

General Terms and Conditions of Sale of SmarAct GmbH

§ 1 Scope, Form

- (1) These General Terms and Conditions of Sale (GCS) shall apply for all our business relations with our customers (hereinafter referred to as "Buyer"). The GCS shall only apply if the Buyer is an entrepreneur (Unternehmer) (section 14 BGB (German Civil Code)), a body corporate organized under public law or a public separate estate.
- (2) The GCS apply especially for contracts concerning sales and/or delivery of movable property (in the following named: „Goods“) without considering if the Goods are manufactured by ourselves or if they are bought from suppliers (sections 433, 651 BGB (German Civil Code)). Unless expressly provided or agreed otherwise, the GCS shall apply in the respective version as a framework contract also for future contracts regarding the sales and/or delivery of movable property with the same Buyer without us having to refer to them again in every single case.
- (3) Our GCS shall apply exclusively. Deviant, conflicting or amendatory general terms and conditions of the Buyer shall become only then and insofar part of the contract as we have agreed explicitly to their application. This requirement of agreement applies in every case, as well if we fulfil the delivery implicitly to the Buyer aware of the general terms and conditions of the Buyer.
- (4) Individual agreements made in individual cases with the Buyer (including side-agreements, amendments and changes) shall take precedence in every case over these GCS. A written contract or our confirmation in written form is, subject to proof to the contrary, decisive for the content of such agreements.
- (5) Legally relevant statements and notices which have to be given to us from the Buyer after conclusion of the contract (e.g. setting time limits, notifications of defect, statement of resignation or reduction), have to be in written form or text form (e.g. email, telefax) to be effective. Statutory provisions on form and other evidence shall remain unaffected, in particular if there is doubt as to the legitimation of the declarant.
- (6) All references to the applicability of statutory provisions shall solely serve the purpose of clarification. Therefore, the statutory regulations shall also apply without such clarification insofar as they are not directly changed or are explicitly excluded in these GCS.

§ 2 Conclusion of Contract

- (1) Our offers are without obligation and non-binding (in particular in relation to amount, price and delivery time). This shall also apply if we have handed over catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to the Buyer, to which we reserve of property rights and copyrights.
- (2) Any typographical, clerical or other error or omission in sales prospectuses, price lists, quotation documents, acceptance of offer, invoice or other documentation issued by us shall be subject to correction without any liability on the part of us.
- (3) The order of the Goods by the Buyer is deemed as a binding contractual offer. Insofar as not otherwise derive from the order we are entitled to accept this contractual offer within 21 days after its receipt by us.
- (4) The acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the Goods to the Buyer.
- (5) Unless explicitly confirmed in writing as binding by us, verbal information about the suitability and other characteristics of the Goods delivered by us is always non-binding and shall not give rise to any contractual obligations.
- (6) The Buyer shall be responsible to us for ensuring the accuracy of the terms and description of any order submitted by the Buyer, and for giving us any necessary information relating to the Goods within a sufficient time to enable us to perform the contract in accordance with its terms.
- (7) If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with a specification submitted by the Buyer, the Buyer shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual rights of any other person which results from our use of Buyer's specification.
- (8) If the Goods are to be manufactured by us on the request of the Buyer or are to be adapted or modified by us based on specifications of the Buyer or if we develop on the request of the Buyer individual solutions, all rights to the adapted or modified Goods as well as to the development, as well as know-how or other intellectual property which result from the adaptation, modification and/or the development shall remain with us. A possible, more extensive arrangement of the right of use for the Buyer can result from the concrete agreement reached in the individual case.

(10) We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements or, where the Goods are supplied to the Seller's specification, which do not materially affect their quality or performance.

(11) Furthermore, we reserve the right to make any changes and improvements to the Goods without notifying the Buyer in advance if the changes or improvements do neither sustainably encumber nor worsen the form or function of the Goods.

§ 3 Terms of Delivery and Delay in Delivery

- (1) The delivery time is agreed upon individually and respectively stated by us at acceptance of the order.
- (2) As far as we cannot adhere to binding delivery times for reasons beyond our control (non-availability of the goods or services) we will inform the Buyer thereof immediately and at the same time communicate the estimated new delivery time. If the goods or services are not available within the new delivery time, we have the right to withdraw completely or partially from the contract; any consideration that may have already been provided will be reimbursed by us without delay. The non-availability of goods or services in this sense particularly includes our suppliers failing to deliver in good time we have entered into a congruent covering transaction (kongruentes Deckungsgeschäft), we are not in the individual case obligated for the supply and if neither we nor our supplier is at fault.
- (3) The occurrence of our delay in delivery is determined according to the statutory regulations. In this case, however, a reminder by the Buyer is necessary.
- (4) The cure period in the case of a reminder shall amount to at least two weeks; if the Goods are prototypes which have to be developed or produced for the Buyer then the cure period shall amount to at least six weeks.
- (5) If we shall fail to meet such deadline (cure period), the Buyer shall be entitled to claim a reduction of the price payable under the contract. The reduction shall amount to 0.5% of the net price (delivery value) for each full calendar week starting from the end of the cure period, a maximum total however of 5% of the delivery value of the Goods delivered in delay. We reserve the right to prove that the Buyer has suffered no loss at all or only a substantially smaller loss than the above lump sum.
- (6) The rights of the Buyer pursuant to § 8 of these GCS and our statutory rights, in particular but not limited to, the exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall be unaffected.

§ 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance

- (1) Delivery takes place ex-warehouse / ex works in Oldenburg ("ex works Incoterms®2010"), which is as well the place of performance. On request and at the Buyer's expense the Goods will be sent to another place of destination (contract of sale involving the carriage of goods). As far as nothing else has been agreed on we have the right to determine the type of shipment ourselves (especially the transport company, transport route and packaging) ourselves.
- (2) The risk of incidental/accidental destruction and incidental/accidental deterioration of the Goods shall pass to the Buyer by no later when the Goods are handed over. With a contract of sale involving the carriage of goods the risk of incidental/accidental destruction and incidental/accidental deterioration of the Goods as well as the risk of delay is passed on to the Buyer already with delivery of the Goods to the forwarder, the carrier or to another person or institution designated to execute the shipment of the Goods. Insofar as an acceptance has been agreed on it is authoritative for the passing of the risk. Incidentally, the statutory regulations of the law governing contracts for work and services shall also apply accordingly to an agreed acceptance. It is deemed equivalent to the handover or acceptance if the Buyer is in default with the acceptance.
- (3) If the Buyer is in default of acceptance, if it fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Buyer is responsible then we are entitled to request compensation for the thus arising damages including additional expenses (e.g. storage costs).

§ 5 Price, Terms of Payment

- (1) Insofar as not otherwise agreed in an individual case our actual prices which respectively apply at the time of the conclusion of the contract ("ex works Incoterms®2010") plus statutory VAT.
- (2) With a contract of sale involving the carriage of goods (§ 4 paragraph (1)) the Buyer has to bear the transportation costs ex warehouse / ex works ("ex works Incoterms®2010") as well as the costs for additional packaging and the costs for transportation insurance desired by Buyer. The Buyer shall also be responsible for any customs duties, taxes and other public charges.

(3) Payment shall be effected by Interbank payment transaction only. Cheques or bills of exchange (promissory notes) require a written agreement between the parties; in this case the cheque or bill of exchange (promissory note) will not be considered as fulfilment of the payment obligation (acceptance only account of performance); any fees for discount bills or promissory notes shall be at the expense of the Buyer and immediately payable.

(4) The purchase price is due and payable within 14 days from the invoice date. It may be agreed between the parties that the Buyer has to deliver a letter of credit issued by his bank (or any bank acceptability of the Seller). Even in the case of an ongoing business relationship we are entitled at every time to execute any delivery fully or partially only in exchange for advance payment or the issuing/opening of a letter of credit. In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.

(5) With the expiry of the above-mentioned term of payment the Buyer will be in default. During the default, interest has to be paid on the purchase price at the in each case legally valid default interest rate. We reserve the enforcement of further default damage. For merchants our claim for commercial maturity interest remains unaffected (section 353 HGB (German Commercial Code)).

(6) Buyer shall have no right to offset any counterclaims or to refuse performance based upon any counterclaim unless such counterclaims have been established by a final and conclusive court judgement or are undisputed. If delivery is defective, buyer's remedies, including, without limitation, those provided in § 7 paragraph (6), second sentence of these GCS, shall remain unaffected thereby.

(7) If after conclusion of the contract it is clearly recognizable that our claim to the purchase price will be at risk by the lack of performance of the Buyer (e.g. by application for insolvency proceedings) we have the right according to the legal provisions to refusal of performance and after setting a deadline – if required – to withdrawal of the contract (section 321 BGB (German Civil Code)). In case of contracts to manufacture unjustifiable things (single-unit production), we can declare a withdrawal of the contract immediately; the legal provisions regarding the dispensability of setting a deadline remain unaffected.

(8) In the cases pursuant to the preceding paragraph (7) which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, where payments are delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act (or any comparable procedure under foreign laws) shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately due and payable, even if we shall have accepted promissory notes or checks. The same shall apply if the Buyer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments of a security deposit or rescind the agreement.

§ 6 Reservation of Title

(1) Until payment of all our present and future claims from the contract of purchase and an ongoing business relation (secured claims) has been completed we reserve title to the sold Goods.

(2) The Goods subject to reservation of title may neither be pledged to third parties, nor assigned as a collateral before the full payment of the secured claims. The Buyer must inform as immediately in writing if and insofar as they are any accesses of third parties to the Goods which belong to us.

(3) In case of conduct in contravention of the contract of the Buyer, especially non-payment of the purchase price due, we have the right to withdraw from the contract or/and to reclaim the Goods due to the reservation of title according to the legal provisions. The reclamation does not include a declaration of withdrawal; moreover, we are entitled to merely reclaim the Goods and reserve the withdrawal. If the Buyer does not pay the purchase price due we can only assert these rights if we have set an appropriate deadline for the payment without success or if such setting of a deadline is dispensable according to the legal provisions.

(4) The Buyer is – subject to revocation pursuant to (c) below – authorized to sell and/or to process the Goods subject to reservation of title within proper course of business. In this case the following additional provisions shall apply:

(a) The reservation of title covers the products resulting from the processing, mixture or combination of our Goods to their full value whereas we are considered as manufacturer. If the title of third parties remains in case of processing, mixture or combination with their Goods we acquire co-ownership in the proportion of the invoice values of the processed, mixed and combined Goods. Apart from that the same as for the goods subject to reservation of title applies for the resulting product.

(b) For security purposes the Buyer hereby shall assign to us all claims against third parties resulting from the resale of the Goods or the products completely or amounting to the value of our co-ownership share according to the above-mentioned paragraph. We accept the assignment. The obligations of the Buyer stated in paragraph (2) will also apply in consideration of the assigned claims.

(c) Beside ourselves the Buyer remains authorized to the collection of the claims. We commit ourselves not to collect the claims as long as the buyer meets his payment obligations towards ourselves, does not fall into arrears, no application for insolvency proceedings has been filed, no other defect of his performance is present and we do not reclaim the Goods due to the reservation of title pursuant to paragraph (3). However, if this is the case we may claim that the Buyer notifies us of the assigned claims and their debtors, furnishes all particulars necessary for the collection, hands over the corresponding documents and notifies the debtors (third parties) of the assignment. Furthermore, we are entitled in this case to revoke Buyer's right to sell and/or to process the Goods which are subject to reservation of title.

(d) If the collectible value of the securities interests exceeds our claims by more than 10% we shall release security interests of our own choice upon the demand of the Buyer.

(5) In the event of any third-party action against our Goods delivered under retention of title or any receivables assigned to us, the Buyer shall notify such party of our property/right and immediately inform us about such action. The Buyer shall bear the costs of any intervention.

§ 7 Claims for Defects of the Buyer

(1) The statutory regulations shall apply to the rights of the Buyer in case of defects of quality and title (including false delivery and shortfall in delivery as well as improper assembly or faulty assembly instructions) insofar as not otherwise determined below. In all cases the statutory special provisions at final delivery of the Goods to the consumer remain unaffected (suppliers' recourse according to sections 478 et seq. BGB (German Civil Code)). Claims resulting from suppliers' recourse are excluded if the defective Goods have been processed (e.g. incorporation into another product) by the Buyer or by another entrepreneur.

(2) The agreement made about the quality of the Goods is most of all the basis of our responsibility for defects. All product descriptions which are subject matter of the individual contract are considered as agreement about the quality of the Goods.

(3) As far as quality has not been agreed upon it has to be evaluated according to the statutory provision if a defect is present or not (section 434 subsection 1 sentence 2 and 3 BGB (German Civil Code)). However, we do not accept liability for public statement by the manufacturer or other third parties (e.g. advertising statements).

(4) The Buyer's claim for defects presume that it has satisfied its statutory obligations for inspection and report of complaints (sections 377, 381 HGB (German Commercial Code)). If a defect appears during examination or subsequently we have to be notified about this immediately and in written form. The notification is considered to be immediate if it takes place within five working days, whereby their timely dispatch of the report is sufficient in order to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints the Buyer must report obvious defects (including false delivery and shortfall in delivery) within two weeks from delivery in writing whereby the timely dispatch of the report is also sufficient here in order to safeguard the deadline. If the Buyer fails to carry out the proper inspection and/or report of defects our liability for the defect which was not reported is excluded. To make a complaint in respect of a defect immediately on receipt of the goods the Buyer has to notify us about obvious defects (including wrong and short deliveries) within two weeks from delivery in written form, to keep this deadline the sending in time is sufficient here as well. If the Buyer misses the orderly examination and/or notification of defect our liability for the defect that we have not been notified of will be excluded.

(5) If the delivered object is faulty we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory prerequisites remains unaffected.

(6) We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. The buyer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(7) The buyer must give us the time and opportunity which are necessary for the owed subsequent performance, in particular to hand over the Goods for which a complaint was made for purposes of inspection. In the event of the substitute delivery the Buyer must return the faulty object to us according to the statutory regulations. Substitute performance that neither include the disassembly of the

faulty object nor the new installation if we were originally not obligated to install the object.

(8) The expenses necessary for examination and subsequent performance will be borne by us pursuant to the statutory provisions if there is indeed a defect. However, if it is determined that a request for remedy of a defect by the Buyer is unjustified we can request reimbursement of the costs (in particular examination and transportation costs) incurred hereby from the Buyer, unless the lack of defect was unforeseeable to the Buyer.

(9) If the subsequent performance has failed or a reasonable deadline which is to be set by the Buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the Buyer can cancel the purchase contract or reduce the purchase price. However, no right to cancellation exist with an insignificant defect.

(10) In the case of improper alterations or maintenance work on the part of the Buyer or a third party without our prior consent, liability for the resulting consequences is voided.

(11) If the Goods are sent back to us within the period of the statute of limitations and if we discover within the inspection of the defect that the defect has been caused by improper treatment on the part of the Buyer, we will provide the Buyer on the basis of these GCS and offer to make a repair for fee. The costs for the examination of the defect have had to be borne by the Buyer if there is no claim for defect of the Buyer.

(12) Claims for damages of the Buyer or compensation of expenses incurred in vain, respectively, do only exist according to § 8 and are excluded apart from that.

§ 8 Other Liability

(1) Insofar as not otherwise derived from these GCS including the following provisions we shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

(2) We shall be liable for damages – no matter for what legal grounds – in case of wilful intent and gross negligence. In the case of simple negligence (subject to a milder standard of liability, e.g. care in the administration of own matters) we shall only be liable

a) for damages from the injury to life, the body or the health,

b) for damages from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

(3) The liability restrictions which can be derived from paragraph (2) shall also apply to any violation of obligations by or for the benefit of persons for which we are responsible pursuant to the statutory provisions. They shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the Goods. The same shall apply to claims of the Buyer according to the Product Liability Act (Produkthaftungsgesetz) or pursuant to data protection rules.

(4) The Buyer can only cancel or terminate the contract owing to the breach of a duty, which does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to sections 651, 649 BGB (German Civil Code)) is excluded. Incidentally the statutory prerequisites and legal consequences shall apply.

§ 9 Statute of Limitations

(1) Notwithstanding section 438 (1) no. 3 BGB (German Civil Code) the general statute of limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed the statute of limitations shall begin with the acceptance.

(2) The aforementioned statutes of limitations of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Buyer which are due to a defect of the Goods, unless the application of the regular legal statute of limitations (sections 195, 199 BGB (German Civil Code)) would lead to a shorter statute of limitations in an individual case. Claims for damages under the Product Liability Act as well as pursuant to § 8 paragraph (2) first sentence as well as letter a) of the second sentence will be time barred by the statutory limitation periods.

§ 10 Export Control Regulations

The export of the Goods may be subject to German and foreign, in particular US American, export control regulations. The Buyer shall be responsible to comply with all applicable export control regulations and other applicable regulations for import and export and shall impose these obligations on a possible recipient as well.

§ 11 Electrical and Electronic Equipment Act (ElektroG)

Pursuant to the Electrical and Electronic Equipment Act we (WEEE-reg.-no.: DE 47992153) are obliged in all cases where we are deemed to be manufacturer pursuant to the Act to take back and did dispose waste electronic equipment which was brought into circulation after 13 August 2005. Such waste electronic equipment can be sent back to us for the purpose of being disposed.

§12 Choice of Law, Place of Jurisdiction, Miscellaneous

(1) For these GCS and all legal relationships between us and the Buyer the law of the Federal Republic of Germany will apply to the exclusion of all international and supranational (contracting regulations) legal systems, especially the UN-Sales Convention (CISG). Requirements and effects of reservation of title according to § 6 are however subject to the law of the respective location of the subject matter, as far as the choice of law made according to that is inadmissible or ineffective for the benefit of the German law.

(2) If the Buyer is an merchant (*Kaufmann*) in the sense of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising the directly or indirectly from the contractual relationship is Oldenburg (Germany). This shall also apply correspondingly where the Buyer is an entrepreneur pursuant to § 14 BGB (German Civil Code). However, in any case, we shall be entitled to bring actions in the place of fulfilment for the delivery commitment pursuant to these GCS or respectively pursuant to an individual agreement or at the general a place of jurisdiction of the Buyer. Priority provisions to the contrary in the form of statutory requirements, in particular, in relation to exclusive jurisdiction shall remain unaffected.

(3) These GCS shall not be disclosed to any third party without our prior written consent.

(4) In the event that individual provisions of the contract, including these GCS, are or should become invalid either fully or in part, this shall not affect the validity of the other provisions. The ineffective provision shall be replaced by new provision that corresponds as far as possible to the regulatory purpose of the invalid provision.