

# Terms and Conditions for Domestic Delivery

## 1 Scope of these Terms and Conditions

1.1 These Terms and Conditions for Domestic Delivery apply exclusively to all offers and contracts regarding sales and the performance of delivery, collection, and services to/for business-entities that have their business seat in Germany or whose relevant establishment is located in Germany at the time of closing the contract. Relevant is the establishment that closes the contract in its own name.

1.2 These Terms and Conditions for Delivery also apply to all future contracts with the customer even without a new express agreement to that fact. Individual agreements between the parties override these Terms and Conditions for Delivery. Diverging conditions of the customer are expressly contradicted.

1.3 These Terms and Conditions for Delivery are divided into two parts: Part A regarding common conditions for all contracts and Part B regarding special conditions for the delivery of Systems systems as defined in no. B.1.2.

1.4 These Terms and Conditions for Delivery apply only in relation to customers closing the contract in the execution of their commercial or self-employed professional activity ("business entities") as well as legal entities under public law or special funds under public law. These Terms and Conditions for Delivery do not apply in relation to natural persons that close the contract for a purpose that can neither be accounted to their commercial nor self-employed professional activity ("consumers").

### Part A – Common conditions for all contracts

#### 1 Conclusion of the contract

1.1 Our offers are not binding, i.e. they are only an invitation to make an offer unless the offer expressly indicates differently. A contract is formed by our confirmation of the customer's offer. In case of discrepancy between offer and confirmation, the customer has to declare his disagreement within one week from receipt.

1.2 Insofar as we make a binding offer, the customer has to accept such offer within the acceptance period stated. If a binding offer does not state an acceptance period, the acceptance period is two weeks from the date of the offer.

1.3 The contractual content, especially the scope of the services, is defined by our order confirmation respectively our delivery note or the invoice.

1.4 Consultations and planning are non-binding unless expressly referenced as binding in the contract. Any documents or information that have been presented or handed over by us, in particular planning sketches, drawings, pictures, indications of weights and dimension specifications are non-binding unless expressly designated as binding.

1.5 The documents and information named in no. A.1.4 above remain our exclusive (intellectual) property even after the execution of the contract. Pictures, descriptions, price- lists, samples, drafts or drawings may neither be copied nor made available to third parties in any other form. The customer is not permitted to use them to produce goods himself or through third parties unless otherwise expressly agreed.

1.6 If a contract to execute the services is not concluded after any consultation and/or planning by us, all documents which have been prepared by us must be returned to us without undue delay; documents that have been transferred in electronic form must be deleted without undue delay and have to be returned as far as possible.

1.7 Misconceptions and mistakes in writing printing or calculating in view of our non-binding offer as well as our catalogues and brochures may occur and shall not bind us. All documents related to the non-binding offer, such as pictures, drawings, invoices, indications of weights and dimension specifications are only approximations unless the parties agreed differently. Such information, in particular information regarding the services and the use of the delivered products as well as German Industry Standards (DIN) are only deemed to be contractually agreed upon if this has been expressly declared by us in writing.

#### 2 Prices and payments

2.1 Our prices are net plus VAT. Prices are in Euro FCA (Incoterms 2020) at our storage facility in Singen or designated storage facility of our logistic partner plus packaging, freight, and shipping unless agreed upon otherwise in writing. Additional costs for express-shipping shall be invoiced separately.

2.2 Payments are due 14 days net after the date of the invoice unless the parties agreed upon otherwise; thereafter the customer has to pay maturity interests to the amount of 9 percentage points above the base interest rate (Basiszinssatz) of the European Central Bank.

2.3 Set-off or retention of payment is only permitted against the customer's receivables arising from the same legal relationship or against the customer's claims which have been accepted or stated legally binding.

2.4 If we recognize after conclusion of the contract that our right for payment is at risk because of the customer's inability to perform we are entitled to refuse our services or preparatory actions. The right to refuse the services ends if the payment is made or the customer lodged a security for the payment. We are entitled to set an appropriate deadline for the payment/lodging a security to the customer. After expiry of the deadline without payment or lodging of a security we are entitled to withdraw from the contract.

2.5 We are entitled to assign our receivables against the customer.

### **3 Delivery and delay**

3.1 Any agreed delivery dates are subject to the timely clarification of any details of the desired realization that have to be defined by the customer as well as the timely receipt of any deposit to be made by customer.

3.2 Any period for execution or delivery is appropriately extended - even in case of default - in cases of force majeure (e.g. natural disasters, wars, uprisings, strikes, epidemics, pandemics) and all unforeseeable impediments, that occur after conclusion of the contract and that we are not responsible for, as far as such impediments have any detrimental impact on the provision of our performance. This also applies if such impediments occur at our pre-suppliers, suppliers, freight-carriers or subcontractors. We will inform the customer without delay about the start and the end of such impediments.

3.3 If such an impediment continuous for more than three months or it is certain that it will remain an impediment for more than three months, both we and the customer are entitled to withdraw from the contract. In the case of withdrawal because of such impediments any claims for damages are excluded. Any deposits of the customer shall be returned unless the customer was responsible for a delay in the delivery schedule

resulting in the detrimental impact of the impediment; in the latter case, clause 6 below shall apply accordingly.

3.4 We are entitled to delivery in parts insofar as a customer has an objective interest in the delivery in parts in view of the contractual purpose and if the delivery in parts does not cause significant additional expenditures for the customer.

3.5 The customer has to provide for the opportunity of undisturbed delivery. Otherwise the customer has to inform us at least 10 days before the agreed or announced time of delivery. If, at that time, we already have initiated deliveries that have to be returned to us because of circumstances which the customer is responsible for, we are entitled to invoice any additional expenditure and cost separately. The agreed delivery period will be extended accordingly. This also applies in case of any amendments or new orders of the customer that are placed after conclusion of the contract.

3.6 If the customer is in default with the acceptance of the goods or payment of the price, we are entitled to withdraw from the contract and/or to claim compensation instead of continuing to perform the contract after unsuccessful expiration of a reasonable grace period set by us. In case of claiming compensation instead of delivery we are entitled to 20 % of the net price for performance as fixed compensation; the parties may prove either a higher or a lower actual damage.

In addition, we were entitled to claim payment for any expenditure caused by default in acceptance of the customer, in particular storage costs. If the goods are stored in our own establishment, we will invoice the storage costs customary in the respective place.

3.7 If we are in default with delivery caused by simple negligence our liability for compensation because of defaulted delivery is limited to 0.5 % of the net order value for each complete week of default, at maximum 5 % of the net order value. If the customer claims compensation instead of delivery in the aforementioned cases this compensation is limited to 10% of the net order value. The limitation of liability according to the sentences one and two above does not apply in case of default caused by intent or gross negligence, furthermore not in any case of injury to life, body and health and if contract which shall be performed by a date specified in the contract or within a specified period, i.e. a transaction, whose success depends on the meeting the specified deadline.

#### **4 Passing of risk**

4.1 The risk passes according to FCA (Incoterms 2020) unless otherwise agreed in writing.

4.2 It shall be the customer's responsibility to insure the goods against any insurable risks at his cost, in particular against theft, breakage, fire, water, transport, or any other damage from the passing of risk.

#### **5 Retention of title**

5.1 We retain title to the goods until the complete fulfillment of our receivables (including all accessory claims such as financing costs, interests) arising from the business transaction with the customer – including future receivables. If a current account agreement has been reached with the customer, the retention of title exists until complete settlement of the accepted current account balance. If an agreement on payment by checks or bills of exchange has been reached with the customer, the retention of title extends to the cashing of our bill of exchange by the customer and does not expire with credit entry of the received check.

5.2 The customer is obligated to handle the goods subject to retention carefully and, in particular to insure them sufficiently against fire and water damage and loss due to theft at the reinstatement value at his cost.

5.3 The customer has to inform us without undue delay in case of seizure, confiscation, damage and/or loss of the delivered goods; any breach of this obligation, as well any other behavior of the customer which is contrary to contract, in particular the non-payment of the due purchase price, gives us the right to withdraw from the contract. The customer bears all costs that must be spent in particular in connection with an objection by a third party to the successful reacquisition of a seizure and if applicable to a successful new purchase of the goods delivered if they cannot be collected by third parties.

5.4 If we have validly withdrawn from the contract, we are entitled to repossess the retained goods, if the repossession was threatened within a reasonable period of time. Our statutory rights and obligations after withdrawal from the contract shall remain unaffected apart from that.

5.5 Any costs arising from our exercise of our right to repossess the goods, in particular for transportation and storage shall be borne by the customer.

5.6 Now already, the customer assigns to us any claims arising from resale or any other legal reasons (for example: in case of an event covered by insurance, a tortious act or loss of ownership through connection of the delivered goods with real estate) the respective purchase price, work wages, or any other receivables in view of the reserved goods including an accepted current account balance up to the amount of the invoice value of the reserved goods; we accept the assignment. The assignment of the claims according to sentence 1 serves as a security for all claims including future claims arising from the business relationship with the customer.

5.7 The customer is revocably entitled to collect any claims from resale for us in his own name. This direct debit mandate can only be revoked if the customer does not properly meet his own payment obligations. In this case the customer has to disclose all information necessary for the collection of the assigned claims, provide the relating documents and to disclose the assignment to the debtor at our request.

5.8 If the realizable value of the securities provided according to the regulations above not only temporarily exceeds our claims against the customer by more than 10 %, we shall at our choice and at request of the customer release a security insofar. This limit of 110 % will be extended by the amount of the VAT if we are liable for VAT in course of the exploitation of the secured goods that originates from the delivery by the customer with VAT. The customer is also entitled to demand the release of securities if the estimated value of the goods assigned as security is more than 150 % of the claims to be secured. The selection of the securities to be released is at our discretion.

5.9 In case of suspension of payment, application for or opening of insolvency proceeding of the customer or his business, the customer's right to resale or to use the secured goods and the direct debit mandate expire. The statutory rights of an insolvency administrator - even if preliminary - shall remain untouched.

#### **6 Notification of defects, remedy for material defects**

6.1 The customer has to notify us in text form (e.g. in writing or via e-mail) of defects of any kind - with the exception of hidden defects - without undue delay after delivery to the customer, at the latest after a period of seven working days (Saturday is not deemed to be a working day); otherwise the goods shall be deemed approved. Hidden defects must be reported by notification in text form after their discovery without undue delay, but no later than seven working days (Saturday

does not count as a working day); otherwise the goods shall be deemed approved with regard to these hidden defects.

6.2 When negotiating with regard to an alleged defect, we do not waive the objection of belated, insufficient or unfounded notification of defect in any case.

6.3 The customer is obliged to give us the opportunity to determine the alleged defect on site. In case of transport damages or breakage the goods are to be left in the state in which they were at discovery of the damage.

If a non-conformity cannot be established after notification by the customer, the customer must reimburse us for the costs incurred in connection with the examination of the goods.

6.4 As far as the goods are defective, we can choose either to rectify the defect (rectification) or to deliver of a non-defective good (replacement) as subsequent fulfillment unless the parties agreed differently or we offered a special guarantee (no.A.6.6). If we are unwilling or unable to rectify the defect/replace the defective good, in particular if the subsequent fulfillment is delayed beyond a reasonable period for reasons for which we are responsible, or if the rectification/replacement fails, the customer has the choice to either withdraw from the contract or to reduce the consideration provided that further attempts at subsequent fulfillment are not acceptable to him. In case of an insubstantial defect, the customer may only withdraw from the contract with our consent.

6.5 Rights to a remedy require that the goods show a defect at the time of passing of risk. Rights to a remedy do not arise in case inappropriate or improper use, faulty installation or operation by the customer or third parties authorized by him, usual wear and tear, faulty or careless handling or maintenance according to the documentation, deficient construction work, unsuitable foundations, chemical, electrochemical or electrical influences, provided these are not caused by any fault attributed to us, or in case of force majeure.

6.6 For damages due to defective goods, we are liable only within the limits of no.A.7.

6.7 Agreements on guarantee apply irrespective of the regulations of these Terms and Conditions of Domestic Delivery.

## **7 Liability**

7.1 We are liable for damages in cases of intent or gross negligence by ourselves, our statutory representative or our vicarious agents, the assumption of a

guarantee, pursuant to the principles of product liability law as well as injury to life, body or health attributable to ourselves, our statutory representative or our vicarious agents.

7.2 Apart from this, we or our statutory representatives or vicarious agents are only liable in the case of negligent violation of a material contractual obligation, i.e. an obligation which enables the proper fulfillment of the contract and which the other contractual party has relied on and may rely on, for the typically occurring, foreseeable damage. The limitation of liability for delay in delivery according to no. A.3.7. remains unaffected.

7.3 In all other cases of liability, claims for damages due to the violation of a contractual obligation as well as arising from tort are excluded, therefore, we are not liable for the customer's consequential damages, additional expenditures, loss of earnings or other financial damages.

7.4 Insofar as our liability is excluded or restricted pursuant to the preceding provisions, this also applies to the personal liability of our employees, workers, staff, representatives and other vicarious agents.

7.5 The terms "damages" or "damage claims" in these General Terms and Conditions also include claims for expenses caused by subsequent performance (Aufwendungen).

## **8 Limitation period**

8.1 In case of supplier recourse in the supply chain of a consumer goods purchase, statutory strict liability, in particular under product liability law and in case of a guarantee, the statutory limitation period applies.

8.2 For damages resulting from injury to life, body or health that are based on a negligent violation of duty by ourselves or an intentional or negligent violation of duty of our statutory representative or vicarious agent, for other damages resulting from an intentional or grossly negligent violation of duty by ourselves or an intentional or grossly negligent violation of duty of our statutory representative or vicarious agents, as well as damages resulting from an intentional or negligent violation of material contractual obligations of the respective contract by ourselves or our statutory representatives or agents, the statutory limitation period applies as well.

8.3 In all other cases, the limitation period is one year.

## **9 Software**

If software is included in the delivery, the respective license conditions apply for the use of the software.



## 10 Data protection

The customer agrees that we store, use or process personal data in accordance with the European General Data Protection Regulation to the extent necessary for the execution of the contract.

## 11 Labelling

11.1 Unless explicitly agreed upon, the goods and the accompanying documentation are labelled and drawn in German, and the goods comply with the applicable German statutory requirements regarding labelling and authorization.

11.2 The customer is solely responsible for the compliance with further requirements of other jurisdictions outside of Germany regarding the labelling or authorization, unless agreed upon otherwise by the parties.

11.3 The Special Terms for Medical Devices, which can be requested from us free of charge, apply additionally to any sale of medical devices.

## 12 Schlussbestimmungen/Gerichtsstand

12.1 All agreements between us and the customer in execution of the contract must be made in writing. Pre-contractual declarations, documents and information as well as the customer's order shall be made in writing.

12.2 Unless otherwise agreed, the place of payment and performance for all obligations is 78224 Singen, Germany.

12.3 If the customer is a businessman within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the place of jurisdiction for all rights and obligations of the contracting parties arising from transactions of any kind is 78224 Singen, Germany. The same applies if the customer has no place of general jurisdiction in Germany, moved to his domicile or habitual residence abroad or if his domicile or habitual residence is unknown at the time of action. However, we are also entitled to sue the customer at place of his general or specific jurisdiction.

12.4 The statutory law of the Federal Republic of Germany applies for these terms and conditions and the entire legal relationship between us and the customer.

12.5 Should any provision of these Terms and Conditions be or become wholly or partially invalid, it shall not affect the validity of the remaining provisions. The Parties undertake to replace the invalid provision by a

valid one which comes closest to the purpose intended by invalid provision.

## Part B – Special Provisions for the delivery of systems

### 1 Systems

1.1 In addition to the foregoing common provisions (Part A), the following special provisions for the delivery of Systems (Part B) shall apply for the delivery of Systems. In the event of conflict with the common provisions, the special provisions shall prevail.

1.2 Systems" within the meaning of these Terms and Conditions of Delivery are either standard modules, modular systems or customer-specific (tailor-cut) systems.

### 2 Prices, payment conditions for systems

2.1 Our prices are net plus VAT. Prices are in Euro FCA (Incoterms 2020) plus packaging, freight, and shipping as well as cost for agreed "Additional Services" (assembly, initial operation et al.) unless agreed upon otherwise in writing. Additional costs for express-shipping shall be invoiced separately.

2.2 If the total value of the order (excluding freight and packaging costs, excluding VAT) is more than EUR 30.000,00 per system, payments for systems shall be made as follows, unless otherwise agreed:

35 % down payment at contract conclusion, as we provide the corresponding raw material immediately;  
65 % at delivery;

or in case of agreed acceptance:  
55 % at delivery, 10 % at acceptance.

2.3 An invoice will be issued for each payment rate. Unless otherwise agreed, the payment at contract conclusion is due immediately net, the remaining payments are due 14 days after date of invoice net.

### 3 Timely fulfilment of contractual obligations

3.1 Unless agreed otherwise our obligation is fulfilled in time

- in case of agreed acceptance, if we informed the customer that the product is ready for acceptance,
- in case of additional services (assembly, initial operation et al.), if the additional service has been provided.

3.2 In case of additional services, the customer has to provide for the opportunity of undisturbed provision of such services. Otherwise the customer has to inform

us at least 10 days before the agreed or announced time of delivery. If, at that time, we already have initiated deliveries that have to be returned to us because of circumstances which the customer is responsible for, we are entitled to invoice any additional expenditure and cost separately. The agreed delivery period will be extended accordingly. This also applies in case of any amendments or new orders of the customer that are placed after conclusion of the contract

#### **4 Passing of the risk of systems**

The risk of loss or deterioration passes to the customer according to the agreed clause of the Incoterms 2020 even if acceptance or additional services have been agreed upon.

#### **5 Obligations of the customer and acceptance of systems**

5.1 On delivery at the customer's site, the customer has to undertake a visual inspection of the delivery with regard to any transport damage immediately and to inform us of any discovered damage without delay as well as record such damage in the transport documents. Any damage that has not been brought to our notice is deemed to be caused by the customer after delivery. With regard to this, the customer carries contributory negligence for any defect of the System system resulting from such damage unless the customer can prove the existence of transport damage or the absence of his contributory negligence.

5.2 If installation and assembly have been agreed upon, the customer has to provide any other construction work or auxiliary work including the required workforce, building material and tools, energy and water including the connections therefore, heating and lighting and the necessary rooms for the storage of system components, materials, tools, etc. and for the assembly personnel at his own expense, unless otherwise agreed.

5.3 If we request the agreed acceptance of the system after its completion, the customer must carry out the acceptance within two weeks. Acceptance shall be deemed as having been given, if the customer lets the two-week deadline expire or starts to use the system commercially.

5.4 The customer may not refuse receipt or acceptance due to minor defects.

5.5 If the customer is culpably delayed with the acceptance or, in case of additional services, with the receipt of the goods or the enabling of the additional services, after expiration of a reasonable period of notice set by us, we are entitled to withdraw from the

contract and/or claim damages instead of the payment due. In addition, no. A.3.6 applies.

#### **6 Maintenance of systems**

6.1 Unless otherwise agreed, the customer is obliged to maintain the system regularly according to the documentation by himself - even during the limitation period of claims for remedy.

6.2 In particular, the regular maintenance includes conducting tests for safety-related functions such as explosion protection, etc. The tools, lubricants or fillers required for regular maintenance of the system, as well as personnel and installation costs are not included in the price of the system, unless otherwise agreed.

**Elma Schmidbauer GmbH**  
**As of 11|2020**