

General Terms and Conditions of Delivery and Payment of SWT Services GmbH & Co. KG

1. Application of the Terms and Conditions

These terms of delivery and payment apply exclusively to legal transactions with entrepreneurs. Our general terms and conditions of delivery and payment apply exclusively. They also apply to all future business relations, even if they are not expressly agreed again. Your deviating conditions are not valid, they are herewith contradicted.

2. Offer, Confirmation of Order, Obligation to inform

2.1

Our offers are subject to confirmation and non-binding.

2.2

If we have not accepted your order by delivery, we reserve the right to confirm orders placed with us in writing, by fax / computer fax or by e-mail. In case we have confirmed an order, only our order confirmation shall be decisive for the contents of the contract. Supplements, amendments, subsidiary agreements or verbal declarations require our written confirmation, sent by fax / computer fax or e-mail, in order to be legally effective.

2.3

You undertake to point out to us as early as possible in the quotation stage any strain falling outside the scope of the offer, any special purposes of use, as well as any increased risks which may arise from the use of our deliveries or services.

2.4

Until the transfer of risk, you are obliged to ensure that all generally applicable regulations, technical-physical specifications and official requirements or orders are complied with in accordance with the material declaration.

3. Prices

Our prices are ex works Ilsfeld excluding packaging, travel and transport costs, insurance and customs duties. Unless otherwise confirmed, our prices valid at the time of conclusion of the contract shall be invoiced plus the applicable statutory value-added tax. If there are more than 4 months between conclusion of the contract and delivery, we shall be entitled to apply the net list prices valid at the time of delivery plus the applicable statutory value-added tax. Prices quoted in our price lists are deemed to be local custom and appropriate.

4. Scope of Delivery, partial Deliveries, Power of Replacement

4.1

Either our unchanged offer or our order confirmation shall be decisive for the scope of our services. Partial deliveries and partial services shall be permissible insofar as they are reasonable for you.

4.2

If a product is no longer in stock, we shall replace it with a similar and equivalent product. If you do not agree, please note this when placing your order.

4.3

Compliance with agreed prices for our deliveries or services presupposes that the items on which the agreement is based remain unchanged and can be provided without any hindrance for which the customer is responsible. Subsequent supplements and changes require a written agreement. Any additional expenses incurred as a result shall be additionally reimbursed by you.

5. Term of Payment, Cash Discount

5.1

Unless otherwise agreed, our invoices shall be payable immediately after delivery or completion without deduction.

5.2

If delivery is delayed for reasons for which you are responsible, the invoice shall be issued upon notification of our readiness to deliver, at the earliest, however, at the originally agreed delivery date.

5.3

Discounts shall not be granted if, upon receipt of the discounted invoice amount, invoices still fall due. If you are in arrears with the payment of one of our invoices, all other outstanding invoices shall become due for payment immediately.

6. Rights of Set-Off, Rights of Retention, Prohibition of Assignment, Payment by Cheque, Payment Collection

6.1

You shall only be entitled to set-off or retention rights if your counterclaims have been legally established, are undisputed or acknowledged by us. However, you may only assert these rights if your counterclaim is based on the same contractual relationship.

6.2

You are not entitled to assign claims of any kind arising from our business relationship to third parties.

6.3

Insofar as cheques are accepted, this shall only take place on account of performance.

6.4

The following applies to SEPA Direct Debit Mandates / SEPA Company Direct Debit Mandates: In order to facilitate payment transactions and accelerate order processing, the 14-day period for information prior to collection of a due payment may be shortened to one day prior to debiting.

7. Shipping Risk

Even if we assume the transport or shipping costs for a delivery, you shall bear the shipping risk from the time the delivery leaves our factory or our distribution warehouse. You can take out a transport or other insurance at your expense.

8. Determination of Repayment

Insofar as you do not make a repayment determination, we are entitled to make these, § 366 BGB is waived.

9. Transfer of Risk

If the risk has not already passed to you beforehand, the risk shall pass to you at the latest as follows:

9.1 Transfer of Risk on Collection, Loading, Handover

The danger passes to you as follows: Either with collection, loading or handover to the forwarding agent or carrier, irrespective of whether we dispatch, you collect, whether we or you commission third parties and irrespective of whether carriage paid, carriage unpaid or for a lump sum, even if partial deliveries are made.

9.2 Passing of Risk in Case of Default of Acceptance

If you are responsible for delays in the aforementioned circumstances or if you are in default of acceptance for other reasons, the risk shall pass to you upon notification of readiness to deliver.

10. Collateral

Until the fulfilment of all claims to which we are entitled against you for any legal reason now or in the future, you shall grant us the following securities:

10.1 Reservation of Title

All goods delivered by us shall remain our property until full payment and settlement of all claims arising from the business relationship (reserved goods). This also applies to disputed and/or conditional claims. You are entitled to process and sell the goods in the ordinary course of business as long as you are not in arrears. In the event of any breach of contract by you, in particular default in payment, we shall be entitled to take back the reserved goods if we have granted you a reasonable period in which to make payment and have withdrawn from the contract if this period has elapsed without success. The statutory provisions on the dispensability of setting a deadline shall remain unaffected.

10.2 Extended Retention of Title

The claims arising from resale or any other legal reason with regard to the reserved goods are hereby assigned to us in full by you as security. We hereby accept the assignments. If we include our claims in a current account relationship with you, the assignment in advance shall also extend to the corresponding balance claim.

At our request, you are obliged to provide us with the information required to assert our claims and to hand over all necessary documents. You are not permitted to make any other dispositions, in particular pledging or security assignment of our reserved goods.

If a deterioration occurs in your assets or if you become insolvent, the right to resell our reserved goods expires. In this case, resale is only permissible if you provide us with adequate security in advance.

10.3 Authorisation to collect Receivables, Revocation of direct Debit Authorisation, no other Assignment, Notification in case of third-party Access

10.3.1

We revocably authorize you to collect the assigned claims for our account in your own name. This authorisation to collect can only be revoked if you are in arrears with your payment obligations or if we become aware of cheque or bill protests, suspensions of payments or negative information about you.

10.3.2

You shall not be entitled to any other assignment. You are entitled to collect these claims as soon as you fulfil your payment obligations. You must notify us immediately of any garnishments or other access by third parties which affect our property or rights.

10.4 Proof of Buyer

At our request, you shall be obliged to prove to us individually your claims against third parties acquired in accordance with Clause 10.2 and to notify the subsequent purchasers of the assignment with the request to pay only to us. We are entitled at any time to inform the subsequent purchasers of the assignment and to collect the claims ourselves.

10.5 No Collection Authorisation in the Event of Insolvency

This authorisation to collect shall be deemed revoked if an application is made to open insolvency proceedings against your assets or to provide information on your assets.

10.6 Release of Securities

You have the right to demand the partial or complete release of securities if their realisable value exceeds 20% of the claims to be secured.

10.7 Collection Authorisation

10.7.1

In order to secure our property rights, in particular in the event of payment arrears, or if you are obliged to release the reserved goods, you grant us or third parties commissioned by us the right to enter the

premises, lots, construction sites or other locations at any time in order to perform all preparatory actions for the removal or collection of the goods sold to you and to take along goods which are our property. The same shall apply if our goods are to be collected from you at your customer's premises.

10.7.2

In order to avoid unnecessary costs, you hereby agree and expressly consent to this procedure.

10.7.3

You are obliged to reimburse us for all additional expenses and costs incurred in connection with the enforcement of our claims for return or the collection of our material.

11. Warranty

Your claims arising from a defect require that you have properly fulfilled your obligations to inspect and give notice of defects according to § 377 HGB (German Commercial Code). We shall be liable for defects in the delivery to the exclusion of further claims, notwithstanding Item 11.4.2, as follows:

11.1 Obligation to give Notice of Defects in the case of obvious and recognisable Defects

You must inspect the goods and their packaging immediately upon delivery or collection. Obvious and recognisable defects, shortages and incorrect deliveries must be reported immediately in writing; otherwise the assertion of warranty claims is excluded. Punctual dispatch of the notification suffices to comply with the time limit. Requirement for your claims arising from a defect is the factual correctness and completeness of the information provided by you to us for the execution of our deliveries and services, as well as the proper and purpose-oriented use of the deliveries and services by you. We shall not be liable for defects resulting from the performance data submitted by you or other incorrect or incomplete information.

If our instructions for use or processing instructions are not followed, if our delivery is incorrectly assembled or incorrectly put into operation by you or third parties, if changes are made without prior written agreement with us, if parts are replaced or materials are used which do not correspond to the originals or were not installed in the delivery condition, you shall not be entitled to any rights, in particular no warranty claims, in the event of defects caused thereby.

11.2 Obligation to give Notice of Defects in the case of non-obvious Defects

Non-obvious defects shall be deemed accepted if they have not been reported to us in writing immediately after their discovery. Punctual dispatch of the notification suffices to comply with the time limit.

11.3 Burden of Proof for Notifications of Defects, Reimbursement of Expenses

You shall bear the full burden of proof for all prerequisites for a claim. If a notice of defect is unjustified, you shall reimburse our expenses incurred.

11.4 Subsequent Performance, late Subsequent Performance

If the goods are defective, you are entitled to the following rights:

11.4.1

In the event of justified complaints, you shall have the right, at our discretion, either to remedy the defect or to delivery of new, defect-free replacement goods. In the case of insignificant defects, withdrawal and refusal of acceptance shall be ruled out. In the event of subsequent performance, we shall be obliged to bear all expenses required for the purpose of remedying the defect, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a location other than the place of performance.

11.4.2

You shall have a right of withdrawal if we are unable to meet your claim to rectification of the defect or delivery of new, defect-free replacement goods within a reasonable period of time. You shall not be entitled to any further claims, including compensation for damage caused by delay.

11.4.3

If only parts of the delivery are defective, your rights refer only to the defective part of the delivery, unless a partial delivery is of no interest to you.

11.5 Legal Consequences of grossly negligent or intentional Breach of Duty

You shall only be entitled to further claims if you can prove to us a grossly negligent or intentional breach of duty. In the case of slightly negligent breaches of duty, the claim for damages for the breach of essential contractual obligations shall be limited to the foreseeable damage typical for the contract. We shall not be liable for slightly negligent breach of insignificant contractual obligations.

11.6 Statute of Limitations

Unless we can be accused of fraudulent intent, claims for material defects which are not based on the purchase of consumer goods shall be time barred one year after the transfer of risk at the latest, which may be the time of collection, delivery, acceptance, handover, notification of readiness for dispatch, dispatch of the notice of completion, actual commissioning or actual commencement of use.

11.7 Restriction of Liability and of the Statute of Limitations

In the case of claims arising from product liability, injury to life, limb and health, the aforementioned liability and limitation restrictions shall not apply. Legal limitations of liability remain unaffected by this.

11.8 Recourse claims according to § 478 BGB (German Civil Code)

Recourse claims of you as purchaser against us as supplier according to § 478 BGB exist only insofar as you have not agreed with your customer on any claims for defects exceeding the statutory warranty claims.

The limitation period in case of a delivery recourse according to §§ 478, 479 BGB remains unaffected. If you act as the last distributor to the consumer, the limitation period shall expire at the latest two months after the time at which you have fulfilled the consumer's claims.

If you do not act as the last distributing trader towards the consumer, an exclusion period of 18 months shall apply for the limitation of all claims which are not subject to the limitation period due to a defect of the item. It begins from knowledge of the damage and the person causing the damage.

11.9 Information in Sales Documents, Website

11.9.1

Product details in our sales documents and on our website do not contain any information on properties or warranties of properties. Only our order confirmation is authoritative. Insofar as we refer to approvals or certifications, this means that our products meet the requirements for the mentioned approval or certification to the required extent and in accordance with the requirements stipulated by the approval or certification.

11.9.2

This does not mean that our products fulfil the specific purpose of use intended by you solely on the basis of an approval or certification.

11.9.3

Information about a certification or approval does not release you from your obligation as a user to inform yourself about all technical and legal requirements for construction, statics and purpose of use or application.

11.9.4

You must always use our products in accordance with the specific static requirements, local conditions and the specific official or legal requirements.

11.9.5 Faulty Assembly or faulty Use Instructions

A defective assembly or use manual is only a minor, insignificant breach of duty. Here you are only entitled to the delivery of a defect-free assembly or use manual if otherwise a proper use of our products is not possible.

12. Return Deliveries

Return deliveries are only possible with our prior written consent.

13. Binding Delivery Periods, Delivery Dates

Our delivery periods and dates are only binding if they are confirmed by us in writing as binding. Your fixed deadlines or dates are contradicted.

13.1 Specification of Delivery Periods, Delivery Dates, Scope of Delivery

Only our written confirmation shall be decisive for delivery periods, delivery dates and scope of delivery. Delivery periods or delivery dates stated by us are otherwise non-binding and indicate the prospective date of dispatch or collection of the goods from our registered office in Ilsfeld.

13.2 Compliance with Delivery Periods, Delivery Dates

A delivery period confirmed in writing or a delivery date confirmed in writing shall be deemed to have been met if

- we have informed you of the readiness or completion or readiness for dispatch of the goods by the delivery date or by the expiry of the delivery period,
- the goods have left our registered office in Ilsfeld or have been handed over to the forwarding agent, the carrier or any other person designated to carry out the shipment in such a way that under normal circumstances punctual delivery can be expected.

13.3 Prerequisites for Meeting Deadlines

Compliance with any time limit or deadline shall be subject to the cumulative condition that you submit all documents, specifications and releases to be provided by you, as well as any necessary approvals, in a timely manner and that you make the agreed payments on time and in full and that you are not in arrears with payments. If this is not the case, the deadlines or dates shall be extended in accordance with the duration of the delay for which you are responsible.

13.4 Extension of Time Limit in Case of Force Majeure

If we are unable to meet deadlines or dates due to force majeure, e.g. weather conditions, strike or lockout, the contractual deadlines or dates shall be extended accordingly. If non-compliance with dates and deadlines is due to the occurrence of unforeseeable hindrances which are beyond our control and for which we are not responsible, these shall be extended appropriately, at least by the duration of the hindrance or interruption. This applies in particular in cases of force majeure as well as strike, lockout, official orders, even if such circumstances occur with our suppliers and subcontractors. If the disruptions last longer than eight weeks without interruption, each contracting party shall have the right to withdraw from the contract in whole or in part. In this case there shall be no further unilateral or reciprocal claims.

13.5 Delay in Delivery

We shall be in delay of delivery if you have granted us a reasonable grace period at the earliest 2 weeks after the non-binding delivery date and this grace period has expired without result. Any resulting liability shall be limited to cases of intentional or grossly negligent breach of contract. You may neither procure a replacement nor withdraw from the contract until the delay in delivery has occurred.

14. Right of Withdrawal in the Event of Cheque or Bill Protest, Suspension of Payment, negative Information, Lump-Sum Compensation

14.1

We are entitled to withdraw from the contract if we become aware of cheque or bill protests, suspensions of payments or negative information about you.

14.2

If we declare our withdrawal for these reasons, we shall be entitled to a lump-sum claim for damages amounting to 20% of the net order value. You have the right to prove to us that we have not suffered any damage or that such damage has not been incurred in this amount. You may not assert any further rights.

15. Procedure in the Case of technical or Raw Material Procurement Difficulties for which we are not responsible

In the event of unforeseeable technical or raw material procurement difficulties for which we are not responsible, we shall be entitled to withdraw from the contract. In this case there shall be no further unilateral or reciprocal claims.

16. Technical Progress

Changes in line with technical progress may be made at any time.

16.1 Copyright, Rights of Disposal and Exploitation, Transfer of Documents and Data to Third Parties

16.1.1

We reserve the unrestricted right to all documents and data communicated to you, in particular to offers, technical drawings, all illustrations, all rights, in particular our rights of disposal and exploitation under property and copyright law.

16.1.2

All documents and data made available to you by us may only be made accessible, transferred, copied, transferred to data carriers or duplicated to third parties in whole, in part or in extracts after our prior written consent by fax / computer fax or by e-mail.

16.2 Meaning of pictorial or graphic Representations, Specifications on Design, intended Use or Application

16.2.1

Pictorial or graphic representations of the possible or actual function, a purpose of use or a production process are only examples and serve only to illustrate the technical function. Pictorial or graphic representations do not constitute any legally binding assurance with regard to type, possible or permissible use, function or intended use.

16.2.2

Information or representations of a function, a purpose of use or a production process are merely examples and are therefore non-binding. Such details or representations do not release you from your obligation as a user to inform yourself of all technical and legal requirements, e.g. purpose of use.

16.2.3

You must always use our products in accordance with the specific static requirements, local conditions and the specific official or legal requirements.

16.2.4

You are obliged to comply with or observe all relevant technical, official or legal requirements for the specific use.

16.2.5

We explicitly point out to you the fact that only you as the user of our products are responsible for compliance with the relevant standards, the generally recognised rules of technology, as well as for compliance with all official requirements and statutory regulations, in particular all rules on work and operational safety with special regard to accident prevention regulations.

16.2.6

In addition, our information in the product documentation must also be observed.

16.3 Consultation

Application technology consulting requires that you have fully informed us of all circumstances essential to the consulting as well as all requirements of actual and legal nature. Under these conditions, technical application advice is provided to the best of our knowledge on the basis of our findings from research, development and experience. Advice on application technology shall only be binding if we have given it in writing.

Information and data provided by us regarding the suitability, use and application of our products at your site shall not release you from the obligation to carry out your own tests and investigations to determine whether the intended use or application of our products can also be implemented on site.

16.3.1 Binding written Information

Oral information from our employees is voluntary service. All verbal statements made by our employees are only legally binding with our written confirmation.

17. Rights of Use, Defects of Title, Infringement of Property Rights of Third Parties

17.1

For deliveries made and developed by us, we ensure that these can be used in the country of the place of delivery free of industrial property rights and copyrights of third parties within the context of the contractual agreements. Any use deviating from the contractual purpose of use, regardless of the type of use, requires our prior written consent.

17.2

Insofar as we make available to you documents or deliveries for which we have industrial property rights, patent rights or a copyright or for which third party rights exist, we shall grant you a non-exclusive right of use for the contractual purposes. You undertake not to remove manufacturer's details from the deliveries or not to change them without our prior express written consent. All other rights remain with us or the owner of the rights.

17.3

Claims for infringement of property rights of any kind are excluded if you commit the infringement of property rights by not using the deliveries for the intended purpose.

17.4

If a third party nevertheless asserts claims against you due to the infringement of industrial property rights, you shall inform us immediately thereof in order to agree defensive measures and settlement negotiations with us. If these third party claims are justified, we shall, at our discretion and at our expense, either obtain a right of use for you or modify our designs in such a way that they do not infringe any third party industrial property rights or exchange the designs. If this is not possible for us within a reasonable period, you have the right to withdraw from the contract. In this case, claims for damages shall be governed exclusively by Clause 11.5.

18. Place of Fulfilment

Place of fulfilment is our registered office in Ilsfeld.

18.1 Exclusive Place of Jurisdiction

The exclusive place of jurisdiction, also in proceedings concerning bills of exchange, cheques and documents, shall be Heilbronn in the event that the parties are registered traders, legal entities under public law or special funds under public law. The same applies if the buyer does not have a general place of jurisdiction in Germany or if he has moved his domicile or usual place of residence out of Germany after conclusion of the contract or if his domicile or usual place of residence is not known at the time the action is filed.

19. No UN-Purchase Right

The law of the Federal Republic of Germany shall apply exclusively or with priority. UN sales law does not apply.

20. Data Protection, Data Security

20.1

We collect your personal information only for the purpose for which you provide it. Your personal data will only be used within SWT Services GmbH & Co. KG in compliance with the applicable data protection regulations. If you enter personal data such as your name, address or communication information such as telephone or fax numbers or e-mail addresses on our website, this is done exclusively on a voluntary basis. As far as possible, you can use the contents and services offered on our website without providing personal data.

20.2

You agree to this and authorize us to use the data received in connection with the business relationship within SWT Services GmbH & Co. KG, store and evaluate the data. Your personal data will neither be made accessible to third parties nor sold to third parties.

20.3 Revocation of Consent

You may refuse the use, processing or transmission of your data for marketing purposes by SWT Services GmbH & Co. KG at any time by means of a short written notification to:

SWT Services GmbH & Co. KG
Clamping and Balancing Technology
Rennthalstr. 14
74360 Ilsfeld
Germany

Phone: +49-7062-914947-0
Fax: +49-7062-914947-9
or by e-mail: info@swt-services.com

with effect for the future.

The use of your data for marketing purposes by SWT Services GmbH & Co. KG is carried out in accordance with data protection regulations.

20.4 Right to Information

You have the right to request information about the personal data we have stored about you at any time.

20.5

You can call up our data protection declaration and further data protection information on our home page at <https://swt-services.de/en/data-protection/>. These apply in addition to the provisions made here in Section 20.

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