

General Terms of Purchase of SMA Railway Technology GmbH, Kassel, Germany

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I. General Provisions

1. These General Terms of Purchase shall apply to all business relationships between SMA Railway Technology GmbH (hereinafter referred to as SMA) and the supplier (hereinafter referred to as the Supplier).
2. The General Terms of Business of the Supplier shall only apply in so far as SMA has consented to the conclusion of each contract in writing.
3. In the event that separate provisions, which diverge from these provisions, are agreed upon in writing for a specific order, these General Terms of Purchase shall be deemed as subordinate and supplementary.
4. The effectiveness of other conditions cannot be derived from the acceptance of the goods.

II. Orders – Confirmation of Order

1. Orders shall be required in writing. Verbal agreements shall only be valid in so far as they have been confirmed in writing by SMA.
2. Orders are to be confirmed in writing by the Supplier within five working days from the date of order, stating our order number; otherwise SMA shall be entitled to withdraw from the order.
3. SMA may demand modifications to the delivery item even after the conclusion of the contract, as long as these modifications are acceptable to the Supplier.

III. Delivery Dates – Withdrawal

1. The delivery dates and periods agreed upon between SMA and the Supplier are binding. Should it be discernible to the Supplier that delivery dates cannot be adhered to, the Supplier shall get in touch with SMA immediately and explain the reasons and give new delivery dates. In this case, the Supplier undertakes to ensure that delivery is effected as quickly as possible at his own expense.
2. Should the Supplier fail to render the service due or not perform it as stipulated in the contract, SMA shall be entitled to withdraw from the contract after expiry of an unsuccessful, reasonable extension of the original term, or, in so far as the Supplier is responsible for the non-observation of the delivery deadline, to demand compensation in accordance with the statutory regulations. This shall also include the additional expenses that arise for procuring substitutes from third parties.
3. SMA can terminate the contract for an important reason or rescind the contract, in particular, when the Supplier has stopped his payments not only temporarily or the Supplier has filed a petition for insolvency or if insolvency proceedings are instituted with relation to his assets or have been refused due to insufficiency of assets.
4. Should a contractual penalty be agreed upon in individual agreements or by a framework buying contract in case of a delay in delivery, the right of SMA pursuant to section III, sub-item 2, to rescind or to claim damages for delay shall remain unaffected.

IV. Prices – Other Conditions

1. The prices quoted in the order are fixed prices including freight, packing and transport insurance.
2. Additional and/or increased performances shall only be remunerated if this was agreed upon in writing before the performance of the service.
3. Upon request by SMA, the Supplier undertakes to collect all packing material of the delivered goods from the receiving point and to dispose of it at his own expense.

V. Dispatch – Invoice

1. The dispatch of the goods shall be effected at the expense and risk of the Supplier. A delivery note shall be attached to each consignment indicating the order number, date, order item number, the description of the goods with the SMA material number and, if available, the serial number.
2. The invoice shall be sent to the accounts payable department of SMA together with the details set forth in paragraph 1.

VI. Payment

1. Payment shall be effected with 3% cash discount within 14 days, 2% cash discount within 30 days or within 60 days net, calculated from the date of the complete and orderly receipt of the goods with all stipulated documents, including the necessary operating and maintenance instructions.
2. The date of the receipt of the invoice shall be deemed to be the date of the receipt stamp on the invoice. The credit periods shall, however, not commence before the receipt of the goods at the delivery place agreed upon.
3. The date when the order of remittance is handed over at the bank or the date when the check is sent shall be decisive for the timeliness of the payment by SMA.
4. SMA shall be entitled to set off claims against the Supplier.
5. The Supplier may only assign claims against SMA to third parties with the written consent of SMA.

VII. Protective Provisions

The Supplier undertakes to comply with the accepted engineering standards and, in particular, with the regulations and guidelines issued by the legislator, regulatory authorities, employers' liability insurance associations and the association of German electrical engineers with regard to execution, the prevention of accidents and protection of the environment.

VIII. Defects of Quality

1. Except as ruled otherwise below, the liability for defects of the Supplier shall be in accordance with statutory regulations.
2. In case of a serial defect, SMA shall be entitled to refuse acceptance of the rest of the delivery and to assert the statutory deficiency claims for the entire delivery. A serial defect shall be assumed if at least 10% of the delivered goods show signs of deficiency of the same kind during the warranty period.
3. The warranty period is 36 months after acceptance of the goods. The warranty period for defects in the case of a building and for defects of an object which has been used for a building in accordance with its customary usage and caused the defectiveness of that building is 60 months. The warranty period shall be extended for the time during which the delivered item cannot be used owing to its faultiness.
4. SMA shall inspect consignments after delivery by the Supplier, insofar this can be done in the regular course of business, at least for quantity variances and divergences in identity, transport damage as well as other obvious defects. The requirement to make a claim in accordance with § 377 of the German Commercial Code shall be deemed to have been raised if the determined deficiencies are notified to the Supplier within 10 working days after receipt of the consignment or, in the case of concealed defects, in the same period after ascertainment thereof.
5. In the case of a material defect or deficiency in title, SMA is entitled, under the provisions of § 437 of the German Civil Code, to demand supplementary performance, to withdraw from the contract, to reduce the purchase price, or to demand compensation or reimbursement of futile expenditure.
6. In the case of increased deliveries, SMA reserves the right to return the excess goods delivered at the expense of the Supplier.
7. The period of limitation of the deficiency claims shall be suspended if negotiations are taking place between the parties on the existence or extent of warranty claims or if the Supplier is inspecting the goods himself for the existence of a defect. The suspension shall end if the Supplier refuses to continue with the remedy of the defect in writing or if he notifies SMA in writing that the negotiations have come to an end or if the outcome of the inspection is sent to SMA.

IX. Liability

1. The Supplier shall be liable for damage arising from the delivery of faulty products in accordance with statutory regulations.
2. The Supplier shall indemnify SMA from claims from the statutory product liability in so far as he is responsible for causing the damage.
3. Provisions for the execution of the order shall remain the property of SMA. They shall be stored separately by the Supplier free of charge, they shall be marked and managed by him and may only be used for the purpose of each contract. The Supplier shall be liable towards SMA for all damage to the provisions.

X. Secrecy and Protection of Confidence

The Supplier undertakes to treat the order and the work ensuing from it, including all of the necessary documents, apparatus and production equipment and facilities etc. in confidence and not to make them accessible to third parties in a direct or indirect manner. Press releases, other publications and advertising with orders placed shall only be permitted with prior written consent by SMA.

XI. Other Conditions

1. The place of performance for deliveries and services shall be the SMA factory in Kassel.
2. In so far as it is legally admissible, the place of jurisdiction for all disputes arising from the contractual relationship shall be Kassel. SMA is also entitled to start legal action at the court of jurisdiction at the legal business domicile of the Supplier or at a competent court on the basis of domestic or foreign law.
3. The laws of the Federal Republic of Germany shall apply for all legal relationships between SMA and the Supplier arising from or in connection with the contractual relationship excluding the UN convention on contracts for the international sale of goods (CISG).
4. Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected, unless holding onto the contract would constitute an undue hardship for one of the parties.
5. SMA shall store the data of its Suppliers within the framework of the Federal law on data protection.