



## General Conditions of Sale

### 1. Scope and validity

The following conditions serve to regulate business relations between customer and SMB. They apply to all supplies by SMB and are valid for all points not stipulated in writing in another and reciprocal way. Conditions of the customer in contradiction with the present General Conditions of Sale are only valid if agreed to in writing. If an order is placed without reserve, these General Conditions of Sale shall be deemed to be fully and unconditionally accepted.

### 2. Quotations and orders

Quotations without time limit of acceptance are not binding. All quotations may be revoked until a declaration of acceptance from the customer is received by SMB. To be considered valid, orders made without a prior offer by SMB shall require order confirmation or other written form of acceptance from SMB. The same applies to any changes made to SMB's offers.

### 3. Conclusion of contract

The contract is considered concluded when SMB confirms acceptance of the order following its entry in writing. Verbal arrangements are only valid insofar as agreed to in writing.

### 4. Execution, volume of the supplies and procurement

Only SMB's order confirmation determines the execution, terms and volume of supply.

Based on the table according to standard DIN EN 10254 under- or oversupply is admissible.

Weights indicated in SMB's quotations are always approximate and without any specific commitment on the part of SMB.

The invoiced amount will be calculated based on the exact quantities delivered by SMB.

SMB may purchase raw materials and semi-finished products based on orders. Without further notice to the customer, SMB may order larger quantities than those needed for the orders in the case of blanket orders, minimum packing quantities, excess deliveries from suppliers or uneconomical procurement of small quantities. The customer shall be obliged to purchase the excess raw materials and semi-finished products purchased by SMB in the event of the product being modified or if no further orders are placed with SMB. In the case of urgent orders or in other justified cases, SMB shall be entitled to procure supplies from brokers or intermediaries, in which case the customer shall bear the additional procurement costs.

### 5. Dimensions, tolerances, drawings

If not otherwise agreed to in writing, standards according to DIN EN 10254, DIN EN 10243 and DIN 7527 shall apply.

### 6. Toolings, special resources and technical documentation

Dies, toolings, punching and bending tools and suchlike always remain the property of SMB.

Insofar as not otherwise agreed to in writing, all technical documentation such as drawings, blueprints, descriptions, illustrations and suchlike, including the production of samples and prototypes manufactured upon request of the customer, remain the property of SMB and shall not be copied, reproduced or brought to the notice of third parties in any way, or be used for the manufacture of the mechanism or parts thereof.

All technical documentation accompanying quotations that does not lead to a purchase order must be returned to SMB immediately without further request.

### 7. Intellectual property rights

SMB alone owns all rights related to intellectual property on designs, projects, developments or other documentation of its making. Without the express consent of SMB these cannot be made available to third parties. If no order is placed or in the event of termination of the relationship of supply, all documents must be returned to SMB without further request.

The customer guarantees his ownership of all intellectual property rights of any kind relating to the drawings, projects, developments etc. of the products entrusted to SMB for manufacture. Within this context, SMB shall not be held liable by the customer in respect of any third-party claims, including all expenses incurred by SMB for legal representation, consultation etc. and, if required by SMB, intervention in a dispute.

### 8. Rules and regulations at destination

The customer is required to draw SMB's attention to legal, official and other regulations that refer to the execution of the supply, the assembly and the plant, as well as to the prevention of illness, accidents and, in general, damages. Possible legal consequences that might result from incomplete explanation/information by the customer are entirely the customer's responsibility.

### 9. Prices

The agreed prices are fixed prices and, unless otherwise agreed in writing, are to be understood net, ex works from SMB's factory, excluding packaging, VAT, public taxes, advance recycling taxes, transport costs and insurance, and in freely available Swiss Francs or other agreed currency, with no discounts.

All additional costs, for example for packaging, transport, insurance, export-, transit-, import- and other permits as well as authentications, are to be charged to the customer; the same is valid for all taxes, fees, royalties, duties and suchlike. If SMB has included the costs of packaging, transport, insurance and other additional charges in its quoted or delivered price, or has shown them separately in the quotation or order confirmation, SMB reserves the right – should the tariffs change – to adjust the rates accordingly.

Price adjustments after conclusion of a contract can be made, if:

- prices have been agreed on a sliding scale basis,
- material, execution or volume of the agreed supply or performance are subject to a change caused by the customer,
- the delivery time is postponed or prolonged for reasons mentioned under §11 or
- raw and auxiliary materials, fuel and/or oil (heating material) or wages are subject to a significant increase during the production period

### 10. Withdrawal from the contract

SMB shall be entitled to withdraw from the contract after concluding it, as a result of unforeseeable changes in circumstances, its delivery costs increase by more than 5%, making fulfilment of the terms and conditions of the contract impracticable. Withdrawal from the contract does not give rise to any entitlement to compensation from SMB.

### 11. Delivery time

Delivery time commences upon conclusion of the contract, after final clarification of all commercial, legal and technical issues and after payments to be made with the order or possible guarantees have been effected. Delivery time is considered as met when at its expiry the supply is completed at the SMB works.

Delivery time will be prolonged appropriately:

- if the customer does not provide SMB in good time with the necessary information for the execution of the order, or later modifies it, thus causing a delay in delivery,
- if the customer or third parties are in arrears with regard either to the work to be executed by them or to compliance with their contractual obligations, for example if the customer does not respect payment terms,
- if unforeseeable circumstances arise despite the care and precautions taken, regardless of whether they are generated by SMB, by the customer or by a third party, as for example mobilization, war, epidemics, riots, strikes, blockades, lockouts, technical breakdowns, accidents, industrial strife; as well as the delayed or defective supply of necessary raw materials, semi-finished or finished products, rejection of important pieces of work, transport problems, official or other provisions, forces of nature.

### 12. Packaging

Packaging material is invoiced separately and is usually non returnable. If identified as SMB's property, however, it must be returned to SMB, free of delivery charge unless otherwise agreed in writing.

### 13. Shipment, transportation and insurance

Requests concerning shipment, transport and insurance must be communicated to SMB with sufficient notice. If no specific instructions are given with the order, choice of transport will be at SMB's discretion, using the cheapest method.

Transport is always at customer's cost and risk, if not otherwise agreed in writing.

Insurance for damage of any kind is at the customer's expense. Even if insurance is provided by SMB, it is considered concluded per order and is charged to the customer.

#### 14. Late collection

If the customer is late in collecting the goods or providing transport or shipment information, SMB shall be entitled to store the goods at the customer's expense and risk. After expiry of one month from the date of issue of the collection notice, SMB shall be entitled to charge the customer a monthly storage fee of 0.5% of the total invoice amount subject to surcharges in the event of cost increases.

#### 15. Transfer of risks and rewards

All risks and rewards are transferred to the customer as soon as the goods are stored at SMB's factory ready for collection or shipment even if the supply is to be carried out delivered free, CIF, FOB or under a similar clause, or if the transport is organised by SMB. Should the shipment be delayed or rendered impossible for reasons beyond SMB's control, the supply will be deposited in a suitable place of SMB's choice or stored on SMB's premises at the customer's cost and risk.

#### 16. Transfer of title

The goods shall remain the property of SMB until payment is received in full. In the event of late payment, SMB reserves the right to enter a "retention of title" clause in the corresponding register in accordance with the respective national laws, and the customer expressly agrees to the entry. The customer will maintain the delivered items until the transfer of title at his expense and will insure them in SMB's favour against theft, breakage, fire, water and other risks. If the customer resells the goods, all claims towards third parties shall be transferred entirely to SMB by way of security. This also applies to the added value of the goods as a result of any further processing carried out by the customer. No goods shall be sold to buyers who exclude the transfer of the seller's claims against them or make it dependent upon their acceptance.

#### 17. Inspection of the supply, acceptance trials and objections

The inspection of the supply prior to shipment is carried out within the framework of standard DIN EN 10254. The customer must inspect the supply as soon after receipt as possible and in any case before using, machining or re-selling the parts thereof.

Should the customer require acceptance trials, these must be stipulated in writing in advance. If these acceptance trials cannot be executed within the defined time limit for reasons outside the control of SMB, the characteristics to be determined through these trials are considered existent.

Any objections concerning the quantities delivered or any obvious defects shall be submitted to SMB within eight days of delivery of the goods. All other defects must be notified to SMB immediately upon detection, at the latest within the warranty period. Objections shall be submitted in writing and include a detailed description.

#### 18. Warranty

The warranty period is 12 months, commencing with the supply leaving the SMB premises or with the acceptance trial agreed to in writing. If shipment or acceptance trial is delayed, the warranty period expires at the latest 18 months following notification of readiness of shipment. For repaired or replaced parts, the warranty period commences anew and lasts 6 months after replacement, termination of repair work or acceptance trial, but at most until the expiration of a time span which is double the initial warranty period.

During the warranty period, upon written request of the customer, in the event of defective delivery, including the lack of promised features, SMB's responsibility is limited as follows: SMB will decide whether to repair the parts at its factory or replace them from its factory, provided that proof can be produced that the defects are the result of circumstances prior to the transfer of risk or that they occurred despite proper use of the goods.

SMB shall bear only the cost of repair work or replacement at its factory. If repairs are carried out on site, SMB shall bear only the costs that would have been incurred had the work been carried out at its factory. SMB shall bear no costs for dismantling, assembly or if the goods have been integrated in other equipment or installations. No further claims will be accepted and further rights of the customer regarding a defective supply, especially as far as reduction in price due to defects, annulment or rescission of the contract and claim for damages are concerned, are excluded.

Explicitly excluded from warranty are defects in parts as a result of normal wear and tear, faulty maintenance, faulty operation and excessive strain, inappropriate resources, chemical or electrolytic influences, corrosion, faulty setting to work not performed by SMB or due to other reasons for which SMB cannot be held responsible. Especially excluded from warranty and liability is damage caused by defects due to instructions given or not given by the customer, or damage that could not be recognized by SMB according to the state of the art and science at the time of production of the corresponding part, or insofar as SMB manufacture only part of a whole product.

All warranty obligations of SMB shall cease in the event of late or incomplete notification of any defects, in the event of repair work carried out by the customer or by third parties not expressly authorized by SMB, or in the event of misuse of the goods.

#### 19. Liability

SMB is liable only for direct damage to property or personal injury suffered by the customer which can be attributed to wilful misconduct or gross negligence on the part of SMB.

Unless otherwise expressly agreed in writing or otherwise provided by a mandatory legal provision, SMB is liable in accordance with the legislative provisions for damage to property or personal injury up to a maximum of CHF 100,000.– (one hundred thousand Swiss francs) per incident.

No further responsibility is accepted by SMB, with particular regard to indirect pecuniary damage such as loss of production, loss of earnings, loss of reputation or any other consequential damage.

#### 20. Payments

If not otherwise stipulated in writing, payment is due net at the head office of SMB within 30 days of the date of the invoice, with no deductions for discounts, charges of any type, taxes, fees, royalties, customs duties or suchlike.

The obligation to pay is fulfilled when Swiss Francs, if not otherwise agreed to in writing, have been placed at free disposal of SMB in Switzerland. If partial deliveries are being invoiced, payment must be effected according to the agreed payment conditions for each supply.

Payment deadlines must be respected also if transport, consignment, assembly, setting to work or auditing of the supply is delayed or made impossible for reasons beyond SMB's control. It is not permitted to shorten or withhold payments as a result of customer's complaints, claims or counterclaims not explicitly recognized by SMB in writing.

Payment must also be effected when unimportant parts are missing or when additional work on the supplied parts should become necessary without rendering their use impossible.

If the customer does not adhere to the contractual payment deadlines, he will be subject – without any special reminder – to payment of interest on arrears maturing as from the due date of the invoice(s). The rate of interest is governed by the usual rate at the domicile of the customer, however at least min. 5% (five per cent) or 4% (four per cent) above the current bank rate of the Swiss National Bank if higher, unless a higher rate of interest was agreed. The obligation for a contractual payment is not nullified with payment of interest on arrears. SMB reserves the right to claim indemnification.

#### 21. Place of performance

Place of performance for the customer and for SMB is at the legal head office of SMB and applies also if the supply is carried out delivered, CIF, FOB or under similar clauses.

#### 22. Severability

If for legal reasons any of the provisions of the contract or of the General Conditions of Sale should be held invalid or unenforceable, the remaining provisions will remain in full force and effect. The Parties shall replace any invalid or unenforceable provisions with valid, enforceable provisions that most closely match the intent and economic purpose of the contract or the General Conditions of Sale.

#### 23. Applicable law and jurisdiction

The contracts subject to these General Conditions of Sale are governed by Swiss substantive law. The Vienna Convention on Contracts for the International Sale of Goods of 11<sup>th</sup> April 1980 does not apply. The exclusive place of jurisdiction for any dispute arising out of or in connection with the performance, validity or interpretation of the contract is the court of first instance at the legal head office of SMB (6592 S. Antonino, Switzerland).