

Terms of Sale and Delivery of SmarAct GmbH

1 Scope

- 1.1 Our terms of sale and delivery apply without exception. Any provisions on the part of the buyer that form a departure from our terms will not be recognised. Terms of purchase named by the buyer as well as remarks regarding our terms of sale and delivery do not render us liable to any obligations, even if they are not explicitly rejected by us.
- 1.2 Our terms of sale and delivery apply to all our deliveries. Orders and agreements require the written form in order to have the legal force. Agreements made verbally or by telephone require written confirmation in order to have legal force.

2 Offers and conclusion of contract

- 2.1 Our offers are without obligation and not binding in terms of prices or delivery periods. Drawings, illustrations, measurements, weights and other specifications are (with the exception of prices and delivery periods) only binding if this has explicitly been agreed in writing. We shall be entitled to adapt our products to the latest state-of-the-art without having to notify the buyer of this or obtain the buyer's permission.
- 2.2 Based on these Terms of Sale and Delivery orders placed with us shall only be deemed contractual after they have been confirmed by us in writing. If the buyer does not immediately object to a confirmation of order sent by us, then the contents shall be deemed to have been approved, even if said confirmation of order should deviate from prior offers. This shall not apply in the event of deliberate deviations from the original contents of negotiation to the detriment of the buyer. Subsidiary agreements or assurances that go beyond the scope of the written contract, as well as any subsequent amendments and additions to the contract shall require written confirmation in order to have legal validity.
- 2.3 None of the offer or project documents may be duplicated or made available to any third party without our consent. They can be recalled at any time and are to be returned to us immediately if the contract is placed elsewhere.
- 2.4 We have the right to withdraw at any time from a contract and/or refuse further deliveries in the case of items made to order and orders in the case of which the buyer has made special conditions, should it be established in the case of an agreement to make a part delivery or established subsequently that we are not in a position to comply with the desired quality or delivery

dates. This does not give the buyer any right to claim damages.

3 Prices

- 3.1 Prices are "ex-works", i.e. excluding packing, freight, customs duty, import, ancillary charges, bank charges and statutory value-added tax. Packing is not returnable. A surcharge of 6% must be added to the invoice value if payment method by credit card.
- 3.2 Should economic factors such as the prices of raw materials and auxiliary materials, wages, or other economic factors clearly having an effect on prices alter between conclusion of the contract and delivery, we have the right to adjust prices in line with such changes.

4 Payment

- 4.1 Our invoices are due for payment net without discount within 14 days of the invoice date unless special terms of payment have been agreed. All payments to us are to be made exclusively in euros.
- 4.2 In the event of default in payment, interest on arrears shall be charged at a rate of 5% above the base interest rate of the European Central Bank and collection expenses in the amount of EURO 5.00. We have the right, notwithstanding any provisions to the contrary on the part of the buyer, to credit payments to the oldest amounts owed. Should costs and interest have already been incurred, we have the right to credit payments first against the cost, then against the interest and only subsequently against the principal that is owed.
- 4.3 We have the right to issue invoices for part deliveries and part performances in successive instalments. In the event of partial deliveries and default in payment, we shall be entitled, contrary to prior payment agreements, to make subsequent deliveries only against cash in advance.
- 4.4 Should, following conclusion of the contract, there be legitimate doubts regarding the solvency or creditworthiness of the buyer or should we subsequently become aware of such factors that existed at the time of conclusion of the contract, we have the right to withdraw from the contract, to require the buyer to reimburse our expenses, as well as to revoke granted for making payment, and to demand immediate payment of all claims for which a period of payment was granted.
- 4.5 The buyer only has the right of offsetting, retention or reduction, even if formal complaints or counter-claims have been filed, if the counter-claims have been established with legal force or are not in dispute. However, we have the right to assert claims by way of offsetting.

5 Period of delivery

- 5.1 Planned delivery dates will be adhered to as far as possible, but will be extended, given the occurrence of unforeseen circumstances, in particular, but not exclusively in the case of plant interruptions, strikes, instances of force majeure, traffic disruptions, fire and natural disasters and/ or other circumstances beyond our control, in line with such circumstances. Should such unforeseen circumstances make provision of services impossible or should circumstances beyond our control mean that we are not supplied by an in-supplier, we and the buyer have the right to rescind the contract; no further claims to damages shall be due to the buyer.
- 5.2 If a planned delivery is exceeded by more than four weeks, the buyer shall have the right to set us an appropriate subsequent delivery period. If delivery does not take place within such a period, the buyer has the right to rescind the contract within two weeks of expiry of the period of grace. Rescission shall be declared in writing. No rights of rescission exists if we were unable to comply with the subsequent deadline for delivery for reasons beyond our control, in particular if the buyer did not fulfill its obligations in time and in the prescribed manner.
- 5.3 Regardless of delivery dates, we shall be entitled to fill orders immediately.
- 5.4 We have the right at any time to make part deliveries or part performances.

6 Passage of risk

- 6.1 Delivery shall be at the expense of the buyer. Risk shall in all cases pass to the buyer once the shipment has been handed over to the party responsible for consignment or has left our warehouse for the purpose of shipment, irrespective of whether the shipment originated from the place of performance. As a rule, the choice of the manner in which shipment is effected shall be incumbent on us.
- 6.2 Should shipment not be possible for reasons beyond our control, risk shall pass to the buyer upon its receipt of a notice stating that we are ready to effect shipment.
- 6.3 The buyer is obliged to take delivery of the goods on the confirmed date. The buyer is otherwise obliged to pay the warehousing costs and shipment is deemed to have been effected. This shall not constitute any changes to the terms of payment agreed.

7 Warranty

- 7.1 The warranty period is one year except in cases in which separate warranty periods were agreed for individual items delivered. The warranty period shall begin as of the time of passage

of risk pursuant to section 6. Defects which are obvious or recognisable following a due and proper examination shall be reported by the buyer in writing immediately without undue delay - latest within seven days - after receipt of the goods. Defects that could not have been detected within such a period, even in the case of due and proper examination shall be reported to us immediately after their detection. The same shall apply in the case of complaints based on delivery of goods other than those stipulated and quantity variances. No warranty claims or any other claims shall exist in the case of failure to observe the period for filing objections. In addition (even in the event of hidden defects/flaws), samples shall be sent to us for visual inspection of the defects that are the subject matter of the complaint.

- 7.2 We solely provide a warranty for goods supplied by us in the form that, at our discretion, we will ship a substitute delivery. If it should turn out that it is also impossible to fulfill the order in accordance with the contract through substitute delivery, then the buyer shall be entitled to cancellation of contract or a reduction in the purchase price after setting a final grace period. No other claims on account of defects - in particular claims for damages - on the part of the buyer will be considered.
- 7.3 Insubstantial deviations, for example in dimensions and quality, do not give the right to lodge a complaint.
- 7.4 The warranty shall expire if the goods supplied are altered or processed. Fulfilment of the contractual obligations of the buyer shall be a prerequisite of the warranty, in particular with regard to the agreed terms of payment. Returns may not be effected without prior mutual agreement.
- 7.5 We do not undertake any guarantee for the unsuitable or improper usage, defective erection and/or initial operation by the buyer or third party, natural wearing, defective or negligent handling, chemical, electro-chemical or electrical influences – in so far as these cannot be justified by us.
- 7.6 In the event of deliveries of goods prepared by third parties and only traded in transit trade by us, then the warranty rights that we have vis-à-vis the manufacturer shall be deemed to have been assigned to the buyer at the moment of delivery. Above and beyond this, we undertake no warranties except as described above and in the event that the buyer is unable to attain warranty from the manufacturer extra-judicially.
- 7.7 If, following a warranty claim on us, it is established that no defect existed or that the defect claimed was not under warranty, the buyer shall reimburse our expenses insofar as the claim was for reasons not beyond its control.

8 Retention of title to ownership

- 8.1 We reserve retention of title to ownership in respect of all goods supplied by us until invoices plus interest and costs have been settled in full. Transfer of individual payments credited to a current account, or reconciliation of balances and recognition thereof shall not constitute setting aside of the retention of title to ownership.
- 8.2 No acquisition of ownership on the part of the buyer or a third party in the case of processing or treatment of our conditional goods to form a new object will be taken into consideration. Processing or treatment shall entirely be on our behalf without this leading to any obligations on our part. This processed object shall entirely serve as collateral for the payment claims named above. Insofar as processing includes goods of other suppliers, we shall, as a minimum, acquire joint ownership of the new object equivalent to the share which, in pro rata terms, corresponds to the value of the other processed objects billed by the other supplier. If the conditional commodity is combined, mixed or merged with goods not belonging to us, we shall become joint owner in accordance with statutory provisions in law. Should the buyer become sole owner as a result of combining, mixing or merging, it hereby transfers to us joint ownership on the basis of the proportional value of the conditional goods to the other goods at the time of combination, mixing or merging. In order to protect our purchase price claim, the buyer hereby undertakes to assign its claims arising from resale of the conditional goods along with all ancillary rights and with the priority over other claims to us with present effect, and to make corresponding note in its bookkeeping records and invoices. We hereby accept the aforesaid assignment. In the case of an attachment or implementation of a claim in another form, the buyer is obliged to make reference to our right of ownership and to notify us without delay. Only in the case that the supplier has also claimed extended reservation of ownership with legal force shall the claims to payment be assigned to us to the extent of our pro-rated share of ownership of the goods sold.
- 8.3 If the payment claims of the buyer based on resale of our conditional good or goods of which we are joint owners are included in a current account, the buyer is obligated to assign these payment claims to us.
- 8.4 The buyer has the right to collect payment claims even after assignment and reservation of the right of revocation. Our right to collect payments ourselves shall not be affected by the aforesaid. However, we undertake not to collect outstanding payments as long as the buyer discharges its payment obligations and other obligations in the agreed manner.
- 8.5 The buyer is, in the case of payment default or discontinuation of payment on its part, institution or insolvency proceedings, or other factors jeopardising payment, obliged to show third parties that the conditional goods are our property. It shall provide us with a list of conditional goods still in its possession - also insofar as the goods in question have been treated or processed - as well as a list of payment claims pursuant to the above aforesaid against third-party debtors. Irrespective of this, our authorised representatives have the right at any time to obtain from the buyer the information necessary to protect our interests and be provided with the pertinent records etc.
- 8.6 The buyer shall bear the risk in connection with all goods supplied by us. It has the obligation to take due and proper care of the goods and insure them adequately against loss, theft, fire, etc. It hereby assigns any claim against an insurance company in the event of loss or damage to us, namely as a first ranking part amount which is the equivalent of the purchase price of the goods supplied by us on the condition of retention of title to ownership. The same shall also apply if the insurance company does not cover the claim in full, with the result that we could be required to render pro-rated compensation.
- 8.7 The buyer has the right to sell our goods in the form of a customary and due and proper business transaction, albeit only on the provision that payment claims do in fact pass to us. No pledging or transfer of ownership as collateral will be accepted. The buyer shall notify us immediately of any attachment or other impairment of our rights by a third party and support us in asserting our rights with a view to avoiding any obligation to pay damages. The buyer shall be liable for all and any costs of court or out-of-court proceedings.
- 8.8 The buyer undertakes to do everything, in particular to make any and all contractual declaration vis à vis us or a third party with a view of aiding the agreed retention of ownership and the advance assignment to have legal force according to the laws of the foreign place of performance or the domicile of the buyer.

9 Restriction of liability

- 9.1 We only assume liability for loss or damage beyond the area of applicability of the law on product liability insofar as we have been proved to have acted with premeditation or gross negligence within the meaning of the statutory provisions of law. We will also be liable in the case of simple negligence in the cases of violation of life or limb caused by us as well as in the case of

breach of trust which essentially underlay achievement of the purpose of the contract (cardinal obligations). Our obligation to pay compensation is in all of the cases named above limited to damage or losses that were typical and predictable. No liability will be assumed in the case of other forms of simple negligence, reimbursement of subsequent loss or damage, economic loss (injury to persons and/or damage to or loss property), savings not incurred, loss of interest and damage or losses asserted against the buyer by a third party.

- 9.2 Liability for deficiency in title in connection with patent rights will only be assumed provided that intent or gross negligence is proved.
- 9.3 We and the buyer have entered into an agreement to the effect that in our internal relationship the buyer assumes sole liability as the joint manufacturer within the meaning of the product liability law. It shall indemnify us against any and all claims and, if necessary, provide collateral.
- 9.4 If the business transaction was concluded on the basis of prospect statements made by third parties/manufacturers, then we shall not be liable for the correctness of said statements in terms of content.

10 Applicable law, legal venue, place of performance, partial liability

- 10.1 Any and all disputes shall be decided on the basis of German substantive law. Applicability of the uniform CISG (United Nations Convention on the International Sale of Goods) does not exist.
- 10.2 The legal venue in respect of all disputes relating to the contractual relations as well as their underpinnings and legal force is the court in 26014 Oldenburg, Germany, having subject matter jurisdiction. However, we also have the right to appeal to the court of jurisdiction of the buyer.
- 10.3 The place of performance in respect of all liabilities arising from the sale is 26125 Oldenburg, Germany.
- 10.4 In the event that individual provisions of these terms are or become ineffective, this shall not affect the remaining provisions. The contacting parties are obliged to agree a new provision which most closely reflects the intended purpose of the provision without legal force. No verbal ancillary agreements have been agreed in respect of our terms of sale and delivery.

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