

General Terms and Conditions

of SUMITOMO ELECTRIC Hartmetall GmbH
Konrad-Zuse-Str. 9
D-47877 Willich

§ 1 General Information, Area of Validity

(1) These General Terms and Conditions (AGB) apply solely to business transactions with businesspersons (Section 14 of the German Civil Code (BGB)), legal entities under public law or special fund under public law in accordance with Section 310 (1) BGB.

(2) These General Terms and Conditions apply particularly to sales agreements and/or agreements on deliveries of movable chattels (hereinafter: products) without consideration whether we produce the products or purchase the products from suppliers (Sections 433, 650 BGB). These General Terms and Conditions apply as amended as framework agreement even to future sales agreements or agreements on the delivery of movable chattel with the same Buyer without us having to make reference to them in each single case. If our General Terms and Conditions change, we will promptly notify the Buyer.

(3) Our General Terms and Conditions shall apply exclusively. Any differing, opposing or supplemental general terms and condition of Buyer become part of the agreement and only to the extent as we have expressly provided our consent to their effectiveness. This consent requirement applies in any case even for example if we carry out the delivery to Buyer without reservations and being fully aware of the general terms and conditions of Buyer.

(4) Any individual agreement concluded with Buyer in one single case (including side-agreements, supplements and amendments) have in any case priority over these General Terms and Conditions. A written agreement or our written confirmation is required for the content of such agreements.

(5) Legally significant declarations and notifications, which are to be made toward us after the conclusion of the agreement (e.g. time limits, notification of defects, declaration of rescission and price reduction) must be made in writing for their legal effectiveness.

(6) Any references to applicable legal provisions are made only for clarification purposes. Therefore, the legal provisions apply even without such clarification unless modified directly or expressly excluded in these General Terms and Conditions.

§ 2 Conclusion of Contract

(1) Our offers are non-binding and without obligation. This applies even if we have given Buyer catalogues, technical documentations (such as drawings, plans, computations, calculations, references to DIN standards), other product descriptions, to which we reserve ownership rights and copyrights -- even if these are in electronic form.

(2) The product order of Buyer is deemed a binding offer of contract. Unless otherwise specified in the order, we are entitled to accept this offer of contract within 10 workdays after we received it.

(3) Acceptance can be declared either be in writing (e.g. by an order confirmation) or by delivery of the products to Buyer.

§ 3 Delivery Terms and Conditions

(1) The delivery date will be agreed individually or we will specify date at the time we accept the order.

(2) If we are unable to comply with binding delivery dates for reasons beyond our control (the service is not available), then we will notify Buyer immediately thereof and we will inform Buyer of the estimated new delivery date. If the service cannot be provided within the new delivery period, then we have the right to rescind the agreement in whole or in part; in this case, we will pay back promptly any of Buyer's consideration. In case the service is not available in this sense, which applies particularly if we do not receive the shipment from our suppliers on time, if we concluded a congruent hedging transaction, if neither our supplier nor we is at fault, or if we are not obliged to provide the product in a particular case.

(3) The occurrence of our delay in delivery is determined in accordance with legal provisions. In any case, Buyer is obliged to send us a warning letter.

(4) Partial deliveries are permissible in consideration of the reasonableness to Buyer.

(5) The rights of Buyer in accordance with § 8 of these General Terms and Conditions and our legal rights, particularly in case the duty to perform is excluded (e.g. for impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected thereby.

§ 4 Delivery, Transfer of Risk, Acceptance, Delay in Acceptance

(1) We ship ex works Willich, which is also the place of performance (obligation to collect). On Buyer's request and at Buyer's expense we also ship the products to another destination. In this case, the place of performance is that particular place of acceptance (obligation to ship). Unless otherwise agree, we are entitled to specify the type of shipment (particularly the freight forwarder, the shipping route, and packaging).

(2) The risk of accidental loss or accidental deterioration of the product transfers to Buyer no later than at the time the product is transferred to Buyer. If we agreed on an acceptance, then this acceptance determines the transfer of risk. Furthermore, the legal provisions stipulated in the Work Contract Law apply accordingly to any agreed acceptance. The transfer or acceptance shall be equal if Buyer is in default with acceptance.

(3) If Buyer is in acceptance default, if Buyer does not comply with his duty to cooperate or if our shipment is delayed for reasons, for which Buyer is responsible, then we are entitled to request payment for any damages we have sustained thereby. Our legal claims (in particular, to receive payment for any extra expenses, reasonable reimbursement, and termination) shall remain unaffected thereby.

§ 5 Prices and Payment Terms

(1) Unless otherwise agreed in a particular case, our current prices at the time the agreement is concluded apply ex works Willich plus statutory value-added-tax.

(2) Buyer pays shipping costs ex works Willich upon agreed shipment (§ 4 (1)). Buyer is responsible for paying any duties, fees, taxes and other public dues. According to the current packaging law, we do not accept the return of transport and other packaging materials. These become Buyer's property with the exception of pallets.

(3) Unless otherwise agreed in a particular case, the purchase price is due and payable within 30 days from the date of the invoice and delivery or acceptance of the products. We grant 2% discount on all payments received within 14 days.

(4) After the end of the payment term, Buyer is in default. During the default period, late fees in the amount of the legally applicable interest rate on default are charged on the purchase price. We reserve the right to claim additional damages as result of the default. Our claim for commercial maturity interest (Section 353 of the German Commercial Code (HGB)) against businesspersons shall remain unaffected thereby.

(5) Buyer is entitled to any rights of set off or retention; if and to the extent that the claim has been legally determined by any court of law or it is undisputed. If the delivery is defective, Buyer's counter-rights particularly in accordance with § 7 (6) (2) of these General Terms and Conditions shall remain unaffected thereby.

(6) If after the agreement is concluded it becomes obvious that our right to the purchase price is at risk, because of Buyer's lack of solvency (e.g. because Buyer filed a motion for a bankruptcy action), then we are entitled - perhaps after specification of a deadline - to rescind the agreement (Section 321 BGB) in accordance with the legal provisions on refusal of service. In agreements concerning the production of unreasonable items (customized productions), we can rescind the agreement immediately; the statutory regulations concerning the waiver of a notice shall remain unaffected thereby.

§ 6 Retention of Ownership

(1) We reserve ownership on the sold products until all of our current and future invoices under the purchase agreement and an ongoing business relationship are paid (secured claim).

(2) Buyer is permitted to process or reform the product ("processing"). Processing is carried out on behalf of Seller. However, if the value of the product owned by Seller is less than the value of the products not owned by Seller and/or the processing, then Seller acquires a co-ownership on the new product in relation to the value (gross invoice amount) the processed product has compared to the remaining processed product and/or the processing at the time of processing. To the extent that in accordance with the above-referenced Seller does not acquire ownership on the new product, then Buyer and Seller agree that Buyer grants Seller a co-ownership on the new product in the ratio the value (gross invoice amount) of Seller's product has compared to the value of the remaining processed products at the time of processing. The above-referenced sentence applies accordingly in case of any Seller's product is mixed or combined inseparably with products not owned by Seller. If Seller acquires ownership or co-ownership in accordance with this § 6 (retention of ownership), then Buyer will safe-keep these products for Seller with the diligence of a prudent businessperson.

(3) In case the product or the newly created product is sold, then Buyer hereby assigns as security to Seller his claim with all secondary rights he has against his customer under the resale without requiring any further special explanations. This assignment applies including any balance on account requests. However, this assignment shall only cover the amount that equals the price of the product, for which Seller invoiced Buyer. The share of the claim assigned to Seller must be paid first.

(4) If Buyer combines the supplied goods or new product with real properties, Buyer also assigns to Seller his claim for compensation for this combination in the amount that equals the amount invoiced by Seller. This does not require any further special explanations.

(5) Until further notice, Buyer is entitled to collect the claims he assigned to Seller in accordance with this § 6 (retention of ownership). Buyer shall forward promptly to Seller all payments Buyer receives up to the amount of Seller's secured claim. Seller is entitled to revoke the collection authorization of Buyer if there are legitimate interests, particularly in case of Buyer's payment default, suspension of payments, opening of bankruptcy proceedings, bill protest, or justifiable indications for over-indebtedness or pending insolvency. In addition, Seller has the right to disclose the collateral assignment, sell the assigned claims and demand Buyer discloses to his customers the collateral assignment upon Seller's prior demand in compliance with a reasonable time limit.

(6) In the event of a substantiated legitimate interest, Buyer shall provide Seller the information and shall hand over the documents required to assert Seller's rights against customers.

(7) Buyer is prohibited from pledging or assigning the products for as long as the retention of ownership is effective. Buyer must notify Seller immediately in the event of attachments, seizures or other third-party dispositions or interventions. The goods or the newly processed products may only be resold in the proper course of business and provided the value of the delivered product be paid to Buyer. In addition, Buyer must agree with customer that customer becomes the owner of the product only upon this payment.

(8) If the realized value of all secured rights, to which Seller is entitled, exceeds the secured claims by more than 10%, then Seller will release an appropriate part of the secured rights upon Buyer's request. It is assumed that the requirements of the above-referenced sentence are satisfied, if the appraised value of the collateral, to which Seller is entitled, is or exceeds 150% of the value of the secured claims. Seller has the choice when releasing various secured rights.

(9) In case Buyer violates his duties, particularly, if Buyer defaults in payments, then Seller is entitled to demand surrender of the goods or the newly processed product even without granting any grace period and/or Seller is entitled to rescind the agreement - if necessary after a specific grace period; Buyer is obliged to surrender the products. The demand for the release of the goods or newly processed goods does not constitute Seller's declaration of rescission unless expressly specified.

§ 7 Notices of Defects, Warranty

(1) The legal provisions apply to Buyer's rights in case of defects of quality and title unless otherwise regulated thereafter. Special statutory provisions on final deliveries of

products to a consumer shall in any case remain unaffected thereby (supplier recourse in accordance with Sections 478, 479 BGB).

(2) Basis for our liability of defects is primarily the agreement on the condition and workmanship. As agreement on the condition and workmanship of products are product descriptions (even those of the manufacturer), which Buyer receives prior to Buyer's order or which became an integral part of the agreement in the same manner as these General Terms and Conditions. If no agreement was made on the condition and workmanship, then the matter whether there is a defect or not is to be judged in accordance with legal provisions (Section 434 (1) sentences 2 and 3 BGB). However, we will not assume any liability for public statements of the manufacturer or other third parties (e.g. advertising claims).

(3) Buyer's claims for defects require that Buyer has fulfilled his legal inspection and notification duties (Sections 377, 381 HGB). If a defect is discovered during the inspection or later, then we must be promptly notified thereof in writing. A notification is considered prompt, if it is sent within two weeks. Timely sending of the notification is sufficient for compliance with the time limit.

Buyer must describe as much detail of the defects as possible. Regardless of this duty to inspect and duty to notify, Buyer must notify us in writing of any obvious defects within two weeks from the date of delivery. Timely sending of the notification is sufficient for compliance with the time limit. If Buyer fails to inspect the goods properly and/or to notify us of the defect, then the liability for the defect, of which we were not notified, is excluded.

(4) In any case, Seller has the right either to rectify the defect or to ship a new product [new performance]. Buyer's request for rectification must be set forth in writing. Seller must be granted a reasonable time for rectification. If the products must be repaired, then the repair is deemed as failed only after the second attempt at it failed. The statutory cases of expandability of this grace period shall remain unaffected thereby. The application of Sections 478, 479 BGB (company's right to recourse) shall remain unaffected thereby.

(5) We are entitled to make remedial performance conditional upon Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable portion of the purchase price that is in relation to the defect.

(6) Buyer must grant us the time and opportunity required for the owed remedial performance; particularly provide us with the claimed product for testing purposes. In case of replacement, Buyer must return the defective item to us in accordance with legal provisions. The rectification includes neither the expansion of a defective item nor the renewed installation if we were not originally obliged to install.

(7) We shall pay for the costs necessary to inspect and rectify, this includes in particular, we pay for all transport costs, travel expenses, work and material costs (with the exception installation and de-installation costs) if there is an actual defect. We may request reimbursement from Buyer for any costs incurred therewith if it is determined that Buyer's demand for defect rectification was unjustified.

(8) In urgent cases, e.g. endangerment of the operational safety or e.g. to prevent unreasonable damages, then Buyer has the right to rectify the defect and to demand

reimbursement of the expenses that were objectively necessary. We must be notified immediately of such self-remedy and if possible prior to such self-remedy. There is no right to self-remedy if we would be entitled to refuse a respective rectification under legal provisions.

(9) If remedial performance failed, if a time limit granted by Buyer for the remedial performance expired unsuccessfully or if a time limit is not required under the law, then Buyer can rescind the agreement or reduce the purchase price.

(10) There are no claims for defects, if there is an insignificant deviation in the agreed characteristics or a negligible impairment of usability.

(11) Buyer's claims for damages or reimbursement for futile expenditures can only be asserted in accordance with §§ 8, 9 and otherwise, they are excluded.

(12) In case of violation of duty, Buyer must explain within a reasonable time following Seller's request whether Buyer rescinds the agreement for the violation of duty or whether Buyer insists on performance.

§ 8 Other Liability

(1) Seller shall be liable in accordance with legal provisions in cases of intent or gross negligence on part of Seller or its representative or agent and in case of culpably caused injuries to life, body or health. However, Seller's liability in case of gross negligence is limited to the damage typical, foreseeable under the agreement unless this is one of the exempt cases specified in sentence 1 or sentence 3 of this paragraph (1). Furthermore, Seller shall only be liable under the Product Liability Act, if Seller culpably violated cardinal contractual duties or if Seller fraudulently concealed a defect or Seller assumed a guarantee for the condition of the delivery item. However, damage claim for the violation of cardinal contractual duties is limited to the damage typical, foreseeable under the agreement unless this is one of the exempt cases specified in sentence 1 or sentence 3 of this paragraph (1).

(2) The regulations of paragraph (1) above apply to all damage claims (particularly to damage claims in addition to performance and damage claims in exchange of performance) on whatever legal grounds but particularly to defects, violation of duties under the contractual obligation or from illegal acts. Furthermore, they apply to the claim for reimbursement of futile expenditures.

(3) A change of the burden of proof with regard to the disadvantage of Buyer is not connected with the above-referenced regulations.

§ 9 Limitations

(1) The limitation period for claims and rights arising out of defective deliveries - on whatever legal grounds - shall be one year. However, this does not apply to cases of Section 438 (1) No. 1 BGB (defects of title on immovable items), Section 438 (1) No. 2 BGB (building structures, items for buildings), Section 479 (1) BGB (the businessperson's right to recourse), or Section 634a (1) No. 2 BGB (building structures or work, the success of which lies in the provision of planning and supervisory services). The cases, which were exempt in the above sentence 2, are subject to a time limit of three years.

(2) Furthermore, the time limits in accordance with paragraph 1 apply to all damage claims against Seller, which are connected with the defect regardless on the claim's legal grounds.

(3) However, the time limits in paragraphs 1 and 2 apply under the following conditions:

- a) The time limits do generally not apply in case of intent or malicious concealment of any defect or if Seller guaranteed the condition of the products.
- b) In addition, the time limits for damage claims do not apply in case of a grossly negligent violation of duty, in case - not with regard to the delivery of a defective item or the provision of a defective workmanship - of culpable violation of cardinal contractual duties, in case of culpably caused injury to life, body or health or in claims under the Product Liability Act. The time limits for damage claims also apply to the reimbursement of futile expenditures.

(4) In all claims, the time limit begins at the date of the delivery and at the date of acceptance in case of work performance.

(5) Unless otherwise expressly specified, the legal provisions on the start of the statutes of limitations, the suspension period, the stay and the recommencement of the statutes of limitation shall be unaffected thereby.

(6) The above-referenced regulations apply accordingly to damage claims, which are not connected to a defect; paragraph 1 sentence 1 applies to the time limit.

(7) A change of the burden of proof with regard to the disadvantage of Buyer is not connected with the above-referenced regulations.

§ 10 Choice of Law, Jurisdiction

(1) These General Terms and Conditions and all legal relations between Buyer and us are construed and governed by the laws of the Federal Republic of Germany with the exclusion of international uniform law, particularly with the UN CISG. The requirement and effectiveness of the retention of ownership in accordance with § 6 are subject to the corresponding site the products are stored if the choice of law in favour of German law is impermissible or ineffective.

(2) If Buyer is a businessperson, a legal entity under public law or a special fund under public law in accordance with the German Commercial Code, the exclusive – even international – jurisdiction for all disputes arising directly under this agreement shall be Willich, the place of our registered office. However, we are entitled to sue at Buyer's general jurisdiction.

§ 11 Language Clause

These General Terms and Conditions are available in German and English. In case of dispute, the German version is the determinant version.

SUMITOMO ELECTRIC Hartmetall GmbH

As of: 1/1/2020