

# General Terms of Delivery

issued by smp aviation, October 2016

## 1. Scope

1.1. These General Terms shall govern legal transactions between smp aviation and business enterprises, namely the delivery of commodities and, mutatis mutandis, the rendering of services.

Software transactions are governed by the Software Conditions issued by smp aviation.

1.2. Any departure from the terms and conditions mentioned in 1.1 above shall be valid only if expressly accepted in writing by smp aviation.

## 2. Submission of offers

2.1. smp aviation's offers shall be deemed offers without engagement.

2.2. Tender documents and project documentation must not be duplicated nor made available to third parties without the permission of smp aviation. They may be claimed back at any time and shall be returned to smp aviation immediately if the order is placed elsewhere.

## 3. Conclusion of contract

3.1. The contract shall be deemed concluded upon written confirmation by smp aviation of an order received or upon dispatch of a delivery.

3.2. Particulars appearing in catalogues, folders etc. as well as any oral or written statements shall only be binding if smp aviation makes express reference to them in the confirmation of the order.

3.3. Subsequent amendments of or additions to the contract shall be subject to written confirmation.

## 4. Prices

4.1. Prices shall be quoted ex works or ex smp aviation's warehouse without VAT, packing and packaging, loading, disassembly, take-back and proper recycling and disposal of waste electrical and electronic equipment for commercial purposes as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment. Buyer shall be liable for any and all charges, taxes or other duties levied in respect of delivery. If the terms of delivery include transport to a destination designated by Buyer, transport costs as well as the cost of any transport insurance desired by Buyer shall be borne by the latter. Delivery does not, however, include unloading and subsequent handling. Packaging materials will be taken back only by express agreement.

4.2. smp aviation reserves the right to modify prices if the order placed is not in accordance with the offer submitted.

4.3. Prices are based on costs obtaining at the time of the first quotation. In the event that the costs have increased by the time of delivery, smp aviation shall have the right to adjust prices accordingly.

4.4. In carrying out repair orders, smp aviation shall provide all services deemed expedient and shall charge Buyer for the same on the basis of the work input and/or expenditures required. The same holds for any services or additional services the expediency of which becomes apparent only as the repair order is executed. In such an event special notification of Buyer shall not be required.

4.5. Expenses for estimates of costs of repair and maintenance or for expert valuations shall be invoiced to Buyer.

## 5. Delivery

5.1. The period allowed for delivery shall commence at the latest of the following dates:

- a) the date of order confirmation by smp aviation;
- b) the date of fulfilment by Buyer of all the conditions, technical, commercial and other, for which he is responsible;
- c) the date of receipt by smp aviation of a deposit or security due before delivery of the goods in question.

5.2. Buyer shall obtain whatever licences or approvals may be required from authorities or third parties for the construction of plant and equipment. If the granting of such licences or approvals is delayed for any reason the delivery period shall be extended accordingly.

5.3. smp aviation may carry out, and charge Buyer for, partial or advance deliveries. If delivery on call is agreed upon, the commodity shall be deemed called off at the latest one year after the order was placed.

5.4. In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which impede compliance with the agreed period of delivery, the latter shall be extended in any case for the duration of such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labour disputes, and default on performance by a major component supplier who is difficult to replace. The aforesaid circumstances shall be deemed to prevail irrespective of whether they affect smp aviation or his subcontractor(s).

5.5. If a contractual penalty for default of delivery was agreed upon by contracting parties when the contract was concluded, it shall be executed as follows, and any deviations concerning individual items shall not affect the remaining provisions: Where delay in performance can be shown to have occurred solely through the fault of smp aviation, Buyer may claim for each completed week of delay an indemnity of at most one half of one per cent, a total of no more than 5 %, however, of the value of that part of the goods to be delivered which cannot be used on account of smp aviation's failure to deliver an essential part thereof, provided the Buyer has suffered a damage to the aforesaid extent. Assertion of rights of damages exceeding this extent is precluded.

## 6. Passage of risk and place of performance

6.1. Unless otherwise agreed, the delivery of goods is considered sold EXW in accordance with INCOTERMS® 2010.

6.2. For services, the place of performance shall be the place indicated in the written order confirmation, secondary to that at which the service is actually rendered by smp aviation. The risk in respect of such services or any part thereof shall pass to Buyer at the time the services have been rendered.

## **7. Payment**

7.1. Unless otherwise agreed, one third of the purchase price shall fall due at the time of receipt by Buyer of the order confirmation of smp aviation, one third after half the delivery period has elapsed and the balance at the time of delivery. Irrespective thereof the turnover tax comprised in the amount of the invoice shall be paid within 30 days of the invoice date. If bankruptcy proceedings are instituted against the assets of Buyer or if an application for bankruptcy proceedings are not granted for insufficiency of assets, deliveries shall only be made against cash in advance.

7.2. In the case of part settlements, the individual part payments shall fall due upon receipt of the respective invoices. The same shall apply to amounts invoiced for additional deliveries or resulting from additional agreements beyond the scope of the original contract, irrespective of the terms of payment agreed upon for the principal delivery.

7.3. Payment shall be made without any discount free smp aviation's domicile in the agreed currency. Drafts and checks shall be accepted on account of payment only, with all interest, fees and charges in connection therewith (such as collection and discounting charges) to be borne by Buyer.

7.4. Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims.

7.5. Payment shall be deemed to have been effected on the date at which the amount in question is at smp aviation's disposal.

7.6. If Buyer fails to meet the terms of payment or any other obligation arising from this or other legal transactions, smp aviation may without prejudice to his other rights

a) suspend performance of his own obligations until payments have been made or other obligations fulfilled, and exercise his right to extend the period of delivery to a reasonable extent,

b) call in debts arisen from this or any other legal transactions and charge default interest amounting to 1.25 % per month plus turnover tax for these amounts beginning with the due dates, unless smp aviation proves costs exceeding this.

c) only perform other legal transactions against cash in advance in the case of qualified insolvency, in other words, following two delays in payment.

In any case smp aviation has the right to invoice all expenses arising prior to a lawsuit, especially reminder charges and lawyer's fees.

7.7. Discounts or bonuses are subject to complete payment in due time.

7.8. smp aviation retains title to all goods delivered by smp aviation until receipt of all amounts invoiced including interests and charges. Buyer herewith assigns his claim out of a resale of conditional commodities, even if they are processed, transformed or combined with other commodities,

to smp aviation to secure the latter's purchase money claim. In the case of resale granting respite Buyer shall have the power of disposal of the product under retention of ownership only with the proviso that upon reselling Buyer notifies the secondary buyer of the assignment for security or enters the assignment in his account books. Upon request Buyer has to notify the assigned claim and the debtor thereof to smp aviation, and to make all information and material required for his debt collection available and to notify the assignment to the third-party debtor. If the goods are attached or otherwise levied upon, Buyer shall draw attention to smp aviation's title and immediately inform smp aviation of the attachment or levy.

## **8. Warranty and acceptance of obligation to repair defects**

8.1. Once the agreed terms of payment have been complied with, smp aviation shall, subject to the conditions hereunder, remedy any defect existing at the time of acceptance of the article in question whether due to faulty design, material or manufacture, that impairs the functioning of said article. From particulars appearing in catalogues, folders, promotional literature as well as written or oral statements which have not been included in the agreement no warranty obligations may be deduced.

8.2. Unless special warranty periods operate for individual items the warranty period shall be 12 months. These conditions shall also apply to any goods supplied, or services rendered in respect of goods supplied, that are firmly attached to buildings or the ground. The warranty period begins at the point of passage of risk acc. to paragraph 6.

8.3. For improved or exchanged parts, the warranty period shall start again, but shall end in any case 6 months after the original warranty period has expired.

8.4. If delivery or the performance of services is delayed for reasons outside the control of smp aviation, the warranty period shall begin 2 weeks after smp aviation is ready to deliver or perform services.

8.5. The foregoing warranty obligations are conditional upon the Buyer giving within a reasonable period notice in writing of any defects that have occurred and such notice reaching smp aviation. Buyer shall prove within a reasonable period the presence of a defect, in particular he shall make available within a reasonable period to smp aviation all material and data in his possession. Upon receipt of such notice smp aviation shall, in the case of a defect covered by the warranty under 8.1 above, have the option to replace the defective goods or defective parts thereof or else to repair them on Buyer's premises or have them returned for repair, or to grant a fair and reasonable price reduction

8.6. Any expenses incurred in connection with rectifying defects (e. g. expenses for assembly and disassembly, transport, waste disposal, travel and site-to-quarters time) shall be borne by Buyer. For warranty work on Buyer's premises Buyer shall make available free of charge any assistance, hoisting gear, scaffolding and sundry supplies and incidentals that may be required. Replaced parts shall become the property of smp aviation.

8.7. If an article is manufactured by smp aviation on the basis of design data, design drawings, models or other specifications supplied by Buyer, smp aviation's warranty shall be restricted to non-compliance with Buyer's specifications.

8.8. smp aviation's warranty obligation shall not extend to any defects due to assembly and installation work not undertaken by smp aviation, inadequate equipment, or due to non-compliance with installation requirements and operating conditions,

overloading of parts in excess of the design values stipulated by smp aviation, negligent or faulty handling or the use of inappropriate materials, nor for defects attributable to material supplied by Buyer. Nor shall smp aviation be liable for damage due to acts of third parties, atmospheric discharges. Excess voltage and chemical influences. The warranty does not cover the replacement of parts subject to natural wear and tear. smp aviation accepts no warranty for the sale of used goods.

8.9. The warranty shall lapse immediately if, without written consent of smp aviation, Buyer himself or a third party not expressly authorised undertakes modifications or repairs on any items delivered.

8.10. Claims acc. to § 933b ABGB are struck by the statute of limitation with lapse of the period mentioned under point 8.2.

8.11. The provisions of sub-paragraphs 8.1 to 8.10 shall apply, mutatis mutandis, to all cases where the obligation to repair defects has to be accepted for other reasons laid down by law.

## **9. Withdrawal from contract**

9.1. Buyer may withdraw from the contract only in the event of delays caused by gross negligence on the part of smp aviation and only after a reasonable period of grace has elapsed. Withdrawal from contract shall be notified in writing by registered mail.

9.2. Irrespective of his other rights smp aviation shall be entitled to withdraw from the contract

a) if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the responsibility of Buyer and if the delay is extended beyond a reasonable period of grace allowed;

b) if doubts have arisen as to Buyer's creditworthiness and if same fails, on smp aviation's request, to make an advance payment or to provide adequate security prior to delivery, or

c) if, for reasons mentioned in 5.4, the period allowed for delivery is extended by more than half of the period originally agreed or by at least 6 months, or

d) if Buyer does not or does not properly meet the obligations imposed as per paragraph 13.

9.3. For the reasons given above withdrawal from the contract shall also be possible in respect of any outstanding part of the delivery or service contracted for.

9.4. If bankruptcy proceedings are instituted against Buyer or an application for bankruptcy proceedings is not granted for insufficiency of assets, smp aviation may withdraw from the contract without allowing a period of grace. If this withdrawal is taken; it shall take effect immediately upon the decision that the business will not be continued. If the business will be continued, a withdrawal shall not take effect until 6 months after the institution of bankruptcy proceedings or after an application for bankruptcy proceedings has not been granted for insufficiency of assets. In any case, the contract shall be terminated immediately unless the bankruptcy law to which Buyer is subject conflicts with this or if termination of the contract is necessary to prevent significant damages to smp aviation.

9.5. Without prejudice to smp aviation's claim for damages including expenses arising prior to a lawsuit, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by smp aviation. smp aviation shall, however, have the option alternatively to require the restitution of articles already delivered.

9.6. Withdrawal from contract shall have no consequences other than those stipulated above.

9.7. The assertion of claims on the ground of *laesio enormis*, error, or lapse of purpose by the Buyer is excluded.

## **10. Disposal of waste electrical and electronic equipment**

10.1. The Buyer of electrical/electronic equipment for commercial purposes, incorporated in Austria, is responsible for the financing of the collection and treatment of waste electrical and electronic equipment as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment, if he is himself the user of the electrical/electronic equipment. If the Buyer is not the end user, he shall transfer the full financial commitment to his customer by agreement and furnish proof thereof to smp aviation.

10.2. The Buyer incorporated in Austria shall ensure that smp aviation is provided with all information necessary to meet smp aviation's obligations as manufacturer/importer, particularly according to §§ 11 and 24 of the Ordinance Regulating the Handling of Waste Electrical Equipment and the Waste Management Act.

10.3. The Buyer incorporated in Austria is liable *vis-à-vis* smp aviation for any damage and other financial disadvantages incurred by smp aviation due to Buyer's failure to meet or fully meet his financing commitment or any other obligations according to Article 10. The Buyer shall bear the burden of proof of performance of this obligation.

## **11. smp aviation's liability**

11.1. Outside the scope of the Product Liability Act, smp aviation shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence, within the limits of statutory provisions. smp aviation's total liability in cases of gross negligence is limited to the net value of the order or EUR 100,000, depending on which amount is lower.

11.2. For each incident of damage, smp aviation shall be liable for 25% of the net value of the order or EUR 25,000, depending on which amount is lower.

11.3. smp aviation shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, indirect damages, loss of production, financing costs, costs for replacement energy, loss of energy, data or information, loss of profits, loss of savings or interest, or damage resulting from third-party claims against buyer.

11.4. smp aviation shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.

11.5. Claims that exceed the contractual penalties that were agreed on are excluded from the respective title. The provisions of paragraph 11 apply exclusively for all claims by Buyer against smp aviation, regardless of the legal basis or entitlement, and also apply to all employees, subcontractors and sub-suppliers of smp aviation.

## **12. Industrial property rights and copyrights**

12.1. Buyer shall indemnify smp aviation and hold him harmless against any claims for any infringement of industrial property rights raised against him if smp aviation's manufactures an article pursuant to any design data, design drawings, models or other specifications made available to him by Buyer.

12.2. Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of smp aviation and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc. The provisions of 2.2 above shall also cover design documents.

### **13. Compliance with export provisions**

13.1. When passing on goods delivered by smp aviation to third parties (as well as any related documentation, regardless of the method of provision or the services performed by smp aviation [including technical support of any kind]), Buyer must comply with the applicable regulations of national and international (re-)export provisions. In any case, Buyer must observe the (re-)export provisions of smp aviation's country of residence, the European Union and the United States of America.

13.2. If necessary for export controls, Buyer must provide smp aviation with all necessary information immediately after being requested to do so, for example, information about the final recipient, final destination and purpose of the goods or services.

### **14. General**

Should individual provisions of the contract or of these provisions be invalid the validity of the other provisions shall not be affected. The invalid provision shall be replaced by a valid one, which comes as close to the target goal as possible.

### **15. Jurisdiction and applicable law**

Any litigations arising under the contract including litigations over the existence or non-existence thereof shall fall within the exclusive jurisdiction of the competent court at smp aviation's domicile; the competent court of the Bezirksgericht Innere Stadt, Vienna, shall have exclusive jurisdiction if smp aviation is domiciled in Vienna. The contract is subject to Austrian law excluding the referral rules. Application of the UN Convention on Contracts for the International Sale of Goods is renounced.

### **16. Proviso**

The execution of the contract by smp aviation is subject to the condition that there are no obstacles standing in the way of execution due to national or international (re-)export provisions, and especially no embargos and/or other sanctions.

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