

## **Schaltanlagenzubehör Bad Muskau GmbH – General Terms and Conditions of Sale 01/2017**

### **1. Scope**

1. The present Terms and Conditions of Sale shall only apply with respect to entrepreneurs, legal entities under public law or public law special funds in terms of Section 310 (1) German Civil Code (BGB). We shall only acknowledge terms and conditions of the Buyer that conflict with or deviate from our Terms and Conditions of Sale if we have expressly agreed to their validity in writing.
2. The present Terms and Conditions of Sale shall also apply to all future transactions with the Buyer, provided that these are legal transactions of a similar nature.

### **2. Conclusion of contracts**

- 2.1 SZM GmbH's quotations shall be subject to change, unless expressly agreed otherwise. Contracts shall only come into force with the written order confirmation, the delivery of the goods or the provision of the service by SZM GmbH. SZM GmbH is not obliged to check the information or specifications of the Customer on which SZM GmbH bases its quotation or the order confirmation for accuracy or to check whether the execution of the order is interfering with third-party property rights. The Customer shall be notified of risks that are identified by SZM GmbH.
- 2.2 Amendments of or additions to these terms and conditions and agreements that have been made shall only be valid if the Contractor confirms them in writing. This shall also apply to an amendment of this requirement for the written form.
- 2.3 The information, drawings and service descriptions contained in our brochures, catalogues, price lists or the documents belonging to the quotation shall be approximate values as is customary within the industry, unless they have been expressly identified as binding in the order confirmation.
- 2.4 Incoterms 2010 shall apply for the interpretation of the commercial clauses.

### **3. Delivery, delivery period, packaging, transfer of risk**

- 3.1. The nature and scope of the services and the delivery period shall be determined by the written order confirmation from SZM GmbH.
- 3.2 The time of dispatch from the factory shall be decisive for compliance with the delivery periods. If the goods cannot be dispatched on time through no fault of our own, the delivery periods shall be deemed to be observed with the notification of readiness for dispatch.
- 3.3. The delivery period shall only start when all the essential questions for the execution of the contract have been clarified with the Customer and the Customer has taken the essential action that is incumbent upon it and is necessary for the execution of the contract by SZM GmbH. In particular, the delivery period shall not begin before SZM GmbH has received all the information and materials that are required for the deliveries from the Customer or before the Customer provides evidence that it has, where necessary, issued a letter of credit or made an advance payment. Changes that are subsequently requested by the Customer

shall interrupt the delivery period. The delivery period shall begin to run again after an agreement has been reached regarding the requested change.

- 3.4 Cases of force majeure, labour disputes, unrest, administrative measures and similar circumstances outside the sphere of influence of SZM GmbH shall release SZM GmbH from its obligation to fulfil the contract for the duration of the disruption and to the extent of its impact. This shall also apply if suppliers of SZM GmbH face the same circumstances, whereby SZM GmbH is already in default. SZM GmbH shall inform the Customer immediately of the start and end of such impediments to the performance.
- 3.5 If we default in delivery and the Customer wants to withdraw from the contract, it they must set us a reasonable period for performance of at least 2 weeks, unless setting a grace period is unnecessary according to the law.
- 3.6 SZM GmbH products shall not be packaged. If the Customer desires packaging, it shall bear the costs.
- 3.7 SZM GmbH shall deliver "ex works" (Incoterms 2010). If SZM GmbH takes on the organisation of the transport, the Customer shall bear the costs of shipping and the transport insurance.
- 3.8 The price risk (risk of accidental loss or accidental deterioration) shall be transferred to the Customer with the provision of the goods at the supplier factory, even if SZM GmbH has taken on additional services such as loading or transport. If performance is delayed for reasons for which the Customer is responsible, the risk shall be transferred to the latter upon the receipt of the notification of readiness. In this case, SZM GmbH may charge the Customer for the goods as if they have been delivered and store them at the expense and at the risk of the Customer. At the request of the Customer, SZM GmbH shall insure the goods against theft and damages caused by breakage, fire and water, at its own expense.
- 3.9 If divisible services are owed by SZM GmbH, part services shall be permitted to a reasonable extent and can be invoiced by SZM GmbH. A right of retention for the part of the order that has not yet been delivered may not be invoked against the entitlement to the payment for a part service that is reasonable for the Customer.

#### **4. Prices, payment, default**

- 4.1 The prices are in EUROS, ex works, plus the statutory VAT in Germany, and plus packaging, shipping and insurance costs.
- 4.2 If the labour, material and / or production costs to be paid by us change in the time from the receipt of the order to the production of the ordered goods or the provision of the other service promised by us through no fault of our own such that the manufacturing costs, as defined in Section 255 of the German Commercial Code HGB, for the respective ordered product, which must be determined in accordance with the principles of commercial law and must be proven by us, increase by more than 25 % in comparison with the time of the placement of the order, we shall be entitled to determine the agreed price for the ordered product anew at our own discretion (Section 315 BGB).

- 4.3 Invoices shall be due after receipt, according to the agreed payment periods. Cheques shall only be accepted on account of performance. The Customer shall agree to the electronic transfer of the invoice.
- 4.4 In the event of a default in payment, SZM GmbH shall demand interest in the amount of 8 percentage points above the basic interest rate per annum (Section 247 BGB). The right to prove further damages caused by the default shall remain reserved.
- 4.5 SZM GmbH is not obliged to fulfil the contract as long as the Customer does not comply with its obligations, including those arising from other contracts with SZM GmbH, in accordance with the agreement, and in particular does not pay invoices that are due.
- 4.6 The Customer may only offset against counterclaims or withhold the payment on account of these if these counterclaims are undisputed in writing or have been legally established.
- 4.7 If the Customer defaults in payment or if there are circumstances that provide grounds for doubt in the Customer's solvency when the usual banking standards are applied, SZM GmbH shall be entitled to only perform outstanding services against payment in advance or to make them dependent upon the provision of a security.
- 4.8 Subject to higher damages, SZM GmbH shall charge € 2.50 for the 2nd and each additional appropriate reminder.
- 4.9 If the acceptance of a service that is ready for acceptance does not take place on time or in full, in spite of a reasonable grace period, through no fault of SZM GmbH, SZM GmbH shall store the goods at the expense and the risk of the Customer. SZM GmbH shall charge a flat rate of 0.5 % of the invoice amount for the storage per month of the delay in the acceptance.

## **5. Warranty, obligations of the Customer in the event of claims for defects by its customers; liability and compensation**

- 5.1 Minor deviations from the agreed or usual condition shall not constitute a defect in the product or the service. General usage specifications or the contents of the instructions for use shall not release the Customer from an in-depth examination to check whether the products are suitable for the use intended by the latter.
- 5.2 The Customer shall inform SZM GmbH immediately of claims for defects by its customers that relate to services of SZM GmbH; otherwise, its claims for defects against SZM GmbH shall be excluded. The Customer shall also secure proof in an appropriate form (e.g. photos or film material) and make them available to SZM GmbH promptly. SZM GmbH can demand a product that has been declared defective back from the Customer for the purpose of investigating the defects, as well as the receipts and packing slips relating to this product. Claims by the Customer on account of defects or the incompleteness of the service shall be excluded if it does not comply with such a reasonable request. This shall also apply in the event that customers of the Customer of SZM GmbH assert claims for defects against the Customer that relate to services of SZM GmbH.
- 5.3 In the event of product defects, SZM GmbH shall provide supplementary performance by removing the defect. The Customer shall be entitled to withdraw from the contract or to a reduction in the price, in accordance with the statutory provisions, only if the supplementary performance has failed twice or is unreasonable and the defect is not negligible. 5.6 shall apply to claims for compensation.

- 5.4 If damages are caused by the improper use, alteration, installation and / or operation of the products of SZM GmbH or by faulty instructions from the Customer and are not the fault of SZM GmbH, compensation for these shall be excluded. If SZM GmbH processes material provided by the Customer or if SZM GmbH processes parts provided, SZM GmbH shall not be liable for defects that are caused by properties of the provided parts or material. If defects in the provided material or the parts provided lead to the material being unusable during processing, the processing costs must nevertheless be paid to SZM GmbH.
- 5.5 Claims against SZM GmbH on account of the express assumption of a warranty or a procurement risk, claims on account of culpable injury to life, limb or health, claims based on the German Product Liability Act and claims in the event of other infringements of obligations through wilful intent or gross negligence shall lapse in accordance with the law. In other respects, claims on account of material defects and defects of title shall lapse twelve months after the transfer of risk.
- 5.6 SZM GmbH shall be liable without limitation in the event of an express assumption of a warranty or a procurement risk, in the event of culpable injury to life, limb or health, in the event of claims based on the German Product Liability Act and in the event of other infringements of obligations through wilful intent or gross negligence. The statutory limitation period shall apply for this. SZM GmbH shall only be liable for slight or normal negligence and material damages or financial losses caused by this in the event of the infringement of essential contractual obligations, where the fulfilment of these obligations makes the proper execution of the contract possible in the first place and where the Customer may particularly rely upon the fulfilment of these obligations. SZM GmbH's liability shall, however, be limited to the foreseeable damage that is typical for the contract. In the event of a default, SZM GmbH shall be liable at 0.5 % of the value of the delayed service for each completed week, to a maximum of 5.0 % of this value. Any further liability for compensation shall be excluded, irrespective of the legal nature of the asserted claim.
- 5.7 The above limitations of liability shall also apply to the legal representatives and the employees of SZM GmbH.
- 5.8 If, within the framework of a bilateral commercial transaction, the Customer neglects to provide a notification of defects in good time, in accordance with the provisions of Sections 377 and 381 HGB, this shall lead to the exclusion of the Customer's claims in tort that have arisen as a consequence of the defect. This shall not apply if the claims are based on conduct of SZM GmbH or its vicarious agents that is at least based on gross negligence. Furthermore, the exclusion shall not apply to claims that are based on the German Product Liability Act or that are based on injury to life, limb or health or the liberty of a person.

## **6. Retention of title**

- 6.1 We shall retain our title to the goods delivered by us until all our receivables arising from the business relationship with the Customer, including any receivables that will arise in the future, have been settled in full. The goods must only be sold in the ordinary course of business. The right to sell the goods shall expire in the event that the Customer ceases its payments. The Customer of SZM GmbH shall not be permitted to pledge reserved goods or to assign them by way of security. It is obliged to protect our rights in the event that the reserved goods are sold on credit. The Customer hereby assigns to us all receivables that arise from the resale to its

customers; it shall, however, remain authorised to collect the receivables at its own expense until further notice. We hereby accept the assignment. On request, the Customer must name the debtors of the assigned receivables to us, as well as the nature and the amount of the receivables, and hand over all the documents that are necessary for enforcing the receivables. After appropriate notice to the Customer, we shall be entitled to disclose the assignment of the receivable to the third-party debtor.

- 6.2 If the delivery item is resold together with another product that does not belong to us, the Customer's receivable from its customers shall be deemed to be assigned to the amount of the price agreed between ourselves and the Customer.
- 6.3 We undertake to release the securities to which we are entitled insofar as their value exceeds the receivables to be secured by more than 20 %, provided that these receivables have not yet been settled.
- 6.4 The Customer is obliged to insure the reserved goods against the risk of destruction, loss or damage by fire, water or theft for the period after the transfer of risk. It is also obliged to insure the risk of destruction, loss and damage of the reserved goods during transportation. The Customer must inform us immediately in the event of the loss, destruction or damage of the reserved goods. On request, it must provide us with all the claim documents relating to the reserved goods, especially damage assessments, notify us of existing insurance policies and, at its discretion, provide us with either the insurance certificate or a security certificate issued by the insurance provider for our reserved goods.
- 6.5 Reserved goods may not be pledged or assigned by way of security. We must be informed immediately in the event of attachments, confiscations or other measures by third parties.
- 6.6 The processing or restructuring of reserved goods by the Customer shall always be undertaken for us. In this respect, we shall be regarded as manufacturers in accordance with Section 950 BGB. In the event that the goods are processed, combined or mixed with other goods that do not belong to us by the Customer, we shall be entitled to joint ownership of the new item according to the proportion of the invoice value of the processed reserved goods to the invoice value of the other processed goods. In other respects, the provisions for reserved goods in accordance with 7.1 to 7.5<sup>[k1]</sup> shall apply to the items that arise as a result of the processing, combination or mixing of which we acquire full or joint ownership.

## **7. The processing or repair of sent-in items**

- 7.1 The following provisions shall apply to contracts that cover the processing, overhaul or repair of items that have been supplied to us. If no particular

provisions have been agreed, the remaining provisions of the present Terms and Conditions shall apply to these contracts.

- 7.2 The delivery of items that are sent in to us for processing must take place “free factory” on the part of the Customer, items must arrive in good packaging and with the inclusion of a delivery note with our order data.
- 7.3 We must be informed of the material of the sent-in parts no later than the delivery; it must guarantee the best possible processing. If these conditions are not met, SZM GmbH may charge the costs for resulting additional work and the costs incurred for tools that are prematurely worn or damaged as a result or may withdraw from the contract, whereby the Customer must pay the contractual price less the saved expenses and plus the aforementioned additional costs.
- 7.4 Our warranty for material defects shall be limited to supplementary performance (subsequent delivery or rectification), withdrawal or reduction of the price, in accordance with the statutory provisions. We shall provide compensation – within the framework of the contractual liability in accordance with the statutory requirements – for the damages caused by material defects for which we are responsible only in the following cases:
- a) The claim for compensation against us is based on a material defect and involves compensation for a material damage caused by the material defect or another financial loss that is the consequence of a material damage that is caused by the material defect. Our liability shall be limited in accordance with the provisions in 5.6.
  - b) We are responsible for the material defect as a result of wilful intent, malice or gross negligence.
  - c) The claim for compensation against us is based on injury to life, limb, health or the liberty of a person.
  - d) We are liable for the damage from the point of view of the default. Our non-contractual liability, especially according to the provisions of tort and the German Product Liability Act, shall not be limited by the above provisions.
- 7.5 If we are liable for the damage or destruction of sent-in items, in accordance with the statutory provisions, this liability shall be limited to an amount of € 2,000,000.00 for each infringement of an obligation for which we are responsible, provided that, in the event of a claim, we provide evidence of a liability insurance policy with an insured sum of at least € 2,000,000.00 available for the claim, which is liable to pay for the claim. If several damages occur within the framework of a single contract that result from the same cause, e.g. the incorrect processing of several sent-in items in the same manner, this shall be regarded as a single infringement. At the written request of the Customer, a higher insured sum can be agreed at the latter’s expense. In this case, the liability limit shall be raised accordingly. This limitation of liability shall not apply if we are culpable of wilful intent or gross negligence or if we have assumed a warranty for freedom from defects with respect to an injurious defect. Furthermore, this limitation of liability shall not apply if claims are made against us on account of a damage that is based on injury to life, limb, health or the liberty of a person.
- 7.6 The limitation period for the warranty claims mentioned in Section 634 BGB for material defects and defects of title shall be one year, subject to the following provisions, if

the work owed by us consists in the production, maintenance or alteration of an item that is not a building, or in the provision of planning or monitoring services that do not relate to buildings. If warranty claims made against us contain compensation on account of injury to life, limb, health or the liberty of a person, the statutory limitation periods shall remain in effect. The statutory limitation periods shall also remain in effect if we have fraudulently concealed the defect or if we are responsible for the defect as a consequence of wilful intent or gross negligence. The statutory limitation periods shall also apply if we have assumed a contractual warranty for freedom from defects with respect to the concrete defect.

- 7.7 If works are rectified by us, the limitation period for warranty claims shall not be extended, even for the rectified parts. The statutory provisions on the suspension and re-start of the limitation period shall remain unaffected by this.
- 7.8 If our service requires acceptance in accordance with the statutory provisions or on the basis of an express contractual arrangement, the following shall be agreed: our service shall be deemed to be accepted at the latest when the item processed by us is sold by the Customer to a third party or is provided to a third party for its use; the item processed by us is processed or mixed or combined with other items with the approval of the Customer; or the item processed by us is used either by a Customer or by third parties with the approval of the Customer beyond trials.
- 7.9 On account of its receivable arising from the order, SZM GmbH shall be entitled to a contractual lien to the items that have come into its possession on the basis of the order. The contractual lien may also be asserted on account of receivables from work that has been carried out earlier and other services, provided that these are connected to the subject of the order. The contractual lien shall only apply to other claims arising from the business relationship if these are undisputed or if a legally binding title exists and the subject of the order belongs to the Customer.

## **8. Place of performance, place of jurisdiction and applicable law**

- 8.1 The place of performance for the contractual obligations of both Parties shall be our registered place of business (Bad Muskau).
- 8.2 The exclusive place of jurisdiction for all claims in connection with the execution of this contractual relationship shall be our registered place of business (Bad Muskau). This shall also apply to claims arising from cheques, bills of exchange and direct debits. We can, however, also file a suit at the registered place of business of the Customer.
- 8.3 German law shall apply to all claims in connection with the execution of the present contractual relationship with the proviso that the provisions of the Vienna UN Convention of 11th April 1980 on Contracts for the International Sale of Goods shall not apply.

## **9. Severability clause**

If a provision of the present Terms of Delivery and Payment is or becomes invalid, the validity of the remaining provisions shall not be affected. In this case, a provision shall apply that comes as close as possible to the objective pursued by the invalid provision.

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