

# SEEBACH SALES TERMS AND CONDITIONS

SEEBACH GmbH („SELLER“) WILL ACCEPT BUYER'S ORDER REFERRED TO ON THE ACCOMPANYING QUOTATION ON CONDITION THAT BUYER ASSENTS TO THE TERMS AND CONDITIONS SET FORTH BELOW AND ON ANY ACCOMPANYING DOCUMENT(S) AND WAIVES ANY DIFFERING TERMS OR CONDITIONS. SUCH ASSENT AND WAIVER IS EVIDENCED EITHER BY BUYER'S PURCHASE ORDER (ANY CONTRARY TERMS OR CONDITIONS OF WHICH SHALL BE DISREGARDED) OR BY ACCEPTING DELIVERY OF THE FIRST SHIPMENT HEREUNDER.

**1. Exclusion of Conflicting Terms and Conditions.** These Terms and Conditions shall apply exclusively. Seller does not recognise conflicting or deviating general terms and conditions of the Buyer, unless Seller has explicitly consented to their application in writing. These Terms and Conditions shall even apply if Seller makes deliveries to the Buyer without reservation despite being aware of conflicting general terms and conditions of the Buyer or general terms and conditions which deviate from these Terms and Conditions. These Terms and Conditions shall also apply to any future business transactions between the Parties.

**2. Payment and Shipping Terms.** Payments are due, without deduction, within 30 days upon date of invoice, ex works, unless expressly provided to the contrary on the accompanying quotation. Any amount not timely paid due to the Buyer's fault shall bear a late charge of one and one-half percent (1.5%) for each month or fraction of a month computed on the outstanding balance until paid in full; provided, however, that such late charges shall not exceed the amount of five percent (5%) of the sum due for the respective order.

**3. Title and Risk of Loss.** Title to products shall pass only upon payment of the full purchase price. Notwithstanding the foregoing, all risk of loss shall be borne by Buyer from the time of delivery of the products by Seller to a public carrier or other manner of transportation. The Buyer undertakes to take out and maintain appropriate insurance for each event of damage to products that were delivered under reservation of title. The Buyer must provide written proof of the insurance coverage upon request. Should the Buyer be unable to prove the insurance cover within two weeks after delivery of the goods, the Seller shall be entitled to take out such insurance coverage at the Buyer's expense. Until passing of title, the Buyer shall mark the goods in a well visible manner as property of the Seller.

**4. Tooling.** Charges for tools, dies and other equipment cover only a portion of their cost and ownership and sole right to possession and use thereof shall not pass to Buyer but shall remain in Seller.

**5. Cancellation.** Seller at its option and in addition to its other remedies may without liability cancel this order or refuse shipment, if (a) Buyer is in default in any payments or other performance due Seller under this or any other agreement or (b) causes beyond Seller's control make it impossible to warrant its timely performance. Buyer may cancel the remaining unfilled portion of its order only upon written consent of Seller and payment of the full price for that portion of the order that Seller has substantially completed at time of cancellation plus reasonable cancellation charges which shall include the full profit plus all costs incurred in connection with the canceled portion of the order such as overhead and administrative costs, commitments made by Seller as a consequence of Buyer's order and the cost of all work-in-progress. Cancellation charges shall not exceed the purchase price of the canceled portion of the order.

**6. Price.** Seller reserves the right to correct quantities or prices due to typographical, clerical, or mathematical errors. The price stated in Seller's quotation or acknowledgment is based upon Seller's current costs. If costs increase or decrease during the life of this order due to cost reductions or cost increases, e.g. as a result of collective agreements or changes in the price of raw materials, Buyer will be notified of any reasonable adjustment of the price; provided, however, that no price adjustment will be made without Buyer's agreement on orders for delivery within 6 weeks of the date of the conclusion of the contract. Buyer shall reimburse Seller for any excise, sales, use or other taxes incident to this transaction for which Seller may be liable or which Seller is required by law to collect.

**7. Delivery.** Delivery dates are estimates only.

**8. Assurance of Performance.** If Buyer is delinquent in payment at any time, or if in Seller's judgment, Buyer's credit becomes impaired or unsatisfactory, Seller may, in addition to its other remedies, cancel Buyer's credit, stop further performance, and demand cash, security or other adequate assurance of payment satisfactory to it.

**9. Limited Warranty.** Seller warrants for a period of one year following original shipment by Seller that its products are free from defects in material or workmanship furnished by Seller. Buyer's rights arising from defects are subject to the Buyer having observed its statutory duties of inspection and notification. In cases of material or legal defects Seller shall be entitled to remedy the defect or to make replacement delivery (subsequent performance). In doing so Seller shall have the right to choose the type of subsequent performance. Seller's liability for any defect shall only apply in case the defect is not insignificant. If one or both of the above types of subsequent performance should be impossible or disproportionate Seller shall have the right to refuse these. Seller shall bear the costs incurred in connection with the subsequent performance, in particular the transport costs, travel expenses, work and material costs; however, Seller shall not bear the costs incurred by moving the goods to a location other than the place of performance.

If the types of subsequent performance set out in above repeatedly failed or should they be unreasonable for the Buyer or if Seller refuses both types of subsequent performance, the Buyer shall have a right to choose to either reduce the purchase price (reduction) or to rescind the contract in accordance with the statutory provisions (rescission). Claims for compensation of damages are restricted in accordance with paragraph 10 of these Terms and Conditions. Further claims by the Buyer, irrespective of their legal basis, are excluded.

**10. Limitation of Liability.** In the event of a pre-contractual, contractual or non-contractual breach of duty (also in the case of defective delivery) Seller shall be liable without restriction - subject to the further contractual or statutory liability requirements - for intent and gross negligence (also of Seller's statutory representatives and vicarious agents) and for damage to life, body or health which is the result of a negligent breach of duty by Seller or an intentional or negligent breach of duty by Seller's statutory representatives or vicarious agents. Where Seller has provided a guarantee for quality or durability Seller shall also be liable in the framework of this guarantee. For damage not directly caused to the goods, however, Seller shall only be liable under the guarantee if the risk of such damage is clearly covered by the guarantee. There shall also not be any limitation of liability for liability according to the Product Liability Act (Produkthaftungsgesetz). In the case of a slightly negligent breach of essential contractual duties (cardinal duties) Seller's liability is also restricted to foreseeable typical damages. Where the duties breached are not essential contractual duties (cardinal duties) Seller's liability for slight negligence shall be excluded. Cardinal duties are essential contractual duties, i.e. duties which give the agreement

its form and on which the contractual partner is entitled to rely. These are therefore essential rights and duties which create the basis for performance of the contract and are indispensable to achieving the purpose of the contract and on the compliance with which the Buyer may regularly rely. An exclusion or restriction of Seller's liability also applies to Seller's statutory representatives and vicarious agents.

**11. Production Performance Estimates.** Any production or performance standards furnished by Buyer may depend on several variable factors, and as such no results or estimates are warranted for Buyer.

**12. Compliance with Laws and Warnings.** In those instances in which Seller provides health or safety information, warning statements, and/or instructions in connection with the installation, use or maintenance, including preventive maintenance, of its products (and Seller assumes no obligation to do so), Buyer agrees to comply with all such information, warnings and instructions. Buyer further agrees to communicate all such information, warnings and instructions to its employees, agents and subcontractors, and to subsequent buyers and users of those products. Buyer will comply with all applicable laws. Buyer will indemnify and hold Seller harmless for Buyer's breach of these terms and conditions.

**13. Confidentiality.** All technical and commercial information and ideas which Seller has supplied or shall supply Buyer, but excluding information in the public domain or properly in Buyer's possession in tangible form before receiving such information from Seller, („confidential information“) is proprietary to Seller and is disclosed to Buyer in confidence for the limited purpose of assisting Buyer in the evaluation or use of Seller's products. Buyer shall not without Seller's prior written consent, disclose or make available such confidential information to any other person or use such confidential information except for such limited purpose. All confidential information shall be returned to Seller on demand, and, in any event, when no longer needed by Buyer in connection with Seller's products. In addition to Seller's other remedies, Buyer agrees that any benefit or property derived by Buyer from any unauthorized use of confidential information shall be the sole and exclusive property of Seller.

**14. Intellectual Property.** Buyer will protect and indemnify Seller against all claims that he is at fault for arising out of patents, designs, trade secrets, copyrights, or trade names with respect to products manufactured wholly or partially to Buyer's designs or specifications, including any costs, expenses, loss, attorneys' fees, settlement payments, or damages.

**15. Government Contracts.** If the items purchased hereunder are to be used in fulfilling a contract with any national government, Seller will comply with all mandatory provisions required by such government applicable to Seller, provided that Buyer gives Seller written notice of such provisions in sufficient time to permit compliance.

**16. Amendments and Survival.** No addition to, modification or revision of the terms and conditions contained herein shall be valid unless in writing, and signed by duly authorized representative of Seller. Sections 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20 shall survive the expiration or termination of these terms and conditions.

**17. Governing Law, Severability and Place of Jurisdiction.** This agreement is subject to the laws of Germany. If any term or condition hereof is found to be illegal or unenforceable, the balance hereof shall remain in full force and effect. Both Seller and Buyer acknowledge and agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to this order. If the Buyer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch, HGB), a legal person under public law or a fund under public law, exclusive – and also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Kassel, Germany. The Seller shall nevertheless have the right to file an action at the place of performance of the delivery.

**18. Code of Conduct.** Seller is committed to conducting its business ethically and lawfully. To that end the Seller, through its ultimate parent company, Smiths Group plc, maintains a Code of Corporate Responsibility and Business Ethics and mechanisms for reporting unethical or unlawful conduct. The Seller expects that the Buyer will also conduct its business ethically and lawfully. If the Buyer has cause to believe that the Seller or any employee or agent of the Seller has behaved unethically or unlawfully under, or in connection with, these terms and conditions, Buyer is encouraged to report such behavior to the Seller or to Smiths Group plc. Smiths Group plc's Code of Corporate Responsibility and Business Ethics and mechanisms for making such reports are available on [www.smiths-group.com](http://www.smiths-group.com).

**19. Export Regulations and Destination Control Statement.** If the commodities, technologies or software sold hereunder are exported from the country where Seller resides, they may only be done so in accordance with the laws and regulations of such jurisdiction, and any diversion contrary to such laws is prohibited. Buyer will not export any technical data, or commodities that are controlled by government regulations in violation thereof, and agrees to defend, indemnify and hold harmless Seller from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by Seller with respect to any of Buyer's export or re-export activities contrary to applicable export and import controls.

**20. Intellectual Property.** Notwithstanding delivery of and the passing of title in any product, nothing in these terms and conditions shall have the effect of granting or transferring to, or vesting in, Buyer any intellectual property rights in or to any products.

**21. General.** Buyer may not assign or transfer all or part of its rights or obligations under this order without the prior written consent of Seller. These terms and conditions constitute the entire agreement and understanding between Buyer and Seller in connection with the subject matter of this order, and supersede all prior oral or written communications, representations or agreements in relations thereto.

**22. Language.** These Terms and Conditions may be set out in the German language and a language other than German. If there is inconsistency between the German language version and any other language version of these Terms and Conditions or there is a conflict in the interpretation of these Terms and Conditions, the German language version shall prevail.

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