

## General Terms and Conditions of Supply and Payment of SEAMCOM GmbH & Co. KG

### Section 1. General

1. Our general terms and conditions of supply and payment alone shall apply for transactions entered into with businesses within the meaning of Section 310 Para 1 of the German Civil Code [BGB]. In particular, appropriate consideration is to be taken of the customs and practices in force in commercial transactions.
2. Our goods, services, offers and other legal acts shall in all cases be based upon these terms and conditions of business. The version of our terms and conditions of business shown in our web site at that point in time shall apply. Amendments of the general terms and conditions of supply and payment may be downloaded from our websites and printed out. This means that they shall also apply for all future business relationships, even if they are not expressly agreed again. These terms and conditions shall be regarded as having been accepted when the goods or services are received at the latest. The Buyer's counter-confirmation is hereby rejected if it makes reference to the application of his terms and conditions of business and / or purchase.
3. Variations of these terms and conditions of business shall only be valid if they have been confirmed by us in writing.
4. We are entitled to assign the claims created by our business relationships.

### Section 2 Offer and Conclusion of Contract

1. Our offers are subject to change without notice and are not binding. Statements of acceptance and all orders shall be subject to our confirmation writing or by fax to be legally valid. The same shall apply for supplements, modifications or side agreements. Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this is expressly agreed in writing.
2. Our sales staff are not authorised to make verbal side agreements or to make verbal assurances in excess of the content of the written contract.
3. If a Buyer exceeds his credit limit by making a call-off, we shall consequently be released from our obligation to supply. The Buyer shall, however, be offered an opportunity to purchase goods to pay in cash if he exceeds his credit limit.

### Section 3 Prices

1. Unless stated otherwise, we shall hold the prices contained in our offers for at least 7 days from the date of offer. It is the prices stated in our order confirmation which shall apply.
2. All the prices stated in the price list shall, unless agreed otherwise, be exclusive carriage, packing, transport, toll fees, freight insurance, copyright royalties plus value added tax at the rate in force. Additional goods and services shall be invoiced separately.
3. If goods are sent in a packet by post, the carriage and packing costs per order shall be 3.99 €. There is no minimum quantity surcharge or freight exemption limit. If goods are sent by the pallet-load, the lump sum per order will be 69.00 €, and 99.00 € for express deliveries or fixed date deliveries. Moreover lump sum for cable reels / cable coils up to 300 metres is 15.00 € per reel / coil, for express deliveries or fixed delivery dates an amount of 59.00 € is charged. For cable reels / cable coils of more than 300 metres, the lump sum is 19.00 € per reel / coils and 65.00 € for express deliveries or fixed delivery dates. Consignments from supplier directly to customer are not covered by this shipping costs regulation and will be invoiced separately.
4. We shall reserve the right to amend our prices as appropriate if, after the contract has been signed, costs increase or decrease in particular as a result of foreign exchange fluctuations. We shall submit proof of such fluctuations to the Buyer upon request.

### Section 4 Delivery

1. Delivery dates or periods are not binding unless an express agreement has been made otherwise in writing.
2. Agreed delivery periods shall only begin after all aspects of the design details have been fully clarified together with all technical queries and assume that the Buyer has fulfilled all his other obligations to co-operate as necessary. They shall always exclude the duration of transportation.
3. All consignments shall be delivered at the Buyer's expense and risk.
4. We cannot be held responsible for delays in the delivery of goods and services as a result of force majeure and events which make it much more difficult or impossible for us to supply (Strike, lock-out, official instructions etc.) even if we have agreed binding delivery dates and periods. They shall entitle us to delay the goods or services by the duration of the hindrance plus a reasonable start-up time or to withdraw from some or all of the contract not yet fulfilled.
5. If the hindrance lasts for more than three months, the Buyer shall, after setting a reasonable subsequent period of time for performance, be entitled to withdraw from the part of the contract not yet fulfilled. If the delivery period is lengthened or if we are exempted from our obligation to supply, the Buyer may consequently not derive any compensation claims for damages therefrom.
6. In so far as we are responsible for failure to comply with binding delivery periods and dates promised or if we are in default, the Buyer shall be entitled to a right to default compensation amounting to 1/4 % for each full week of default not however, exceeding 5% of the value of the amount invoiced for the goods and services affected. No additional claims shall be admitted, unless the default is attributable to gross negligence at least.
7. Provided that the date of our delivery of goods or services is not specifically marked on our invoice, it will be the same as the date on the invoice.
8. We shall be entitled to make part deliveries and render part performances at all times. In supply contracts each part delivery and part performance shall be regarded as a separate performance. The delivery period shall likewise be extended by the period of time with which the Buyer is himself in default with the fulfilment of his contractual obligations.

### Section 5 Default in acceptance of our goods and services

1. For the duration of the default in acceptance by the Buyer we shall be entitled to put the items to be supplied into store at the Buyer's risk and expense. We may also avail ourselves of the services of a haulier or a warehouse operator to do so.
2. For the duration of the default in acceptance the Buyer shall have to pay us a lump sum of 1% of the net invoiced sum per week, not however to exceed 30 Euros per week as compensation for the storage costs incurred without us having to furnish additional proof – unless

the Buyer is able to prove that the losses incurred by us are less. If higher storage costs are incurred, we may demand the reimbursement of such costs from the Buyer by submitting proof of them.

- If, after he has been set a subsequent period of time to do so and this expires, the Buyer refuses to take delivery of the items to be supplied, and fail to respond to a written request to take delivery of said goods, or if he states that he does not intend to take delivery of the goods, we may refuse to fulfil the contract and demand compensation for damages on account of non-fulfilment. We shall be entitled to demand as compensation for damages, as we choose, either a lump sum of 20% of the agreed gross purchase price – unless the Buyer proves that the loss suffered by us is less than this amount – or the reimbursement of the actual loss incurred.

#### **Section 6 Quantity delivered / Shortages**

Upon receipt of the goods, visible discrepancies in quantity must be notified to us immediately; concealed discrepancies must be notified to us within 4 days, and to the haulier in writing. If a haulier or carrier takes delivery of goods this shall be regarded as proof that the goods are all present, correctly wrapped and loaded. Moreover, the Buyer shall undertake to inform us in writing within 14 days at the latest if we supply goods by mistake without the Buyer having ordered them and to keep the goods ready for collection by a haulier or carrier instructed by us.

#### **Section 7 Passing of risk**

The risk of accidental loss or accidental deterioration of the products shall pass over to the Buyer when the goods are handed over, and if the contract of sale involves the carriage of goods, when they are handed over to the haulier, freight forwarder or other person or organisation appointed to deliver them. If dispatch is delayed or becomes impossible for reasons for which we are not responsible, the risk of reporting that the goods are ready for dispatch shall pass over to the Buyer. The passing of risk shall not be affected if, in an individual instance, it is agreed that the transport costs are to be taken over by us.

#### **Section 8 Warranty**

- The Buyer's warranty rights presuppose that he has properly fulfilled the obligations of inspection and notification of defects incumbent upon him in Section 377 of the German Commercial Code [HGB].
- If the goods supplied by us are faulty, we shall initially be entitled to rectify the defect (repair) or to supply defect-free goods (delivery of a replacement). Replaced parts shall become our property. In the event of a repair the necessary expenditure shall only be reimbursed by us to the extent that it has not been increased as a result of the thing having been moved to a place other than the place of fulfilment.
- If, when the thing is sent in for a repair, we establish that there is nothing wrong with it, we shall invoice the Buyer for the cost of inspection and return.
- If the cure is unsuccessful, the Buyer may as he chooses, withdraw from the contract or reduce the purchase price. An unsubstantiated defect shall not entitle the Buyer to withdraw from the contract.
- The full burden of proof that all preconditions for his claim have been satisfied, in particular the defect itself, for the point in time at which the defect was established and for the defect being notified on time, shall be incumbent upon the Buyer.
- The Buyer's rights on account of a defect in the product supplied shall become time-barred one year from passing of risk. There is no warranty for used products. Section 444 of the German Civil Code [BGB] as well as the Buyer's compensation rights for damages in accordance with Section 10 of these general terms and conditions of supply and payment shall not be affected.
- As a matter of principle, only the manufacturer's product description shall be regarded as agreed for the properties and condition of the product. Public statements, revaluation or advertising by the manufacturer shall not constitute any additional contractual information about the properties and condition of the product. If the Buyer receives defective assembly instructions, we shall only be obliged to supply fault-free assembly instructions and we shall only have to do this in those cases in which the defect in the assembly instructions is not incompatible with proper assembly.
- The Buyer shall not be given product warranties in the legal sense by us. Manufacturer's guarantees shall not be affected by this.
- The Buyer's rights in Sections 478 and 479 of the German Civil Code [BGB] shall not be affected.

#### **Section 9 Return / Handling the cure**

- Defective products are to be returned by stating the model and serial number as well as a copy of the shipping or invoice documents with a precise description of the defect to SEAMCOM GmbH & Co. KG, c/o PMR-Service, Leyer Str. 24, D-49076 Osnabrück, Germany or, if agreed, delivered to the supplier.
- No new warranties will come into force concerning rights and claims on account of defects when individual parts, sub-assemblies or entire appliances are replaced. This shall apply to the period of limitation for the parts affected by the defect being rectified.
- Moreover, our terms and conditions of return in force at that time shall apply. (You may request the terms and conditions at the e-mail address [retouren@seamcom.de](mailto:retouren@seamcom.de).)

#### **Section 10 Liability**

- Provided that there is nothing stated otherwise in the terms and conditions below, no other additional claims asserted by the Buyer – regardless of whatever legal reason upon which they are based, shall be admitted. The regulations in the German Construction Contract Procedures [VOB] and official contracting terms for the award of service performance contracts [VOL] shall not apply for invitations to tender and awarding contracts (public or private law), instead of which our general terms and conditions of business shall apply. We shall not be liable for damages not incurred by the supplied item itself. In particular, we cannot be held liable for the loss of data, lost profit or other financial losses incurred by the Buyer.
- This exemption from liability shall not apply provided that the Buyer asserts compensation claims for damages based upon intent or gross negligence, or we are culpably in breach of important contractual obligations. Provided that we are not accused of any intentional breach of contract, our liability shall be limited to the typically occurring damages which should have been foreseen at the point in time at which the contract was concluded.
- Liability on account of death, personal injury or physical harm for which we are responsible as well as the compulsory liability in accordance with the German product liability act, shall not be affected.
- If our liability is not admitted or limited, this shall also apply for the personal liability of our salaried staff, employees, representatives and assistants.

5. We shall not be liable for the loss of data, data recovery or other consequential damages resulting from this, if the damages would not have occurred had the data for which the Buyer was responsible been secured properly. Proper data security requires the Buyer to back up his data every day by applying state-of-the-art-techniques, in particular that he makes back-up copies which can be read by computers so that this data can be recovered at an acceptable cost. The liability for the loss of data shall in all cases be limited to the typical recovery costs which would have been incurred had the data been properly secured.

#### **Section 11 Reservation of Title**

1. The following securities are to be furnished to us until all accounts (including all outstanding balance claims in current account arrangements) to which we are entitled for any legal reason against the Buyer are fulfilled. We may release these securities as we choose, provided that their value exceeds the value of our accounts by more than 20%.
2. The goods shall remain our property. Processing or modification shall always be carried out for us as manufacture within the meaning of Section 950 of the German Civil Code [BGB], without however, placing us under any obligation. If the goods are mixed, connected or processed with other items, the Buyer shall consequently assign here and now his ownership or co-ownership in the new totality to us and he shall look after it for us free of charge, to the extent that we have not become a co-owner of the new thing in accordance with the ratio of the value of the goods subject to reservation of title (cost price) to the other goods at the point in time of mixing, connecting or processing. If the goods created by the processing or connection are resold, the advance assignment agreed below shall consequently only apply for the value of the goods subject to reservation of title.
3. The Buyer is obliged to handle the goods carefully.
4. The Buyer is entitled to process and to resell the goods in a proper commercial transaction, as long he is not in default in payment to us. Pledging or other assignments by bill of sale as a security is not allowed. The Buyer shall assign all accounts created by the resale or other legal reason (insurance, unlawful act) of the goods subject to reservation of title (including all outstanding balances of account in the current account arrangement) to us here and now in full as a security. We authorise the Buyer on a revocable basis to collect the accounts assigned to us for his own account and in his own name. This collection authorisation may only be revoked by us if the Buyer fails to fulfil his payment obligations properly.
5. The assignments are accepted by us.
6. In the event that the goods subject to reservation of title are seized by third parties the Buyer shall point out to the third parties that we own the goods and inform us without undue delay.
7. In the event of conduct in breach of contract, in particular default in payment, or a loss of the Buyer's creditworthiness, we shall be entitled after withdrawing from the contract to demand the return of the goods subject to reservation of title or the assignment of the Buyer's claim to hand-over against third parties.
8. The Buyer undertakes to pass over the information we require to assert our rights and to hand over the documents required to do so.

#### **Section 12 Payment**

1. Generally, the goods shall be supplied against cash on delivery and unfree, that is by transport service provider or haulier at the Buyer's expense, unless another agreement has been made.
2. If goods are supplied on account, the arrangements must be agreed separately. Should the Buyer not comply with the terms and conditions of payment agreed separately, subsequent deliveries shall consequently be supplied for cash on delivery without prior announcement. Invoices payable by direct debit shall be due for payment immediately, unless an agreement has been made otherwise. (The direct debit procedure to date will be changed over to the SEPA direct debit procedure used throughout Europe by 1 February 2014). In so far as a payment by means of the SEPA direct debit method has been agreed, and the Buyer has passed over a corresponding SEPA direct debit authorisation, the following shall apply:  
The impending collection by direct debit shall as a rule be announced at the same time as presenting an invoice (or by another method of communication agreed with the Buyer) by no later than 1 (one) calendar day prior to the direct debit becoming payable (Pre-notification). The booked sum may, in an individual case, differ from the sum notified in the settlement advice / invoice or in the pre-notification, if the Buyer has received credit notes and / or correction advice notes or individual transactions have been cancelled in the period of time between the settlement advice / invoice being raised or the pre-notification being sent and the date on which payment is due. The booked sum may, in an individual case, differ from the sum notified in the individual settlement advice / invoice or the sum notified in the specific pre-notification, if the Buyer has passed over the SEPA authorisation as a blanket authorisation for several contractual relationships, the Buyer receives a separate settlement advice / invoice for each contractual relationship as agreed - and receives a separate pre-notification accordingly, but the respective settlement advice / invoice sums have the same due date for payment. In this case the entire amount (=sum of the two settlement advice notes / invoices) shall be collected on the date on which payment is due. The Buyer shall be responsible for seeing that he has sufficient funds in the account nominated in the SEPA authorisation and he must ensure that the amounts due can be collected by us. This obligation shall also exist in those individual cases in which the Buyer has not received pre-notification or has not received it on time.
3. In spite of the Buyer's terms and conditions of business stating otherwise, we shall be entitled to count payments first of all towards his older debt and to inform the Buyer of how the amount received has been offset against his debts. If costs and interest have already been incurred, we shall consequently be entitled to offset the payment initially against the costs, then against the interest and lastly against the main claim.
4. Payment shall be regarded as having been made if we are able to dispose of the amount. Cheques shall only be accepted as payment so that the payment obligation shall only be regarded as having been made after it has been credited in full to our account.
5. Any prompt payment discounts which may have been granted may only be made if all invoices due have been paid on time. It shall be the date on which payment is received by us which shall determine whether payment has been made on time.
6. If the Buyer falls into arrears with payment, we shall consequently be entitled to charge interest at 8% points above base rate from the point in time concerned onwards. We shall reserve the right to prove that we have suffered a default loss in excess of base rate plus 8% and to claim it. In the event of default in payment all rebates and prompt payment discounts and other remunerations shall lapse.
7. All accounts shall become payable immediately if the Buyer falls into arrears with payment, culpably fails to comply with other important obligations under the contract or if we become aware of circumstances capable of reducing the Buyer's creditworthiness, in particular if he stops making his payments and / or if insolvency proceedings are pending. In these cases we shall be entitled to retain or refuse to carry out deliveries still outstanding or only to carry them out against payment in advance or if securities are furnished.



8. If there are return debit notes or in similar cases in which payment transactions have failed, we shall pass on the bank fees incurred to the Buyer, unless the Buyer is not to blame or proves that the costs actually incurred by us were less.
9. The Buyer shall only be entitled to offsetting rights if his counter claims have been adjudicated, are uncontested or have been recognised by us. Besides which he shall be authorised to exercise a right of retention, provided that his counter-claim is based upon the same contractual relationship.
10. The Buyer may only transfer the rights to which he is entitled to third parties with our express prior consent; Section 354a of the German Commercial Code [HGB] shall not be affected.

**Section 13 Use of the Products**

The products are intended for normal commercial use in accordance with the operating instructions and not for use in critical security systems, nuclear power stations, military facilities or medical appliances designed to keep people alive or for the manufacture of weapons. No liability will be accepted for use in these applications.

**Section 14 Industrial Property Rights**

1. All industrial property rights existing for the items to be supplied are and shall remain the property of the Supplier. All use shall be subject to the consent of the supplier concerned. We shall not accept any liability for breaches of the industrial property rights, if the goods are exported into another country from the sales territory intended by us, since we shall be unable to guarantee that all rights there will be protected.
2. The Buyer must not remove, modify, cover up or make information on the contractual products about industrial property rights unrecognizable by other means. The Buyer is only entitled to translate documentation material supplied with the goods for advertising purposes with our prior consent.
3. Software programmes are to be handed over in accordance with the licence terms of the respective licensor. The software's scope of performance is shown by the licensor's licence terms as well as the specifications and other user information printed in the relevant user handbooks. This shall also apply in particular for the restrictions on use. The software remuneration does not include the installation, training and familiarisation training.

**Section 15 Non-Disclosure / Data Protection / Advertising**

The Buyer is obliged to keep secret for an unlimited period of time all the information made accessible to him in connection with the deliveries which, as a result of other circumstances, are clearly identifiable as our business or operational secrets and to be kept confidential for an unlimited period of time, and not to record it nor pass it over to third parties or exploit it by any means unless this is for the purpose of achieving the contractual objective.

**Yes, I read and accept the terms and conditions of SEAMCOM GmbH & Co. KG (please check the box).**

Company \_\_\_\_\_

Owner/Representation: \_\_\_\_\_

ZIP, City: \_\_\_\_\_

VAT-No. \_\_\_\_\_

City, date: \_\_\_\_\_

Signature and stamp of customer: \_\_\_\_\_