



## 1. Scope of Application and Protective Clause

These Terms and Conditions of Business shall apply to all business relations between SMB Schwede Maschinenbau GmbH (in the following referred to as "SMB") and contractors as defined in §14 BGB (German Civil Code) (in the following referred to as "the Customer"). Deviating terms, particularly the Customer's conditions of purchase, are hereby expressly rejected. Terms and conditions other than these General Sales Conditions require the explicit written approval of SMB. These General Sales Conditions shall also apply to future business transactions conducted on the basis of ongoing business relations, even if they are not explicitly referred to, provided that the Customer received them in conjunction with a previous order which SMB executed.

## 2. Offer

All offers in SMB advertising material and on SMB websites are subject to change without notice with regard to prices, delivery and technical modification.

## 3. Prices and Terms of Payment

Unless agreed otherwise, all quoted prices are net prices applicable on the date of delivery as a rule. Prices are ex-warehouse prices and are exclusive of costs for packaging, freight, insurances and forwarding. The respectively applicable value added tax shall be indicated separately on the invoice. Save as agreed otherwise, the invoiced amount shall fall due for payment upon delivery of the goods and receipt of the invoice. Payment by the Customer shall be considered as effected when SMB has the invoice amount available; in the case of cheque payment, only after the cheque has been credited to SMB and has not been reversed. The Customer is in default without any further notice 10 days after the due date to the extent that the invoice has not been paid, whereupon SMB shall be entitled to charge interest at a rate of 8 percentage points above the base lending rate. SMB is free to provide proof that higher damage has been incurred. Unless specified otherwise by the Customer, payments shall be used to first settle any older debts of the Customer. SMB shall inform the Customer about the settlement. If costs and interests have accrued, payments shall be used to first cover costs, then interests and finally to cover the principal claim.

## 4. Supplementary Performance Provision and Right of Retention

If the delivered goods are defective, the Customer shall not be entitled to retention unless the goods have apparent defects or the Customer has an obvious right to refuse acceptance of the delivery. In such cases, the Customer shall be entitled to retention to a reasonable extent considering the defects and the probable costs of supplementary performance (in particular to remedy defects). The Customer shall not be entitled to any claims and rights regarding defective goods if he is in default with due payments and the due amount is proportionate considering the value of the - defective - goods.

## 5. Delivery and Liability upon Delivery Delay

The delivery dates given by SMB are not-binding, but rather specify in general an assumed date of delivery which SMB shall strive to meet. If SMB cannot meet specified delivery dates that have explicitly been confirmed in writing, the Customer shall be entitled to withdraw from the contract, provided that he has given written notice to SMB of an appropriate period of grace. Unless agreed otherwise effectively, the deadlines start with the dispatch of the final Order Confirmation. Delivery shall be considered effected in due time if the goods have been provided for loading at the SMB plant or, if so agreed, the plant of the sub-supplier (for pick-up) before the deadline has expired. SMB shall inform the Customer immediately about delivery delays. In the case of Force Majeure or other circumstances that seriously aggravate or rule out due delivery and which circumstances SMB cannot be held liable for, SMB shall be entitled to withdraw from the contract of sale. In such cases, SMB shall inform the Customer immediately that delivery is not possible. Payments already effected by the Customer shall be reimbursed immediately. Circumstances and events beyond SMB's control which make it temporarily impossible or unacceptable for SMB to deliver, in particular traffic dislocations and work disruptions, raw material or energy shortages, strikes or lock-outs, including those occurring on the part of an SMB sub-supplier, shall exempt SMB from their obligation to deliver for the duration of the incident and a reasonable preparatory period. SMB shall be held liable for delivery delays due to intent or gross negligence on their part or on the part of any representative or subcontractor according to the legal provisions. In all other cases of delivery delays, SMB's liability for compensation in addition to or instead of delivery shall be limited to 5 % of the value of the delivered goods. Any other claims of the Customer are excluded even after a period of grace for SMB has expired. This limitation of liability does not apply to damage caused to body, life or health.

## 6. Passing of Risk and Default of Acceptance

The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer upon delivery, i.e. upon provision of the goods ex works. Delivery shall also be considered as performed if the Customer is in default of acceptance. If the Customer is in default, SMB shall be entitled to claim compensation of damage incurred.

## 7. Retention of Title

The goods shall remain the property of SMB until the Customer has settled all outstanding accounts arising from the respective business transaction. The Customer shall expressly refer to this Retention of Title of SMB if any third parties should raise claims for such goods, in particular in the case of attachment, and notify SMB accordingly without delay. Costs incurred by SMB for any necessary legal action shall be reimbursed by the Customer. If the Customer violates his obligations, especially in the case of default in payment, and if he fails performance within a reasonable period of grace, SMB shall be entitled to withdraw from the contract and to demand return of the delivered goods. The legal provisions governing the dispensability of setting a period of grace shall remain unaffected. The Customer shall be entitled to resell the goods in the course of normal business transactions, provided that he meets his obligations from his business relations with SMB in due time. The Customer assigns to SMB already now all claims equivalent to the invoice amount due from a third party which accrue to him out of the resale. SMB accepts this assignment. Upon assignment the Customer shall be entitled to collect the claims. However, SMB reserves the right of collection in case the Customer is in default of payment. The Customer is obliged to secure SMB's rights if the resale of the conditional goods is financed on credit. Any processing or treatment of such conditional goods shall be executed by the Customer on behalf of SMB. If the conditional goods are processed or combined inseparably with goods which are not owned by SMB, SMB shall acquire ownership in the new items in the proportion of the value of the conditional goods to the other processed or combined items at the time of processing or combination. If SMB goods are processed or combined inseparably with other movable objects to form a new item and if such other item is to be considered a main item, the Customer shall pass to SMB a proportionate co-ownership if the Customer is the owner of such main item. The Customer shall hold in safe custody such property or goods of shared ownership on behalf of SMB. Otherwise, the provisions specified for the conditional goods shall apply likewise to the new item which has been formed through processing or combination. If the value of the existing securities exceeds the secured claims by more than 10 % in total, SMB shall be obliged to release securities on SMB's discretion upon the Customer's request to that extent.

## 8. Liability for Defects

The Customer shall be obliged to thoroughly inspect delivered goods upon receipt and to inform SMB about apparent defects no later than 10 days after receipt of delivery. In the case of hidden defects, complaints must be raised to SMB within 10 days after detection but no later than 12 months after passage of risk. Warranty claims raised by the Customer after these periods shall not be accepted. The Customer shall not be entitled to warranty claims against SMB for negligible deviations from the contractual properties or for minor loss of usefulness of the sold item. For supplementary performance, SMB shall not be obliged to send or produce new goods as replacement. If the customer is responsible for deterioration or loss of the delivery or is unable to return the goods, he shall be liable to compensation for the loss of value or incurred damage. SMB shall not be held liable for defects of quality of the delivered goods which are procured from third parties and passed on to the Customer unchanged. However, the liability in the case of intent or gross negligence according to paragraph 9 shall remain unaffected. Claims under a legal right of recourse, according to § 478 BGB, of the Customer against SMB shall apply only insofar as the Customer has made no agreement with his clients which exceeds the legal provisions of the liability for defects.

The period of limitation of claims for damages due to defective goods - regardless of the legal basis - is one year. Longer periods of limitation required by other legal provisions shall remain unaffected.

## 9. Liability

SMB shall be liable in case of intent or gross negligence on the part of SMB or SMB's representatives or subcontractors according to legal provisions. Apart from this, SMB shall be liable only as stipulated by the Product Liability Act for damage to life, body or health or culpable violation of material contractual obligations. The claim for damages due to the violation of material contractual obligations shall, however, be limited to contract-typical foreseeable damage. Liability for damage caused by the delivered goods to the Customer's property, in particular to other goods, shall be excluded entirely. The provisions of the sentences 3 and 4 of this paragraph do not apply in cases of intent or gross negligence or damage to life, body or health.

## 10. Waste equipment

The customer shall be liable for appropriate waste disposal according to legal provisions at his own costs.

## 11. Place of Jurisdiction and Applicable Law

Bayreuth, Germany, shall be the only place of jurisdiction. These General Sales Conditions shall be governed by the law of Germany.