing of risk

According to Incoterms® 2010 FCA SMT factory, benefit and risk with regard to the products purchased pass to the client upon placement of products in the possession of the shipper or upon collection by the client.

11. Redemption of products

SMT may, upon prior agreement, redeem products according to catalogue (standard products) provided that these products are still contained in the product range, virgin, i.e. not older than max. 6 months, unused, and originally packed at the time of return. SMT does not have any duty of redemption. Redemption of customers' products (special designs) or products that have been procured on client's specific demand is excluded.

The return of products according to catalogue shall be made enclosing a copy of the invoice and stating the reason for the return, free of all charges to the address of SMT AG, Bachtelstrasse 32, CH-8636 Wald, Switzerland.

From the credit as agreed with the client, a service charge of at least 20% of the net catalogue price will be deducted. A payment of the credit in cash is excluded. It can only be credited against future orders.

12. Duty of examination

The client shall examine all products for defects directly upon receipt. Any defects are to be reported to SMT immediately in writing; the product will otherwise be deemed to be approved. Hidden defects must be reported in writing immediately after they are discovered.

13. Warranty

The SMT warranty guarantees that the delivered products meet the specifications that are explicitly listed on the corresponding data sheets. For the rest, the warranty is waived as far as permitted by law.

In particular, no warranty is given for damage resulting from or partly caused by the client or by third parties acting within the scope of responsibility of the client when

- a) Products are used in areas that are not specified in the data and assembly sheets;

- b) Products are used without observing the laws, official regulations or the instructions of SMT (especially regarding installation, commissioning, operating regulations and information on the data and assembly sheets);
- c) Products are used under special conditions, especially under the continuous influence of aggressive chemicals, gases or liquids;
- d) Products are assembled, handled or installed incorrectly or without due care or not according to the respective authoritative state-of-the-art or are not used or installed by skilled qualified personnel;
- e) Products are modified or repaired without prior written approval of SMT;
- f) Products become worn out as a result of inappropriate or unintended use or excessive stress;
- g) Products are stored inappropriate; or
- h) The client or third parties are responsible for damage.

The client is liable for actions or omissions of auxiliary personnel as if these were his own actions.

The warranty period is two years from the date of manufacture. The warranty period starts at the time of manufacture or delivery of the product, respectively, without requiring acceptance from or testing by the client.

The client is obliged to immediately initiate all suitable measures to minimise damage. If a timely report has been made in accordance with Section 12 above, SMT is obliged either to replace defective products with products that are equal or equivalent, to have them repaired either by SMT or third parties at SMT's expense or to issue the client a credit note in the amount of the net price paid for the defective product. SMT will decide which of these measures is taken.

Any extra charges incurred in connection with a replacement, such as transport costs etc., will be borne fully by the client. The warranty period does not restart from the beginning for replaced products.

SMT can require the client to replace particular defective products or parts of products in a system to prevent damage, whereby reasonable client expenditures in this context that are approved by SMT will be reimbursed by SMT.

14. Limitation of Liability

The liability of SMT is defined conclusively under Section 13. Any other claims of the client towards SMT, irrespective of the legal basis, including but not limited to price reduction or rescission, are excluded and waived expressly herewith.

Client does not have any title to claim for damage which does not occur on the products themselves. In particular, SMT does not accept any liability for costs incurred for determining the causes of damage, for expert opinions or indirect or consequential damage (including damage resulting from defects) of any kind, such

as loss of use, downtimes, loss of profit or returns etc. unless they have been caused by SMT intentionally or due to gross negligence.

The extent to which SMT's liability is excluded or limited also applies to the personal liability of their employees, staff, representatives and vicarious agents.

15. Indemnification

Upon SMT's first request, the client shall indemnify and hold harmless SMT in full from any third party claim in conjunction with the events listed under Section 13, letters a) to h). This also applies to claims in connection with product liability.

16. Force majeure

Neither SMT nor the client accepts liability for damage of any kind if obstacles occur which they are unable to prevent in spite of all due care, irrespective of whether these occur at SMT, the client or a third party. Such obstacles are, for example, epidemics, mobilisation, war, revolts, severe interruptions of operations, accidents, labour disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished goods, non-availability of important work pieces, magisterial injunctions or omissions, embargos, export or import restrictions, acts of God or any other circumstances which are, to a large extent, beyond the control of SMT or the client. Payments, however, may not be retained or delayed with reference to such circumstances. In such cases, both parties shall, without delay, undertake all effective measures which can be expected of them to prevent damage, or if damage occurs, to minimise the degree of this damage as far as possible.

17. Resale

If the product is resold, the client must impose at least the same limitations of warranty restrictions upon the buyer.

18. Modifications

SMT reserves the right to modify these General Terms and Conditions at any time.

19. Severability clause

In the event that one or more of the aforementioned provisions should be or become invalid, the validity of the remaining provisions shall not be affected thereby.

20. Applicable law and jurisdiction

Swiss law shall apply exclusively, excluding application of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG).

The ordinary courts at SMT's domicile shall have exclusive jurisdiction.

In case of inconsistency between the German and the English version of these General Terms and Conditions, the German version shall prevail.