

# General Terms and Conditions of smart things solutions GmbH (STS)

## §1 General Terms – Scope of Application

1. Our Terms and Conditions of Delivery apply exclusively; we do not recognize any conditions of the Customer that are in conflict with, diverge from or are supplementary to our Terms and Conditions of Delivery, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Delivery shall also apply if we, having knowledge of any conditions of the Customer that are in conflict with, diverge from or are supplementary to our Terms and Conditions of Delivery, perform the delivery to the Customer without reservation
2. All agreements made between us and the Customer for the purpose of performing this contract must be set down in writing in this contract.
3. Our Terms and Conditions of Delivery only apply to companies or public corporate bodies or public separate estates within the meaning of § 310 Subsec. 1 BGB (German Civil Code) and they also apply to all future transactions with the Customer.

## §2 Offer – Offering Documents

1. Our offers are not binding. Technical modifications as well as changes in form, colour and/or weight are reserved within the bounds of reasonableness.
2. Upon ordering a product, the Customer is bound according to § 145 BGB. We are entitled to accept the contract offer made by means of the order within a period of four weeks from its receipt. Acceptance is exclusively made by written confirmation of the order.
3. If the order is given by electronic means, we will immediately confirm the receipt of the order. The confirmation of receipt, however, is not a binding acceptance of the order. The confirmation of receipt can also be combined with the confirmation of acceptance.
4. The contract with the Customer is concluded subject to the reservation of the receipt of correct and timely deliveries from our suppliers. The effectiveness of the reservation of receipt of deliveries depends on the conclusion of a congruent legal transaction with the supplier and on the fact that we are not responsible for the failure to deliver. The Customer shall be immediately informed about the non-availability of the services or deliveries. As far as consideration has already been paid, it will be immediately refunded by us.

## §3 Prices – Terms of Payment

1. Unless otherwise stated in the confirmation of the order, our prices are "ex works" exclusive of packaging; the latter being invoiced separately.
2. The statutory value-added tax is not included in our prices; it is separately stated to the legal amount on the day of invoicing.
3. The deduction of discount is subject to a separate written agreement.
4. The Customer is obliged to pay our compensation without deduction within a period of 7 days from the date of the invoice. If the Customer gets in default with its payments, we are entitled to claim default interest at a rate of 8 % above the respective basic interest rate. This shall be without prejudice to the assertion of further default damages.
5. The Customer shall only be entitled to offset if its counterclaims have become res judicata, are undisputed or have been recognized by us. Moreover, the Customer shall only be entitled to exercise a right of retention as far as its counterclaim is based on the same contractual relationship; beyond this, any rights of retention against us under whatever legal relationship are excluded in the commercial intercourse. The Customer's rights can only be assigned with our written consent.

## §4 Time of Delivery

1. It a time for the performance of the order has been indicated by us or agreed on with the Customer, that time shall start upon our confirmation of the order, but not before the receipt of all documents, permits, releases or other information to be obtained by the Customer for the handling of the order, in particular not before all technical questions have been clarified.
2. As far as we are prevented from performing the contract in time due to special circumstances, such as lack of energy, interruption of traffic, strikes, lock-outs, unforeseen technical problems or other procurement, manufacturing or delivery disorders that are beyond our control and that probably have a considerable effect on the fulfilment of our duty to perform, the time of delivery for the performance of the order shall be extended by the respective period from the occurrence to the elimination of the impediment. The same shall also apply if such circumstances occur at our suppliers or subcontractors. We undertake to immediately inform the Customer, in case of an impediment to performance, about both the occurrence and the elimination of the impediment.
3. The two subparagraphs above shall not affect the reservation of receipt of deliveries according to § 2 Subsec. 4 above.

4. In case we get in default in delivery for reasons that we are responsible for, the Customer shall be entitled to claim lump-sum default damages to an amount of 1 % of the value of the delivery for every complete week of delay, but not exceeding a maximum amount of 5 %. Any claim for damages beyond this is excluded, unless a foreseeable and typical damage is concerned.

## §5 Passing of the Risk

1. Unless otherwise agreed in writing, the risk of accidental loss and of accidental deterioration of the goods shall pass to the customer upon delivery or, if shipment is requested, upon handing the goods over to the forwarder, the carrier or the other person or entity entrusted with the transport.
2. If the Customer gets into default in acceptance or if it violates any other duties to co-operate, we shall be entitled to claim the damage incurred by us, including additional expenses, if any. In such case, the risk of accidental loss and of accidental deterioration of the goods shall pass to the customer at the moment it gets into default in acceptance.

## §6 Co-operation of the Customer

1. The Customer shall name a contact partner and indicate a postal address and an e-mail address under which contact to the contact person is guaranteed. That contact person must be authorized by the Customer to take the decisions required within the scope of the handling of the order or to cause such decisions to be immediately taken. At the same time, we name to the Customer a contact person who can take the decisions required for the handling of the order or cause such decisions to be immediately taken.
2. If no contact person has been separately named, the authorized representative of the Customer indicated in the order shall be regarded as the contact person according to Item 1 above.

## §7 Object of Delivery

1. Our specifications with regard to dimensions, weight, services and material are given carefully but without commitment, unless such specifications are expressly marked as binding. The same applies to all design information and suggestions. We reserve modifications due to technical development.
2. Any drawings, sample pieces and documents made by us continue to be our property. They must not be made accessible to any third party, unless with our written approval. In that regard, we point to the existence of industrial property rights and/or copyrights. All models, tools and other devices for the execution of an order shall always continue to be our property, even if we charge part of the costs.
3. A functional final testing of our products shall only be part of the object of delivery if such testing has been separately agreed. In the absence of a separate agreement, functional final testing shall be incumbent on the Customer.

## §8 Product Warranty

1. The Customer's warranty rights are subject to the fact that the Customer has properly fulfilled its obligations of examination and notification of defects under § 377 HGB (Commercial Code).
2. We warrant that our products are manufactured according to the state of the art applying thorough working methods. Nevertheless, defects of our products in the hardware and software design and in the manufacturing processes are not unavoidable. Our liability for unavoidable defects within this meaning is restricted to subsequent delivery or rectification of defects (subsequent performance); any warranty rights of the Customer beyond this are excluded in such cases. The same shall apply to functional defects of our products if we are only obliged to make a visual inspection and not a functional testing and if the functional defect would have been detectable in a functional testing.
3. We warrant the quality stipulated under item 7 excluding insignificant deviations by means of either subsequently delivering a faultless product or rectifying the defective condition at our option after a reasonable period of time fixed by the Customer. If we decide in favor of subsequent performance by rectification of the defect, the Customer shall only have any further warranty rights when a rectification of the defect has failed two times. The reasonable additional period shall only commence after the defect and our warranty obligation have been established and proven.
4. If a subsequent performance has finally failed, the Customer can, at its option, generally claim either a reduction in price or the rescission of the contract. In case of a minor lack of conformity with the contract, in particular minor defects, the Customer shall not be entitled to rescind the contract. With regard to the assertion of a right of rescission as well as claims for damages, we refer to §9.
5. The Customer bears the full burden of proof with regard to all prerequisites for a claim, in particular the defect itself, the time of detection of the defect and the timeliness of the notification of the defect.

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6. Unless otherwise agreed in writing, the warranty period is one year for all products delivered by us. However, it shall expire prematurely if the Customer itself makes any attempts of repair or alterations or if operating instructions are not observed. The warranty period begins on the date of delivery.
7. Any public statements, recommendations or advertising made by the manufacturer, in particular in leaflets, brochures, etc. do not constitute contractual descriptions of the quality of the products.
8. It is hereby pointed out to the Customer that the descriptions of quality provided in the specifications do not constitute warranties in a legal sense. Any descriptions of quality and warranties that go beyond the product description shall only be regarded as given to the Customer to the extent they were set down in writing by us.

## **§9 Customer's Right of Rescission and other Liabilities of the Seller**

1. The Customer can rescind the contract if the entire delivery/service becomes finally impossible prior to the passing of risk according to § 5 or if the delivery was not made within a reasonable period of time that, however, must not be shorter than 1 month, unless the Seller is at least mainly responsible for the impediment to performance or a case according to § 4 Subsec. 2 above is concerned. As far as partial deliveries/services are possible that can be used by the Customer after a termination of the contract, the right of rescission shall be limited to the parts not yet delivered.
2. If the impossibility occurs during a default in acceptance or due to the Customer's fault, the Customer shall continue to be obliged to pay consideration. As far as partial deliveries/services have already been made/rendered within the meaning of Subsec. 1 above, there shall exist a claim for remuneration.
3. If the Customer or a third party should make any alterations or do any maintenance work regarding the delivery items without our prior written approval, we shall not be liable for the resulting consequences. This is without prejudice to the provisions of § 8 above.
4. We shall be liable to the full extent for any damage caused intentionally.
5. For damage culpably caused by us in cases of gross negligence and for slightly negligent failure to comply with a duty that is of essential importance for achieving the purpose of the contract, we shall be liable to the amount of the typical and foreseeable damage. Any liability beyond this shall only be assumed within the scope and coverage of our manufacturer's liability insurance and our financial loss liability insurance up to a maximum amount of € 500,000.00.
6. Liability for any damage that is not caused to the object of delivery itself is excluded, except in cases of intent or gross negligence. Any liability for aviation risks directly, indirectly or incidentally connected with delivery items is also excluded.
7. Subsections 5 and 6 above are without prejudice to liability for personal injury, for a missing quality warranted by us as well as to liability under the Product Liability Act.
8. All claims asserted against us for damages or for compensation for expenses incurred in vain, whether under contractual or non-contractual liability except in cases of intent or personal injury shall be subject to a limitation period of one year. The period shall begin at the point in time defined under § 199 Subsec 2 BGB (German Civil Code). Limitation shall enter into effect at the latest upon expiry of the maximum period defined under § 199 Subsecs. 3 and 4 BGB. This is without prejudice to the provision of § 8 item 5.
9. Customer agrees with us, even without particular release by Customer in each individual case, on the general acceptance for the use of RoHS compliant substitutes in connection with manufacturing of the object of delivery. Such release for the use for RoHS compliant substitutes shall apply provided that any technical product or part specification, apart from unavoidable modifications for reasons of RoHS compliant process technology requirements (e.g. processing temperature) or further requirements of material analysis (RoHS concentration limits), remains, as such, unchanged. It is hereby indicated that Customer is and remains obliged to observe the regulations regarding EU-Directives 2002/95/EG (RoHS) and 2002/96/EG (WEEE) as well as all national regulations enacted by implementing those European Directives (Germany: ElektroG) as respectively amended. It is furthermore indicated that Customer is and remains responsible for any compliance with the respective legal guidelines for proper use and disposal of the object of delivery.
10. Customer is and remains solely responsible for the full compliance of products or parts delivered by us with national or international restrictions of export or import. In case such export or import restrictions should apply on purchased products or parts, Customer undertakes proper obtaining of necessary export or import approvals at its own costs. In case of proven violation of national or international export or import restrictions Customer undertakes to exempt and hold harmless STS and its employees from any claim, liability, loss, damage, judgment and reasonably occurring costs and

expenses, irrespective their legal ground. In case of infringements Customer shall bear any and all harm, loss or damage arising to the disadvantage of STS.

## **§ 10 Reservation of Title**

1. We reserve our title to the object of delivery until the receipt of all payments under the business relationship with the Customer. In case of a behavior of the Customer in breach of the contract, in particular in case of default in payment, we shall be entitled to take the object of delivery back. The taking back of the object of delivery by us does not constitute a rescission of the contract, unless this is expressly declared on our part. An attachment of the object of delivery by us, however, constitutes a rescission of the contract in any case. After taking back the object of delivery, we shall be entitled to realize it; the realization proceeds less reasonable costs of realization shall be offset against the Customer's liabilities.
2. The Customer is obliged to treat the object of delivery with care; the Customer is in particular obliged to sufficiently insure it, at its own expense, at replacement value against fire, water and theft. As far as maintenance and inspection work is required, the Customer must perform such work in good time at its own expense.
3. In case of attachment or any other intervention by a third party, the Customer must inform us immediately in writing so that we can bring an action according to § 771 ZPO (Code of Civil Procedure). As far as the third party is not able to refund to us the judicial and extra-judicial costs of an action under § 771 ZPO, the Customer shall be liable for the loss incurred by us.
4. The Customer is entitled to resell the object of delivery within the regular course of business. However, the Customer already now assigns to us all claims to the amount of the final amount of invoice (including value-added tax) accruing against its customers or third parties from the resale, irrespective of whether the object of delivery is resold without or after further processing. The Customer continues to be entitled to collect such claim even after this assignment. This is without prejudice to our right to collect such claim. However, we undertake not to collect such claim as long as the Customer fulfils its obligations to pay from the proceeds received; as long as it is not in default in payment; and in particular as long as there has not been filed an application for the institution of insolvency proceedings and there is no case of a cessation of payments. However, in case of any of the above conditions, we shall be entitled to demand the Customer to inform us about the assigned claims and the respective debtors, give us all information that is necessary for the collection, hand all related documents over to us and inform the debtor (third party) about the assignment.
5. If the object of delivery is inseparably mixed with other items not owned by us, we shall acquire co-ownership of the new item in the ratio of the value of the item delivered to the other items mixed with it in such a way that the Customer's item is regarded as the principal item and that it is understood that the Customer transfers co-ownership to us on a pro-rata basis. The Customer shall hold the resulting sole ownership or co-ownership in custody for us. The Customer also assigns to us the claims for securing our claims against it that result against a third party from the combination of the item of delivery with a piece of real property.
6. We undertake to release, at the Customer's request, the securities due to us as far as the value of our securities exceed the claims to be secured by more than 20 %; the choice of the securities to be released shall be ours.

## **§ 11 Place of Jurisdiction Place of Performance**

1. If the Customer is a merchant entered in the commercial register, our established place of business shall be the place of jurisdiction, however, we are also entitled to sue the Customer before the competent court at its place of residence.
2. Unless otherwise resulting from the confirmation of the order, our established place of business shall be the place of performance.

## **§ 12 Severability Clause**

If any provision of this agreement should be or become invalid or unenforceable, this shall not affect the effectiveness of the remaining provisions. The parties undertake to agree, in place of the invalid or unenforceable provision, on a provision that comes as close as possible to what was economically intended. The same procedure applies to the filling of any possible gaps.