

General Terms and Conditions of Sale (GTCS) of SMB Schwermechanik GmbH

1. Applicability

- These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with the customer. In particular, they apply to contracts on the sale and/or delivery of movables, whether we have manufactured them or bought them from suppliers or subcontractors. However, they only apply where the customer is an entrepreneur within the meaning of section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*), a legal entity under public law or a special public fund.
- These GTCS apply exclusively even if we, with knowledge of the customer's general terms and conditions, accept orders, perform services or directly or indirectly refer to letters etc. which contain the customer's or third-party terms and conditions without any reservations. We accept any contrary, deviating or supplementing terms and conditions of the customer only by expressly consenting to their applicability in writing.
- Our GTCS apply in the version as applicable from time to time as a framework agreement (section 305 (3) of the German Civil Code) also for future offers and contracts on the sale and/or deliveries of movables concluded with the same customer without our having to refer to them in each individual case; we will inform the customer of any change to our GTCS without undue delay.

2. Offer, conclusion of contract

- Our offers are unbinding unless otherwise expressly stated in the respective offer.
- Any offers to or orders placed by the customer shall not be deemed accepted until we expressly confirmed in writing (order confirmation). Our silence to such offer or order shall not be deemed an acceptance.
- Any statements as to the conclusion, amendment or termination of contracts must be done in writing to be valid. Transmission via fax or e-mail shall be deemed sufficient for compliance with the written form requirement within the meaning of these GTCS.
- Our public statements, in particular those in connection with advertising or labelling, are not a description or guarantee of the quality of products.
- In case of doubt, the Incoterms as of the date when the contract was concluded shall be authoritative for the interpretation of standard trade terms.

3. Submitted Documents

- We retain full title, copyright and all other proprietary rights to all documents, material and other objects handed over by us to the customer (e.g. offers, catalogues, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions and product specifications, samples, models and other physical and/or electronic documents, information and objects).
- Without our prior written consent, the customer may not make available to any third party or inform about, dispose of, multiply or alter the objects mentioned above or their contents. The customer shall use them exclusively for the contractual purposes and return them to us completely upon our request and to destroy or delete any copy, including but not limited to electronic copies, where the customer no longer needs them in the proper course of business or to comply with the statutory duties to retain them. Upon our request, the customer shall confirm that all documents, material or objects have been returned or destroyed/deleted or state which of them the customer supposes to need for what ground..

4. Prices, VAT

- The prices specified in the order confirmation are authoritative. Such prices are exclusive statutory VAT. VAT shall be added and specified separately in the invoice at the rate applicable on the date of invoice.
- We retain the right to reasonably adjust prices in case of any cost decrease or increase which we are not responsible for and occurring two or more months following conclusion of the contract, in particular due to collective agreements, raw material price changes or energy cost changes or the introduction of or change to public taxes or charges. Upon request, evidence for such cost decrease or increase shall be submitted.
- The VAT regulations of the 6th EC VAT Directive as applicable from time to time shall apply to invoices for deliveries from one EC member state to another EC member state unless this is against national law.

5. Payment

- The customer shall pay the agreed price within 30 days from receipt of invoice. The entry on our bank account is authoritative for the date of payment. Cheques shall not be deemed paid until cashed irrevocably.
- Deduction of cash discount is permitted after prior written agreement only.
- If we are obliged to perform in advance and a considerable deterioration in the customer's assets occurs after conclusion of the contract which endangers payment of the purchase price, in particular if the customer suspends payment or if a petition for institution of insolvency proceedings regarding the customer's assets is filed, we are entitled to suspend delivery until the purchase price is paid or a security is submitted. In case the customer neither effects payment nor submits a security within reasonable time, we are entitled to withdraw from the contract, and any claims of the customer for compensation or indemnification shall then be excluded.
- The German statutory regulations regarding default of payment shall remain unaffected.
- To the extent the contract provides for letter of credit, we are not obliged to fulfil obligations under the contract until we have received such letter of credit.

6. Set-off, right of retention (consolidated set-off)

- The customer is entitled to set off only if the customer's counter-claims have been confirmed by final court decision or are uncontested. The customer is entitled to exercise its right to set off only if its counter-claim is based on the same contractual relationship.
- We may set off any claims we are entitled to vis-à-vis the customer against any claims the customer is entitled to vis-à-vis us.
We are also entitled to set any claims we are entitled to vis-à-vis the customer off against any claims the customer is entitled to vis-à-vis any enterprise in which Georgsmarienhütte Holding GmbH directly or indirectly holds a majority participation regardless of the legal reason for such claim. A list of the present enterprises is at www.gmh-gruppe.de. Upon request, the customer may receive information as to which enterprises belong to such group at any time.

7. Comprehensive retention of title

- The following agreement on retention of title serves the safeguarding of all claims we have at a particular time or thereafter against the customer from the supply relationship between the contractual parties (including but not limited to any balance claims resulting from a current account limited to that supply relationship).
- We retain title to the goods supplied by us to the customer until payment in full of all secured claims. The goods and any goods subject to retention of title substituting goods pursuant to this clause shall hereinafter be referred to as goods subject to retention of title.
- The customer shall store the goods subject to retention of title for us without charge.
- The customer is entitled to process and sell goods subject to retention of title in the ordinary course of business until realisation (see (9) below) occurs. Pledging and transfer by way of security are not permitted.
- In case goods subject to retention of title are processed by the customer, the following applies: Such processing is effected on our behalf and for the account of us as the manufacturer and we directly acquire ownership in the new thing made thereby or, if the new thing is made of or from materials from different owners or the value of the processed thing is above the value of the goods subject to retention of title, co-ownership (ownership in fractional shares) in the new thing made thereby at the rate of the value of the goods subject to retention of title to the value of the newly made thing. In case such acquisition of ownership by us does not occur, the customer hereby already transfers its future ownership or co-ownership at the rate specified above in the newly made thing to us by way of security. If the goods subject to retention of title are combined to one uniform thing or mixed with each other inseparably and one of the other things must be regarded as the main thing, the customer shall, if he owns the main thing, transfer to us co-ownership in the uniform thing at the rate specified in sentence 1 above.
- In case goods subject to retention of title are sold on, the customer hereby already transfers the claim or, if the customer co-owns the goods subject to retention of title, the pro-rata claim resulting therefrom against the acquirer to us by way of security. The same shall apply to any other claims which take the place of the goods subject to retention of title or arise with respect to the goods subject to retention of title, e.g. insurance claims or claims based on tort in case of loss or destruction. We hereby authorize the customer, which authorization may be revoked at any time, to collect the claims assigned to us on our own behalf. We may not revoke this collection authorization but in case of realisation.
- In case of attachment to the goods subject to retention of title by any third party, in particular in case of seizure, the customer shall immediately inform the third party that we are the owners and inform us to enable us to enforce our ownership rights. If the third party is not able to reimburse us for any court cost and out-of-court cost we incur in such context, the customer shall be liable for such cost to us.
- We will release the goods subject to retention of title or, at our sole discretion, the things or claims taking the place of such goods upon request if their value exceeds the value of the secured claims by more than 50%.
- If we withdraw from the contract due to infringement of material contractual obligations by the customer, in particular due to default in payment (realisation), we are entitled to claim return of the goods subject to retention of title.
- If we are entitled to take back goods subject to retention of title, the customer shall irrevocably grant our representatives access to the customer's business premises during customary business hours and allow removal of such goods.
- We are entitled to assign our claims resulting from deliveries made and services rendered for financing purposes.

8. Delivery periods, delivery dates

- Delivery dates and delivery periods are binding for us only if expressly agreed to be binding.
- Delivery periods shall start on the date of our order confirmation, however not before full clarification of all details of the order. This shall apply to delivery dates correspondingly.
- All delivery dates and delivery periods are under the reserve of unforeseeable industrial disruption and the correct and timely delivery of the required primary material to us unless such disruption or defective delivery is due to us.
- If the customer fails to fulfil contractual duties including but not limited to duties to cooperate and collateral duties in time, we are entitled to correspondingly postpone our delivery dates and prolong our delivery periods in accordance with the requirements of our production process. Our rights based on default of the customer shall remain unaffected thereby.
- The point of time of shipment ex works shall be authoritative for compliance with delivery dates and delivery periods.
- We are entitled to effect partial deliveries.

(7) In case of default in delivery, we are liable for any damage caused by delay and substantiated by the customer pursuant to n° 13 of these GTCS. We will inform the customer of the presumable period of delay in delivery without undue delay.

(8) In case of non-compliance with delivery dates or delivery periods, the customer has the rights laid down in sections 281 and 323 of the German Civil Code only if the customer set us a reasonable deadline for delivery before. In deviation from sections 281 and 323 of the German Civil Code, such notice must be combined with the declaration that the customer will refuse acceptance of performance after expiry of the deadline.

9. Weights, measures and quality

Deviations from weights, measures and quality are permitted in accordance with the DIN standards or customary practice. Weights shall be determined on our calibrated scales and shall be authoritative for invoicing. Weights shall be substantiated by submission of weight logs. If weighing of individual items is not customary, the total weight of the consignment shall apply. Any deviations from item weights determined by calculation shall be allotted to such item weights on a pro rata basis.

10. Packaging, packaging cost

- We supply the goods packaged if this is customary in the trade. We shall be free to select the packaging. The customer shall bear the cost.
- Packaging, protection material or handling aids are not taken back.
- Any packaging beyond the shipping purpose or any particular protection, e.g. for long storage, must be expressly agreed.

11. Shipment, passing of risk

- Unless expressly agreed otherwise, we will select the forwarder or carrier.
- Risk shall pass to the customer upon delivery of the goods to the forwarder or carrier, however at the latest when the goods leave our works.
- If the loading or shipment of the goods is delayed for a reason which the customer is responsible for, then we are entitled to store the goods at our reasonably exercised discretion and cost at the customer's risk and to invoice the goods as if delivered. This shall apply also if goods reported to be ready for dispatch are not called within reasonable time. The statutory provisions on delay of acceptance shall remain unaffected hereby.
- In case of damage to any goods in transit, the customer shall, without undue delay, take the measures required to safeguard the facts and to inform us.

12. Claims based on defects

- The goods are in conformity with the contract if they do not deviate or if they deviate only slightly from the agreed specifications in the point of time when the risk passes. Conformity of our goods with the contract and freedom from defects are exclusively assessed based on the express agreements on quality and quantity of the ordered goods. Liability for a particular intended use or fitness for a particular use is assumed only to the extent expressly agreed; in any other case, the risk of fitness and use is exclusively with the customer. We are not liable for deterioration or loss or improper handling of the goods after the risk has passed.
- The contents of agreed specifications or an expressly agreed purpose of use do not establish a warranty; the assumption of a warranty requires express written agreement.
- The customer shall inspect the goods immediately after receipt. Any claim based on defects exists validly only if written notice of such defect is given without undue delay, notice of hidden defects in quality shall be given immediately after discovery of such hidden defect. Defects detected during an agreed acceptance procedure may not be notified any more after completion of such procedure.
- In case of defects, the customer shall give us immediate opportunity to verify the rejected goods. Upon request, the rejected goods or a sample of the rejected goods shall be made available to us at our cost. In case of any unjustified notice of defects, we retain the right to charge freight and transshipment cost as well as any expenditure for inspection to the customer.
- In case of any defect in quality, we will render supplementary performance either by supplying goods in replacement or by rectification of defects at our discretion taking the customer's needs into consideration.
If we fail to render supplementary performance successfully within a reasonable time period, the customer may set us a reasonable deadline for supplementary performance and when such period expires without results, the customer may either reduce the purchase price or withdraw from the contract but he is not entitled to any other claims. N° 13 shall remain unaffected.
- We may refuse to render supplementary performance if such supplementary performance can only be rendered at unreasonable cost. Costs are deemed to be unreasonable if the direct costs of supplementary performance including any expenditures required for supplementary performance exceed 150% of the invoice total (excluding VAT) for the respective goods.
- We are not liable for costs incurred in connection with the installation or dismounting of the defective goods or for costs incurred by rectification of defects by the customer unless the required preconditions are fulfilled. We do not assume any expenditure accrued for sending the sold goods to another place than the place of performance.
- The limitation period for claims resulting from defects in quality or title shall end, except in case of intention, after expiry of one year following dispatch. If acceptance is agreed, the limitation period shall start upon acceptance.
- Any rights of recourse in favour of the customer pursuant to section 478 of the German Civil Code against us are limited to the statutory extent of the claims based on defects and raised by a third party against the customer and exist only if the customer has fulfilled its duty resulting from section 377 of the German Commercial Code (*Handelsgesetzbuch*) to make a complaint against us.

13. General limitation of liability

- Unless otherwise provided in these GTCS including any supplement terms and conditions, we are liable pursuant to the applicable statutory provisions in case of any infringement of contractual and extra-contractual duties.
- We are liable for damages, irrespective of their legal ground, in case of intention and gross negligence. In case of simple negligence, we are liable only for
 - damages arising out of death, injury to body or health; and
 - damages arising out of infringement of an essential contractual duty (which is an obligation the fulfilment of which is a precondition for the proper implementation of the contract and the compliance of which the parties usually rely on and may reasonably rely on), in such a case our liability is limited to replacement of the foreseeable, typically arising damages.
- Limitation of liability as resulting from (2) above shall not apply in case we fraudulently concealed a defect. The same shall apply to our mandatory liability pursuant to the German Product Liability Act.
- The customer may withdraw from or terminate the contract for breach of duty which is not a defect only if we are responsible for such breach. Any free right of the customer to terminate the contract (in particular based on section 651 or 649 of the German Civil Code) is excluded. For the rest, the statutory preconditions and legal consequences shall apply.
- To the extent our liability for damages is excluded or limited, this shall apply also regarding the personal liability for damages of our employees, staff members, representatives and agents.
- In case we have assumed a guarantee based on express written agreement (section 443 of the German Civil Code), any claims based on such guarantee shall be exclusively subject to the agreements made therein.

14. Proof of exportation

If a customer residing outside the Federal Republic of Germany (an extraterritorial customer) or a person authorized by such extraterritorial customer collects the goods and ships or dispatches them into the outside territory, the customer shall submit to us the export certificate required under tax law. If such certificate is not submitted, the customer shall pay VAT on the invoiced amount at the rate applicable to deliveries within the Federal Republic of Germany.

15. Force majeure

In case of force majeure, the contractual duties of both parties shall be deemed suspended. All fixed dates and deadlines shall be postponed correspondingly. Force majeure are any circumstances which are not subject to the control of the parties such as war, revolution, strike, breakdown of the fuel or energy supply, act of God, unacceptable weather conditions, acts of government, traffic accidents, export bans, import bans, fire, explosion, flood, accidents, act of sabotage, commotion, riot, delay of import/customs clearance, breakage or loss during transport or storage and delay of delivery by subcontractors if such delay is caused by force majeure as specified herein.

16. Applicable law

The business relationships between us and the customer shall exclusively be governed by the law of the Federal Republic of Germany excluding the applicability of all international and supranational (contractual) laws, in particular of the United Nations Convention on the International Sale of Goods.

17. Place of performance

Place of performance for our obligation to deliver and place of performance for the customer's payment obligation is our delivering plant.

18. Venue

The exclusive venue, including but not limited to international disputes, for all disputes resulting directly or indirectly from the business relationship is the court competent for our place of business in Wildau. We are entitled to sue the customer at the customer's regular venue. This provision does not affect any mandatory statutory provision on the sole places of jurisdiction.