



## General business terms and conditions of SMART Technologies ID GmbH

### §1 Scope

All current and future deliveries and services of SMART Technologies ID GmbH are provided exclusively on the basis of these General Terms and Conditions. Deviating terms and conditions of the contractual partner shall only apply in the event of express written confirmation by SMART Technologies ID GmbH.

### §2 Conclusion of contract

Quotations from SMART Technologies ID GmbH are subject to change and subject to correct and timely delivery to SMART Technologies ID GmbH. Orders placed by the customer contain binding offers which SMART Technologies ID GmbH accepts either by sending a written order confirmation or by sending the ordered goods at the final price invoiced.

Verbal information, product descriptions, performance specifications, etc. do not constitute a guarantee or agreement on quality unless they are expressly confirmed by SMART Technologies ID GmbH as "binding". Minor deviations of the goods from product specifications shall be deemed to be approved, provided that this is not unreasonable for the customer.

### §3

All prices quoted by SMART Technologies ID GmbH, including those in the order confirmation, are subject to change. SMART Technologies ID GmbH reserves the right to increase prices in the event of an increase in procurement costs or other costs relevant to the purchase price.



#### §4 Delivery, Transfer of Risk, Partial Services, Product Return, RMA Procedure

Unless otherwise agreed, all deliveries by SMART Technologies ID GmbH shall be insured and all transport costs shall be paid by the customer in addition to the purchase price.

Subject to any other rights of SMART Technologies ID GmbH, delivery to the customer shall take place when the goods are handed over to the carrier and the risk shall pass at that time. The choice of the carrier and the transport route shall be made by SMART Technologies ID GmbH, unless specified by the customer. SMART Technologies ID GmbH will make every effort to take account of the delivery date requested by the customer as far as possible when initiating the shipment and the delivery date. SMART Technologies ID GmbH is entitled to make partial deliveries. The delivery of a smaller quantity than ordered does not exempt the buyer from the obligation to accept and to pay for them. Delay in delivery of a partial delivery does not entitle the customer to cancel other partial deliveries. Orders for standard goods ("standard products") may not be modified, reversed or postponed with regard to the delivery date without the consent of SMART Technologies ID GmbH; the granting of consent is at the discretion of SMART Technologies ID GmbH. SMART Technologies ID GmbH reserves the right to allocate sales of goods by its customers at its own discretion. Except as otherwise provided in these terms and conditions, orders for special, customized, value-added or other non-standard goods and services, including kits to be assembled for the customer and goods from manufacturers not on SMART Technologies ID GmbH's list of manufacturers, work in progress and other goods and services designated by SMART Technologies ID GmbH as "NCNR" or "Non-Cancellable" and "Non-Returnable" ("Special Products") cannot be cancelled and Special Products cannot be returned. Returns of goods shall be handled in accordance with the rules in place at SMART Technologies ID GmbH for this purpose (RMA-Procedure). Without that so-called RMA number (Return Material Authorization), previously issued by SMART Technologies ID GmbH, no goods will be accepted handled by SMART Technologies ID GmbH. The customer is responsible for ensuring that the returned goods are protected against transport damage and must pack them accordingly. Furthermore, the returned goods must be delivered carriage paid. If the goods are considered defective by the customer, a complete and detailed description of the defect must be enclosed with the return delivery. Goods that cannot be accepted by SMART Technologies ID GmbH on the basis of the above provisions shall be returned to the customer at the customer's expense.

#### §5 Delivery time

Subject to correct and timely delivery to us, delivery shall be made on the agreed dates. This also applies after order confirmations have been made. Delivery dates are deemed to have been met if the goods are handed over to the agreed or chosen carrier in time for them to reach the customer on time in the normal course of events. Notwithstanding the above, the customer is advised that delivery dates given by SMART Technologies ID GmbH are only estimates.

#### §6 Delivery disruptions, delay

Circumstances and events for which SMART Technologies ID GmbH is not responsible and which prevent or significantly impede delivery shall entitle SMART Technologies ID GmbH to postpone performance for the duration of their effect plus a reasonable start-up period. If the delay in delivery lasts more than four weeks, either party may withdraw from the contract in whole or in part. Delivery disruptions for which SMART Technologies ID GmbH is not responsible include, unless otherwise agreed, force majeure, natural disasters, acts or omissions of third parties or public, official or military authorities, changes in the law, shortage of materials, riots, war, terrorist attacks, transport delays as well as failure or disruption of the normal sources of supply for labour or materials. If a change in governmental or official import conditions prevents delivery, SMART Technologies ID GmbH is entitled to withdraw from the contract. In such a case, SMART Technologies ID GmbH will, at the customer's request, conclude a new contract with the customer adapted to the changed conditions. If SMART Technologies ID GmbH is in default, liability is governed by §10.

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## §7 Retention of title

The following securities are granted to SMART Technologies ID GmbH until all claims including all current account balance claims to which SMART Technologies ID GmbH is entitled against the customer now or in the future, irrespective of the legal grounds, have been satisfied: The goods remain the property of SMART Technologies ID GmbH. Processing or transformation shall always be carried out for SMART Technologies ID GmbH as manufacturer, but without any obligation for it. If the (co-)ownership of SMART Technologies ID GmbH expires as a result of combination, it is already agreed now that the customer's (co-)ownership of the uniform item passes to SMART Technologies ID GmbH in proportion to its value (invoice value). Goods in which SMART Technologies ID GmbH has (co-)ownership are hereinafter referred to as goods subject to retention of title. The customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business as long as the customer is not in default. The customer hereby assigns to SMART Technologies ID GmbH by way of security all claims arising from the resale or any other legal reason (insurance, tort) in lieu of the goods subject to retention of title (including all current account balance claims). SMART Technologies ID GmbH accepts this assignment. SMART Technologies ID GmbH revocably authorises the customer to collect the claims assigned to SMART Technologies ID GmbH for its account in its own name. This direct debit authorisation can only be revoked if the customer does not properly meet its payment obligations. In the event of access by third parties to the goods subject to retention of title, the customer shall point out the ownership of SMART Technologies ID GmbH and notify SMART Technologies ID GmbH without delay. If the customer acts in breach of contract - in particular if it is in default of payment - or if an application is made to open insolvency proceedings against its assets, SMART Technologies ID GmbH is entitled to take back the goods subject to retention of title or, if necessary, to demand assignment of the customer's claims for return against third parties. In this case the customer is obliged to provide SMART Technologies ID GmbH with the information necessary for the collection of the assigned claims and to hand over the relevant documents. If the value of the securities to which SMART Technologies ID GmbH is entitled hereunder release securities to this extent at its discretion at the customer's request.

## §8 Notice of defects, warranty

The customer is responsible for inspecting the goods in accordance with §377 of the German Commercial Code (HGB) and notifying any obvious defects/other deviations within 10 days of receipt of the delivery. If the goods are defective at the time of the transfer of risk and if a complaint is made in good time, SMART Technologies ID GmbH is only obliged to rectify the defect or to deliver defect-free goods at its own discretion. If SMART Technologies ID GmbH is not willing or able to do so within a reasonable period of time or if the subsequent performance fails for other reasons, the customer may, at its own discretion, withdraw from the contract or demand a price reduction. If the customer has suffered damage or incurred futile expenses due to defects in goods delivered by SMART Technologies ID GmbH, §10 applies. There is no warranty, inter alia, for (i) the suitability of the goods for a particular purpose, unless this was expressly agreed in writing, (ii) for defects that arose after the transfer of risk, e.g. due to faulty operation (non-compliance with the given specifications of use) or conditions), damage or other external influences, (iii) in the event of delayed notification of defects (iv) to persons other than the customer.

## §9 Warranty period

Warranty claims shall become statute-barred within a period of 12 months. The limitation period begins with the delivery to the customer or with the occurrence of a delay in acceptance by the customer. If the manufacturers of the goods assume a warranty for a longer period, SMART Technologies ID GmbH shall transfer this to the customer upon corresponding request, provided the manufacturer agrees.

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## §10 Liability

SMART Technologies ID GmbH shall be liable in the event of intent or gross negligence on the part of its legal representatives, employees and vicarious agents. Otherwise, the liability of SMART Technologies ID GmbH, irrespective of the legal grounds (including e.g. impossibility, culpa in contrahendo, positive breach of contract, warranty, tort) is excluded. This exclusion of liability does not apply

- in the case of claims for injury to life, limb or health;
- in the case of claims under the Product Liability Act;
- in the event of breach of a written guarantee, with regard to the damage from which the guarantee is intended to protect;
- in the event of a breach of a material contractual obligation;
- in the event of delay in delivery.

In the event of a breach of a material contractual obligation and in the event of a delay in delivery, the liability of SMART Technologies ID GmbH for simple negligence shall be limited on the merits to foreseeable and direct damage and in terms of amount to a maximum of €50,000, unless a higher liability framework has been agreed in individual cases. In these cases SMART Technologies ID GmbH shall in particular not be liable for loss of profit of the customer or for unforeseeable indirect consequential damages. The limitations of liability pursuant to the two preceding sentences shall also apply if damage is due to gross negligence or intent on the part of an employee or agent who is not one of the executive employees of SMART Technologies ID GmbH or one of the legal representatives of its general partner.

## §11 Terms of payment, set-off/retention, default in payment

All invoices of SMART Technologies ID GmbH are to be paid within the agreed payment terms of, if nothing has been agreed, to be paid immediately net without any deductions. If the initial credit check of the customer has not yet been completed, if the customer is in default of payment to SMART Technologies ID GmbH's reasonable discretion, doubts arise as to the customer's ability or willingness to pay for other reasons, SMART Technologies ID GmbH is entitled to carry out the agreed or future deliveries against cash on delivery or advance payment. If the customer does not pay cash on delivery, SMART Technologies ID GmbH may - without prejudice to other rights - sell the goods elsewhere for the account of the customer or for its own account and charge the customer the difference between the purchase price agreed with the customer and the purchase price obtained through the distress sale. The customer has no right of retention or set-off against the due payment claim of SMART Technologies ID GmbH, unless the counterclaim is undisputed or has been finally adjudicated. If the customer is in arrears with payment, SMART Technologies ID GmbH may demand interest on arrears in accordance with §288 para. 2 BGB. Further rights in the event of default of payment by the customer remain unaffected.



#### §12 Restrictions on use, exemption

The goods sold by SMART Technologies ID GmbH are intended only for the purposes intended by the respective manufacturer. These regularly do not include the use of the products in life-support or life-sustaining systems, in connection with nuclear material or for other purposes in which a failure of the product could reasonably be expected to result in injury to life, limb or health or in extraordinarily high financial losses. In the event that the customer uses or resells products purchased and/or programmed by SMART Technologies ID GmbH in such contexts notwithstanding the foregoing, such use shall be at the customer's own risk and sole responsibility. The customer fully indemnifies and holds SMART Technologies ID GmbH and the respective manufacturer harmless against any liability arising from the use of goods in such contexts upon first request, including the costs of reasonable legal defence.

#### §13 Industrial property rights

Where a Supply includes software or other intellectual property, such software or other intellectual property is granted to the Customer on the terms of the copyright and use licence, the terms of which are set out in the licence agreement accompanying the software or other intellectual property. These Terms do not grant any rights or licence to use such software or other intellectual property in any manner or for any purpose not expressly permitted by the Licence Agreement.

#### §14 Resale/export control

All goods delivered by SMART Technologies ID GmbH are intended to remain in the country of delivery agreed with the customer. The resale or other use of the goods and the technology and documentation associated with them are subject to the export control regulations (laws, regulations, directives, decisions, administrative acts) of the United States of America, the home countries of the contracting parties and the European Union and may also be subject to the export and/or import regulations of other countries. It is the customer's responsibility to inform himself about these regulations, to observe them and to apply for and obtain the corresponding export, re-export or import permits himself.

#### §15 Place of Performance, Jurisdiction, Miscellaneous

All obligations arising from the business relationship with SMART Technologies ID GmbH are to be fulfilled at the registered office of the respective operating facility that executes the order. The place of jurisdiction for all disputes between SMART Technologies ID GmbH and the customer, also in connection with claims arising from bills of exchange and cheques, is Kleve. The law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. If individual provisions of these General Terms and Conditions of Delivery or a provision within the scope of other agreements with the customer should be or become invalid, this shall not affect the validity of all other provisions or agreements. The contracting parties undertake to replace any invalid contractual provisions by such agreements whose content comes as close as possible to the economic purpose pursued by the respective invalid clause. Personal data arising in the course of the business relationship shall be stored and processed by SMART Technologies, insofar as necessary for business purposes, in compliance with the statutory provisions.

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## § 16 Confidentiality

The customer undertakes to treat as confidential all technical and commercial information relating to the goods and other information including technical and commercial business secrets which are either marked as confidential or must be regarded as confidential due to the circumstances under which they were provided or became known to the purchaser (hereinafter collectively referred to as "Know-How") and not to disclose or make them available to third parties, in particular competitors of SMART Technologies ID GmbH. The Client shall take all appropriate and necessary measures to protect the Know-How from unlawful investigation, transfer, distribution and use. The customer shall only make the know-how available to those of its employees or vicarious agents who work with the goods and require the know-how for this work. Before making the Know-How available to its employees or vicarious agents, the Customer shall inform them that the Know-How is to be treated confidentially and with the same care as proprietary Know-How and shall oblige them to maintain confidentiality in at least the same manner and to the same extent as provided for in this clause § 16.

This confidentiality obligation shall not apply to any information which

- was demonstrably already known to the customer by way of written documents, documentation or other evidence at the time it was made available to the customer by SMART Technologies ID GmbH, without this knowledge being based on a breach of confidentiality obligations, or
- were publicly accessible without the customer having any influence, or
- were provided to the client without an obligation of confidentiality by a third party who did not receive this information directly or indirectly from SMART Technologies ID GmbH.

SMART Technologies ID GmbH reserves all rights to the know-how.

This obligation to maintain secrecy shall remain in force even if the contractual obligations between the client and SMART Technologies ID GmbH have been fulfilled.

The client agrees to protect SMART Technologies ID GmbH and its business and agrees that the payment of damages would only inappropriately compensate for a breach of the confidentiality obligations under this clause. Furthermore, the Customer accepts and acknowledges that any actual or threatened breach of these confidentiality obligations would cause irreparable damage to SMART Technologies ID GmbH and that SMART Technologies ID GmbH is therefore entitled, in addition to all statutory and other claims, to obtain an injunction against the actual, threatened or continuing breach of this confidentiality obligation if SMART Technologies ID GmbH can demonstrate that damage may result from the breach, but without SMART Technologies ID GmbH being obliged to prove actual damage.

## § 17 Data protection notice

The customer is advised that personal data will be processed by us in accordance with our data protection declaration. The current version of the data protection declaration is available at <https://www.smart-technologies.eu/en/data-privacy>.

## § 18 Interpretation

- The headings are for convenience only
- When the term "including" is used in these Terms means "including but not limited to".
- In the event of any discrepancy as to the meaning or interpretation of a word, phrases or part of a phrase, the German version shall prevail.