
SMT Scharf AG – STANDARD TERMS AND CONDITIONS OF SALE

(as of March 25, 2019)

1. PREAMBLE

1.1 The customer acknowledges that the only basis upon which SMT Scharf AG (the "**Supplier**") is prepared to supply goods and services ("**Products**") is on the basis that, notwithstanding anything in the customer's enquiry, specification, acceptance, order or other documentation or discussion to the contrary, the terms and conditions contained herein shall constitute the sole terms of the agreement between the Supplier and the customer, unless expressly agreed otherwise by the Supplier in writing.

1.2 Services include consultation, calibration and servicing of goods and shall be supplied to the customer upon request within a reasonable time period or as agreed between the Supplier and the customer.

2. QUOTATIONS AND ACCEPTANCE OF ORDER

2.1 Quotations included in offers given by the Supplier to the customer are valid for a period of 4 weeks starting with the sending of the offer.

2.2 Offers given by the Supplier to the customer are not binding and in all cases subject to the availability of production capacity at the Supplier at the time of receipt of the customer's order. The Supplier may accept or reject in whole or in part any order a customer places in reply to an offer from the Supplier. A binding agreement shall only come into force between the Supplier and the customer if, after receipt by the Supplier of the customer's order, the Supplier confirms in writing to the customer acceptance of the customer's order. The customer shall have no claims whatsoever against the Supplier on the basis that the Supplier rejected an order placed by the customer in reply to an offer from the Supplier.

3. PURCHASE PRICE AND PAYMENT

3.1 Unless otherwise expressly stated, prices are exclusive of value-added tax ("**VAT**"), which shall be for the account of the customer. The customer shall pay the Supplier the amount of any VAT simultaneously with the purchase price.

3.2 Prices are subject to the applicable exchange rate from time to time and any variation shall be for the customer's account at date of invoice or date of despatch of goods, as applicable.

3.3 All invoiced amounts shall be payable by the customer, together with VAT, on delivery unless the Supplier agrees in writing that payment may be made within 30 (thirty) days after the date of statement or in the event that the customer has an agreed current credit facility available with the Supplier. A separate invoice shall be rendered for each delivery.

3.4 Payment of the purchase price for goods becomes due upon their delivery to the customer in accordance with the stipulations of clause 3.3, even if the sales contract stipulates that after delivery of the goods, the Supplier is obliged to render further related services such as for example installation and commissioning of the delivered goods at the customer's site. Should the sales contract provide for a separate price for the rendering of services or stipulate that part of the purchase price shall be payable only after the rendering of the services, then such amounts or portions of the purchase price shall become due upon the rendering of these services by the Supplier, while the remaining amounts shall already become due with the delivery of the goods.

3.5 The purchase price plus VAT shall be payable by the customer to the Supplier by way of electronic funds transfer into the bank account designated for such payment by the Supplier in writing from time to time, or at such other place as the Supplier may direct from time to time, without deduction or set-off and free of any exchange, unless otherwise agreed in writing between the Supplier and the customer.

3.6 The customer shall be responsible for any bank charges incurred by the Supplier due to erroneous or duplicate payments made by the customer.

4. INTEREST

4.1 If the customer fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on

the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

4.2 In case of late payment the Supplier may, after having notified the customer in writing, suspend his performance of the contract until he receives payment.

4.3 If the customer has not paid the amount due within three months the Supplier shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

5. DELIVERY

5.1 The customer shall take delivery of the goods with reasonable notice. If the Supplier is unable to deliver the goods to the customer due to any act or omission on the part of the customer, it shall be entitled to charge the customer for reasonable storage costs and other expenses incurred in respect of the goods as from the specified delivery date and the goods shall be stored at the customer's sole risk.

5.2 If the customer fails or refuses to furnish the information necessary to enable delivery to be effected, or if it fails or refuses to take delivery, the goods shall, without prejudice to the provisions of clause 5.1, be deemed to have been delivered to the customer upon notification by the Supplier to the customer to that effect.

5.3 The date of delivery is given in good faith and all reasonable efforts shall be made to comply therewith. The Supplier shall only be liable pursuant to the provisions of Sec. 9.2 to 9.6 for any loss or damage to the customer due to the failure of the Supplier for any reason whatsoever to deliver the goods on the date of delivery.

5.4 The Supplier shall be entitled to suspend or reduce the fulfilment of any agreement for the supply of goods at any time if any contingency beyond the Supplier's control arises, such as the Supplier being unable to obtain sufficient parts, raw materials or energy supply, strikes, lock-outs, fire or any act or similar event which interferes with or prevents the manufacture, production or delivery of the goods. In such an event, the Supplier's obligation to perform in terms of these terms and conditions shall automatically be deferred for such period as the impediment remains.

5.5 If delivery of any particular order is to be effected in consignments, the Supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered has been paid.

6. OWNERSHIP

6.1 Ownership of the products shall not pass to the customer until the purchase price (including interest, if any) in respect of the products in question has been paid.

6.2 The customer shall keep all products in respect of which the purchase price (and interest, if any) has not been discharged in full, free from attachment, hypothec or other legal charge. The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the products in question has not passed from the Supplier. In particular, the customer shall inform the owner/landlord of the premises in which the products are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the Supplier on demand.

7. RISK

7.1 Notwithstanding that the ownership in the products shall not pass to the customer until payment of the entire purchase price in respect of the products in question has been effected, the products shall be at the risk of the customer (it will be responsible for all loss or damage thereto howsoever arising), upon despatch thereof from the premises of the Supplier.

7.2 Should the Supplier be unable to obtain access to the premises of the customer in order to deliver the products, or should the customer fail to take delivery of the products or fail to furnish the information necessary to enable delivery thereof to be effected, then the risk of destruction or damage to such products not intentionally or grossly negligently caused by the Supplier shall pass to the customer upon notification by the Supplier that the products are ready for delivery.

8. BREACH

8.1 If the customer breaches any of the terms or conditions hereof or any other agreement with the Supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the Supplier's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 (seven) days or is placed into provisional or final liquidation or business rescue or under provisional or final sequestration or if its estate is voluntarily surrendered, the Supplier shall have the right, without prejudice to any other right which it may have against the customer, to elect to:

- treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement and to claim such amounts as well as any other amounts in arrear, including interest, and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach; or
- cancel this agreement and retake possession of any of the goods sold.

9. WARRANTY/ LIABILITY

9.1 The Supplier's liability shall be limited, at its sole discretion, to:

- repairing goods free of charge at its premises; or
- supplying the customer with another unit of the goods free of charge; or
- passing a credit for the purchase price of the goods, provided that the goods are returned to the Supplier within a period of 21 calendar days from date of dispatch.

9.2 In case of intent or gross negligence on the Supplier's part or by Supplier's agents or assistants in performance Supplier shall be liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent that the breach of contract is unintentional, Supplier's liability for damages shall be limited to the typically predictable damage.

9.3 Any liability not expressly provided for above shall be disclaimed.

9.4 Warranty claims shall be time-barred after 12 months of the passage of risk.

9.5 The repair or exchange of goods under warranty in accordance with section 9.1 shall not prolong the original warranty period as stipulated in section 9.4.

9.6 Supplier's liability for culpable damage to life, body or health as well as Supplier's liability under the German Product Liability Act shall remain unaffected.

9.7 Save as otherwise stated in these General Terms and Conditions there shall be no liability for the Supplier towards the customer for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

10. NO CESSION

The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of these terms and conditions to any third party.

11. CHANGE OF CONTROL

11.1 The customer undertakes to notify the Supplier, in writing, within seven (7) days of any change in ownership of the customer's business, or, should the customer be a company or close corporation, any share/member's interest transaction where the majority shareholding/membership is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by the customer.

11.2 In addition to the foregoing, the customer acknowledges that immediately upon the change of ownership in the customer any outstanding amount whether due or not shall be deemed forthwith payable by the customer to the Supplier.

12. NO VARIATIONS OR AMENDMENTS

12.1 These terms and conditions constitute the entire agreement between the Supplier and the customer and neither party shall be bound by any express, implied or tacit term, representation, warranty, promise or the like not recorded herein whether it induced the contract between the Supplier and the customer or not.

12.2 No alteration, cancellation, variation or addition hereto shall be of any force or effect unless reduced to writing and signed by both parties.

12.3 No indulgence, leniency or extension of time shown or granted to the customer shall in any way prejudice the Supplier or preclude the Supplier from exercising any of its rights in the future.

13. FINAL PROVISIONS

13.1 These terms and conditions as well as the legal relationship between the Supplier and the customer shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention for the International Sale of Goods is excluded.

13.2 Should individual parts of these Terms and Conditions be or become invalid the validity of the remaining provisions shall not be affected.

13.3 All disputes arising out of or in connection with the legal relationship between the Supplier and the customer, including these terms and conditions or their validity, shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

13.4 The arbitral tribunal shall be comprised of three members. In rendering their decision, the arbitrators shall consider the intention of the Parties hereto insofar as it can be ascertained from the contractual agreement.

13.5 The seat of the arbitration shall be Frankfurt am Main, Germany. The language of the arbitration shall be English.

13.6 The losing Party shall be responsible for all costs and expenses related to the arbitration, and all costs and expenses of enforcement of any arbitral award.