

General Terms and Conditions of Sale

Smairtech GmbH, Unterberg 9, 14532 Kleinmachnow

1. Scope of application

1.1 These General Terms and Conditions of Sale (GTCS) apply to all business relationships with our customers ("Buyers"). The General Terms and Conditions of Sale shall exclusively apply to the extent that the Buyer is an entrepreneur (Section 14 *BGB* (German Civil Code)), a legal entity under public law or a special fund under public law as defined in Section 310 (1) *BGB*.

1.2 Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions issued by the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This consent requirement shall also apply if the Buyer refers to its own GTC in the context of the order and we have not expressly objected to the GTC.

1.3 These GTCS shall apply to contracts for the sale and/or delivery of movable goods ("Goods"). It is irrelevant whether we manufacture the Goods in-house, process them or purchase them from suppliers (Sections 433, 650 *BGB*). Unless otherwise agreed, the General Terms and Conditions of Sale as applicable at the time of the Buyer's order or as last communicated to the Buyer in text form shall also apply as a framework agreement for similar future contracts and shall not require us, as Seller, to refer to them again in each individual case.

1.4 Individual agreements made separately with the Buyer in individual cases (including collateral agreements, supplements and amendments) and information in our order confirmation shall take precedence over these GTCS. A written contract or our confirmation in text form shall be binding for the content of such agreements, subject to evidence to the contrary.

1.5 All legal declarations and notifications by the Buyer concerning the contract (e.g. notifications of defects, deadlines, cancellation or price reduction) shall be made in writing or in text form (e.g. email, fax). Further statutory formal requirements and further evidence (if necessary in the event of doubts as to the legitimisation of the declaring party) shall remain unaffected.

1.6 Where references are made to the applicability of statutory provisions, it should be noted that these are for clarification purposes only. The statutory provisions shall apply as amended – even if no corresponding clarification has been made – to the extent that they are not modified or excluded by the GTCS.

2. Offer and conclusion of contract

2.1 Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with documents, catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards) and other product descriptions (including in electronic form). We reserve ownership and copyrights to all documents provided to the Buyer in connection with the placement of the order. Such documents may not be made accessible to third parties unless we give the Buyer our express written consent to do so.

2.2 The Buyer's order for the Goods represents a non-binding contractual offer pursuant to Section 145 BGB. Unless the order specifies otherwise, we shall be entitled to accept this contractual offer within two weeks of our receipt thereof.

2.3 Acceptance of the Buyer's offer of contract may be declared either in writing, in text form (e.g. by order confirmation) or by delivery of the Goods to the Buyer. In the event that we, as Seller, do not accept the Buyer's offer within the period specified in paragraph 2.2, any documents sent to the Buyer shall be returned to us without delay.

2.4 The Buyer is not entitled to return any Goods to us unless we expressly agree to such return. This does not apply if the Buyer cancels the contract with legal effect or rightfully demands subsequent performance.

3. Prices and payment arrangements

3.1 The prices shall be set as per the content of the respective order confirmation. All prices are net prices excluding any applicable value added tax. The parties shall decide on the terms of delivery relevant to VAT when drawing up the offer and acceptance/order confirmation.

3.2 Price changes caused by changes to the contracted product or by changes to the requirements placed on the contracted product shall be negotiated and set on the basis of a joint cost analysis.

3.3 In the case of a dispatch purchase, the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes or other public charges shall be borne by the Buyer.

3.4 Payment of the purchase price shall be made exclusively to the account specified overleaf. Deduction of a cash discount is permissible upon special agreement only, which must be made in text form.

3.5 Unless otherwise agreed, the purchase price shall be due and payable within fourteen days of invoicing and delivery and/or acceptance of the Goods. We are, however, authorised at any time to make a delivery in whole or in part only against advance payment, even in the context of an ongoing business relationship. A corresponding reservation shall be declared at the latest upon order confirmation.

3.6 The Buyer will be in default once the aforementioned payment period expires. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate pursuant to Section 288 (2) BGB in the amount of nine percentage points above the respective base interest rate. We reserve the right to claim further damages for default. In the case of merchants, our claim against such merchants regarding standard interest payable on the due date pursuant to Section 353 German Commercial Code (HGB) shall remain unaffected.

3.7 If, after conclusion of the contract, it becomes apparent that our claim to payment of the purchase price is jeopardised due to the Buyer's inability to pay (e.g. due to application for the institution of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if applicable, to withdraw from the contract after setting a deadline (Section 321 BGB).

3.8 The Buyer may not assert any right of retention or set-off unless its counterclaims are undisputed or have been recognised by declaratory judgement.

4. Delivery period and delayed delivery

4.1 Estimated delivery dates stated by are non-binding. Binding delivery dates or deadlines shall be expressly agreed in text form pursuant to Section 126 b *BGB*.

4.2 In the event that we are unable to meet contractually agreed delivery deadlines for reasons beyond our control, we shall inform the Buyer of this circumstance without delay and state the expected or new delivery deadline at the same time. If a delayed delivery cannot be made within the newly announced delivery period due to non-availability of the service, we shall be entitled to withdraw from the contract either in whole or in part; any consideration already provided by the Buyer (in the form of the purchase price payment) shall be reimbursed by us without delay. Non-availability of the service may occur, for instance, if our supplier has failed to deliver to us on time, if we have concluded a congruent hedging transaction, if there are other disruptions in the supply chain (e.g. due to force majeure) or if we are not obliged to procure the service in individual cases.

4.3 Whether we, as Seller, are in default of delivery shall be determined in accordance with the statutory provisions. However, the prerequisite for any delay in delivery by us, as Seller, is a reminder issued by the Buyer.

5. Delivery, transfer of risk, acceptance, default in acceptance

5.1 Unless otherwise agreed, delivery and the transfer of risk shall be “ex works” (Incoterm 2020). All costs, fees, charges and similar expenses associated with delivery shall be borne by the Buyer, unless otherwise agreed.

5.2 The risk of accidental loss and accidental deterioration shall pass to the Buyer upon handover of the Goods to the Buyer. In the case of dispatch purchases, the risk of accidental loss of the Goods and accidental deterioration of the Goods and the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent or carrier. If acceptance of the Goods has been contractually agreed, such acceptance shall be decisive for the transfer of risk. If the Buyer defaults on accepting delivery, this shall be deemed equivalent to the handover or acceptance of the Goods.

5.3 In the event that the Buyer defaults on acceptance or our delivery is delayed for other reasons within the Buyer’s control, we shall be entitled to claim compensation from the Buyer for the damage incurred, including any additional expenses (e.g. storage costs).

6. Retention of title

6.1 We shall retain title to the delivered Goods until full payment of all our current and future claims arising from the purchase contract and the ongoing business relationship (secured claims).

6.2 Until the secured claims have been paid in full, the Goods subject to retention of title may neither be pledged to third parties nor assigned as collateral. The Buyer shall notify us promptly in text form if an application for the institution of insolvency proceedings has been filed or if the Goods owned by us are seized by third parties (e.g. by way of attachment). If the relevant third party is not in a position to reimburse us for the judicial and extrajudicial costs of legal action pursuant to Section 771 of the German Code of Civil Procedure (*ZPO*), the Buyer shall be liable for the loss incurred by us.

6.3 If the Buyer acts in breach of contract, in particular in the event of non-payment of the outstanding purchase price, we shall be entitled to withdraw from the contract pursuant to the

applicable statutory provisions and/or to request the return of the Goods on the basis of our retention of title. The request for the return of the Goods shall not include a simultaneous declaration of cancellation; instead, we shall be entitled to merely request the return of the Goods and reserve the right to withdraw from the contract. If the Buyer fails to pay the outstanding purchase price, prior to asserting these rights we must have given the Buyer a reasonable deadline for payment which has expired without success. This shall only apply if such a deadline is not dispensable under the statutory provisions.

6.4 The Buyer is authorised to resell and/or process, in the ordinary course of business, the Goods subject to the retention of title until such time as this authorisation is revoked pursuant to paragraph 6.4.c. In this case, the following additional provisions shall apply:

a) Any products resulting from the combination, mixing or processing of our Goods shall be subject to the retention of title at their full value, whereby we shall be deemed to be the manufacturer. Should the ownership rights of third parties remain valid in the event of any combination, mixing or processing with their goods, we shall acquire co-ownership in proportion to the invoice values of the combined, mixed or processed Goods. In all other respects, the resulting product shall be subject to the same provisions as the Goods delivered subject to the retention of title. For collateralisation purposes, the Buyer shall also assign to us such claims which accrue to it against third parties if the Goods subject to the retention of title are combined with real property. In this case, we shall accept such assignment.

b) The Buyer hereby assigns to us, for collateralisation purposes, all claims against third parties arising from the resale of the Goods or the product in the amount of the final invoice total agreed with us (including any applicable VAT) in total or in the amount of our potential co-ownership share in accordance with clause 6.4.a. We hereby accept the assignment. The Buyer's obligations listed in paragraph 6.2 shall also apply with regard to the assigned claims.

c) In addition to us, the Buyer shall also remain authorised to collect the claim. As long as the Buyer meets its payment obligations to us, there is no fault in the Buyer's ability to pay and we do not assert the retention of title by exercising a right pursuant to paragraph 6.3, we shall undertake not to collect the claim. If we assert the exercise of a right pursuant to paragraph 6.3, we may require the Buyer to disclose the assigned claims and their debtors, and request that the Buyer provides all information necessary for collection, hands over the relevant documents and notifies the debtors (third parties) of such assignment. Furthermore, we shall be entitled to revoke the Buyer's authorisation to resell and process the Goods subject to the retention of title.

d) Should the realisable value of the collateral exceed our claims by more than 10%, we shall release collateral of our choice at the Buyer's request.

6.5 The Buyer is obliged to treat the purchased items with care as long as ownership has not yet been transferred. In particular, the Buyer is obliged to insure the Goods at its own expense against theft, fire and water damage at their replacement value. If maintenance and inspection work has to be carried out, the Buyer shall carry this work out in good time at its own expense.

7. Buyer's warranty claims

7.1 The relevant statutory provisions shall apply to the Buyer's rights in the event of material defects or defects of title (including incorrect delivery or short supply as well as improper assembly/installation or defective instructions), unless otherwise specified below. This shall not affect the Buyer's rights arising from separately issued guarantees, in particular by the manufacturer.

7.2. As a rule, agreements we have concluded with Buyers with regard to the quality and intended use of the Goods (including accessories and instructions) shall form the basis of our liability for defects under the warranty. A quality agreement shall include all product descriptions and manufacturer's specifications that are the subject of the individual contract or were published by us (in particular in catalogues or on our website) at the time the contract was concluded. In the event that no specific quality has been agreed, Section 434 (3) BGB shall be applied to determine whether a defect exists. Given this background, it should be noted that public statements made by the manufacturer in the context of its advertising, or on the labelling of the Goods, shall take precedence over statements made by other third parties.

7.3 In the case of Goods that include digital elements or other digital content, it should be noted that we are only obliged to provide and update the digital content if this is expressly stated in a quality agreement pursuant to paragraph 7.2. We disclaim any liability for public statements made by the manufacturer or other third parties.

7.4 We shall not be liable for defects which the Buyer is aware of, or fails to be aware of due to gross negligence, at the time of the conclusion of the contract pursuant to Section 442 BGB.

7.5 The Buyer is only entitled to warranty claims if the Buyer has complied with its statutory inspection and reporting obligations (Sections 377, 381 HGB). We must be notified promptly in text form if a defect is discovered during delivery, inspection or at a later date. Obvious defects shall be reported in text form within 3 calendar days from delivery, and non-visible defects within the same period from discovery of the defects. If the Buyer neglects or fails to fulfil its obligation to properly inspect the Goods and/or report defects, we shall not be liable for defects not reported, or not reported on time or not duly reported, pursuant to the statutory provisions. Where the Goods were intended for fitting, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of non-compliance with, or breach of, any of these obligations. In this case, the Buyer shall not be entitled to any compensation for "installation and removal costs".

7.6 If the delivered Goods are defective we, as Seller, shall be entitled to choose whether we provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (subsequent delivery). Should the type of subsequent performance chosen by us be unacceptable to the Buyer in a particular case, the Buyer may refuse it. However, we reserve the right to refuse subsequent performance subject to the statutory requirements. In addition, we are entitled to make our required subsequent performance dependent on the Buyer paying the outstanding purchase price. The Buyer, in turn, shall be entitled to retain a portion of the purchase price proportionate to the defect.

7.7 The Buyer shall grant us the time and opportunity needed to provide the subsequent performance. In particular, the Buyer shall surrender to us for inspection the item for which the defect has been claimed. Should we provide a subsequent delivery of a defect-free item, the Buyer shall return the defective item to us in accordance with the statutory provisions. However, the Buyer has no right of return.

7.8 Unless we have made a respective contractual commitment, our subsequent performance shall not include the dismantling, removal or deinstallation of the defective item or the installation, fitting or mounting of a defect-free item. This shall not affect the Buyer's claims for reimbursement of the "installation and removal costs".

7.9 In the event of a defect, we shall reimburse the necessary expenses incurred for inspection and subsequent performance (transport, labour and material costs as well as any removal and installation costs) pursuant to the applicable statutory provisions and these GTCS. However, we may claim reimbursement from the Buyer for costs incurred due to an unjustified request to remedy a defect if the Buyer knew or could have recognised that there was in fact no defect.

7.10 In urgent cases (e.g. if operational safety is at risk or there is a need to prevent disproportionate damage), the Buyer has the right to perform its own rectification of the defect and to claim reimbursement of the expenses objectively necessary to do so. The Buyer shall inform us promptly in the event of self-performance. Should we be entitled to refuse subsequent performance pursuant to the statutory provisions, the Buyer shall have no right to self-performance.

7.11 Pursuant to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price if a deadline for subsequent performance specified by the Buyer has expired without success or is dispensable pursuant to the statutory provisions. However, in the case of insignificant defects, the Buyer shall have no right of cancellation.

7.12 Even if a defect exists, claims for damages or claims for reimbursement of futile expenses on the part of the Buyer (Section 284 *BGB*) shall only arise in accordance with section 9 and section 10 of these GTCS.

8. Incoming goods inspection

8.1 The Buyer is obliged to check the type, quantity and condition of the delivered Goods directly after receipt.

8.2 Obvious defects shall be reported immediately in text form, at the latest within a period of three calendar days. If a defect becomes apparent at a later time (hidden defect), the Buyer shall notify us of the hidden defect directly after gaining knowledge of it. In all cases, the decisive time shall be the date of our receipt of the notification of the defect.

8.3 If a complaint is made late, the Goods shall be deemed free of defects in terms of contractual and statutory claims and rights. This shall not apply to claims for damages based on malicious behaviour or based on the German Product Liability Act.

9. Statute of limitations

9.1 Contrary to Section 438 (1) (3) *BGB*, the general limitation period for claims resulting from material defects or defects of title shall be one year from delivery. If acceptance has been agreed by contract, the limitation period shall commence upon acceptance. Liability claims arising from death or injury to body or health are excluded from the limitation of liability; in such cases, the respective statutory limitation period and applicable statutory commencement of the limitation period shall apply.

9.2 The above limitation periods under the laws governing the sale of goods shall also apply to the Buyer's contractual and non-contractual claims for damages based on a defect in the Goods, unless the application of the regular statutory limitation period pursuant to Sections 195, 199 *BGB* would entail a shorter limitation period in individual cases. The Buyer's claims for damages pursuant to paragraph 10.1 and clause 10.2.a and those pursuant to the German Product Liability Act shall expire exclusively in accordance with the statutory limitation periods.

10. Further liability

10.1 Unless otherwise stipulated in these GTCS, including the following provisions, we, as Seller, shall be liable for breaches of contractual and non-contractual obligations pursuant to the statutory provisions.

10.2 With regard to tortious liability, irrespective of the legal grounds, we shall exclusively be liable to pay damages in the event of wilful intent or gross negligence. In the case of simple negligence, we shall exclusively be liable for the following, subject to statutory limitations of liability (e.g. standard of care in one's own affairs; minor breach of duty):

- a) damage resulting from death or injury to body or health,
- b) damage resulting from breach of a material contractual obligation (obligations which must be fulfilled to ensure the proper performance of the contract and on the fulfilment of which the contractual partner relies and is entitled to rely). However, our liability in this case is limited to compensation for foreseeable, typically occurring damage.

10.3 The limitations of liability arising pursuant to paragraph 10.2 shall also apply to third parties and shall also apply in the event of breaches of duty by individuals whose fault is our responsibility under statutory provisions. The limitations of liability shall not apply if a defect has been fraudulently concealed and a guarantee for the quality of the Goods has been provided. This also applies to the Buyer's claims under the German Product Liability Act.

10.4 The Buyer may only withdraw from, or cancel, the contract due to a breach of duty not arising from a defect if we, as Seller, are responsible for such breach of duty.

10.5 The Buyer's right of termination (in particular pursuant to Sections 650, 648 *BGB*) is excluded. In all other respects, the relevant statutory requirements and legal consequences shall apply.

11. Third-party industrial property rights

The Buyer shall guarantee that the ordered Goods do not infringe any third-party industrial property rights. Should such industrial property rights be infringed, the Buyer shall indemnify us against any third-party claims for damages.

12. Applicable law and place of jurisdiction

12.1 These General Terms and Conditions of Sale and the contractual relationship between us, as Seller, and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

12.2 If the Buyer is a merchant as defined by the German Commercial Code, a legal entity under public law or a special fund under public law, our registered office in Kleinmachnow shall be the exclusive, and also the international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the Buyer is an entrepreneur as defined by Section 14 *BGB*.

12.3 Furthermore, we shall be entitled to bring legal actions at the place of performance applicable to the delivery obligation as per these General Terms and Conditions of Sale or an overriding individual agreement, or at the Buyer's general place of jurisdiction. This shall not affect any overriding statutory provisions (exclusive places of jurisdiction).