

Terms and Condition for Sales and Delivery of SWARCO DAMBACH GmbH

I. Preface

1. Only our terms and condition of sales and delivery are applicable, conflicting terms and conditions of sales and delivery or those of the Customer divergent from ours shall not be recognised unless their validity is specifically sanctioned by us in writing. On no account does it require us to issue a specific caveat against the divergent terms and conditions of the Customer. Our terms and conditions for sales and delivery are applicable even when we make deliveries to the Customer without any reservations knowing that the terms and conditions of sales and delivery are conflicting or those of the Customer are divergent from ours.
2. In existing business relationships these terms and conditions are also effective for all future business dealings with the Customer until the enforcement of our new terms and conditions, unless another agreement has been reached with the Customer.
3. Our terms and conditions of sales and delivery are valid for companies as defined by § 310 Para 1 of the BGB/German Civil Code and Corporate Bodies under Public Law or Special Assets under Public Law.
4. For standard software the Customer has the non-exclusive right of use with the agreed performance features in an unaltered form on the appointed machines.

For the rest, only our specific terms and conditions of sales and delivery are applicable for the sale of software and/or software licenses.

II. Offers

1. Our offers shall be without obligation. This is particularly valid with regard to price, delivery date and availability. The minimum order value is EUR 25.00 net.
2. If an order from the Customer qualifies as an offer as per § 145 BGB then we can accept this offer within six weeks unless agreed otherwise.
3. Not before a written confirmation of the order or execution of the order/contract by us shall the formation of a contract be deemed as concluded. Our written confirmation of the order is authoritative for the contractual content.
4. Information regarding the nature of the item to be delivered in our prospectus, catalogues and VDI (Association of German Engineers) specification sheets and in all the documents accompanying the offer shall be considered merely as approximations unless they are expressly stated as being binding. This is also applicable for photographs, diagrams and other illustrations.
5. We reserve the right to changes in construction and form in the course of the delivery period provided this does not bring about a fundamental change in the functions and appearance of the item to be delivered and the changes are acceptable to the Customer.
6. We reserve all rights including ownership rights, copyright and the right to register intellectual property rights such as patents, utility patents etc on all the documents made accessible to the Customer by the offer, technical information, documents, software, knowhow, drawings of signboards and lettering, also other knowledge and experience and any objects handed over (samples, models). These documents etc. may not be used for any purpose other than those implicit in the offer and not be made accessible to any third party without our express permission. The Customer may neither use them himself nor offer and deliver them to a third party without our express permission. All the documents etc. have to be returned to us promptly in their entirety on first demand, or have to be destroyed at our behest and may not be duplicated or used commercially by the Customer, other than in the context of the delivery and services to be rendered by us, without our written consent. The documents etc. have to be voluntarily returned to us in case of a contract not being awarded to us.

III. Scope of Delivery

1. Our written confirmation of the order is authoritative for the scope of delivery.
2. Subsidary agreements and amendments are subject to our written confirmation for validation.
3. In case of custom made products and print products we are entitled to deliver surplus or short quantities of up to 10% of the number of pieces ordered.
4. Safety devices shall be delivered if this has been stipulated.
5. The provisions of the Central Association of the German Electrical and Electronics Industry (ZVEI) are applicable for electronic material.

IV. Price

1. Unless otherwise stated in the order confirmation, our prices shall apply "ex-works" excluding freight, postal charges, packaging, insurance, assembly and commissioning; they will be separately accounted for in the bill.
2. The statutory VAT is not included in our prices; it will be separately accounted for in the bill at the legally applicable rate on the day of invoicing.

V. Payment

1. Unless otherwise stipulated, payments shall be made strictly net and without deduction within 30 days from the date of invoice.
2. Deduction of discount shall be subject to an explicit written agreement.
3. The Customer when in default shall pay interest on monetary debt at the rate of 8 percentage points p.a. above the relevant basic rate of interest. We reserve the right to substantiate for higher damages due to default and to assert the same. Furthermore, in the event of a default the Customer shall be charged with all the costs incurred due to payment reminders. Moreover, in case of payment default by the Customer we are entitled to assert forthwith all claims including those not yet due. We shall in this case be released from further delivery commitments.
4. Transfers to our bank account must be made free of cost. The day on which the amount is available to us shall be deemed as the date of effective payment. Payment has to be made in the same currency, in which the invoice has been made, unless stipulated otherwise. We are not obliged to accept bills of exchange or cheques as payment. If they are accepted it will be only on account of performance and not in lieu of performance. For bills of exchange that are accepted the discount for bills drawn from out-of-town places or foreign countries will take account of collection charges and loss by exchange.
5. The Customer is entitled to offsetting only when his counter claims are established by a court decision or are undisputed or admitted by us. Furthermore, he is authorised to exercise his right of retention only in so far as his counterclaim is based on the same contractual relationship.

VI. Time Limit for Deliveries or Performance of Services; Partial Deliveries

1. The deadlines for delivery and performance of services stated by us are calculated to enable adherence in the normal course of business. The deadline for delivery commences with the dispatch of our confirmation of order, however only upon all the documents, authorisations, releases etc to be provided by the Customer being available and the stipulated advance payment being made. Should an official authorisation be required to commence work then the deadline shall start only after it has been issued.
2. Should non-compliance of the deadline for delivery or performance of services be attributed to Force Majeure, e.g. mobilisation, war, riots or similar events like strikes, lockouts or other circumstances unforeseen by us or unavoidable for us, then the deadline shall be postponed correspondingly.
3. We are entitled to make partial deliveries within the period of delivery as per Para 1 or 2, unless it entails delivery of a unitary (indivisible) contractual object or the partial delivery / partial performance executed is of no use to the Customer. The Customer's right to withdrawal does not include partial deliveries already made within the purview of the aforesaid clause. Any claim for damages are subject to the provisions of Para 4.
4. Claims for compensation by the Customer are excluded in all cases of delay in delivery even after the lapse of the grace period set for us, unless mandatorily liable on account of wilful intent or gross negligence or a cardinal obligation (fundamental contractual obligation) has been breached. Liability covered by the Product Liability Act and liability owing to injury to body, life or health remain unaffected thereof.

VII. Transfer of Risk and Acceptance

1. Our deliveries are made ex works unless otherwise stipulated. The risk of accidental destruction and accidental deterioration of the delivery item while transporting shall pass on to the Customer once the goods leave our works and indeed even when partial deliveries are made or when we have taken charge of other services such as shipping costs or delivery and installation.
2. If the dispatch should be delayed due to circumstances that the Customer is responsible for then the risk is passed on to the Customer from the day of notification of readiness for dispatch; we nevertheless pledge to take an insurance cover, should the customer so desire, at his expense.
3. To defend his claim for compensation the Customer has to keep a written record of the damages caused in transit and have it countersigned by the carrier (mover, freight forwarder etc.). The compensation is subject to the terms and conditions of the insurance company.
4. If the Customer so desires, we shall have the delivery covered by transport insurance; the expenses incurred for this shall be borne by the Customer.

VIII. Retention of Title, Protection of Retention of Title

1. We reserve the right to ownership of the delivery item till the receipt of all payments arising from the delivery contract. If the Customer breaches the terms and conditions of the contract, particularly in the event of payment default, we are entitled to revoke the delivery item. Taking back the delivery item on our part does not constitute rescission of the contract unless expressly stated to the effect by us. Seizure of the delivery items by us always constitutes rescission of the contract. Upon repossession of the delivery items we are authorised to sell them. The proceeds from the sale after deduction of a reasonable cost of disposal shall be offset against the Customer's liabilities.
2. The Customer is obligated to handle the delivery items with care; he is particularly obliged to take adequate replacement value insurance cover for the delivery items at his own expense for damages caused by fire, water and theft. If maintenance and inspection are required the Customer must undertake this promptly at his own expense.
3. In case of seizure or other interventions by third parties the Customer has to inform us immediately in writing so that we can file a suit as per § 771 ZPO (German Code of Civil Procedure). If the third party is not in a position

to refund the legal and extrajudicial costs of filing the suit as per § 771 ZPO the Customer shall be liable for the losses incurred by us.

4. The Customer is entitled to resell the delivery item in the proper course of business; he however shall assign to us all claims, equivalent to the invoiced amount and grand total (including VAT) of our receivables, which are accrued to him upon resale to his buyer or third party, quite irrespective of the fact whether the delivery item has been resold with or without processing. We accept this assignment. The Customer is authorised to collect this claim even after assignment. Our authorisation to collect the receivables ourselves remains unaffected thereof. We however pledge not to collect the receivables as long as the Customer complies with his payment obligations from the revenues received, does not default on payment to us and, in particular, does not file a petition to open bankruptcy proceedings or if payment is not suspended. However, this being the case we may demand that the Customer inform us about the assigned receivables and the debtors, disclose all information necessary for collection, hand over all the related documents and inform the debtors (third party) of the assignment.
5. The Customer shall at all times take up processing or modification of the delivery items for us. Should the delivery items be processed with objects not belonging to us then we shall acquire co-ownership of the new item in ratio of the value of our delivery item (final invoice value including VAT) to the other processed objects at the time of processing. For the rest, the same applies for the reworked object as for the object delivered under reserve.
6. Should our delivery item be inextricably combined with other objects not belonging to us, then we shall acquire the co-ownership of the new object in ratio of the value of our delivery item (final invoice value including VAT) to the other combining objects at the time of combining. Should combining be done in a manner to make the Customer's object the principal object then it is deemed customary for the Customer to transfer the pro-rata co-ownership to us. The Customer shall hold in safe custody the sole ownership or co-ownership consequently created for us.
7. In order to safeguard our claims the Customer shall also assign to us the claims amounting to the value accrued to him from a third party as a result of the linking of the delivery item with property. We accept the assignment.
8. At the Customer's behest we undertake to release the securities that we are entitled to insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of securities to be released rests with us.

IX. Liability for Defects

1. The Customer's claims concerning defects is subject to compliance of his obligation to inspect goods and notify defects pursuant to § 377 HGB/German Commercial Code.
2. Repair and correction, resupply or re-provision of all those components or services shall be undertaken free of charge at our discretion, which within the warranty period, irrespective of the service life, calculated from the day of transfer of perils onwards, verifiably caused by circumstances before the transfer of perils, have been rendered waste particularly owing to design fault, poor materials or defective workmanship or whose usability has been substantially impaired. Detection of such defects has to be communicated to us immediately by a written notification. Replaced parts shall become our property.
3. Claims for material defects, irrespective of service life, expire in twelve months. This is inapplicable if the law as per §§ 438 Para 1, No. 2 (Building Structures and Materials used for Construction), 479 Para 1 (Right to Recourse) and 634a Para 1, No. 2 (Construction Defects) BGB (German Civil Code) stipulates longer limitation periods and in cases of injury to life, body or health, in the event of an wilful or grossly negligent breach of duties on our part or in case of fraudulent non-disclosure of a defect. The statutory provisions on expiry, suspension and re-commencement of the statute of limitations shall remain unaffected.
4. For essential third-party products our liability shall be restricted to the assignment of warranty claims that we are entitled to from the supplier of the third-party products. Failing assertion of this, our liability shall be in keeping with this section.
5. The Customer shall comply with the contractual obligations incumbent on him especially the stipulated terms of payment. If a notice of defects is asserted the Customer may withhold payments only to the extent that is reasonably in proportion to the defects that arise. Notification of defects does not absolve the Customer from the general terms of payment. The Customer can withhold payments only when he has asserted a notification of defects, they are justified beyond doubt and are recognised by us.
6. The Customer must grant us reasonable time and the opportunity required to rectify the defect.
7. If we have let the grace period set for us elapse without rectifying the defect, or in the event of rectification being impossible or denied by us, or the rectification being abortive the Customer is entitled at his discretion to demand for rescission or reduction.
8. Warranty claims do not include merely insubstantial variation of the stipulated properties, mere insignificant impairment of the usability, natural wear and tear or damages caused after transfer of perils due to incorrect or negligent handling, excessive loading, unsuitable equipments, defective construction work, unsuitable building ground or due to exceptional outside influences unforeseen by the contract and non-reproducible software errors. Should improper changes or maintenance work be undertaken by the Customer or a third party then he shall forfeit his claims for defects against us for these actions and their outcome.
9. Customer's claims with regard to expenses incurred for supplementary performance particularly transportation, travelling, labour and material costs are excluded if the expenses increase because of the delivery being made to a place other than the place of delivery unless the delivery is done in line with the intended use.
10. The Customer's Right to Recourse against us as per § 478 BGB (Recourse of an Entrepreneur) exists only inasmuch as the Customer has not drawn an agreement with his buyer beyond the scope of the statutory warranty provisions. Furthermore, the aforesaid paragraph shall apply with regard to the scope of the Customer's Right of Recourse against the Supplier as per § 478 Para 2 BGB.
11. We shall be liable under the law insofar as the Customer asserts claims for damages, which are based on wilful intent or gross negligence, including wilful intent or gross negligence on the part of our representative or assistants. Insofar as we are not charged with wilful breach of contract, the liability for damage claims is restricted to foreseeable damages that occur usually.
12. We shall be liable under the law insofar as we culpably violate a fundamental contractual duty; in this case however the liability for damage is restricted to foreseeable damages that occur usually.
13. Inasmuch as the Customer is entitled to a compensation for damages in lieu of performance, our liability, even in the context of a failed subsequent performance, is restricted to compensation of foreseeable damages that occur usually.
14. Liability for culpable injury to life, body or health remains unaffected. This is also applicable for the mandatory liability under the German Product Liability Law.
15. Unless otherwise regulated in the foregoing provisions, any further liability shall be excluded.
16. The period of limitation in event of a Delivery Recourse as per §§ 478, 479 BGB remains unaffected; the period is 5 years commencing from the delivery of the defective object.

X. Damage Claims, Liability Limitation

1. Any further liability for damages other than those mentioned under point IX, irrespective of the legal nature of the claim asserted, is excluded. This is particularly applicable for damage claims due to debt encumbrance while entering into a contract, due to other breach of duties or due to tort claims for property loss as per § 823 BGB.
2. If liability for damages against us is excluded or restricted, this shall also apply with respect to personal liability for damages of our agencies, employees, workers, collaborators, representatives and vicarious agents.
3. Liability for financial loss, including loss of profits, for indirect consequential losses or vicarious loss caused by defects etc., is excluded, unless a liability exists because of the aforementioned conditions in sections IX and X.
4. With respect to the amount, our liability is restricted in each case to the sum for personal injury, loss of property and financial loss, which is covered by our business liability and product liability insurance, insofar as the insured sum covers the risk typical for the contract. On request, we are prepared to let the Customer have a look at our policy and to settle on a correspondingly higher amount of coverage should the Customer be ready to pay a higher premium that this would warrant. If the insurance provider has no liability (excess, risk exclusion, maximum annual cover) we shall enlist personal contributions.

XI. Storage of Data

We would like to bring to your notice that we store data about business transactions at a central location. The Customer herewith declares his consent.

XII. Assembly, Commissioning, Customer Service

The Parties are free to take the terms and conditions to be stipulated separately, as a basis for all actions pertaining to assembly, commissioning and customer service.

XIII. Place of Performance, Court of Jurisdiction, Applicable Law

1. These terms and conditions for sales and delivery and the business transactions between the Parties in their entirety or their respective legal successors shall be governed exclusively by the German law to the exclusion of the provisions of the uniform UN Convention on Contracts for International Sale of Goods (CISG) and the International Private Law.
2. The place of performance for our deliveries and services is the shipping station in each case. The place of performance for the Customer's payments is Gaggenau.
3. The court of jurisdiction for all disputes is Baden Baden, if the Customer is a Trader, a Corporate Body under Public Law, Special Assets under Public Law or if he does not have a court of jurisdiction in Germany. We are alternately also entitled to take the Customer to the general court of jurisdiction reasonable for his domicile.

XIV. Protective Clause

Should individual clauses of our terms and conditions for sales and delivery or a provision within the framework of other agreements be deemed null and void it does not affect the validity of the other provisions or agreement.