

1 Scope of the Export Terms and Conditions

1.1 These Export Terms and Conditions apply exclusively to all our offers and contracts regarding sales and the performance of delivery, collection, and services to/for business-entities that have their business seat outside Germany or whose relevant establishment is located outside Germany at the time of closing the contract. Relevant is the establishment that closes the contract in its own name.

1.2 Individual agreements between the parties override these Export Terms and Conditions. Diverging conditions of the customer are expressly contradicted.

1.3 These Export Terms and Conditions are divided into two parts: Part A regarding common conditions for all contracts and Part B regarding special conditions for the delivery of Systems as defined in no. B.1.2.

1.4 These Export Terms and Conditions do not apply if the customer purchases the goods for his personal use or the use in his family or household and we were aware of this fact, or should have been aware, at the time of closing the contract.

PART A – Common conditions for all contracts

1 Conclusion of the contract

1.1 Our offers are not binding, i.e. they are only an invitation to make an offer unless the offer expressly indicates differently. A contract is formed by our confirmation of the customer's offer. In case of discrepancy between offer and confirmation, the customer has to declare his disagreement within one week from receipt.

1.2 Insofar as we make a binding offer, the customer has to accept such offer within the acceptance period stated. If a binding offer does not state an acceptance period, the acceptance period is two weeks from the date of the offer.

1.3 The contractual content, especially the scope of the services, is defined by our order confirmation respectively our delivery note or the invoice is solely decisive.

1.4 Consultations and planning are non-binding unless expressly referenced as binding in the contract.

Any documents or information that have been presented or handed over by us, in particular planning sketches, drawings, pictures, indications of weights and dimension specifications are non-binding unless expressly designates as binding.

1.5 The documents and information named in no. A.1.4 above remain our exclusive (intellectual) property even after the execution of the contract. Pictures, descriptions, price lists, samples, drafts or drawings may neither be copied nor made available to third parties in any other form. The customer is not permitted to use them to produce goods himself or through third parties unless otherwise expressly agreed.

1.6 If a contract to execute the services is not concluded after any consultation and/or planning by us, all documents which have been prepared by us must be returned to us without undue delay; documents that have been transferred in electronic form must be deleted without undue delay and have to be returned as far as possible.

1.7 Misconceptions and mistakes in writing, printing or calculating in our non-binding offer as well as our catalogues and brochures may occur and shall not bind us. All documents related to the non-binding offer, such as pictures, drawings, invoices, indications of weights and dimension specifications are only approximations unless the parties agreed differently. Such information, in particular information regarding the services and the use of the delivered products as well as German Industry Standards (DIN) are only deemed to be contractually agreed upon if this has been expressly declared by us in writing.

1.8 The customer has to inform us before conclusion of contract if the goods to be supplied are to be solely suitable for normal use or are to be used under abnormal conditions or conditions constituting a special health, safety or environmental risk or requiring increased utilization or if any atypical damage potential or any unusual extents of damage could be associated with the contract. This obligation applies only with relation to such use conditions, damage potential, or unusual extents of damage that are known or would have to be known by the customer.

2 Prices and payments

2.1 Our prices are net plus applicable VAT. Prices are in Euro FCA (Incoterms 2020) at our storage facility in Singen or designated storage facility of our logistic partner plus packaging, freight, and shipping unless agreed upon otherwise in writing. Additional costs for express-shipping shall be invoiced separately.

2.2 Payments are due 14 days net after the date of the invoice unless the parties agreed upon otherwise; Thereafter the customer has to pay maturity interests to the amount of 9 percentage points above the base interest rate (Basiszinssatz) of the European Central Bank.

2.3 Set-off or retention of payment is only permitted against the customer's receivables arising from the same legal relationship or against the customer's claims which have been accepted or stated legally binding.

2.4 If we recognize after conclusion of the contract that our right for payment is at risk because of the customer's inability to perform we are entitled to refuse our services or preparatory actions. The right to refuse the services ends if the payment is made or the customer provided a security for the payment. We are entitled to set an appropriate deadline for the payment/lodging a security to the customer. After expiry of the deadline without payment or lodging of a security we are entitled to declare the contract avoided.

2.5 We are entitled to assign our receivables against the customer.

3 Delivery and delay

3.1 Any agreed delivery dates are subject to the timely clarification of any details of the desired realization that have to be defined by the customer as well as the timely receipt of any deposit to be made by customer.

3.2 Any period for execution or delivery is appropriately extended – even in case of default – in cases of force majeure (e.g. natural disasters, wars, uprisings, strikes, epidemics, pandemics) and all unforeseeable impediments, that occur after conclusion of the contract and that we are not responsible for, as far as such impediments have any detrimental impact on the provision of our performance. This also applies if such impediments that occur at our pre-suppliers, suppliers, freight-carriers or subcontractors. We will inform the customer without delay about the start and the end of such impediments.

3.3 If such an impediment continuous for more than three months or it is certain that it will remain an impediment for more than three months, both we and the customer are entitled to declare the contract avoided. In the case of withdrawal because of such impediments any claims for damages are excluded. Any deposits of the customer shall be returned unless the customer was responsible for a delay in the delivery schedule resulting in the detrimental impact of the impediment; in the latter case, clause 4 below shall apply accordingly.

3.4 If the customer is in default with the acceptance of the goods or payment of the price, we are entitled to withdraw from the contract and/or to claim compensation instead of continuing to perform the contract after unsuccessful expiration of a reasonable grace period set by us. In case of claiming compensation instead of delivery we are entitled to 20 % of the net price for performance as fixed compensation; the parties may proof either a higher or a lower actual damage.

In addition, we were entitled to claim payment for any expenditure caused by default in acceptance of the customer, in particular storage costs. If the goods are stored in our own establishment we will invoice the storage costs customary in the respective place.

3.5 If the delivery is delayed due to simple negligence, this shall not constitute a fundamental breach of contract and our liability for damages because of defaulted delivery is limited to 0.5 % of the net order value for each complete week of default, at maximum 5 % of the net order value. If the customer declares the contract avoided after an appropriate grace period set by the customer, this compensation is limited to 10 % of the net order value. The limitation of liability according to the sentences one and two above does not apply in case of delay caused by intent or gross negligence, furthermore not in any case of injury to life, body and health.

4 Passing of risk

4.1 The risk passes according to FCA (Incoterms 2020) unless otherwise agreed in writing.

4.2 It shall be the customer's responsibility, to insure the goods against any insurable risks at his cost, in particular against theft, breakage, fire, water, transport, or any other damage from the passing of risk unless according to the contract this obligation is expressly borne by us.

5 Means of security

5.1 We retain title to the goods until the purchase price according to no. A.2.1 is paid.

5.2 If such retention of title is not effective under the applicable law, the parties shall agree on a functionally equivalent means of security and shall validly agree on such means of security.

5.3 The customer shall take all necessary measures to maintain this retention of title or a functionally equivalent security interest recognised in the country of destination (customer's domicile). If the customer breaches this obligation, this shall constitute a fundamental breach of contract.

5.4 The customer is obligated to handle the goods subject to retention carefully and, in particular to insure them sufficiently against fire and water damage and loss due to theft at the reinstatement value at his cost.

5.5 The customer has to inform us without undue delay in case of seizure, confiscation, damage and/or loss of the delivered goods; any breach of this obligation, as well any other behavior of the customer which is contrary to contract, in particular the non-payment of the due purchase price, gives us the right to declare the contract avoided. The customer bears all costs that must be spent in particular in connection with an objection by a third party to the successful reacquisition of a seizure and if applicable to a successful new purchase of the goods delivered if they cannot be collected by third parties.

5.6 If we have validly declared the contract avoided we are entitled to repossess the retained goods, if the repossession was threatened within a reasonable period of time. Our statutory rights and obligations after withdrawal from the contract shall remain unaffected apart from that.

5.7 Any costs arising from our exercise of our right to repossess the goods, in particular for transportation and storage shall be borne by the customer.

5.8 In case of suspension of payment, application for or opening of insolvency proceeding of the customer or his business, the customer's right to use the secured goods expires. The statutory rights of an insolvency administrator - even if preliminary - or any similar institution or person shall remain untouched.

6 Obligation of examination, notification of defects

6.1 The customer has to examine, or have examined, the goods without undue delay after receipt.

6.2 Our liability for the goods for non-conformity lapses without the customer being able to invoke an excuse in this regard if the customer does not notify us of this non-conformity in writing or via e-mail ("text form") within 7 working days (saturday is not deemed to be a working day) after the customer has established it or must have established it, and in the process gives a precise description of the type of non-conformity. The notification of the non-conformity by the customer must have been sent within the aforementioned deadline by the customer; in addition, it is necessary that the notification of defect sent in a timely manner has also been received by us. When negotiating with regard to an alleged non-conformity, we do not waive the objection of belated, insufficient or unfounded notification.

6.3 The customer is obliged to give us the opportunity to determine the alleged breach of contract on site. In case of transport damages or breakage the goods are to be left in the state in which they were at discovery of the damage.

6.4 If a non-conformity cannot be established after notification by the customer, the customer must reimburse us for the costs incurred in connection with the examination of the goods.

6.5 At any rate, the customer loses the right to invoke the lack of conformity of the goods if he does not give notification of this at the latest within 12 months after the goods have actually been handed over to it, unless a longer period of guarantee has been granted (no. A.7.6.).

7 Non-conformity

7.1 As far as the goods are proven to lack conformity, we are entitled even after expiry of the agreed delivery time to initially perform subsequent improvement or replacement delivery at our discretion unless the parties agreed differently or we offered a special guarantee (no. A.7.6).

7.2 Replacement delivery or subsequent improvement does not result in the limitation period pursuant to clause A.6.5 starting to run anew.

7.3 If the customer has set us an appropriate grace period for repair or replacement (subsequent performance) and the subsequent performance has not been successful within this period of time or is refused by us, the customer has the right to reduce the purchase price or to declare the contract avoided pursuant to the statutory conditions. The amount by which the purchase price is reduced is limited to the damage incurred by the customer.

7.4 Rights for lack of conformity require that the goods show a defect at the time of passing of risk. Rights for lack of conformity do not arise in case inappropriate or improper use, faulty installation or operation by the customer or third parties authorized by him, usual wear and tear, faulty or careless handling or maintenance according to the documentation, deficient construction work, unsuitable foundations, chemical, electrochemical or electrical influences, provided these are not caused by any fault attributed to us, or in case of force majeure.

7.5 For damages due to lack of conformity, we are liable only within the limits of no. A.8.

7.6 Agreements on guarantee apply irrespective of the regulations of these Terms and Conditions of Delivery.

8 Liability

8.1 We are liable for damages in cases of intent or gross negligence by ourselves, our statutory representative or our vicarious agents, the assumption of a guarantee, pursuant to the principles of product liability law as well as injury to life, body or health attributable to ourselves, our statutory representative or our vicarious agents.

8.2 Apart from this, we or our statutory representatives or vicarious agents are only liable in the case of negligent violation of a material contractual obligation, i.e. an obligation which enables the proper fulfilment of the contract and which the other contractual party has relied on and may rely on, for the typically occurring, foreseeable damage. The limitation of liability for delay in delivery according to no. A.3.7. remains unaffected.

8.3 In all other cases of liability, claims for damages due to the violation of a contractual obligation as well as arising from tort are excluded, therefore, we are not liable for indirect damage and consequential damage (including loss of earnings, loss of goodwill, damage due to operational downtimes and nugatory expenses) unless the customer has explicitly pointed this damage possibility out to us before conclusion of the contract pursuant to no. A.1.6.

8.4 Insofar as our liability is excluded or restricted pursuant to the preceding provisions, this also applies to the personal liability of our employees, workers, staff, representatives and other vicarious agents.

8.5 The terms "damages" or "damage claims" in these General Terms and Conditions also include claims for expenses caused by subsequent performance (Aufwendungen).

9 Limitation period

9.1 For damages resulting from injury to life, body or health that are based on a negligent violation of duty by ourselves or an intentional or negligent violation of duty of our statutory representative or vicarious agent, for other damages resulting from an intentional or grossly negligent violation of duty by ourselves or an intentional or grossly negligent violation of duty of our statutory representative or vicarious agents, as well as damages resulting from an intentional or negligent violation of material contractual obligations of the respective contract by ourselves or our statutory representatives or agents, the statutory limitation period applies as well.

9.2 In all other cases, the limitation period is one year.

10 Software

If software is included in the delivery, the respective license conditions apply for the use of the software.

11 Data protection

The customer agrees that we store, use or process personal data in accordance with the European General Data Protection Regulation to the extent necessary for the execution of this agreement.

12 Labelling

12.1 Unless explicitly agreed upon, the goods and the accompanying documentation are labelled and drawn in German, and the goods comply with the applicable German statutory requirements regarding labelling and authorization.

12.2 The customer is solely responsible for the compliance with further requirements of other jurisdictions outside of Germany regarding the labelling or authorization, unless agreed upon otherwise by the parties.

12.3 The Special Terms for Medical Devices, which can be requested from us free of charge, apply additionally to any sale of medical devices.

13 Final provisions, Place of Jurisdiction, Applicable Law

13.1 All agreements between us and the customer in execution of the contract must be made in writing. Pre-contractual declarations, documents and information as well as the customer's order shall be made in writing.

13.2 Unless otherwise agreed, the place of payment and performance for all obligations is 78224 Singen, Germany.

13.3 The place of jurisdiction for all rights and obligations of the contracting parties arising from transactions of any kind is 78224 Singen, Germany. However, we are also entitled to sue the customer at place of his general or specific jurisdiction.

13.4 For these terms Terms and conditions Conditions and the entire legal relationship between us and the customer, the English version of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11/04/1980 applies. Legal issues that are not regulated in this Convention convention or cannot be decided pursuant to its principles are subject to German law (subsidiary law).

13.5 Should any provision of these Terms and Conditions be or become wholly or partially invalid, it shall not affect the validity of the remaining provisions. The Parties parties undertake to replace the invalid provision by a valid one which comes closest to the purpose intended by invalid provision.

PART B – Special provisions for the delivery of systems

1 Systems

1.1 In addition to the foregoing common provisions (Part A), the following special provisions for the delivery of Systems (Part B) shall apply for the delivery of Systemssystems. In the event of conflict with the common provisions, the special provisions shall prevail.

1.2 “Systems” within the meaning of these Terms and Conditions of Delivery are either standard modules, modular systems or customer-specific (tailor-cut) systems.

2 Applicable law

To the delivery of Systems, CISG as well as subsidiary German law expressly applies (no. A.12.4). Any additional services (for example assembly, initial operation of the System et al.) are only auxiliary obligations for the delivery of the system.

3 Prices, payment conditions for systems

3.1 Our prices are net plus VAT. Prices are in Euro FCA (Incoterms 2020) plus packaging, freight, and shipping as well as cost for agreed “Additional Services” (assembly, initial operation et al.) unless agreed upon otherwise in writing. Additional costs for express-shipping shall be invoiced separately.

3.2 If the total value of the order (excluding freight and packaging costs, excluding VAT) is more than EUR 30.000,00 per system, payments for Systems shall be

made as follows, unless otherwise agreed:

35% down payment at contract conclusion, as we provide the corresponding raw material immediately;

65% at delivery;

or in case of agreed special acceptance:

55% at delivery, 10% at special acceptance.

3.3 An invoice will be issued for each payment rate. Unless otherwise agreed, the payment at contract conclusion is due immediately net, the remaining payments are due 14 days after date of invoice net.

4 Timely fulfilment of contractual obligations

4.1 Unless agreed otherwise our obligation is fulfilled in time

- in case of agreed special acceptance, if we informed the customer that the product is ready for acceptance,

- in case of additional services (assembly, initial operation et. al.), if the additional service has been provided.

4.2 In case of additional services the customer has to provide for the opportunity of undisturbed provision of such services. Otherwise the customer has to inform us at least 10 days before the agreed or announced time of delivery. If, at that time, we already have initiated deliveries that have to be returned to us because of circumstances which the customer is responsible for, we are entitled to invoice any additional expenditure and cost separately. The agreed delivery period will be extended accordingly. This also applies in case of any amendments or new orders of the customer that are placed after conclusion of the contract.

5 Passing of the risk of systems

The risk of loss or deterioration of the Systems passes to the customer according to the agreed Incoterms 2020 even if special acceptance or Additional Services have been agreed upon.

6 Obligations of the customer and special acceptance of systems

6.1 On delivery at the customer's site, the customer has to undertake a visual inspection of the delivery with regard to any transport damage immediately and to inform us of any discovered damage without delay as well as record such damage in the transport documents. Any damage that has not been brought to our notice is deemed to be caused by the customer after delivery of the goods. With regard to this, the customer carries contributory negligence for any lack of conformity of the System resulting from such damage

unless the customer can prove the existence of transport damage or the absence of his contributory negligence.

6.2 If installation and assembly have been agreed upon, the customer has to provide any other construction work or auxiliary work including the required workforce, building material and tools, energy and water including the connections therefore, heating and lighting and the necessary rooms for the storage of system components, materials, tools, etc. and for the assembly personnel at his own expense, unless otherwise agreed.

6.3 If we request the agreed special acceptance of the system after its completion, the customer must carry out the special acceptance within two weeks. Acceptance shall be deemed as having been given, if the customer lets the two-week deadline expire or starts to use the system commercially.

6.4 The customer may not refuse receipt or special acceptance due to minor defects.

7 Maintenance of systems

7.1 Unless otherwise agreed, the customer is obliged to maintain the system regularly according to the documentation by himself - even during the complaint period for lack of conformity and the limitation period.

7.2 In particular, the regular maintenance includes conducting tests for safety-related functions such as explosion protection, etc. The tools, lubricants or fillers required for regular maintenance of the system, as well as personnel and installation costs are not included in the price of the system, unless otherwise agreed.

Elma Schmidbauer GmbH
As of 10|2020