

General Terms of Sale and Supply of SMW-Autoblok GmbH in Meckenbeuren

- exclusively for use in business transactions with entrepreneurs -

I. General

Only the provisions negotiated individually for each contract and the terms set forth below shall apply to our deliveries, including deliveries based on future business agreements. Any amendments and additions will be made by our company management. Verbal agreements or statements made by other persons not given special authority to do so by our company management shall only be effective if confirmed in writing by our company management.

We do not recognise any contradictory general terms of business of the purchaser or any general terms of business of the purchaser that differ from our terms – even if delivery is executed without reservations –, unless we have expressly confirmed in writing that such terms shall apply. By acceptance of our goods, at the latest, the purchaser expresses his agreement with our terms. All agreements must always be made in writing.

II. Advisory Services

All types of oral or written advisory services are provided by us to the best of our knowledge on the basis of our past experience. Data and information on the suitability and application of our goods, together with dimensions, weights, illustrations and drawings, are only binding for execution of the order if this has been expressly confirmed in writing and they do not exempt the purchaser from the necessity of performing his own inspections and tests. The purchaser is responsible for complying with legal and public-authority regulations when using our goods.

III. Offers, Acceptance, Offer Documents

1. Our offers are not binding, provided that nothing to the contrary is stated in order confirmation. They are made free of charge but costs for the production of drawings for customised designs must be paid by the purchaser if the offer does not lead to an order for reasons for which we are not responsible.

2. We can accept purchase orders within 4 weeks. A purchase order is not deemed accepted by us until we have confirmed it in writing or have issued a shipment notice or an invoice.

3. We reserve the title rights and copyrights to cost estimates, drawings and all other material we supply. Without our written consent, they must neither be reproduced nor made accessible to third parties. If no order is placed, all the material must be returned immediately. Material provided by the purchaser may be made available to third parties whom we intend to commission to provide deliveries or services.

4. Purchase orders must always be placed in writing. Any purchase orders given by telephone are performed at the purchaser's risk.

IV. Technical Modifications, Inspections, Property Rights, Privacy Policy

1. Technical modifications are permitted if they prove necessary for reasons of production or product care or due to legal requirements or for other reasons. When the purchaser learns of modifications, he shall notify us immediately if he considers them inadmissible.

2. If certain temperatures, times and other measuring and control values are scheduled to apply in tests, the appropriate measuring methods must be specified and recognised by both parties before start of delivery. If no such specifications are agreed, our measuring methods shall apply.

3. Orders in compliance with drawings, sketches or other data supplied to us will be performed at the purchaser's risk. If we breach third-party property rights by performing such orders, the purchaser shall hold us harmless in relation to all claims made by third-party holders of property rights. Any further losses will be payable by the purchaser.

4. We have the right to process data within the limits of the German Federal Data Protection Act.

V. Prices

1. Prices are quoted in euros. The price list valid at the time when the contract is made shall apply. Prices can be amended if there are more than six weeks between the making of the contract and the agreed delivery date. If wages, material costs or market acquisition costs rise

thereafter before completion of delivery, we have the right to increase the price appropriately in line with cost rises. The purchaser shall only have the right to rescind the contract if the price rise exceeds by more than 5% the increase in the consumer price index issued by the German Statistics Office between the time of order and the time of delivery.

2. Prices are quoted net ex Meckenbeuren plant and do not include the value-added tax applicable on the day of delivery, customs, freight, packaging and insurance costs. Prices shall apply for the particular order and not in retrospect or for future orders. Follow-up purchases are deemed new orders.

VI. Delivery, Default

1. If nothing has been agreed to the contrary, delivery will be from our supply plant. Our order confirmation shall be decisive for the content and scope of the contract. Partial deliveries are permissible if no disadvantages result therefrom in relation to use. They are to be billed and paid separately. In the event of default on payment of a partial delivery, we have the right to refuse further performance of the order. Any delivery dates or periods not expressly agreed to be binding are exclusively non-binding data. The delivery period shall start to run on dispatch of order confirmation at the earliest. The start of the delivery period we have quoted is subject to full clarification of all technical matters. Observation of the delivery period requires on-time receipt of all documents, approvals and releases to be obtained by the purchaser and of all agreed advance payments, together with on-time clarification and approval of plans and on-time provision of all items to be supplied by the purchaser. If this is not the case, the delivery period will be extended accordingly. With application of the due care necessary for congruent cover transactions, specification of the delivery period is subject to correct and on-time delivery to us. Compliance with our delivery obligations is subject to on-time and due fulfilment of the purchaser's co-operation obligations.

2. The delivery period is deemed met if the goods are dispatched within said period or if notice of readiness for dispatch has been given before it expires.

3. The delivery period will be extended in the event of action as part of industrial disputes, in particular strikes and lock-outs, and if any unforeseen hindrances outside our sphere of influence occur, such as traffic and operational disturbances, shortage of material or energy or all other cases of force majeure. The extension of the delivery period will correspond to the length of such action and hindrances. Similarly, we shall not be deemed responsible for the circumstances specified above even if they occur when we are already in default. The purchaser will be notified immediately of the beginning and end of such action and hindrances or, respectively, the non-availability of the supply item. If delivery is delayed by more than six months as a result of such action and hindrances, the contracting parties have the right to rescind the contract. In the event of rescission, any counter-performance already rendered will be returned. Further claims by the purchaser are ruled out.

4. If the purchaser is in default on acceptance of the goods, we will allow a reasonable period of grace at our discretion and are then entitled to rescind the contract and claim damages if applicable. Statutory provisions on the dispensability of a period of grace and the assertion of further claims which we legally hold are not prejudiced hereby.

5. If shipment or delivery are delayed at the instigation of the purchaser, we will claim, subject to evidence of higher losses, storage charges of 1% of the invoice amount for each month or part of a month, totalling no more than 5% of the net invoice amount. The purchaser has the right to provide evidence of lower losses.

6. Goods we have supplied will not be taken back unless proved to be defective. If, in individual case, we are prepared by way of exception to take goods back after making a prior written agreement, a processing fee of 10% of the net goods value plus value-added tax will be charged. The purchaser has the right to provide evidence of significantly lower processing costs. The purchaser will bear the transportation risk and pay transportation costs. Return shipments may only be made through forwarders whom we have commissioned. The cheapest method of transport shall always be selected, with due consideration of transportation safety.

VII. Shipment Risk, Place of Performance, Transportation, Packaging

1. The time of the passage of risk will be determined by the international rules for the interpretation of trade terms issued by the International Chamber of Commerce (INCOTERMS 2000), the applicable version being that in German which is valid on the day of conclusion of the contract. If the contract does not contain any ruling on the type of sale, the supplied item will be deemed sold "ex works" (EXW). The place of performance is our supply plant. For sales "ex works", we undertake to notify the purchaser in writing of the time at which the shipment can be collected. This notification must be given in due time for the purchaser to take the action normally necessary.
2. If nothing has been agreed to the contrary, we reserve the right in special cases to dispatch shipments in the interest of the purchaser at the latter's risk and expense and to insure them against transportation damage at said purchaser's expense. If the goods are damaged or lost during transportation, an appraisal must be instigated immediately and notification given to us.
3. If no other ruling has been agreed, we will decide on the type and size of packaging. The packaging will be chosen with due care to the best of our knowledge. Disposable packaging becomes the property of the purchaser.

VIII. Defect Claims by the Purchaser

1. If nothing has been agreed to the contrary, solely the relevant German legal rulings, such as protection laws and other safety regulations, and the recognised rules of engineering and technology shall apply to the development, production, sale, delivery and nature of our products. In relation to the nature of the goods, only our product description is deemed agreed. If not expressly agreed to the contrary, our products can be used in one-shift operation if treated properly. No defect claims can be made for merely minor deviations from the agreed nature of the goods. Public statements, promotion or advertising by the manufacturer do not constitute contractual information on the nature of the goods. The customer receives no guarantees from us in the legal sense. Unless considered information on the nature of goods as defined in Section 434 of the German Civil Code, information in product descriptions and product specifications does not represent a guarantee for the nature of the item or for it retaining a certain quality for a specified time.
2.
 - a) If one of our products is found to have a defect and we have received a written request from the purchaser, we are entitled at our discretion to either remedy the defect or supply a new product. Without obtaining our prior written consent, the purchaser must not repair the supplied item himself, even in urgent cases.
 - b) As long as we meet our obligation to render subsequent performance (remedying the defect or supplying a new product), the purchaser has no right to require a reduction in the purchase price or to rescind the contract, unless two attempts at subsequent performance have proved unsuccessful or if the purchaser cannot be expected to accept subsequent performance for other reasons. The right of the purchaser to claim damages instead of performance in compliance with the legal provisions and these General Terms of Business is not prejudiced.
 - c) Following delivery of the goods ordered, the purchaser must inspect them immediately for discrepancies in quality and quantity and any obvious defects, such as transportation damage, and send us a written notice of any defects found. A notice of obvious defects is only considered to have been submitted in due time if we receive it within 5 working days of delivery of the goods, whereas a notice of hidden defects is considered to have been submitted in due time if we receive it within 5 working days of such defects having been discovered.
 - d) If there are alleged to be defects in goods, the purchaser has no right to withhold payment unless our goods are obviously defective. In such a case, the purchaser only has the right to withhold payment to the extent that the amount withheld is in a reasonable proportion to the defects and the probable costs of subsequent performance, in particular the remedying of defects.
The purchaser only has the right to assert claims and rights relating to defects if he has made due payments and the amount he has paid is in a reasonable proportion to the value of our defective goods.

3.
 - a) Defect claims do not apply if there is only a minor deviation from the agreed nature of the goods or only a minor impairment of usability.
 - b) The purchaser holds no rights relating to a defect if the defect is due to improper use of our products or use for a purpose for which they were not intended or failure to comply with our instructions for use or excess stress or natural wear and tear in view of their material substance, in particular with regard to parts that come into contact with workpieces, or to improper modifications, defective servicing or defective and negligent treatment or if a repair has been made without our written consent.
 - c) In relation to repairs made without any legal obligation, the purchaser will only hold defect claims if expressly agreed.
 4. a) Costs incurred for subsequent performance will be paid by the purchaser if they are increased because the goods have been moved to a different location after delivery, unless such a move complies with their intended purpose.
 - b) Parts replaced in the course of the remedying of defects become our property when removed.
5. If nothing has been expressly agreed to the contrary, the period of limitation for claims and rights relating to defects in our goods is 1 year from supply to the purchaser. For repairs and replacements, we are liable to the same extent as for the supplied item, this being until the end of the limitation period applying to the original item for defect claims.

IX. Damages Claims by the Purchaser and Rescission of Contract

1.
 - a) We are liable in compliance with legal regulations in the event of intent or gross negligence by us or our representatives or vicarious agents. Apart from this, we are only liable under the German Product Liability Act, for loss of life, bodily injury or damage to the health of a person or for a culpable breach of major contractual obligations. However, a damages claim based on a breach of major contractual obligations will be limited to foreseeable damage typical of the contract concerned. Our liability in cases of gross negligence is also limited to foreseeable damage typical of the contract concerned if none of the exceptional cases listed in sentence 2 of this no. 1 lit. a) applies.
 - b) To the extent that we are not liable for intent or gross negligence or for a culpable breach of major contractual obligations or for loss of life, bodily injury or damage to the health of a person or under the German Product Liability Act, we assume no liability for damage by the supplied item to the purchaser's legal property, e.g. to other items, loss of profit or other financial losses.
 - c) The rulings in no.1 lit. a) and b) above extend to compensation in addition to performance and compensation in lieu of performance, for whatever legal reason, in particular for defects, breach of other obligations under the contract or liability in tort. They also apply to a claim to reimbursement of futile costs and to our liability for impossibility of performance and default.
 - d) Possible claims for compensation are limited to the scope of our business and product liability insurance amounting to a max. of 1 million euros. This limit of liability does not apply in the case of intent, gross negligence, culpable breach of significant contractual obligations, in the case of injury to the life, body or health of a person or in the case of liability under the German Product Liability Act.
 - e) The above rulings do not constitute any change in the burden of proof to the disadvantage of the purchaser.
2. The purchaser can only rescind the contract in compliance with legal regulations if there has been a breach of obligations for which we are responsible; for defects, legal requirements shall apply. The ruling in no. VIII.2 lit. b) sentence 1 of our Terms of Sale and Supply is not prejudiced.

X. Period of Limitation

1. The period of limitation for claims and rights of the purchaser relating to defects in our products – for whatever legal reason – is 1 year. This also applies to damages claims of the purchaser, irrespective of the legal basis of the claim and irrespective of whether the damages claim is connected with a defect or not, and to claims of the purchaser for futile costs and claims of the purchaser due to impossibility of performance.

However, the period of limitation under sentence 1 and sentence 2 does not apply in cases under Section 438 para. 1 no. 1 of the German Civil Code (legal defects in immovable items), Section 438 para. 1 no. 2 of the German Civil Code (buildings, items for buildings), Section 479 para. 1 of the German Civil Code (recourse claim of entrepreneur) or Section 634a para. 1 no. 2 of the German Civil Code (buildings or work of which the aim is the provision of planning or supervisory services).

Similarly, the limitation periods under this no. 1 sentences 1 and 2 do not apply in cases of intent, gross negligence, malicious concealment, provision of a guarantee for the nature of our goods – which must be expressly agreed – or for damages claims for loss of life, bodily injury or damage to the health or freedom of a person, claims under the Product Liability Act or for a breach of major contractual obligations. Statutory periods of limitation apply to the claims under this no. 1, sentences 3 and 4.

2. If nothing has been expressly specified to the contrary, statutory provisions on the beginning of the period of limitation and on the suspension, stay and resumption of set periods are not prejudiced.

3. The above rulings do not constitute any change in the burden of proof to the disadvantage of the purchaser.

XI. Payments

1. a) Our invoices are payable on receipt without any deductions. If the purchaser fails to make payment, he will be deemed in default 10 days after the date on which payment was due without any further notification from us and no later than when we sent him a reminder.

When the purchaser is in default, we have the right to charge interest on default at a rate 8 percentage points above the European Central Bank basic interest rate. The right is reserved to claim further damages.

b) Any terms of purchase of the purchaser which provide for an interest rate higher than the statutory one for any payments by us are hereby expressly refuted.

2. If the purchaser is in default on payment for earlier deliveries or if, after the contract has been made, the financial position of the purchaser deteriorates significantly so that our claim for counter-performance is jeopardised, payment shall be required progressively against delivery of the goods. The purchaser can avoid the necessity of progressive payment by furnishing security to the amount of the purchase price.

In the event of default on payment, we also reserve the right to withhold further deliveries until all due invoices have been settled.

3. If the purchaser has an obligation to pay damages under these terms or under legal provisions, we can, without providing evidence, require damages amounting to 25 % of the purchase price plus statutory turnover tax at the rate then applicable. Higher or lower damages can be specified if we provide evidence of higher losses or the purchaser provides evidence of lower losses.

4. We expressly reserve the right to accept bills of exchange or cheques. Bills of exchanges, payment orders and cheques are only accepted on account of performance and not instead of performance. Any costs incurred will be paid by the purchaser.

5. The purchaser has no withholding right, unless it is based on the same legal contractual relationship.

6. The purchaser has no offsetting right, unless offsetting is against an undisputed claim or a claim confirmed in final legal proceedings.

7. Any assignment of claims is subject to our consent.

XII. Security rights

1.a) We reserve the right of title of the delivery items (goods subject to reservation) until all liabilities resulting from the supply contract have been met in full insofar as permissible under the law in the area in which the supplied item is located. If said law does not permit such a reservation of title but allows the seller to reserve other rights to the goods, we shall be permitted to exercise all rights of this kind. The purchaser has an obligation to co-operate in any measures that we plan to take to protect our property right or another right to the goods in its stead. Supplied goods shall also be subject to reservation of title until all other claims existing between us and the purchaser have also been settled.

b) The purchaser has an obligation to keep the reserved goods carefully for us, to maintain them in a technically perfect condition and to perform, or arrange for performance of, maintenance, servicing and repair work in due time at the purchaser's cost if necessary. In particu-

lar, the purchaser must insure such goods adequately at reinstatement value at his own expense, such insurance being against damage by fire, water, tempest, burglary and theft. Any security claims arising in the event of losses are to be assigned to us. The reserved goods may only be repaired by our fitter, except in emergencies. Only original SMW-Autoblok parts are to be used.

c) Goods supplied subject to reservation of title may be sold by the purchaser in the course of due business. If the purchaser sells goods subject to reservation of title in the course of due business, he shall, on receipt of the order, assign to us the part of his claim against the third party which corresponds to the value of the goods that we supplied. There will be assignment of claims existing between the purchaser and the third party on the basis of works contracts, supply contracts and service contracts. No separate statement of assignment is required. For as long as the purchaser duly meets his payment obligations to us, he is authorised to collect such claims on our behalf. If the purchaser is in default, we have the right to disclose such assignment to the third party at any time. The purchaser has an obligation to give notification of any prohibition of assignment agreed with the third party on placement of the order. If the purchaser fails to meet this obligation or if the third party does not approve the agreed assignment, we shall be released from our supply obligation.

d) The purchaser undertakes to provide us at our request with an exact list of the claims to which we are entitled, with the names and addresses of the customers, amounts of each claims, dates of invoices, etc., to supply us with all the necessary information for asserting the assigned claim, to permit verification of such information and to disclose the assignment to the customers.

2. If the purchaser uses the goods we supply to produce a new movable item, the following additional provisions shall apply:

In relation to the production of such items, we are deemed the producer as defined in Section 950 of the German Civil Code and acquire the title to the intermediate or final products. If the new item includes other materials not supplied by us, our joint title is determined by the ratio of the value of the goods supplied by us to the other materials. The processed goods will serve to secure all claims resulting from the business relationship on any legal grounds whatsoever. The purchaser is no more than the keeper of the goods produced in this way. He has the right to sell the product produced in this way in the due course of business. He hereby assigns to us the claims against third parties resulting from resale or for any other legal reason, this being as security and to the amount of the partial value of the reserved goods to which we are entitled. For as long as the purchaser duly meets his payment obligations to us, he is authorised to collect such claims on our behalf. In this case too, we have the right to give notification of assignment in the event of default.

3. a) Any attachment of the assigned claims must be reported immediately.

b) The purchaser must notify us immediately in the event of seizure or other impairments of our interests as owners,

4. If the realisable value of all the security rights held by the customer exceeds the amount of all secured claims by more than 10%, we will release an appropriate share of the security rights at the purchaser's request; we have the right to choose between the different security rights.

5. If the purchaser breaches the contract, in particular if he is in default on payment, we have the right to repossess the goods supplied. The repossession or seizure of the goods by us does not constitute rescission of the contract, unless we expressly confirm in writing that this is the case. We have the right to sell the goods. The proceeds of sale will be credited to the purchaser's liabilities, with deduction of reasonable selling costs.

6. The purchaser hereby gives his consent that the persons commissioned by us to repossess the goods may enter, either on foot or in a vehicle, the site or the building on or in which the reserved goods are located, for the purpose of repossessing the goods.

XIII. Confidentiality

If the purchaser gains knowledge of our business secrets and/or know how during performance of the order, he shall treat the same as confidential and must take appropriate action to ensure that our protectable interests are not infringed and protectable knowledge is only used in connection with the order or, respectively, later use of the ordered item itself. In particular, the purchaser bears the burden of proof that

the business secrets and/or know how were already known to him previously or were obvious, at the least.

The purchaser shall treat as business secrets all the business and technical details associated with the order. He also has an obligation to continue to treat documents and information as confidential after completion of the contract concerned. Duplication is only permissible as required by business operations and in compliance with copyright law. Any disclosure to third parties is subject to our written consent. The parties to the contract may only use their business relationship for advertising purposes subject to prior written consent.

XIV. Items Supplied by the Purchaser

If the purchaser submits claims due to damage to or destruction of his items supplied to us or given to us for processing, we shall only be liable in the event of intent and gross negligence; there will be no liability for ordinary negligence. Liability does not cover normal wear and tear. The purchaser must take out external insurance for the necessary amount to cover the items supplied. The purchaser is responsible for inspecting and guaranteeing the quality (e.g. material, accuracy of measurements, etc.) of products supplied, e.g. raw material, blanks, etc.; we perform no more than an incoming-goods control of quantity and identity and a visual check for obvious transportation damage. We have no obligation to perform any further checks.

XV. Final Clauses

1. The contractual relationships with the customer are governed exclusively by the law of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1990 is excluded.

2. Solely the legal venue that has jurisdiction for us is agreed to be competent for all present and future claims resulting from business relationships with fully qualified merchants and for claims asserted by way of dunning proceedings. The same legal venue shall be valid if the purchaser has no general legal venue in Germany or moves his home or usual place of residence from Germany after entering into the contract or if his home or usual place of residence is not known when legal action is instigated.

3. Please note that this is a translation of the original text of our German General Terms of Sale and Supply. In the event of any dispute on the interpretation of these General Terms of Sale and Supply the German original text shall be conclusive.