

# General Terms and Conditions | SMARTISTIC | B-2-B (Exception: B-2-C | for B-2-C these B-2-B conditions also apply)

## § 1 General

1. Unless otherwise agreed in writing, the following terms and conditions apply exclusively to our offers, planning services and works, which also apply to future business relations until the General Terms and Conditions of Business changed by us become available to the contractual partner be made.
2. These terms and conditions apply to all transactions arising from current business relations, even if they have not been expressly stated once.
3. All agreements must be settled in writing. No guarantee is given for verbal or telephone information or collateral agreements.

## § 2 Scope of supplies or services

1. For the scope of all deliveries or services of SMARTISTIC - hereinafter also Supplier - to third parties - hereinafter referred to as Purchaser - exclusively these General Terms of Delivery shall prevail. The supplier's terms and conditions deviating from or deviating from the terms of delivery of the supplier shall not be recognized by the supplier, unless the supplier has expressly agreed to their validity in writing. The terms of delivery of the supplier shall also apply if the supplier carries out the delivery to the purchaser unconditionally in the knowledge of conflicting terms of the customer which deviates from his delivery terms.
2. Before the order is placed, the purchaser is obliged to check the supplier's information on the content and extent of the respective delivery, even if the supplier supports him before the order is placed during the planning of the delivery. The purchaser must notify the supplier without delay if the chosen designs, components, etc. are not suitable, economically or otherwise unfavorably, incorrectly or disadvantageously.

## § 3 Offer and order confirmation

1. Our offers are free and non-binding until the conclusion of the contract. This is subject to the proper and timely delivery by our suppliers. In the event of a delay in delivery, the contractual partner shall be informed; In the case of non-performance, a consideration already paid will be refunded.
2. Planning services that go beyond an offer can be calculated by us at our expense; As far as they are used by third parties without our consent, we assume no liability.
3. The transfer of our price lists, catalogs, brochures etc. does not oblige us to conclude the contract.
4. Orders shall be deemed accepted if they have been confirmed or executed in writing.
5. Our offer has been based on the visible conditions. If deviations occur which require additional expenses, these must be negotiated separately.
6. Technical alterations, which are necessary for the purpose or in the context of the technical Are contractual, provided that the contractual partner does not suffer any significant disadvantages.
7. Illustrations, given dimensions and weights in our catalogs, prospectuses or in the pre-contractual correspondence are only approximate. The supplier reserves the right to make minor changes and deviations, in particular those which do not impair usability, as well as the use of at least equivalent materials or components.
8. In the event of withdrawal from the contract after successful confirmation of the order, the Supplier shall be entitled to charge 10% of the order value as a flat-rate cost participation for planning and engineering services.

## § 4 Prices

1. Our prices are subject to value-added tax, which is applicable in each case.
2. The supplier's price lists do not include an offer for the conclusion of a contract. The supplier is entitled to change the price list at any time. However, the amendment has no effect on the contracts already concluded at the time of the amendment.
3. The prices apply for delivery without installation / assembly EXW excluding packaging.
4. The supplier is entitled to change the prices of items for billing according to measurements, material consumption or hours if, after conclusion of the contract, costs increase, in particular due to material price changes. The contracting party may require proof of this.
5. Any necessary scaffolding and any necessary counting equipment or conversion work in the counting cabinet are not included, unless explicitly mentioned.
6. A deduction of cash discount is required by express written agreement.

## § 5 Payment

1. Unless otherwise stated in the order confirmation/invoice, the purchase price is due without deduction immediately after receipt of invoice and is payable 100% in advance and therefore before delivery.
2. Our sales representatives (agents) are entitled to receive payments only with special authority.
3. Cancellation fee: 10% of the total net value of the invoice.

## § 6 Delivery

1. The information on delivery times shall be regarded as orientation points and only as agreed upon, if this has been expressly stated.
2. The Supplier shall not be liable for damages resulting from delay in delivery (for example, failure of the feed-in tariff, financing interest, etc.). Compliance with delivery and monthly deadlines requires the contractual partner to comply with his obligations.
3. The Supplier shall be entitled to deliver partial deliveries at any time.
4. Unless otherwise agreed, the shipping method is at our discretion.
5. The delivery does not include assembly and commissioning of the item.

## § 7 Scope of delivery and assembly

1. The delivery of all products by the Supplier is carried out exclusively on the basis of the specifications of the purchaser. The verification of the concrete use of the products to be supplied by the supplier in the projects of the customer is neither the individual nor the entire subject matter of the delivery and performance of the supplier.
2. The products supplied by the supplier may only be installed when using and observing the currently valid installation instructions and the regulations and regulations stated in this assembly manual (for example, DIN 1055) as well as taking into account the recognized rules of technology.

## § 8 Acceptance and notification of defects

1. The purchaser must check the items immediately on receipt for damage and must notify the supplier and the freight forwarder / parcel service immediately on the consignment note if defects are found in the packaging and/or the delivered item, as otherwise no compensation for transport damage is possible (according to German General Forwarding Conditions).
2. Delivered items are only to be accepted by the purchaser if they show no or only insignificant external damage; whereby the damage is to be noted immediately on the consignment note.
3. If serious external damage or obvious damage to the delivered item is detected, the supplier and the freight forwarder / parcel service must be informed immediately in order to decide whether the goods may be accepted or whether acceptance of the delivered item must be refused.
4. Notification must be made immediately upon acceptance of the item.

## § 9 Retention of title

1. The goods shall remain the property of the supplier until the fulfillment of all claims of the supplier against the customer from the business relationship.
2. The supplier is entitled to take back the goods if the contractual partner does not pay duly. The withdrawal does not constitute a withdrawal from the contract.

## § 10 Cooperation

The contractor is obliged to provide electricity, water, etc. free of charge. He also undertakes to take all measures to ensure smooth assembly.

## § 11 Guarantee/warranty, supplementary performance in the event of a defect

1. The purchaser must notify the supplier immediately if defects in the objects appear below. The notification must be made immediately.
2. The buyer's right of option within the scope of the warranty / supplementary performance is limited to the extent that the supplier can determine at the first supplementary performance whether the supplementary performance is to be carried out by the removal of the defect or the delivery of a defect-free thing. The improvement is not considered to be successful until after the third attempt.
3. If the purchaser refuses the supplementary performance, although this is reasonable for him, the claims and rights of the purchaser in the case of defects are excluded.
4. The contractually agreed nature of the delivered items does not include the stock against natural wear and tear, improper handling before and after installation, improper installation work, unsuitable foundation and extraordinary chemical, electronic or electrical influences.
5. The guarantee expires if the delivery item is altered by third parties or by the installation of parts of foreign origin, unless the damage is not a causal link with the change. The contractor is always obliged to comply with the regulations of the supplier or manufacturer.
6. The supplier shall bear only the transport costs necessary for the purpose of the supplementary performance for the exchange of defective items delivered by the supplier. The entitlement to the transfer of all further expenses incurred by the customer within the scope of the supplementary performance, such as the costs for installation and removal, by the supplier is excluded.
7. Insofar as the manufacturer has a warranty which extends beyond the warranty, this warranty does not apply to us, here the warranty is applicable.
8. Manufacturer's warranties or other separate statements of warranty or quality of the manufacturer are given exclusively by the manufacturer and not by the supplier itself. The fulfillment of all claims arising from the manufacturer's warranty or the manufacturer's warranty or conditional declarations relates exclusively to the legal relationship between the purchaser and the manufacturer and not the legal relationship between the purchaser and the supplier.

## § 12 Claims for damages

1. The Supplier shall be liable in accordance with statutory provisions insofar as the Purchaser asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of the Supplier's agents or vicarious agents. Unless deliberate breach of contract is charged to the Supplier, liability for damages shall be limited to the foreseeable, typically occurring damage.
2. The supplier is liable according to the statutory provisions, insofar as he culpably violates a substantial contractual obligation; In this case, the liability for damages shall be limited to the foreseeable, typically occurring damage.
3. Liability for culpable injury to life, body or health or damage to privately used items according to the Product Liability Act remains unaffected.
4. Unless stated otherwise, the liability is excluded.

## § 13 Liability

1. The transfer of liability to the contractual partner shall be made upon delivery.
2. The supplier accepts no liability for a possibly necessary lightning protection device, Necessary building permit, a possibly insufficient structural analysis, consequential damages from the Handling with asbestos-containing substances, insurance questions, etc.
3. We are liable according to the statutory provisions for intent and gross negligence by us and our employees. Furthermore, our liability is excluded.
4. The right of the Purchaser to assert claims arising from defects shall be statute-barred in all cases from the date of transfer of risk in 24 months insofar as the law does not prescribe mandatory longer deadlines. The statutory periods of limitation shall apply in cases of intent or gross negligence.

## § 14 Rights

The contractual partner undertakes not to disclose our documents to third parties for the purpose of commercial evaluation. A contractual penalty of EUR 5,000 is payable for each case of the offense. Each week a continuous infringement is considered an independent infringement. The Supplier may demand damages instead of the contractual penalty.

## § 15 Agent

These regulations shall apply mutatis mutandis if the contractual partner for us is an agent, which in turn delivers to the end customer. If we have not expressly authorized it in writing, we shall not be able to advertise with our name.

## § 16 Withdrawal

The purchaser has no right of withdrawal from distance sales (compare § 312g paragraph (1) in conjunction with § 355 BGB).

## § 17 Data Storage

According to § 33 BDSG, we point out that customer data is stored for our internal use and saved as delivery addresses for suppliers.

## § 18 Data Protection

According to § EU General Data Protection Regulation (GDPR) valid since May 25, 2018. (Details on request or see separate document; also for download on our website under the menu item Rights and under the heading: Privacy Policy.)

## § 19 Severability clause

Should a provision of this contract and / or the terms of the contract be or become invalid or unenforceable, the remaining provisions shall remain unaffected. In this case, the contract is to be implemented with a system which comes closest to the invalid or impracticable provision taking into account the economic purpose. This applies to any gaps which must be replaced by provisions which the parties had reasonably concluded, taking into account the intentions and objectives of this contract if they had been aware of the gap in the contract.

## § 20 Place of Performance and Jurisdiction

1. The place of performance and sole court of jurisdiction is the registered office of the company; in this case Neumünster.
2. Relations shall be governed exclusively by the law applicable in the Federal Republic of Germany.