

General Terms and Conditions of Sale of SMSC Europe GmbH

1. Scope

- 1.1 Any delivery, service and offer made by us shall be executed exclusively according to the General Terms of Sale set forth herein. These shall also apply to any future business even if not expressly stipulated otherwise. Any counter-confirmation made by a Customer with reference to his own business or purchasing terms is hereby contradicted.
- 1.2 Any provision made between us and a Customer in order to execute a contract shall be stipulated in a written contract.

2. Offer, conclusion of contract, resale, use restrictions

- 2.1 Our quotations are non-binding, provided the binding force of a quotation was not explicitly stipulated in writing. Your orders shall become binding only upon receipt of our written order acknowledgement.
- 2.2 Drawings, illustrations, weights, measures, and other performance data shall only be binding if expressly stipulated in writing.
- 2.3 We retain title of ownership and copyright of all tender documents, illustrations, drawings, calculations and other documents. These must not be disclosed to any third parties. This rule particularly applies to written documents which are clearly marked as "confidential". The Customer shall, under no circumstances, disclose any of these documents to a third party, unless he has procured our express written consent.
- 2.4 Any products supplied by us shall only be resold within the country from / or for which they had been ordered. Resale in a different country shall only be permitted with our explicit written consent. Without our explicit prior written consent no products supplied by us may be used for the performance of a contract with the government of the United States of America.
- 2.5 None of the products supplied by us are designed and manufactured for the use in any life support or any other medical application or in the field of aviation or nuclear industry. Therefore, they may not be used for these purposes or any other purpose that involves the risk of significant risks for life and health.

3. Pricing, terms of payment, set-off, retention

- 3.1 Unless otherwise agreed, prices are quoted ex works our facility in Karlsruhe or any other facility we may designate. Packing is separately invoiced.
- 3.2 Unless otherwise specified, we consider ourselves bound for four weeks by the prices quoted in our firm and binding offers commencing at the date of offering.
- 3.3 Prices are always quoted before VAT, which will be separately shown in the invoice at the rate that is legally binding on the date of invoicing.
- 3.4 Unless otherwise stipulated, our invoices shall be payable in full thirty (30) days from the date of invoice. The date of the receipt of payment at our account is decisive. Despite any Customer statements to the contrary, we shall be entitled to initially set payments off against previous debts. The Customer will then be duly informed regarding settlement. Where such previous debts have incurred additional costs and interest, we shall be entitled to set due payments off against such costs in the first place, then against such interest, and finally against the primary obligation.
- 3.5 Any deduction of discount shall require a special written agreement.
- 3.6 If the Customer defaults, we may, at our own option, charge annual interest of eight percentage points above the respective base interest rate (§ 247 German Civil Code) from the day on which a default situation begins. This shall not affect our right to claim further compensation of damage from the Customer.
- 3.7 If circumstances become known to us, which cast doubt on the Customer's creditworthiness, notably, if a cheque and / or a bill of exchange is not cleared, or payment discontinues, we will be within our rights to call in the total amount due, even though we may have previously accepted cheques. Furthermore, advance payment or the provision of securities may be demanded in such cases.
- 3.8 The Customer shall only be entitled to claim set-off if his counter-claims have been established res judicata or are indisputable or are acknowledged on our part. He may only use his right of retention to the extent that his counter-claims are based on the same contractual relationship and have been established res judicata or are indisputable or are acknowledged on our part.

4. Delivery time, partial deliveries, default in accepting

- 4.1 Dates and/or periods of delivery shall require our written confirmation to be firm and binding. Unconfirmed dates and/or periods of delivery are in no case binding. All technical and administrative issues must have been settled for a quoted delivery period to begin.
- 4.2 We may, at any time, perform partial deliveries and render partial services.
- 4.3 Our compliance with contractual delivery and performance commitments shall require the timely and proper fulfillment of the Customer's obligations.
- 4.4 If the Customer defaults in accepting or fails to meet any of his obligations to cooperate, we shall be entitled to claim compensation of damages we have suffered therefrom, including additional expenses if any. In this case, the risk of accidental loss/destruction or accidental deterioration of sold products shall pass to the Customer at the moment when the Customer defaults in accepting.

5. Passing of risk

- The risk of goods deliveries shall pass to the Customer as soon as a shipment has been handed over to the person responsible for its transportation, or has left our storage facility for dispatch (shipping date). If a shipment becomes impossible through no fault of our own, the risk shall pass to the Customer upon notification of our readiness to ship.

6. Warranty, notice of defects

- 6.1 Our products substantially conform to the applicable product specifications published by us (agreed quality pursuant to § 434 para. 1 German Civil Code).
- 6.2 It is the Customer's responsibility to promptly give written notice of identified defects not later than one week from receipt of delivered goods and in accordance with the Return Material Authorization guidelines published by us. Defects, which even a careful inspection is unable to discover within this time period, shall be notified to us in writing promptly upon identification.
- 6.3 Where we are shown to be responsible for a defect in sold products or services, the Customer shall be entitled to claim subsequent performance (§ 439 German Civil Code) to be rendered – at our choice – by way of defect removal or product replacement. All expenditure that is necessary to render the subsequent performance, notably transportation, travel, work and material costs, shall be borne by us, unless such costs are not further increased due to a relocation of sold products or contractual services to a site other than the place of fulfillment.
- 6.4 If the subsequent performance fails within a reasonable time and/or no replacement can be provided or appears unreasonable, the Customer may, at his discretion, demand a reduction in the sales price or cancel the contract. Damages may only be claimed in accordance to the provisions of paragraph 7 of this General Terms of Sale.
- 6.5 Insignificant defects shall void any warranty.
- 6.6 Additional warranty terms for software:
For software provided to the Customer, we warrant compliance with our program specifications, if such software is installed in equipment as designated by us and in accordance with our guidelines. Warranty shall only be accepted for software faults that can be reproduced at any time. We warrant that any fault or defect which is non-significant for intended software use will be removed under these warranty terms, but reserve the right to eliminate software defects according to a priority scale of our choice. This shall be done by installing an enhanced software version and giving advice on workarounds or a method to eliminate the fault. We cannot warrant the software to run faultlessly in any user-selected combinations which have not been specified by us. Any granting of services / support over and above the warranty shall be the subject matter of a separate agreement to be concluded. Unless anything different has been agreed upon between us and the customer the statutory provisions relating to donations shall apply to software offered free of charge by us (e.g. on the internet).
- 6.7 Failure to observe our operating or maintenance instructions, or changes in delivered goods or rendered services, or replacement of parts or the use of consumables which do not meet original product specifications, shall void any warranty.
- 6.8 Warranty claims may solely be put forward by the contractual Customer. They are not assignable to third parties without our written consent.
- 6.9 Unless otherwise stipulated, warranty period will be twelve months, starting at the date of delivery.
- 6.10 The foregoing warranty terms cover all commitments to provide warranty for delivered products or services. No warranty claims of any other kind will be accepted. The legal provisions concerning the purchase of consumer goods shall remain unaffected.

7. Limited liability

- 7.1 Any liability for damages – without consideration of its kind and/or legal nature – as well as reimbursement of expenses shall be excluded unless such damage can be proven to be the result of deliberate acts or gross negligence or careless failure to meet essential contractual obligations.
- 7.2 The foregoing liability restriction clause shall not be applicable where liability claims are based on guarantees or on fraudulent intent. If we are responsible for a personal injury or an injury of health we shall be liable also for negligence.
- 7.3 Our liabilities under the Product Liability Act shall in any case remain unaffected.
- 7.4 Where liability is assumed for loss of data, such liability shall be restricted to the amount of labor and expenditure typically required to restore the condition that would have been maintained in the event of regular and risk-adequate data saving on the Customer's part.
- 7.5 To the extent permissible by law our liability is restricted to typical contractual damage.
- 7.6 Unless warranty claims are covered by one of the foregoing terms, they are excluded – without consideration of their legal nature. Especially, we shall not be liable for damages which were not caused to the item of delivery itself; particularly, we shall not be liable for loss of profit or other damage caused to the Customer's assets.

8. Retention of title

- 8.1 Pending the settlement of any receivables (including current account balance claims) from the Customer at present or in the future - on whatever legal grounds - the following securities shall be provided to us. We shall relinquish these wholly or partially on request if their value clearly exceeds the value of receivables by more than 15%.
- 8.2 Shipments shall remain our property (goods sold subject to retention of title). Reprocessing or reshaping of goods shall always be regarded as performed on our behalf, but with no obligation on our part. We shall be entitled to co-ownership of the new property inasmuch as the value of goods sold with retention of title (invoiced value) relates to the new property. The Customer will be responsible for holding such new property in safe custody on our behalf and at his own expense. If the Customer chooses to resell the new property, subparagraph 8.3 shall be applicable.
- 8.3 The Customer may reprocess or resell goods under retention of title in normal business operations, as long as

he is not defaulting. He shall be prohibited from pledging or depositing such goods for collateral security. Furthermore, the Customer shall be responsible for insuring goods shipped with title reservation against all common risks. For reasons of safety, the Customer immediately assigns to us any receivables resulting from a resale or other legal grounds (insurance, unlawful acts) in connection with goods under retention of title (including any current account balance claims) in their full amount. The Customer is hereby revocably authorized to collect such receivables he has assigned to us on our account, but on his own behalf. This collection authority can only be revoked if the Customer does not meet his payment commitments in due course.

- 8.4 If a third party gains access to, or a hold on, goods shipped with retention of title, notably in the case of hypothecation, the Customer shall clearly indicate to such third party that these are our property, delivering prompt notice thereof, in order to enable us to enforce our own property rights. Where such third party is unable to refund our costs in connection with necessary court or out-of-court proceedings, the Customer shall be held liable therefore.

9. Industrial property and copyrights

- 9.1 In the event of claims on the Customer because of breach of an industrial property right or a copyright in using our deliveries or services during one year from the delivery date, we shall be responsible to obtain justice for the Customer to continue using such deliveries or services, always providing that the Customer gives immediate written notice of such third-party claims. We reserve our right to take appropriate defensive and out-of-court actions in such cases. If, despite such defensive actions, it proves impossible to continue using our deliveries or services under reasonable economic conditions, it shall be understood as agreed that we may, at our discretion, modify or replace the particular delivery or service for removal of a legal deficiency, or reship such delivery or service and refund the sales price previously paid to us less a certain deduction to account for the age of the particular product or service.
- 9.2 No claim against us shall be accepted if a law is infringed due to the use of our deliveries or services in any other way than quoted by us or due to combined use with other products than our deliveries or services. The terms of paragraph 7 shall generally apply.
- 9.3 We shall assume no liability in the case of a breach of law by deliveries or services which have been created or rendered in accordance with engineering design documents or other specification requirements of the Customer.

10. Software rights

- 10.1 The Customer is granted a non-exclusive, non-assignable, unlimited (in time) right to use the software, including any of its updates, amendments, extensions and related documentation, which are part of our product deliveries or are delivered at some later date, for no other purpose than that of operating the product.
- 10.2 Except for what is quoted in subparagraph 10.1 above, the Customer shall have no further rights in software and documentation. Notably, we shall remain the sole owner of intellectual property rights. The Customer shall not disclose any software, documentation, including subsequently provided updates, amendments or extensions, to a third party, unless our prior written approval has been obtained, nor shall he change, copy or otherwise multiply these, unless such multiplying is done to create a backup copy which must then be clearly marked as a backup copy.
- 10.3 Under the terms of paragraph 69e of the German Copyright Act, delivered program codes may be re-translated into other code forms (decompilation) if necessary to achieve interoperability between independently created software and the contractual software. Interfacing particulars required to achieve interoperability are available from us at minimal cost.
- 10.4 The concurrent storing, maintaining or application of software on more than one hardware product shall not be allowed. If the Customer intends to operate given software on several hardware configurations at the same time, for example, in a multi-operator scenario, he shall acquire the corresponding number of program packages.
- 10.5 The Customer shall take adequate precautions to prevent unauthorized access to software and documentation by third parties. He shall be responsible for keeping all delivered original data carriers and the backup copy in a place which is safe from access by third parties. The Customer shall hold us harmless in the event of damage due to a breach of this obligation. He shall also properly instruct his personnel about the need to comply with these contractual requirements and the provisions of intellectual property law.

11. Applicable law and legal venue

- 11.1 These terms of business and all legal relations with the Customer shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN-Convention on Contracts for the International Sale of Goods.
- 11.2 For Customers who qualify as a merchant as defined by the Commercial Code, a legal person under public law or Federal Special Funds, our company's registered place of business shall be the exclusive legal venue for any dispute arising from, or in connection with, this contractual relationship - whether directly or indirectly - unless legal requirements prescribe an alternate legal venue as compulsory.