

## GERMANY TERMS AND CONDITIONS OF SALE (02/2023)

### 1. DEFINITIONS

In these Conditions:-

(a) "Company" means **Smiths Detection Germany GmbH**, Im Herzen 4, 65205 Wiesbaden, Germany.

(b) "Goods" means any movable item of whatsoever nature which is sold by the Company to the Purchaser.

(c) "ICC Incoterms" means the International Chamber of Commerce's Incoterms published in 2010 and "Ex Works" and "FCA" shall have the meanings given them by ICC Incoterms 2010.

(d) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations.

(e) "Operator" means the operator or user of Goods.

(f) "Contract" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Goods or Works, referencing these Terms and Conditions of Sale.

(g) "Purchaser" means the company, public law entity or sole proprietor who has bought, or agreed to buy, the Goods and/or Works.

(h) "Quotation" means the quotation addressed to the Purchaser by the Company.

(i) "Works" means all works, including maintenance and installation services, provided under the Contract.

### 2. GENERAL

(a) The Company shall supply all Goods and perform all Works subject to these Terms and Conditions to the exclusion of any provisions deviating from or complementing these Terms and Conditions, in particular any conditions contained in any other document issued or referred to by the Purchaser, unless otherwise specifically agreed by the Company in writing. These Terms and Conditions shall also apply to all future supplies of Goods or performance of Works by the Company.

(b) These Terms and Conditions shall only apply in relation to entrepreneurs ("Unternehmer") in the meaning of Section 14 of the German Civil Code ("Bürgerliches Gesetzbuch", BGB), public law entities and public law separate estates as defined by § 310 par. 1 BGB.

(c) Unless otherwise stated in writing, all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only, unless a specific purpose of the Goods or Works expressly agreed in writing requires exactness of such statements. The Company may at any time make any changes to the Goods or Works as far as such changes are required to conform with any applicable safety or other statutory or regulatory requirements and do not materially affect their quality or performance, or if they provide for improvement of the Goods or Works only.

(d) The Company warrants only that the Goods or Works meet or demonstrate those performance standards or characteristics which are specifically attributed to them in the specifications made available by the Company to the Purchaser. The Company gives no warranty that the Goods or Works will be suitable for any particular use to which the Purchaser may put them.

(e) Side agreements made orally shall not be binding unless specifically labelled binding or confirmed in writing. Only managing directors or procurists of the Company shall be entitled to make oral agreements deviating from the terms of these Conditions.

(f) Amendments to Contracts, including deviations from these Terms and Conditions, shall be made in writing. Contracts, amendments to Contracts and individual agreements shall be read and construed as fixed in writing or as confirmed in writing by the Company. Any notices or declarations by the Purchaser under the Contract shall be made in writing.

### 3. QUOTATIONS, PRICE, SET-OFF

(a) All Quotations by the Company shall be without a legal obligation, unless they have expressly been labelled binding offer or set a specific deadline for acceptance. The Company may accept orders and offers within 14 days following receipt.

(b) Unless otherwise agreed in writing the price for the Goods in respect of:  
- (i) Contracts for delivery within Germany is Ex Works Company's Designated Facility (Incoterms 2010) including the cost of basic packaging but excluding VAT and all applicable taxes and duties and  
- (ii) Contracts for delivery outside Germany is FCA Company's Designated Facility (Incoterms 2010)..

(c) The cost of any special packaging requested by the Purchaser shall be determined at the date of invoice and shall be payable by the Purchaser.

(d) The Company may adjust prices in line with an increase of its list prices if delivery is owed no sooner than four months after conclusion of the Contract.

(e) The Purchaser shall not be entitled to set-off against claims of the Company unless the counterclaim of the Purchaser is undisputed or has been awarded by a judgment which is no longer subject to an appeal. The

same applies to counterclaims because of which the Purchaser avails itself of a right to withhold payment. Such counterclaims shall give rise to a withholding right only if they have their origin in the same Contract. In an ongoing business relation, every order shall give rise to a new Contract.

### 4. PAYMENT

(a) The Purchaser shall, except where other payment arrangements have been agreed in writing, make full payment for the Goods or Works not later than 30 days after the date of the invoice relating thereto. Payments shall be made in EURO. If the price becomes due, interest of 5 % per year shall accrue, unless the Purchaser is in delay of payment. If payment for the Goods or Works is not made within that period, Purchaser shall be in payment default even without an additional reminder. In case of delay of payment, consequences provided under statutory law shall apply. The lump sum pursuant to § 288 par. 5 BGB shall not be credited against other damages for delay of payment.

(b) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to withhold delivery of any further consignment of Goods or performance of Works under the same Contract or goods or works under any other contract with the Purchaser.

(c) The defence of insecurity under § 321 BGB shall not be affected.

### 5. TRANSFER OF PROPERTY AND RISK

Risk and property to the Goods shall transfer Ex-Works Company's Designated Facility (INCOTERMS 2010) for deliveries within Germany and for shipments to places outside of Germany FCA Company's Designated Facility (INCOTERMS 2010).

### 6. DELIVERY

(a) Unless otherwise agreed in writing, within Germany, all deliveries of Goods made by the Company shall be Ex-Works Company's Designated Facility (INCOTERMS 2010). Notwithstanding the foregoing, all shipments to places outside of Germany shall be FCA Company's Designated Facility (INCOTERMS 2010).

(b) Unless otherwise stated in writing, any time or date for the delivery shall not be binding. All deliveries shall be subject to the Company's being supplied itself in a correct and timely manner. The Company shall not be in delay of delivery unless a reminder has been received.

(c) Delivery and the Purchaser's acceptance of the Goods shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms.

(d) The Company shall be entitled to make partial deliveries by instalments in particular if the Purchaser can make use of such partial deliveries and they do not cause substantial additional expenses. Where the Company has agreed to be responsible for delivery of the Goods to the Customer, it may determine the route and manner of delivery of the Goods and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable.

(e) Where delivery of the Goods is made in instalments, each instalment shall be construed as constituting a separate Contract to which all the provisions of these conditions shall apply with any necessary alterations.

### 7. WARRANTY FOR DEFECTS

(a) Warranty rights ("Gewährleistungsrechte") of the Purchaser shall be subject to the condition that the Purchaser has fully complied with its obligations for examination and notice of defects according to Section 377 German Commercial Code ("Handelsgesetzbuch"). The Purchaser shall notify the Company of apparent defects in writing without undue delay. In case of non-apparent defects, the Purchaser shall notify the Company in writing without undue delay after a defect has been detected.

(b) The Company warrants the Goods or Works supplied by it against defective materials or defective workmanship for a period of twelve (12) months from the date of delivery or acceptance of Works or installation. The Company further warrants that the Goods are conform to the specifications described in condition 2 (d) above at the time of delivery or acceptance. The limitation periods under §§ 438 par. 1 No. 2, and 634a par. 1 No. 2 BGB shall not be affected.

(c) Under this warranty, the Company shall be required only to rectify any defect by repair or replacement; the Company may choose between these in its reasonable discretion. If Goods have been installed into other systems, rectification shall not comprise removal of defective and installation of replacement or repaired Goods. Any parts so repaired or replaced free of charge under this warranty will be subject to a warranty on the same terms as this warranty for the remaining initial warranty period. The Company may require that Goods notified to be defective be returned freight prepaid to its Designated Facility. If the Goods are actually defective, the Company shall reimburse to the Purchaser the costs for the cheapest way of shipment; this shall not apply if costs have increased because the Goods have been relocated to a place different from the place for their intended use.

(d) If rectification fails, is unduly delayed or refused, Purchaser shall be entitled to reduce the purchase price or to rescind the Contract. Claims for damages shall be subject to condition 8 below. The remedies provided in this condition 7 shall be the Purchaser's sole warranty rights. All further remedies are hereby excluded.

(e) No claim will be met by the Company under this warranty arising out of fair wear and tear or if the defects arises because the Goods have been incorrectly fitted, misused, kept in storage or immobilised for one year or more, subjected to neglect or abnormal conditions or involved in any accident or because any attempt to repair, replacement or modification has been made without the sanction of the Company or because they have been in any way dealt with contrary to any instructions issued by the Company.

(f) Used goods shall be sold without any warranty, subject to Condition 8.

(g) The Company may decline to honour warranty rights under this Condition if the Purchaser has failed to pay a portion of the price which is proportionate to the scope and nature of the defect when such price becomes due.

## 8. LIMITATION OF LIABILITY

(a) The Purchaser acknowledges that:

- (i) The Goods are intended to be used as security screening equipment, in order to assist in the detection of illegal and/or hazardous materials;  
- (ii) The degree of success with which the Goods will fulfil their intended use is dependent on numerous factors, including without limitation the sophistication of efforts to conceal illegal and/or hazardous materials, the chemical identity and quantity of such materials, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions; and  
- (iii) No security screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Goods are capable of detecting, or that they will detect, all illegal and/or hazardous materials (this being the case whether the Goods are operated with or without Operator supervision, and regardless of the degree of diligence with which services of the Company, if any, are or have been performed).

(b) The Company shall be liable for intentional or grossly negligent misconduct according to statutory law.

(c) In cases of slight negligence ("einfacher Fahrlässigkeit"), irrespective of the legal basis, the Company shall only be liable to the extent it has violated an obligation which to honour is essential for the purpose of the Contract, and which the Purchaser may typically rely upon that it is fulfilled. In such cases, the Company shall only be liable for direct damages caused by the misconduct which were foreseeable when the Company concluded the Contract. Such damages shall be time-barred one year after limitations have started according to statutory law.

(d) The limitations of liability under the precedent paragraph shall not apply in case of harm to life, body or health, liability under the German Product Liability Act ("Produkthaftungsgesetz") or equivalent legislation, and to the extent the Company has assumed a guarantee.

## 9. INDEMNITY

To the fullest extent permitted by applicable law, the Purchaser shall indemnify the Company and its affiliates from and against any and all Losses and threatened Losses arising out of or in connection with: (i) any claim made against the Company by a third party arising out of or in connection with the provision of Services or the supply of the Goods, to the extent that such a claim arises out of the breach of contract, breach of statutory duty, negligence, or failure or delay in performance by Purchaser, its employees, agents or subcontractors or (ii) any claim made against the Company by a third party for death, personal injury or damage to property arising from the Purchaser's use and/or operation of the Goods.

## 10. EXPORT AND IMPORT CONTROLS

(a) When the export of the Goods or performance of the Works is subject to export control provisions and the Company is aware that Purchaser intends to export the Goods, the Company may withhold performance unless an export licence has been granted. Applications for export licences will be made by the Company only when the Company has agreed to take care of the shipment.

(b) Purchaser acknowledges and agrees that the ultimate destination of Goods, Works, software, technology ("Products") sold hereunder is in country where the Company is located, unless otherwise stated in writing. Purchaser shall not authorize or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to transfer, export, re-export, or import any of the Products to any person without complying with applicable export, import, and economic sanctions laws and regulations of the country where the Company is located, the United States, the European Union, or any other applicable jurisdictions. Purchaser agrees to notify the Company immediately if Purchaser or the end-user (if not the Purchaser and known) is specifically or otherwise effectively listed on any relevant government restricted or prohibited parties lists, including the Denied Persons List, Entity List, Sectoral Sanctions Identifications List, or Specially Designated Nationals List, or if the export privileges of Purchaser or any relevant third party whom Purchaser will involve in this transaction (including its customer, if applicable), are otherwise denied, suspended or revoked in whole or in part by any relevant government authority. Purchaser shall ensure that the Products are not used in relation to chemical, biological or nuclear weapons, or missiles capable of delivering such weapons. Purchaser shall indemnify the Company against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Purchaser breach of this clause.

## 11. INTELLECTUAL PROPERTY RIGHTS

(a) In the event of any claim being made or action being brought or threatened in respect of infringement of patents, copyright, trade marks, trade names, registered designs or any other intellectual property rights in respect of the Goods or Works the Purchaser will make no admission in respect thereof and will notify the Company thereof forthwith. The Company shall be entitled to conduct all negotiations and take all necessary proceedings to dispute the same in its own name and in the name

of the Purchaser and the conduct of all proceedings and negotiations shall be completely at the discretion of the Company. In such event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company shall require. The Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought or threatened as a result of work done in relation to the Goods or Works by the Company in accordance with the Purchaser's specification or by the use to which the Goods are put by the Purchaser.

(b) To the extent the Goods or the Works infringe intellectual property rights of a third party, the Company may, at its reasonable discretion, rectify by either amending or modifying the Goods or Works so the infringements is ceased without affecting compliance of the Goods or Works with Condition 2 (c) and (d), or procuring a license for the Purchaser. Condition 7 shall apply *mutatis mutandis*.

## 12. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract Works or any part thereof, without prejudice to its liability to the Purchaser for fulfilment of its obligations under the Contract.

## 13. SALES BY THE PURCHASER

The Purchaser undertakes to the Company that in respect of any sales of the Goods the Purchaser shall:-

(a) comply with all applicable public law and regulatory rules, including but not limited to export control laws, regulations and orders; and

(b) indemnify the Company against all costs, expenses, loss or damage incurred by the Company as a result of any breach by the Purchaser or any of its employees, agents or representatives of any of the provisions of this Condition.

## 14. CONFIDENTIALITY

(a) The Company reserves any and all rights in pictures, drawings, calculations and further documents. This also applies to such documents that are marked as "confidential". Such documents may be handed over to third parties only upon the prior written consent of the Company. The Purchaser shall return objects and documents in the meaning of this paragraph to the Company upon request and shall destroy all copies when they are no longer needed in due course of business or when negotiations do not result in conclusion of a Contract.

(b) Updates, repairs, replacements, fixes, modifications, and other changes to the Goods or Works shall be considered the Company's proprietary information. Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company. Purchaser shall preserve the confidential nature of the confidential information.

## 15. PROPER LAW AND JURISDICTION OF COURTS

(a) The Contract shall be governed by and construed in accordance with German law, to the exclusion of the UN-CISG. Place of performance for all obligations under the Contract shall be Company's Designated Facility.

(b) If the Purchaser is a merchant, a legal person under public law or special assets under public law, the courts at the Company's place of office shall have exclusive jurisdiction for all controversies arising under or related to the Contract. The Company may sue the Purchaser at his general venue, too.

(c) The precedent paragraph shall also apply if the Purchaser has no general venue within Germany, furthermore if the Purchaser has relocated his place of business outside Germany or if the place of business of the Purchaser is unknown at the time the proceedings are brought in Court.

## 16. FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage arising due to delay or non-performance of its obligations under this Agreement to the extent such delay or non-performance arise from any cause beyond the Company's reasonable control and which cause the Company cannot reasonably prevent or remove. The Company shall be permitted to suspend its obligations under the Order for the duration of such a force majeure event.

## 17. INSTALLATION OF THE GOODS

(a) Where the Company has agreed to install the Goods, the Purchaser shall at its own cost prepare the site on which the Goods are to be installed in accordance with the specifications furnished by the Company for this purpose and, in accordance with such specifications, provide such equipment (including without limitation, any equipment necessary to unload the Goods) and carry out such works to the site as may be necessary to enable the Company to install the Goods. If the Purchaser fails so to prepare the site and provide such equipment and carry out such works before the agreed delivery date the Purchaser shall indemnify the Company for all costs and charges incurred by the Company (including storage and transportation costs) as a result of such failure.

(b) When the Goods have been installed or Works have been performed and the Company has requested the Purchaser to declare acceptance, the Purchaser shall be deemed to have accepted the Goods or Works if the Purchaser fails to accept the Goods or Works within 7 days, unless for serious defects, or if the Purchaser starts to use the Goods or Works.

## 18. SOFTWARE

(a) To the extent the Goods or Works contain or are software, the Company reserves all and any rights in such software, except for the rights provided under the Contract, this paragraph or §§ 69d and 69e of the German Copyrights Act ("Urheberrechtsgesetz", UrRG). It may produce safety copies as far as necessary to secure future use of the software. Safety copies must be stored safely and, to the extent technically possible, labelled as such and provided with the copyright mark of the Company. Purchaser shall not remove copyright marks, trademarks or other marks of the Company.

(b) The Purchaser may decompile software supplied by the Company only after having requested the Company and set a reasonable deadline, however, no shorter than two weeks, for providing information and documents necessary for establishing interoperability.

(c) Software may be transferred to a third party only completely. Upon such transfer, the Purchaser shall cease any use of that software and render to the transferee or destroy all copies of the software. It shall agree with the transferee compliance with lit. a above in relation to the Company. The Purchaser shall also give notice to the Company of the transfer without undue delay, detailing the name and address of the transferee.

## 19. CEIA METAL DETECTORS

If the Goods sold under these Conditions includes metal detectors manufactured by CEIA the following additional provision applies: To ensure proper operation of the unit, CEIA recommends that the unit be firmly anchored to the floor using screws or silicone. If the unit is not firmly anchored to the floor, it may fall and pose a safety risk and/or its detection capability may be compromised. If the Purchaser requests that the Company not install the unit in accordance with CEIA's recommendations, COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS, COSTS, LOSSES, LIABILITIES AND DAMAGES OF ANY SORT (WHETHER DIRECT, INDIRECT, AND IRRESPECTIVE OF THE LEGAL BASIS) RELATING TO THE LACK OF FIRM FIXATION OF THE CEIA UNIT TO THE FLOOR. The Purchaser shall indemnify and hold the Company harmless from and against any and all actual or threatened Losses resulting from the lack of firm fixation of the CEIA unit to the floor.

## 20. X-RAY BODY SCANNER

(a) Purchaser is hereby notified that the exposure of human beings to x-ray radiation may be harmful. Purchaser acknowledges that the safe operation of the Goods is entirely the Purchaser's responsibility and that the Company shall have no liability relating to the use or operation of the Goods by Purchaser or anybody acting on the Purchaser's behalf. Purchaser undertakes to exercise such care and to adopt and follow such procedures in the use and operation of the Goods as may be necessary to eliminate or minimize the hazards referred to in this section. Without limiting the generality of the foregoing, Purchaser undertakes to use the Goods in full compliance with Company's maintenance procedures and operator manuals, to comply with the requirements of all applicable environmental or occupational health and safety laws, radiation safety laws and industry standards relating to radiation safety for personnel security screening systems using x-rays, and to operate the Goods within the radiation dose limits established by such laws and standards.

(b) Purchaser is further notified that the use of x-ray Goods on human beings for non-medical purposes may be prohibited in some states or require registration with governmental authorities. Purchaser undertakes to comply with all such prohibitions and registration requirements.

(c) Purchaser covenants that the use and operation of the Goods by or on behalf of the Purchaser shall comply with all applicable privacy and data protection laws.

(d) The Purchaser shall defend, indemnify, and hold harmless Company and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns from and against any and all actual or threatened Losses to the extent they arise from any non-compliance with the undertakings in paragraphs (a) to (c).

## 21. COMPLIANCE AND ETHICS

Smiths is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully. To that end Smiths, maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Smiths expects that the Customer also will conduct its business ethically and lawfully. Smiths Code of Business Ethics is available at <https://www.smiths.com/who-we-are/responsible-business>.

## 22. DISPOSAL AND COMPLIANCE WITH WEEE REGULATIONS

(a) The Purchaser shall be responsible for and shall exclusively finance the cost of collection, delivery, treatment, recovery and environmentally sound disposal by an approved, authorised treatment facility of all WEEE arising or deriving from the Goods.

(b) The Purchaser shall comply with all additional obligations placed upon the Purchaser by the WEEE Regulations in respect of all WEEE referred to in this condition.

(c) The Purchaser shall provide to the Company and the Company's WEEE producers compliance scheme operator with such data, documents, information and other assistance as the Company and/or such scheme operator may from time to time reasonably require to enable the Company to comply with its obligations pursuant to the WEEE Regulations and such operator to satisfy the obligations assumed by it as a result of the Company's membership of the operator's compliance scheme.

(d) The Purchaser shall be responsible for all costs and expenses arising from and relating to its obligations in this Clause 22.

(e) The Purchaser agrees to indemnify and keep indemnified and hold harmless the Company and its compliance scheme operator from and against all costs and expenses which the Company or the compliance scheme operator incurs or suffers as a result of a direct or indirect breach or negligent performance or failure in performance by the Purchaser of its obligations in this Clause 22.

(f) Further information in respect of the Company's arrangements for WEEE recycling (including information on removal of radioactive source materials and certification that the EEE is free from contamination) can be found at [http://www.smithsdetection.com/WEEE\\_compliance.php](http://www.smithsdetection.com/WEEE_compliance.php)