

# Terms & Conditions

## General Terms and Conditions of Delivery for Products (Deliveries) and Services of SSB For use in business transactions with businesses

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### **I. Applicability of these Terms and Conditions of Delivery**

The following Terms and Conditions apply always and exclusively for the contractual relationship between SSB and the Customer, even if they are not specifically referred to again in individual (follow-on) transactions. Terms and Conditions of the Customer only apply in as far as SSB expressly recognises their rules in writing.

### **II. General provisions**

1. An order (contract) is only deemed to be issued when SSB expressly confirms acceptance of it in writing to the Customer after receiving a purchase order in response to an offer.
2. The confirmation of order applies for all orders, especially for the scope of deliveries or services. Supplementary agreements and amendments of an order must also be confirmed in writing by SSB in order to be effective. This will not be waived.
3. SSB unrestrictedly reserves all property rights, copyright and other rights of disposal relating to cost estimates, drawings and other documents (hereinafter referred to as documents), especially if no contract materialises. The documents may only be made accessible to third parties with prior written consent of SSB, and if no order with SSB materialises they are to be returned promptly to SSB on request.

The preceding applies by analogy for documents of the Customer; however, these may be made accessible to those third parties to whom SSB has admissibly transferred deliveries or will admissibly transfer deliveries.

4. The Customer has the non-exclusive right to use standard software with the agreed performance attributes in unaltered form on the agreed equipment. The Customer may not create a back-up copy without express agreement.
5. Part-deliveries are admissible in as far as these are reasonable for the Customer.

### **III. Prices and conditions of payment**

1. The prices apply ex works, excluding packing, plus the respective valid statutory value added tax.
2. If SSB has assumed erection and/or assembly and/or other service, and unless otherwise agreed, in addition to the agreed remuneration the Customer shall bear all necessary ancillary costs such as travel costs, costs of transport for tools and personal luggage as well as allowances against documentary evidence.
3. All payments are to be made free point of payment to SSB.
4. Unless otherwise agreed, payments are due immediately and must be made no later than 30 days after receipt of invoice. If this period is exceeded the Customer is in default without any further reminder.

5. The Customer can only offset payments with such claims as are undisputed or have been legally ascertained.
6. If any significant deterioration in the financial situation occurs at the Customer's after acceptance of the order (conclusion of contract) by comparison with that prevailing at the time the contract was signed, e.g. debt settlement plan, application for insolvency proceedings, or deterioration in the cover by the trade credit insurer, SSB can at its choice require security or advance payment for all deliveries and services yet to be effected under the contract or the same legal relationship. If the Customer does not comply with this requirement, SSB can withdraw from the contract or after setting a deadline require compensation instead of performance.

#### **IV. Time periods for deliveries; delay**

1. Delivery periods in the meaning of a binding contractual period are only deemed to be binding if they are set out in writing, designated as binding and confirmed by SSB.
2. Unless expressly agreed otherwise, any agreed binding delivery periods apply ex works.
3. In the event of changes in delivery or performance at the request of the Customer, the previously agreed delivery period ceases to apply. A new delivery period only commences with the written confirmation of the alteration and written confirmation of a new binding delivery period by SSB.
4. The observance of periods for deliveries and services presupposes timely receipt of all documents, necessary permits and releases to be supplied by the Customer, in particular of plans/drawings etc. and observance of the agreed conditions of payment and other obligations by the Customer. If these conditions are not satisfied in time, the periods shall be extended accordingly; this does not apply if SSB is responsible for the delay.
5. If non-observance of the periods is attributable to force majeure (Section X) or other circumstances for which SSB is not responsible, the periods shall be extended appropriately.
6. Both claims for damages of the Customer for delays in delivery and claims for compensation instead of performance are ruled out in all cases of delayed delivery, even after expiry of any period for delivery set for SSB. This does not apply in cases of mandatory liability for deliberate intent, gross negligence or injury to life, limb or health.
7. At any rate any compensation for delay to be paid by SSB is limited to the negative interest.
8. The Customer is obliged to declare within an appropriate period at the request of SSB whether he wishes to withdraw from the contract due to delay in delivery. Otherwise delivery/performance will be maintained.
9. If at the wish of the Customer dispatch or delivery are delayed by more than one month after notification of readiness for dispatch, storage fees amounting to 0.5 % of the price of the objects of delivery but at most altogether 5 % can be billed to the Customer for each month or part thereof. The contracting parties can furnish evidence of higher or lower storage costs.

#### **V. Transfer of risk**

1. The risk is transferred to the Customer as follows, even in the case of freight-free delivery:
  - a. in the case of deliveries without erection or assembly, when the merchandise is dispatched or collected. At the wish and for the account of the Customer SSB will insure deliveries against the customary transport risks;

- b. in the case of deliveries with erection or assembly, on the day these are taken over in the customer's establishment or, in as far as this is agreed, after sound trial operation.
2. If the dispatch, delivery, commencement, implementation of erection or assembly, taking over in the Customer's own establishment or the trial operation is delayed by reasons for which the Customer is responsible, or if the Customer is in default with acceptance on other grounds, the risk is transferred to the Customer on the delay in acceptance.

## **VI. Erection and assembly**

Unless otherwise agreed in writing, the following provisions apply for any erection and/or assembly agreed:

1. The Customer shall at his own cost assume and provide in time:
  - a. all earthworks, construction works and other incidental works from outside the industry, including providing the necessary skilled and auxiliary staff, construction materials and tools,
  - b. the equipment, materials and substances necessary for assembly and commissioning such as scaffolding, lifting gear and other devices, fuels and lubricants,
  - c. energy/power and water at the point of use including the connections, heating and lighting,
  - d. at the place of assembly sufficiently large, suitable, dry and lockable rooms for storage machinery parts, apparatus, materials, tools etc. and appropriate work and staff rooms for the assembly staff including sanitary facilities appropriate to the circumstances; for the rest the Customer shall take such measures to protect the delivery and the assembly personnel at the site as he would take to protect his own property,
  - e. protective clothing and protective devices necessary as a consequence of the special circumstances at the point of assembly.
2. Prior to the start of assembly works the Customer shall provide the necessary information about the position of concealed electricity, gas and water lines or similar facilities and the necessary static (stress analysis) data without being specially requested to do so.
3. Prior to the start of erection or assembly the provisions and objects necessary for starting the work must be in place at the points of erection or assembly and all preliminary works must have progressed so far before the start of construction that the erection or assembly can be commenced as agreed and be implemented without interruption. Approach paths and the place of erection or assembly must be levelled and cleared.
4. If the erection, assembly or commissioning are delayed by circumstances for which SSB is not responsible, the Customer shall bear reasonable costs incurred by SSB for waiting time and additionally required travel or for assembly staff against documentary evidence.
5. The Customer shall certify the duration of working times of the assembly staff and completion of the erection, assembly or commissioning promptly to SSB.
6. If after completion SSB requires acceptance of the performance/delivery, the Customer shall effect this within a week. If this is not done, acceptance shall be considered effected. The acceptance is also considered to be effective if the delivery/performance – where appropriate after completion of an agreed test phase – has been taken into use.

## VII. Acceptance

The Customer may not refuse acceptance of deliveries due to insignificant defects.

## VIII. Guarantee

1. Obligation to report defects
  - a. The Customer shall inspect the merchandise (delivery/performance) promptly and make a written complaint concerning any visible defects promptly, at the latest three days after receipt. The same applies by analogy in the event of wrong delivery.
  - b. If defects become evident in the case of any (further) processing, the processing must be discontinued at once and SSB notified promptly in writing.
  - c. In the case of direct delivery of the goods to third parties, the period for complaints is extended to seven days. Concealed defects are to be reported in writing promptly after discovery.
  - d. In the event of infringement of the above obligation to inspect and complain, all and any guarantee claims are ruled out.
  - e. Independently of this, unless otherwise agreed guarantee claims are ruled out for components provided by customers and in cases of inappropriate or inexperienced use, independent opening and/or dismantling, faulty assembly or commissioning by the Customer or third parties, natural wear, faulty or negligent treatment, excessive stress, unsuitable expendable supplies, replacement materials, poor construction ground, unless the defects are attributable to the fault of SSB.
2. SSB's liability for material defects
  - a. At its choice, SSB will repair, deliver (parts of) the affected merchandise anew or execute the performance again free of charge, in the case of material defects that become apparent within the guarantee period.
  - b. Claims for material defects do not exist in the event of only insignificant deviation from the agreed condition, in the case of only insignificant impairment of usefulness, in the case of natural wear or damage resulting as a consequence of faulty or negligent treatment after the transfer of risk, excessive stress, unsuitable expendable supplies, defective construction works, unsuitable construction ground or due to special external influences that were not presupposed according to the contract, and in the case of non-reproducible software faults. If the Customer or third parties undertake inexperienced alterations or repair works, no material defect claims exist for these and the resulting consequences either.
  - c. Unless expressly otherwise agreed, claims for material defects become statute barred in 12 months (guarantee period) after delivery, irrespective of the duration of operation.

The guarantee period of 12 months does not apply in as far as the law prescribes longer periods in accordance with §§ 438 Para. 1 No. 2 (Structures and items for structures), 479 Para. 1 (Claim to recourse) and 634a Para. 1 No. 2 (Construction defects) BGB, and in cases of injury to life, limb or health, in the case of deliberate or grossly negligent infringement of duty on the part of the supplier and in the case of fraudulent concealment of a defect.

- d. Claims by the Customer for expenditures necessary for the purpose of supplementary performance, in particular costs of transport, call out, labour and materials are ruled out in as far as the expenditures are increased because the object of delivery has subsequently been conveyed to a place other than the contractually agreed place of delivery.
- e. Claims to recourse by the Customer against SSB in accordance with § 478 BGB (recourse of the business-person) only exist in as far as the Customer has not entered into any agreements with his buyer extending beyond the statutory material defect claims. No. VIII. 2 d) applies accordingly for the scope of the Customer's claim to recourse against SSB pursuant to § 478 Para. 2 BGB.

- f. Compensation can only be claimed pursuant to the provisions in Section XI. Any claim of the Customer for compensation is at any rate restricted to the value of that part of the delivery/performance that is defective. With consideration given to the limitation of liability, it is recommended that insurance cover be taken out. The limitation of liability does not apply in as far as mandatory liability exists in cases of deliberate intent, gross negligence, or injury to life, limb or health; this is not connected with any change of the burden of evidence to the detriment of the Customer. The Customer's right to withdraw from the contract remains unaffected by this ruling.

## **IX. Industrial property rights and copyrights; deficiency in title**

Unless otherwise agreed SSB only commits to effect the delivery free of industrial property rights and copyrights of third parties (hereinafter referred to as protection rights) in the country of the place of delivery.

If a third party raises justified claims against the Customer on the grounds of infringement of protected rights by deliveries furnished by SSB and used in accordance with the contract, SSB is liable as follows to the Customer within the period set out in Section VIII.2 c):

1. SSB will at its own choice, at its own cost, obtain a right of use for the subject deliveries, modify them so that the protective right is no longer infringed, or exchange them. If this is not possible on reasonable terms, the Customer is entitled to the statutory rights of withdrawal or price reduction.
2. The obligation to pay damages is oriented to Section XI.
3. The above obligations only exist in as far as the Customer notifies SSB promptly in writing of the claims filed by the third party, does not acknowledge an infringement, and all defence measures and negotiations for a compromise settlement remain reserved for SSB. If the Customer discontinues the use of the delivery on the grounds of loss mitigation or other important reasons, he is obliged to notify the third party that the discontinuation of use is not connected with any acknowledgement of infringement of a protected right. On request, SSB is to be granted the authority to conduct the negotiations or the litigation with the third party for its own account and on its own responsibility. The Customer shall be liable to SSB for any loss/harm resulting to SSB from culpable infringement of the above duties.
4. Claims of the Customer are excluded in as far as he is responsible for infringing the protected right.
5. Furthermore claims of the Customer are ruled out in as far as the infringement of the protected right is caused by special specifications of the Customer, by an application that could not be foreseen by SSB or by the delivery being modified by the Customer or used together with products not furnished by SSB.
6. For the rest, in the event of cases of infringements of protected rights, the provisions of Section VIII.2 apply by analogy for the Customer's claims regulated in Section IX.1.
7. The provisions of Section VIII.2 apply by analogy in the case of any other deficiencies in title.

Any further claims, or claims other than those governed by this Section IX, of the Customer against SSB and its agents for a deficiency in title are excluded.

## **X. Force majeure**

1. The contract (with the exception of the Customer's duty to pay all the amounts owed to SSB in accordance with the contract) will be suspended without liability in the case of delay or prevention of the fulfilment of the contract on the grounds of circumstances beyond the reasonable power of direction of the respective party affected, in particular force majeure, war, armed conflict or terrorist attacks, civil commotion, fire

explosion, accident, flooding, sabotage, state decisions or measures (especially export or re-export bans or non-granting or revocation of necessary export permits) or labour unrest, strike, lock-out or court injunction. SSB is not obliged to deliver hardware, software or technology or to deliver services if state permits are not granted or statutory prerequisites for the exemption from the permit obligation were not satisfied within the framework of import and export controls (in particular according to the rules applying in the United States, the European Union and in the jurisdiction of the place where SSB has its registered offices or from where product components are supplied) and the respective circumstances were not foreseeable for SSB and are outside the scope of influence of SSB. In the case of revocation of state permits that had been issued or in the case of a change in the valid import and export control provisions in such a way that SSB is impeded from satisfying the contract, SSB shall be exempted from its contractual obligations without any liability.

2. In the event of delay or prevention of fulfilment of the obligations of a party on the grounds of this Section X for a period of more than 180 consecutive calendar days, either party can cancel the part of the contract that is unfulfilled at the respective time through written notification of the other party without liability, subject to the proviso that the Customer is obliged to refund the reasonable costs and expenditures for work commenced and to pay for all the products and services delivered up to the time of cancellation.

## **XI. Limitation of liability**

1. SSB is only liable to the Customer for losses caused by gross negligence or deliberate intent. In the event of infringement of essential contractual duties, however, SSB is liable for all culpable conduct of its staff causing damage (statutory representatives, senior employees and other agents).
2. Except in the case of damage deliberately caused by staff of SSB or damage caused with gross negligence by statutory representatives or senior employees of SSB, SSB shall not be liable for compensating indirect losses, especially not for compensating lost profit, unless such losses are covered by the protective purpose of an expressly assumed guarantee.
3. Except in the case of damage deliberately caused by staff of SSB or damage caused with gross negligence by statutory representatives or senior employees of SSB, the liability of SSB is in all cases limited to the amount of loss that can be typically foreseen on conclusion of the contract.
4. Claims for damages through injury of life, limb or health, infringement of a guarantee expressly issued in writing by SSB expressly and those under the Product Liability Act remain unaffected.

## **XII. Observance of laws**

The Customer confirms that his receipt and use of hardware, software, services and technology is subject to all applicable laws, regulations, ordinances and rules with regard to import, export controls and sanctions in their respective valid wording – including, but without restriction, those laws, regulations, ordinances and rules in the United States, the European Union and in the jurisdictions in which SSB and the Customer have their registered offices or from which deliveries are made – and the conditions of all associated permits, approvals, General Licenses or exemptions from licenses. The Customer will in no way use, transfer, release, export or re-export the hardware, software or technology in infringement of these valid, laws, regulations, ordinances or rules, or the conditions of associated licenses, approvals or exemptions from licenses. The Customer furthermore agrees not to perform any activities that would expose SSB or one of its associated companies to the risk of punishment under the laws or regulations of a corresponding jurisdiction according to which inappropriate payments, including but not restricted to bribes to staff of a government, public authority, establishment or corresponding sub-divisions, to political parties or officials of political parties or candidates for public office or to staff of customers or suppliers are prohibited. The Customer agrees to observe all valid legal, ethical and other regulations.

### **XIII. Nuclear clause**

THE PRODUCTS DELIVERED AND SERVICES PROVIDED UNDER THIS CONTRACT WILL NOT BE SOLD FOR USE IN ANY NUCLEAR OR ASSOCIATED APPLICATIONS AND ARE NOT INTENDED FOR THIS USE. The Customer (i) accepts the products and services with the preceding restriction, (ii) agrees to pass on this restriction in writing to all subsequent buyers and users, and (iii) agrees to exempt, defend and save SSB and the associated companies of SSB harmless from all claims, losses, liabilities, litigation, judgments and claims for compensation – including those for compensation of casually resulting damage and consequential damage – as a consequence of using the products or services in any nuclear or associated applications, independently of whether the respective claim is based on tort, contract or any other grounds, including allegations that the liability of SSB is based on negligence or strict liability.

### **XIV. Statutory and other provisions**

In as far as this is not necessary under valid law, SSB is not responsible for the collecting, treatment, recovery or waste disposal (i) of the products or any part of the products in as far as these are considered under the law as „waste“ or (ii) of any objects for which the products or any part of the products represent spare parts. If SSB is obliged under applicable law (including the law governing wastes as regards electrical and electronic equipment, EU Directive 2002/96/EC (WEEE) and corresponding laws in the EU Member States) to dispose of products or any part of the products „waste“, the Customer – provided he is not prevented from this by valid law – shall pay SSB in addition to the contract price either (i) the regular fee of SSB for the waste disposal of these products or (ii) if there is no such regular fee at SSB, the costs of SSB (including all processing, transport and recycling costs and a reasonable overhead surcharge) for the waste disposal of these products.

### **XV. Jurisdiction and applicable law**

1. If the Customer is a merchant, the sole jurisdiction for all disputes arising directly or indirectly from the order (contractual relationship) is the place of business of SSB. However SSB is also entitled to sue at the place of business of the Customer.
2. German material law applies for the legal relations in connection with an order (contract) with exclusion of the United Nations Convention on International Sale of Goods (CISG).

### **XVI. Concluding provisions**

1. Supplementary agreements, amendments or supplements to the contractual relationship between the parties and waiver of the written form requirement must be made in writing in order to be valid.
2. If individual provisions of the contract turn out to be legally invalid in whole or in part, this shall not affect the validity of the remaining provisions. In such a case the invalid provision is to be interpreted by the parties or be supplemented in such a way that the economic purpose intended by the invalid provision is achieved. This does not apply if maintaining the contract would represent unreasonable hardship for one of the parties.