

## General Terms and Conditions of Sale of SCM PC-Card GmbH

### 1. Scope of application

- 1.1 Our Terms and Conditions of Sale are valid exclusively and are the basis on which all our offers are made, all our goods are supplied and all our services are rendered; they also apply whenever we execute a delivery to a customer without reservation even though we are aware that the customer's terms and conditions conflict with or are different from our Terms and Conditions of Sale. We only recognize a customer's conflicting or different terms and conditions if we have agreed in writing that they shall apply.
- 1.2 All the agreements made between the customer and ourselves regarding the performance of this contract shall be recorded in this contract in writing.
- 1.3 Our Terms and Conditions of Sale only apply vis-à-vis merchants within the meaning of AGBG (Law Regulation General Terms and Conditions) Section 24.

### 2. Offer, Offer Documents

- 2.1 Our offers are always subject to confirmation. No contact comes about until we have confirmed the customer's order in writing.
- 2.2 We reserve the right to make technical alterations and amendments to the design in relation to descriptions and details in brochures, catalogues and other documents and to implement changes to the products in terms of their design, construction and materials, provided that these do not impair the products' proper functioning.
- 2.3 We reserve all rights of ownership and copyright in illustrations, drawings, calculations and other documents; they may only be made accessible to third parties if we have granted prior consent thereto in writing; this applies in particular to documents marked „confidential“.

### 3. Prices and terms of payment

- 3.1 Except where something different is indicated in the confirmation of the order, our prices are „ex warehouse“, excluding freight charges and packaging or, in the case of direct shipments from other countries, „ex German border“ or „c.i.f. German port of entry“, excluding freight charges and packaging, plus value-added tax at the statutory rate prevailing at the time concerned. We reserve the right to adjust our prices by an appropriate amount if reductions or increases in costs occur after the conclusion of the contract, especially on the basis of collective bargaining agreements or increases in the price of materials; we shall provide the client with evidence of such increases upon request. For new customers the amount of the first three orders has to be paid in advance.
- 3.2 Except where something different is indicated in the confirmation of the order, the purchase price becomes due for payment net (without any deductions) within 30 days from the date of the invoice. We are entitled to claim interest after the due date amounting 2% p.a. more than the discount rate of the German Federal Bank prevailing at the time concerned. If the client defaults in payment, we are entitled to claim interest on the arrears amounting to 5% p.a. more than the discount rate of the German Federal Bank prevailing at the time concerned.
- 3.3 The customer is only entitled to set off his counter-claims if they have become res judicata, if they are uncontested, or if they have been acknowledged by us. In addition, he is only entitled to exercise a right of retention if this counterclaim is based on the same contractual relationship.
- 3.4 If more than one invoice is open, payments can be credited, irrespective of any conflicting conditions of the customer's, towards discharging the oldest debt at the time concerned. If interest and costs also have to be paid, payments will be credited first to the costs, then to the interest and finally to the principal debt.
- 3.5 -we are entitled to execute deliveries only in return for advance payment if facts exist which give rise to the expectation that the customer's economic situation has deteriorated substantially since the conclusion of the contract, and especially if the customer does not settle debts outstanding with us, so that our claims to payment appear jeopardized. Furthermore, we can suspend further performances in this case until all the debts outstanding under the contractual relationship concerned or under contracts economically connected with it or from the customer's earlier orders have been paid, or until adequate security has been provided.

### 4. Shipment, delivery deadlines, passage of risk

- 4.1 Except where something different is indicated in the confirmation of the order, delivery is „ex warehouse“ or, in the case of direct shipments from other countries, „ex German border“ or „c.i.f. German port of entry“ We are free to choose the method of dispatch; the risk passes to the customer at the latest when the goods are handed over to the person charged with effecting the dispatch. If dispatch is delayed or rendered impossible for reasons beyond our control, the risk passes to the customer when we notify the customer that the goods are ready for dispatch. If the customer so desires, we shall have the delivery covered by Marine Insurance; the costs incurred in this respect shall be borne by the customer.
- 4.2 Transport packaging and all other forms of packaging within the meaning of the Packaging Ordinance will not be taken back, with the exception of pallets; the customer is obliged to arrange for the packaging to be disposed of at his own expense.
- 4.3 Part shipments are permissible and can be invoiced separately unless the customer is unable to make any meaningful economic use of them.
- 4.4 Times for performance and delivery deadlines are only binding if they have been agreed in writing. The commencement of this times for performance and delivery specified by us presupposes that all the technical issues have been settled. Times for performance and delivery deadlines shall be extended appropriately in the event of disturbances as a result of force majeure and other obstacles beyond our control wherever - as in the case of strikes, lock-outs, plant stoppages, disturbances in obtaining deliveries of our own, etc. - they have a considerable influence on our delivery of performance.
- 4.5 If we are in default with our delivery for reasons for which we are responsible, the customer is entitled to demand lumpsum compensation for the default, amounting to 0,5% of the value of the goods to be delivered for each complete week of default, up to a maximum of 5% of the value of the goods to be delivered.
- 4.6 If, once we are already in default, the client grants us an additional period of time of reasonable length, stating that he will refuse to accept any performance after that period has expired, he is entitled to repudiate the contract after the period has expired without result; claims for damages on the grounds of non-performance, up to the amount of the foreseeable loss, may only be asserted by the customer if the default is due to willful intent or gross negligence; in other cases, liability for damages is limited to 50% of the loss incurred.
- 4.7 The limitations on liability pursuant to Nos. 4.5 and 4.6 shall not apply if a commercial transaction where time is of the essence has been agreed; the same applies if the customer can demonstrate that interest in performance of the contract has disappeared because of a default for reasons for which we are responsible.
- 4.8 A condition for our complying with our delivery obligations is that the customer duly fulfills his obligations on time.
- 4.9 If the customer defaults in acceptance or if he infringes other obligations to cooperate, we shall be entitled to compensation for any loss we incur, including any additional expenditure. In this case, the risk of accidental loss or accidental deterioration of the goods sold shall pass to the customer at the time at which he defaults.

### 5. Reservation of title

- 5.1 We reserve title to the products supplied (reserved property) until all our claims to remuneration under this contractual relationship and all other outstanding claims under the current business relationship with the customer have been settled.
- 5.2 The customer is obliged to treat the reserved property with due care, and in particular to insure it at his own expense against damage through fire, water and theft.
- 5.3 Any combining, blending, processing or transforming of the reserved property is effected exclusively on our behalf; we acquire a co-owner's share of the finished product or new item in proportion to the ratio of the value of the reserved property to the value of the other, processed, items at the time of processing.
- 5.4 The customer is entitled, in the due and orderly course of business, to resell the reserved property or items of which we have a co-owner's share, subject to the reservation of title. By way of security, however, he hereby assigns to us, even at this stage, his future claims from passing on the reserved property up to the amount of the invoice value (including value-added tax) of the reserved property until all our claims specified in No. 5.1. have been paid in full; we hereby accept the assignment. If we only have a co-owner's share of the items sold, the claims are in each case assigned only up to the salable value of that share, though with priority over the other claims. Even after the assignment, the customer remains entitled the sum due; this shall not affect our entitlement to collect the sum due ourselves. At our request, the customer shall inform us of the names and

addresses of the purchasers concerned and of the nature and scope of his claims vis-à-vis those purchasers. We are entitled to disclose this assignment at any time in order to secure our claims to payment. The customer is not permitted to offer reserved property as a pledge or as a chattel mortgage.

- 5.5 In the event that third parties should levy execution on or otherwise attach the reserved property, the customer shall draw attention to the fact that it is our property and shall inform us in writing without delay. The customer shall bear all the costs of an action claiming title to the attached property and of other measures in connection with warding off such an attachment by a third party.
- 5.6 In the event of conduct on the part of the customer which is in breach of contract, especially in the case of default in payment, or if an application is filed for bankruptcy or composition proceedings to be instituted or if it can be expected that payments will be suspended, we can revoke the customer's entitlement to collect debts, and to resell, process, treat or combine reserved property, and can take the reserved property back at the customer's expense, or alternatively require that the customer's claims to return of the property vis-à-vis third parties be assigned to us. These rights shall remain in existence even if the claims secured have become statute-barred. If we take the reserved property back or levy execution on it, this shall not be deemed repudiation of the contract unless we have expressly declared in writing that this is the case. We shall be entitled to dispose of the reserved property and to pay ourselves off from the proceeds, setting off the proceeds against our open claims against the customer.
- 5.7 At the customer's request, we shall release collateral should its realizable value exceed the claims to be secured by more than 20%.
- 5.8 Where we are entitled to exercise the reservation of title, the customer grants us the irrevocable and unconditional right of access to his business premises and operational facilities during normal working hours for the purpose of collecting the reserved property.

## **6. Warranty**

- 6.1 We hereby warrant that, at the time of the passage of risk, products are free of manufacturing and material defects which would substantially reduce their value or fitness, and that they process any properties expressly warranted. We do not assume any guarantee that the products will be resaleable or that they will be suitable for a specific application. Technical data, specifications or quality descriptions issued by us do not constitute any warranty unless we have expressly confirmed them as such in writing.
- 6.2 The customer's warranty rights presuppose that he has, in a due and orderly fashion, performed his obligations under HGB (German Commercial Code) Sections 377, 378 to examine the goods purchased and to make a complaint in respect of a defect immediately upon receipt of the goods.
- 6.3 If the goods purchased are defective in a manner for which we are responsible, either the defect will be remedied, or the goods will be replaced, at our option. If the attempt to remedy the defect or to replace the goods is unsuccessful even within an additional period of time of reasonable length granted us in writing by the client, the customer is entitled to require either rescission of the contract or an appropriate reduction in the purchase price.
- 6.4 Work on remedying a defect will be performed, at our option, either at the customer's premises or at our company. If the customer insists that the defect be remedied on the spot, he will be invoiced for the additional costs incurred, on the basis of the rates charged for individual orders, as valid at the time concerned.
- 6.5 The warranty shall not apply if the customer or a third party alters or inexpertly installs, maintains or repairs the product supplied or exposes it to ambient conditions that do not comply with our installation requirements, unless the customer proves that these conditions are not the cause or the complained of. The same applies if the customer uses replacement or wear parts which do not correspond to the original specifications. The warranty shall likewise not apply if technical marks of origin are altered or removed.
- 6.6 If the examination of a defect complained of reveals that the problem is not covered by the warranty, the customer will be invoiced for the costs of the examination and/or repair at the rate we charge for individual orders, as valid at the time concerned.
- 6.7 The customer can only assign warranty rights with our prior written consent.
- 6.8 Except where No. 9 provides for something different, any more extensive rights on the part of the customer - whatever their legal basis - shall be excluded.
- 6.9 The warranty period is 12 months from the passage of risk. This period is a limitation period and also applies to claims to compensation for consequential losses caused by a defect, except where claims arising out of a tort are asserted.

## **7. Software**

- 7.1 Irrespective of any possibility of the objective copyright protection of software, it is agreed between the parties that the national and international copyright regulations shall be applied to our software provided under this contract.
- 7.2 We grant the customer a non-exclusive, personal right to use software and its documentation.
- 7.3 The software may only be copied for the purpose of archive storage, replacement or tracing faults. Copies must bear the same copyright notices as the original.
- 7.4 If we grant any right to use software (software license) which is needed to operate hardware (operating system software), said right may only be transferred to third parties with our prior consent; we shall not refuse consent without good cause. A software license for application software is not transferable. Without our prior written consent, the customer may neither grant sub-licenses nor pass on the software to third parties.

## **8. Industrial property rights**

- 8.1 We shall defend the customer, at our expense, all claims derived against the customer under any alleged infringement of German industrial property rights (patents, patent applications, copyright, trade mark, rights to masks and semiconductor topographies, etc.) by products supplied or licensed in accordance with these Terms and Conditions, and shall reimburse the customer for all the costs and damages imposed in a final and non-appealable manner, provided that the customer informs us in writing without delay that such claims have been asserted, provides us with all the information we need, affords any other assistance that we may reasonably require, and reserves to us the sole decision as to whether the claim is to be defended or settled.
- 8.2 In the same way, the customer shall defend us if any claims are asserted against us on the basis of any alleged infringement of industrial property rights as a result of our complying with the customer's instructions or performing product modifications or systems integration on his behalf.
- 8.3 In the event of the infringement of an industrial property right, we shall, at our own discretion and at our own expense, reach an agreement with the proprietor of the industrial property right to enable the customer to continue using the product, or we shall alter or replace the product concerned in such a way that no industrial property rights of third parties are infringed any longer and the specifications agreed are still met, or we shall take back the product, returning the purchase price, less a reasonable utilization fee for the time during which the product has been at the customer's. No other claims shall exist.
- 8.4 We shall not be liable for the infringement of industrial property rights if it is the result of using a product supplied by us in combination with products not supplied by us or altering the product supplied by us in a manner not authorized by us or of using a product supplied by us in a manner not intended.

## **9. Liability**

- 9.1 We have unlimited liability for losses - whatever their legal basis - caused by willful intent or gross negligence or due to the absence of a property warranted by us, or where the Law on Strict Product Liability prescribes peremptory liability.
- 9.2 Apart from that, except where No. 9.1 provides for something different, we are only liable for the culpable infringement of substantial contractual obligations up to a maximum overall total of DM 2.000.000 (two million DM) for personal injury and damage to property and up to DM 200.000 (two hundred thousand DM) for other losses.
- 9.3 Except where No. 9.1 provides for something different, we shall not be liable for loss of profit, consequential harm caused by a defect and other indirect losses, for slight negligence and for losses whose occurrence could typically not have been foreseen at the time on the conclusion of the contract.
- 9.4 Except where Nos. 9.1 - 9.3 provide for something different, all liability on our part is excluded - whatever the legal basis.

## **10. Export/re-export**

- 10.1 Products (hardware, software) which are subject matter of this contract may be subject to German, American or other national export control regulations. The customer undertakes to observe these control regulations in the event of exporting/re-exporting products or technical data which he has obtained from us; this also applies to products which he has manufactured on the basis of said technical data. We are entitled to refuse to implement this contract if the abovementioned control regulations would be infringed as a result.

## **11. Miscellaneous**

- 11.1 This contract replaces any and all earlier agreements between the parties regarding the same subject matter. Supplements and amendments to this contract must be in writing in order to be valid; this also applies to any waiver of this requirement of written form.
- 11.2 If any provision of this contract is invalid, this shall not affect the validity of other contractual provisions. In this case and in the event that this contract should contain loopholes in need of regulation, the contracting parties shall supplement the contract in such a way that the economic purpose which forms the basis of this contract is achieved as closely as possible.
- 11.3 The non-exercise of a right in accordance with these provisions does not mean that we waive the possibility of asserting that right in future.
- 11.4 This contract shall be subject exclusively to the law of the Federal Republic of Germany; the UN Uniform Law on the Sale of Goods (Convention on Contracts for the International Sale of Goods of 11th April, 1980, UNCITRAL Law on the Sale of Goods) is excluded.

If the customer is a merchant who has been entered in the Commercial Register, a public-law entity or a separate fund under public law, Munich is agreed as the legal venue for all disputes arising from or in connection with this contract - subject to any different exclusive legal venue. Either contracting party, however, remains entitled to file an action or institute other legal proceedings at the place where the other contracting party has its registered offices or general legal venue.