

# General Terms and Conditions of SWA GmbH

## Applicability

The present General Terms and Conditions apply to all purchases of goods or services sold by SWA GmbH. These Terms and Conditions are deemed to have been accepted upon taking delivery of the products or services at the latest. These General Terms and Conditions shall apply exclusively. Deviating business or purchase terms and conditions of the customer cannot be accepted, unless expressly acknowledged in writing by SWA GmbH. No additional agreements or supplementary conditions of contract will be permitted without the prior written approval from SWA GmbH.

## Offer and Contract Conclusion

Our offers are subject to confirmation and without obligation. A contract shall only come into force when SWA GmbH has accepted a customer order in writing, via telefax or electronically. This also applies to all supplementary conditions, alterations and additional agreements. The sending of an invoice to the customer shall be equivalent to an express declaration of acceptance. Documents which form part of an offer such as images, drawings and details of weight and dimensions, are only approximations and are subject to change. For cost estimates, the costs can exceed or fall below the originally specified costs by up to 15%. We reserve the right to make improvements or changes in the products or services to the fullest extent permissible by law. For service and development orders, the prices and delivery details specified in writing are subject to change according to unforeseen price increases and delays in supply and therefore without obligation on the part of SWA GmbH. If the Buyer conclusively declines acceptance of the delivery in whole or in part, or we cannot continue with fulfillment of the order due to circumstances within the authority of the Buyer, SWA GmbH is entitled to claim compensation amounting to 25 % of the value of the order and to rescind from the contract.

## Custom-made Products

For custom-made products, 50 % of the total purchase price must be paid in advance. The other half of the total purchase price is due when the goods are ready for shipment. The Buyer must bear all charges for goods that have been wrongly specified by the Buyer or the end customer.

## Prices

The prices applicable on the delivery date shall apply plus the statutory value added tax. The prices denote the price of delivery ex our warehouse. In the case of direct marketing, prices denote the price of delivery ex German boarder/FOB at German port of entry. We reserve the right to demand cash in advance or cash on delivery for all deliveries. Additional charges that are not specified in the confirmation of contract, such as installation and commissioning costs, mailing expenses, packing costs, cost of insurance, L/C, consulate and service fees, are charged separately. SWA GmbH reserves the right to adjust prices in case of increases in charges such as custom fees, import and export fees or exchange rates. Price alterations falling within the period of an on-demand contract entitles SWA GmbH to price adjustments.

## Time of Delivery or Performance

The Terms and Conditions of Delivery of SWA GmbH are based on the *General Conditions of Supply and Delivery for Products and Services of the Electrical Industry*. All delivery agreements must be in writing and are valid only from the date the received order has been processed and confirmed with respect to the correctness of its technical and commercial specifications. The delivery time stated commences with the date given on the confirmation of order. SWA GmbH shall be exempt from all liability if delivery is delayed as a result of a delay on the part of our contractor. However, the relevant dispositions must be specified by SWA GmbH. Part deliveries and partial performance are permissible. Part deliveries and partial performance agreed to in supply contracts shall be considered as independent deliveries. If the dispatch or delivery is delayed, the Buyer is entitled and obliged to grant the seller a respite period of 4 weeks in compliance with article 326 subsection 1 of the German Civil Code (BGB). Interruptions in performance or delays due to force majeure or similar circumstances which considerably impede performance or make performance impossible and for which we are not responsible, such as plant standstill, lawful strike, etc. - even if these arise with our suppliers or their subcontractors - are not considered defaults in delivery. In such cases, the Buyer is not entitled to claim compensation for delayed delivery or failure of performance. Delays in supply and performance due to circumstances beyond our control entitle us to delay the supply and/or performance for the duration of the hindrance plus a start-up time of 2 months, or to withdraw totally or in part from the contract. If the hindrance lasts for longer than 2 months, the customer is entitled to withdraw from that part of the contract which is not yet fulfilled. If the delivery is delayed due to circumstances beyond the control of SWA GmbH, the Buyer is entitled to claim compensation for damages. SWA GmbH can only invoke the aforementioned circumstances, if the customer is informed accordingly in writing and without delay. In as far as we are responsible for the noncompliance with binding delivery dates, traders have the right to withdraw from contract, but are not entitled to demand compensation for any damages.

## Consignment and Passing of Risks

The risk passes to the customer at the time goods are surrendered to the shipping agent, at the latest upon leaving the warehouse of SWA GmbH. However, we can insure the consignment at buyers request and expense. All consignments to SWA GmbH are at the expense and risk of the sender. Risk passes to us after the consignment has been arrived at our premises and accepted by us.

## Terms of Payment

In accordance with the customer's wishes regarding the mode of payment, our invoices are payable by cash on delivery, crossed cheques on delivery, or bank transfer without cash discount deduction.

Payments will be imputed on the eldest debt or invoice due, independent of deviating terms and conditions of the customer. If costs for recovery of claims and interest have already been accumulated, SWA GmbH reserves the right to offset payments for the settlement of the eldest invoices due plus any default interests and costs, in the following order: incidental costs, interests, principal claim. The contract partner can claim a right of retention or right of setoff only with claims determined by legally binding jurisdiction. Part deliveries and partial performance may be invoiced separately. Payments shall not be deemed to be duly paid until the entire amount of debits is credited to the bank account of SWA GmbH. This also applies to payment by cheque. If payments are delayed or suspended or if a cheque is dishonored, SWA GmbH has the right to withdraw from the contract without prior notification. In this case, we are entitled to demand payment of the entire balance of debt without specific claim. The same applies if circumstances come to our knowledge which question the customer's creditability. If SWA GmbH decides to stick to the contract, we reserve the right to demand payment in advance, bank guarantee or deposit of security. SWA GmbH reserves the right to stop all subsequent deliveries to the customer in default of payment, independent of the delivery agreements.

During the period of arrears the customer shall be liable to pay interest at the rate charged by merchant banks for open overdraft credits. The costs for recovery of claims, court fees or enforcement costs shall be borne by the customer. We reserve the right to assign claims.

## Payment in Advance

If our contractor demands payment in advance, the customer shall be obliged to duly pay the required installments.

## Retention of Title

All goods delivered by us remain our property until our contract partner has settled all outstanding accounts under its business relationship with us which accrue now or in the future for whatever legal reason. For current accounts, the reservation of title serves as security for the preliminary balance agreements. In case of processing the goods, the Buyer will act on behalf of SWA GmbH, however, without gaining claims against SWA GmbH due to the processing whatsoever. If the goods are installed in third-party products by the customer, we acquire co-ownership of the new item to the extent of the value of the commodity supplied by us in relation to the otherwise processed goods. In the event the Buyer processes (connects, mixes) the delivered goods with other goods not belonging to us, his rights of ownership or co-ownership of the mixed or new item will be assigned to us already at this point of time. The Buyer is obliged to duly keep the items on behalf of SWA GmbH at his own expense. The Buyer shall have the right to resell or process the reserved goods within the scope of his regular business activities provided he is not in default of payment. The Buyer shall not be entitled to pledge or transfer the goods by way of security. Any claims (including all current account balance claims) that arise for the Buyer from the reselling of the reserved goods or from any legal ground (insurance/legal act) are hereby assigned to SWA GmbH us in advance as security. SWA GmbH grants revocable authority to the Buyer to recover in his own name the claims assigned to SWA GmbH for its account. This authorization to recover claims can only be revoked in cases where the Buyer does not properly comply with his payment obligations. If reserved products are attached by third parties, particularly by way of a seizure, the Buyer will make reference to the property of SWA GmbH and will immediately notify SWA GmbH accordingly. The Buyer is obliged to avert access to the goods by third parties. Should the customer be in breach of contract, in particular with regard to a dishonored cheque, SWA GmbH is entitled to take back the reserved goods without authorization by court, asserting its retention of title. The Buyer is obliged to grant agents authorized by us and who will properly legitimate themselves, access to the premises. The Buyer must pay the costs of taking back the goods. In the event of a dishonored cheque, the Buyer is obliged to return upon our request the remaining goods at its own risk and expense. The garnishment or evacuation of the reserved goods by SWA GmbH (unless an installment plan will be inured) shall not be equated with the withdrawal from contract. SWA GmbH shall be obliged to release, upon the customer's request, existing securities in so far as their value should exceed by more than 25 % the value of claims to be secured. The Buyer must provide proof that existing securities exceed by more than 25 %.

## Warranty

The warranty period for all delivered products is 12 months. The period begins with the transfer of the goods to the customer. SWA GmbH does not assume any warranty for damages suffered on the grounds that the Buyer or third parties modify the products, exchange parts or use consumables which do not comply with the original specifications. The same analogously applies to damages due to failure to observe our instructions for use and maintenance. If the goods we have supplied are deficient, warranty shall first be provided by rectification of the defect or replacement at our discretion. If subsequent performance is not successful after expiration of a reasonable period, the Purchaser is entitled to reduction of the purchase price or cancel the contract. If the Buyer returns goods in packing other than the original packing, SWA GmbH shall be entitled to refuse any right of deduction or cancellation. Incompatibility with similar third-party components or devices already in use shall not be deemed to be a deficiency of the delivered product. The Buyer shall notify SWA GmbH in writing about obvious defects without delay, at the latest within a period of one week after receipt of the goods. Otherwise, the assertion of the claim for warranty is barred. Notices of defect are to include a detailed description of the defects, the products version and serial number and a copy of the delivery note. The Buyer is obliged to send the defect device or component to the technical department of SWA GmbH at its own risk and expense. In replacing defective items or parts or the complete device, the warranty period is not to be extended. Any damage on the product which resulted from inappropriate use or storage, incorrect application or modification by a third party or opening the casing, will have the warranty voided immediately. The warranty does not cover consumables such as printheads, ink ribbons, daisy wheels, etc.. Our warranty service is restricted to the repair or replacement of the defective product. SWA GmbH shall not be liable for the loss of data that resulted from the repair of the defective product. A liability for normal wear and tear is excluded. Concluding terms of warranty for the delivered goods are given in the sections below. Any further warranty claims by the Buyer shall be excluded.

## Software

In so far as software components are part of the consignment, the Buyer is granted an unrestricted single-user license, i.e., the software may not be copied or hired to any third party. A multi-user license must be granted by way of a specific agreement in writing. The Buyer shall be fully liable for all costs and claims associated with any breach of license.

## Claims for Damage

In case of positive breach of contract, illegal acts, misconduct in the organization, or infringement of obligations during the negotiation of the contract, SWA GmbH is liable only for intention and negligence; this also applies with respect to legal agents and auxiliary persons.

## Applicable Law

These General Terms and Conditions of Sales and all legal relations between SWA GmbH and the Buyer shall be governed by the law of the Federal Republic of Germany. Other national laws and the Uniform Law on the International Sale of Goods (EKG and EKAG, both dd. 17. 7. 1973) shall not apply.

If the customer is merchant in terms of a commercial code (HGB), judicial persons of the public law or public-legal funding, the jurisdiction for any and all disputes which arise either directly or indirectly out of this contractual relationship shall be Bamberg.

Should individual provisions of these General Terms and Conditions or a provision within the scope of other agreements be or become invalid, this shall not affect the validity of all remaining provisions or agreements.

## Data Protection

The customer shall authorize us by doing without a statement to process person-related data, even if submitted by a third person, within the scope of the admissibility of the Federal Data Protection Act if this is required for the implementation of the contractual relation.

## Liability

SWA GmbH shall not be liable for production downtimes, business interruption, loss of profit, corruption of data.

## Export

The products delivered by SWA GmbH may be subject to export control laws and regulations. The Buyer should contact the Federal Office of Economics and Export Control (BAFA) for further information. For products destined for export to export-restricted countries, SWA GmbH shall acquire an export license in compliance with the German foreign trade regulations of the BAFA.