

GENERAL CONDITIONS OF CONTRACT FOR THE SALE, SUPPLY AND SERVICE OF SMARTEC SA PRODUCTS

1. General conditions

1.1 These general conditions are binding for all sale, supply and service of SMARTEC SA products. Any conditions stipulated by the customer which are in contradiction to these general conditions shall only be valid if expressly acknowledged by SMARTEC SA in writing.

2. Prices

2.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works SMARTEC SA, excluding Swiss turnover tax, packing, insurances without any deduction whatsoever.

3. Terms of payment

3.1 Payments shall be made at SMARTEC SA's domicile, without any deduction for cash discount, expenses, taxes, levies, fees duties and the like, within thirty (30) days of issuance of invoice. SMARTEC SA reserves the right to change the terms of payment if confirmed in writing. Payments shall be deemed complete when SMARTEC SA has full and unlimited access to funds covering the total amount invoiced. Partial deliveries will be invoiced accordingly.

Any delay of the supplies or services and notifications of defects does not entitle the customer to any deduction of claims.

3.2 If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate of 5 percent over the current discount rate of the Swiss National Bank. The right to claim further damages is reserved.

3.3 The material remains property of SMARTEC SA until payment is made in full.

4. Delivery time

4.1 The delivery time shall start as soon as the contract is entered into, all officials formalities have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time SMARTEC SA has sent a notice to the customer informing that the supplies are ready for dispatch.

4.2 SMARTEC SA shall use its reasonable endeavours to deliver the goods by the agreed delivery time and any delay of the supplies or services does not entitle the customer to any right and claims.

4.3 Any delay of the supplies or services does not entitle the customer to rescind the contract or to return the supplies.

4.4 The customer is not entitled to refuse the supply after the issuance of the order confirmation.

4.5 The packing is invoiced at cost price and cannot be taken back.

4.6 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works. Possible damages shall immediately be notified to the shipping company after receipt of the supplies.

5. Passing of benefit and risk

5.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.

6. Inspection and taking-over of the supplies

6.1 As far as being normal practice, SMARTEC SA shall inspect the supplies before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid by the customer.

6.2 The customer shall inspect the supplies and shall without undue delay notify SMARTEC SA in writing of any defect. The notice shall contain a description of the defect. If the customer fails in doing so, he shall lose his right to have the defect remedied.

6.3 If the client wants to return the material, this has to be specially agreed upon and charges are at the customer expense.

6.4 Deficiencies of any kind in supplies shall not entitle the customer to any rights and claims other than those expressly stipulated in clauses 7 and 8 (guarantee, liability for defects) of the present general conditions.

7. Guarantee, liability for defects

7.1 The guarantee period is 12 months. It starts when the supplies are ready to leave the works. If dispatch is delayed due to reasons beyond SMARTEC's control, the guarantee period shall end not later than 18 months after SMARTEC's notification that supplies are ready for dispatch. Items identified as "Prototype" have no guarantee.

7.2 The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give SMARTEC SA the possibility of remedying such defect. The shipping costs to SMARTEC SA are at the customer expense. The supplies are to be returned to SMARTEC SA for its inspection.

7.3 Excluded from SMARTEC's guarantee and liability for defects are all deficiencies that cannot be proved to have their origin in bad materials, faulty design or poor workmanship, like for example incorrect handling during the installation.

8. Exclusion of further liability

8.1 All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawals from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited to, loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage.

9. Re-export and security

9.1 The buyer is responsible for compliance with all domestic and foreign export regulations. The buyer shall be responsible to compliance with all regulations and shall further pass such responsibility to all subsequent third parties.

10. Loaned Material

10.1 The buyer shall be held accountable for the maintenance and protection of loaned materials or tools and for damages incurred during the time that they are in his possession.

10.2 The loaned material remains the property of SMARTEC SA.

11. Services

11.1 SMARTEC SA can offer services such as installation- and measurement support. Unless otherwise agreed upon, the client is responsible for the installation and the measurement.

11.2 SMARTEC SA can provide support to define a monitoring strategy. Proposals proceeded with in collaboration with SMARTEC SA are based on information provided by the client, which is not verified, and on SMARTEC's experience. Service consultancy, which has not been verified by an engineer, is only a recommendation. A possible deficiency due to faulty measurements or missing measurements, such as misinterpretation of the obtained measurements does not entitle the customer to any rights and claims.

12. Jurisdiction and applicable law

12.1 The place of fulfilment shall be at the registered office of SMARTEC SA, 6928 Manno, Switzerland.

12.2 Swiss substantive law shall govern the contract.