

**GENERAL TERMS AND CONDITIONS OF PURCHASE**  
**OF SIEMENS MOBILITY AUSTRIA GMBH**

Issued November 2021

**1. Scope**

These General Terms and Conditions of Purchase apply to all orders (supplies and services) of Siemens Mobility Austria GmbH and the companies linked to it as members of the same group (hereinafter referred to as 'Buyer' or 'SMO').

**2. Purchase Order, Written Form,**

- 2.1. (Purchase) Orders are issued exclusively in writing. Oral agreements are exclusively valid if confirmed in writing.
- 2.2. For amendments or supplements to an order Art. 2.1. applies correspondingly.
- 2.3. Written form according to these General Conditions is met if
  - (i) the requirements in § 886 ABGB are adhered to, or
  - (ii) the requirements in an existing EDI agreement are adhered to, or
  - (iii) a document with a handwritten signature is scanned and sent by e-mail, or
  - (iv) a document with an electronic signature (signature according to Art. 26 Regulation (EU) No 910/2014 (eIDAS-Regulation)) is sent by e-mail.

**3. Confirmation of order, Seller's General Terms and Conditions**

- 3.1. Upon confirmation of an order, these General Terms and Conditions of Purchase become part of the corresponding contract.
- 3.2. An order is accepted by the Seller's order confirmation. Art. 2 applies correspondingly with regard to the order confirmation.
- 3.3. SMO reserves the right to cancel an order unless it has received a proper order confirmation from the Seller within two weeks after the date of the order. Such cancellation is deemed on time if it is sent to the Seller before SMO receives the purchase order confirmation.
- 3.4. If the purchase order confirmation deviates from the order, the Seller shall clearly state any such deviation in the purchase order confirmation. SMO shall only be bound by such deviation if it has expressly accepted it according to Art. 2. An unconditional acceptance by SMO of the goods delivered by the Seller shall not be considered as acceptance of any such deviation.
- 3.5. Unless accepted by SMO according to Art. 2, the Seller's general terms and conditions, as well as any other provision in other documents of the Seller (such as but not limited to specifications, data sheets, technical documentation, advertising materials, order confirmations and/or shipping documents) regarding legal terms (e.g. liability, restriction of use, restriction of application and/or restriction of suitability) or any other provisions that change the provisions of these Conditions of Purchase, shall not become binding upon SMO. Any reference in the order to the Seller's quotation documents by SMO does not imply acceptance of the Seller's terms and conditions.
- 3.6. Unless expressly accepted by SMO in writing, any terms and/or licensing conditions of the Seller or any of its subcontractors (such as EULA) made available in paper or digital form together with the delivery of software products shall not be binding upon SMO. In particular, they do not apply if SMO or any third party attributable to SMO (e.g. employees, consultants, SMOs of SMO) commits an act that, pursuant to those terms and/or licensing conditions, constitutes a basis for the conclusion of a contract. They also do not apply if software registration cards are sent back to the Seller, or approvals are given which are conditional for use of the software products. The Seller shall ensure that according to the contracts with its subcontractors such behaviour does not lead to obligations of SMO or third parties who are attributable to SMO. If claims are asserted by the Seller's subcontractor, the Seller shall fully indemnify and hold harmless SMO and these third parties.

**4. Delivery Period, Consequences of Delay**

- 4.1. Unless expressly agreed otherwise, the period of delivery or performance shall commence on the day the order is issued by SMO. If no such period has been agreed, the Seller shall deliver goods and services without delay. For the timeliness of deliveries, the relevant point in time shall be the date of receipt at the place of destination specified by SMO. For the timeliness of deliveries involving erection or installation, the relevant point in time shall be the date of acceptance. When foreseeable delays in delivery occur, SMO shall be notified immediately, and its decision obtained. In that event, the period of delivery or performance shall be extended only if SMO has explicitly recognised such extension in writing.
- 4.2. SMO is entitled to charge a penalty of 0.5%, however, not more than 10% of the overall contract value for each commenced calendar day of delay in delivery. Such penalty is independent of the Seller's fault and any proof of damage. SMO reserves the right to claim damages exceeding the amount of the penalty. In the event of a delay, SMO is entitled to withdraw from the contract after expiry of a reasonable additional time-limit for delivery granted to the Seller. This applies even if SMO used to accept delayed partial deliveries without reservation before. In the case of a time-sensitive contract, SMO shall not be obliged to grant an additional time-limit for delivery.
- 4.3. When it can be foreseen that the Seller will fail to properly deliver or perform by the agreed date, the SMO shall be entitled to take all measures necessary to prevent an imminent delay in delivery / performance at the Seller's cost and risk.
- 4.4. If a delay in delivery or performance is caused by an omission or lack of assistance by SMO despite due written notification, the agreed delivery dates and periods shall be extended by not more than the number of days of delay caused by SMO. The Seller shall take accelerating measures. If the extension exceeds three months the Seller is entitled to claim additional costs.
- 4.5. In the case of early delivery, SMO reserves the right to charge the Seller any extra cost, e.g. warehouse and insurance costs, and to effect payment in accordance with the agreed delivery date. Until the agreed date, SMO shall only bear the responsibility of a depositary.

**5. Shipment, Delivery, Passing of Risk, Export Control, Subcontracting**

- 5.1. In the case of deliveries involving erection or installation and in the case of services, the risk passes upon acceptance; for deliveries not involving erection or installation the risk passes upon receipt by SMO at the place of destination/delivery according to Incoterms ® 2020. Unless agreed otherwise, DDP (named place of destination) Incoterms ® 2020 shall apply, if (a) the seat of the Seller and the named place of destination are within the same country or if (b) the seat of the Seller and the named place of destination are both within the European Union, whereby the discharge occurs at the Seller's risk and expense. If neither (a) nor (b) are fulfilled,

then DAP (named place of destination) Incoterms® 2020 shall apply, unless agreed otherwise. If in this case delivery to construction sites or directly to third parties is agreed, DAT (named place of destination) Incoterms® 2020 shall apply.

- 5.2. Partial as well as overdeliveries and underdeliveries are only permissible after obtaining SMO' express written approval. Goods are delivered to the goods receiving department of the place designated for delivery at the times agreed for the receipt of goods in the order. Each delivery shall be accompanied by a delivery note detailing, the net weight per item and the complete purchase order number.
  - 5.3. All requirements by SMO regarding mode of transportation, carrier and shipment rules must be strictly adhered to. Unless SMO has required a particular mode of transportation, goods must be dispatched at the lowest possible cost, failing which any adverse consequences and additional cost shall be borne by the Seller. Additional cost arising from the need to meet the delivery date by way of expedited shipment shall be borne by the Seller. Should agree payment instruments (e.g.letter of credit) and shipping documents, in particular purchase order data, be missing or incomplete, SMO shall be entitled to refuse acceptance at the Seller's cost and risk.
  - 5.4. Unless the freight costs are borne by the Seller, the usage of the SMO's Routing Order Tool is mandatory (<https://lvmmnet.SMO.at/transport/routing.asp>). If the Seller neglects to use the said Tool, SMO will not bear the freight costs.
  - 5.5. When providing goods and services, the Seller shall comply with all applicable export control, customs and foreign trade regulations (hereinafter referred to as "Foreign Trade Regulations") in relation to all Services to be provided and/or all Products to be delivered according to this Agreement. Supplier shall obtain all necessary export licenses pursuant to the applicable Foreign Trade Regulations.
  - 5.6. The Seller shall advise SMO in writing or per e-mail as early as possible but not later than the Delivery Date, of any information and data required by SMO (for each item on the purchase order confirmation, delivery note and invoice) to comply with all Foreign Trade Regulations for the Products and Services applicable in the countries of export and import as well as re-export in case of resale. In any case Supplier shall provide to SMO for each Product and Service:
    - the "Export Control Classification Number pursuant to the U.S. Commerce Control List (ECCN) if the Product is subject to the U.S. Export Administration Regulations; and
    - all applicable export list numbers; and
    - the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) Code.
    - the country of origin (non-preferential origin); and upon request of SMO, documents to prove the non-preferential origin; and upon request of SMO, documents to prove the non-preferential origin; and
    - the preferential country of origin, and, upon request of SMO, documents pursuant to the requirements of the applicable preferential law to prove the preferential origin (e.g supplier's declaration)
  - 5.7. In the case of any alterations to origin and/or characteristics of the products and services or the applicable Foreign Trade Regulations, the Seller shall update and communicate this Article 5.
  - 5.8. Direct supplies to SMO shall be made in neutral packaging and with shipping in writing or per e-mail to SMO's contact person who is stated in the order the Export Control and Foreign Trade Data as early as possible but not later than the Delivery Date. The Seller shall be liable for any expenses and/or damage incurred by SMO due to any breach of the obligations according to documents in the name and on behalf of SMO, where necessary. The Seller shall provide SMO with a copy of these delivery notes.
  - 5.9. Retention of title of whatsoever nature by the Seller is invalid.
  - 5.10. Where prices are quoted without packaging, packaging shall be charged at cost price and stated separately in the invoices. Unless otherwise agreed by the parties, the value of packaging material returned by SMO to the Seller for reuse shall be reimbursed by the Seller. The Seller is liable for any damage caused by improper packaging. When delivering hazardous goods, the Seller shall comply with all applicable statutory provisions, in particular those relating to the type and marking of packaging and to the means of transport to be used.
  - 5.11. For the performance of works and services under this contract the Contractor shall only use employees who are not listed in the relevant national, European, and US-American sanctions lists based on foreign trade legislation.
  - 5.12. The Seller must perform the works - except for the permissible involvement of already named vicarious agents - by himself. If the Seller intends to assign a third party (i.e.Subcontractor or vicarious agents) with performing parts of the services, such assignment must be approved in writing by SMO. The Seller must notify SMO in writing of any involvement of a further third party and provide all documents required to approve respective third party before such an assignment.
  - 5.13. The Seller undertakes to assign to SMO its warranty claims and claims for damages versus its subcontractors. The Seller undertakes to inform its subcontractors of this assignment in writing and provide SMO with a conformation. At SMO request the Seller provides SMO with all documents required to enforce assigned claims. This paragraph shall apply mutatis mutandis to the warranty claims and claims for damages versus the Sellers suppliers.
  - 5.14. The Seller undertakes to agree with its subcontractors or vicarious agents that SMO, in the event of a termination or cancelation, may take over the contracts between the Seller and its subcontractors regarding the works. At SMO request the Seller provides SMO with all relevant documents (including but not limited to contracts). This paragraph shall apply mutatis mutandis to the Sellers contracts with its suppliers.
- 6. Suspension, Cancellation**
- 6.1. SMO reserves the right to order the Seller to suspend the performance of the contract at any time. If the performance of the contract is suspended for more than three months, the Seller will have to prove to SMO in detail that it has incurred costs resulting from such suspension. However, SMO shall not be liable to the Seller for any loss of profits. The Seller may claim compensation only for such proven costs. The Seller may not claim compensation for any costs incurred during the first three months.
  - 6.2. SMO reserves the right to withdraw from the contract, in whole or in part, at its convenience. In such a case, the Seller is only entitled to charge SMO for the services proved to have been properly performed by the date of withdrawal, minus all possible gains and savings arising out of or relating to the withdrawal.
  - 6.3. SMO also reserves the right to vary the scope of supply or services. The Seller is entitled to a corresponding adjustment in the contract price.
  - 6.4. Unless binding provisions of the Austrian Insolvency Act (Insolvenzordnung) determine otherwise, SMO is entitled to rescind the contract as a whole or in part, without prejudice to procedural consequences, if insolvency proceedings are commenced against the Seller or if the Seller's ownership structure changes. The Seller is obliged to immediately inform SMO about any such circumstances.

## **7. Invoicing, set-off**

- 7.1. Invoices must indicate all purchase order details and be submitted to SMO immediately after delivery of goods or completion of services. Copy invoices must be marked as duplicates. Invoices shall be worded and structured to facilitate both their comparison with the order and their auditing. Each invoice must show the purchase order number and the purchase order data. Invoices relating to services and installation performed shall be accompanied by time records confirmed by SMO. Invoices relating to goods requiring export authorisations shall list all marking requirements fulfilled. If the Seller's main office is within the EU the seller must provide the VAT number not later than the invoice.
- 7.2. SMO reserves the right to return invoices which do not to comply with its requirements, in particular those regarding purchase order data or VAT rules, unprocessed. In such a case, invoices are considered as not submitted. Electronic invoices will only be accepted if forwarded to SMO via EDI.
- 7.3. The Seller is not entitled to set off claims it may have against SMO against claims SMO has against the Seller.

## **8. Terms of payment**

- 8.1. The period within which invoices must be paid commences with SMO' unconditional acceptance of delivered goods or services and upon receipt of the properly issued invoice. If the Seller is obliged to provide material tests, test records or quality control documents or any other documentation, deliveries and services will be regarded as fully performed only upon receipt of such documentation.
- 8.2. Unless otherwise agreed, payments are to be made within 60 days net or within 30 days less a discount of 3% at SMO' choice. SMO is entitled to withhold payment until identified defects are remedied. For the duration of the warranty period, SMO may withhold up to 10% of the contract value as an interest-free guarantee deposit. Payment shall not be considered as an acceptance that the goods or services were delivered in accordance with the contract, nor as a waiver of any rights on the part of SMO. The Seller bears bank charges incurred by the receiving bank. If, for any reason, an agreed security is not (or no longer) available, the Seller is obliged to provide SMO with an equivalent one.
- 8.3. SMO is entitled to set off claims of its affiliated companies against the Seller's claims.
- 8.4. **Obligation in case of change of bank account and consequences of breach of duty**
  - 8.4.1. In case the Seller changes the bank account indicated in the Contract, the Seller is obliged to immediately inform SMO thereof and to submit, at its own expense, to SMO a confirmation from the bank keeping the account regarding IBAN and BIC of the bank account as well as the Seller's ownership of this bank account ("**Bank Confirmation**"). Seller acknowledges that it is not possible for SMO to pay in particular for the services provided by the Seller, as long as SMO has not received such Bank Confirmation.
  - 8.4.2. Until receipt of the Bank Confirmation SMO has the right to suspend both the payment of services provided by the Seller as well as the completion of each and any further obligation to be fulfilled by SMO under the Contract. Such suspension does in no way discharge and release Seller from any obligations to which it is subject under this Contract. The payment deadline of 60 days agreed upon in the Contract shall only start to run upon receipt of the Bank Confirmation by SMO. In addition, the Seller undertakes to indemnify and hold SMO completely harmless at SMO's first demand against all claims and disadvantages related to the suspension of the Seller's obligations.

## **9. Acceptance, Notice of Defects, Liability for Defects, Product Liability, Product Safety, Intellectual Property Rights, Quality Assurance**

- 9.1. The mere receipt or temporary use of deliveries and services or payments made thereof do not constitute an acceptance or waiver of rights by SMO. Acknowledgements of receipt issued by the goods receiving department of SMO do not constitute a final acceptance by SMO of the goods delivered.
- 9.2. The goods are taken over (received) and checked as to their completeness and any visible defects within a reasonable time after their receipt. If random checks show that parts of a delivery do not comply with SMO' requirements or do not have the required marketable quality, SMO may reject the delivery as a whole. SMO shall notify the Seller of any defects detected as soon as possible. However, SMO is not obliged to notify defects pursuant to Sect. 377 of the Austrian Business Code (*Unternehmensgesetzbuch*).
- 9.3. The Seller is required to carry out an adequate inspection of the components it provides (e.g. raw materials, building materials) from upstream suppliers, producers and other third parties upon receipt in order to determine any apparent or hidden defects, and to notify the supplier of such defects without delay.
- 9.4. The Seller warrants to the Buyer that it will use best, appropriate and brand-new materials, manufacture the products adequately and in compliance with the underlying technical drawings, and that it will provide for their proper installation. The warranty period for supplies and services by the Seller is three years. The warranty period for products and services that become a fixed part of buildings or land is three years. After rectification of defects notified by SMO, the warranty period for the affected product begins to run afresh. The warranty period for deliveries begins with the erection or installation of the delivered products, for services with their acceptance, for deliveries not involving erection or installation with their delivery to the place of destination, for hidden defects with their identification. For deliveries to locations where SMO uses the Seller's goods to perform contracts outside its premises, the warranty period begins to run with the acceptance of the services to be rendered by SMO by SMO' SMO. This time-limit is deemed to be observed if SMO has asserted warranty claims against the Seller within the aforesaid periods in writing.
- 9.5. If engineering, advisory, software or documentation services or staff are provided by the Seller, the Seller fully guarantees the correctness and completeness of its information and instructions for a period of two years after their provision.
- 9.6. SMO may assert claims against the Seller pursuant to Sect. 933b ABGB (Austrian Civil Code), irrespective of whether the final SMO is a consumer or an entrepreneur. The Seller waives the objection of SMO' failure to assert warranty claims in a timely manner pursuant to Sect. 933b, para. 2 ABGB by SMO.
- 9.7. The Seller's subcontractors are regarded as its agents.
- 9.8. SMO may require the Seller either to immediately remedy defects identified within the above specified warranty periods at the Seller's expense at the place of destination or to provide defect-free goods or services within the set deadline. SMO is entitled to claim all costs incurred in connection with the rectification of defects, e.g. installation and removal costs. The Seller shall reimburse SMO for any inspection costs if an inspection has revealed defects. In the case of imminent danger, e.g. in order to avoid its own default, or if the Seller fails to rectify defects within a reasonable time, SMO shall be entitled to acquire defect-free products from third parties, without prior notification and without prejudice to its warranty claims against the Seller or to repair or have defective goods repaired at the Seller's expense. The Seller shall fully reimburse SMO the cost of such repairs, even if it exceeds the cost of repair by the Seller.

- 9.9. The Seller shall indemnify and hold SMO harmless against disputes arising from any patent, copyright, trademark or registered design, and guarantee SMO the unrestricted use of the delivered product. Without prejudice to other obligations, the Seller will indemnify and hold SMO harmless against any product liability claims raised by third parties against SMO as a result of defects in the products delivered by the Seller. The Seller undertakes to compensate SMO for costs incurred in connection with a defence against any such claim or in connection with an obligation to repair defective products. The Seller will provide SMO with ample proof that it has taken out adequate insurance to cover these risks.
- 9.10. For a period of 11 years after the last delivery, the Seller shall provide SMO upon the latter's request with the names of the respective manufacturers, importers, upstream suppliers without delay, not later however than two weeks after being requested to do so. Furthermore, the Seller will provide SMO immediately with appropriate evidence, such as production records and documents specifying production and delivery batches and/or the date of production and delivery to enable SMO to oppose product liability claims.
- 9.11. The regulations of Austrian law on liability apply.
- 9.12. Installations or products delivered by the Seller must have the required safety features and comply with the applicable safety standards (for installations or parts thereof in particular with those applicable at the place of destination). In any case, the current state of the art and technical rules shall be complied with. In particular, the relevant EU directives, the Austrian Electrical Engineering Act (*Elektrotechnikgesetz*) and any provisions based thereon (as amended) as well as ÖVE or VDE regulations in their currently applicable version, Austrian technical standards (ÖNORMEN), DIN standards, European standards and similar bodies of rules must be complied with. Installations, systems or products delivered by the Seller must bear the CE markings required under the relevant EC directives and Austrian legislation. Upon delivery, the Seller shall provide SMO with EC declarations of conformity with short technical descriptions as well as installation instructions and installation requirements, if required. In addition, the Seller shall inform SMO about changes in materials, manufacturing procedures, sub-supplier parts and EC declarations of conformity in a timely fashion. When delivering equipment designed to be assembled by SMO or a third party, the Seller shall provide SMO, to the extent necessary, with all documentation required by SMO, including assembly schedules, data sheets, installation instructions, processing instructions, storage, operation and maintenance instructions, lists of spare and non-consumable parts etc. Delivered products have to be marked in German and – upon SMO' request – in other languages as well. The operating requirements and instructions must be drawn up in duplicate in German and - upon SMO' request - also in other languages.
- 9.13. SMO reserves the right to demand proof of the Seller's quality control system and the Seller's documentation of the quality tests executed, and to carry out audits on the Seller's premises at any time. The Seller shall compensate SMO for the costs of the audit if defects in the quality control system or errors of the documentation of quality tests are detected in the course of the audit.
- 9.14. Before a necessary product warning the Seller will inform SMO immediately and directly in writing.

## 10. Material provided by SMO

- 10.1. Material provided by SMO remains SMO' property and is to be stored, labelled and managed separately free of charge. Upon SMO' request, the Seller shall confirm the receipt of material provided by SMO. The Seller may use such material only to execute orders from SMO. The Seller shall compensate SMO for a diminution in value or loss. Claims for damages arising from the delayed provision of such material as well as any right of retention of the Seller shall be excluded.

## 11. Special Conditions for Hardware and Software

- 11.1. Unless otherwise agreed in the order, hardware and software always constitute a single product.
- 11.2. . If the Seller is to deliver software that has not been developed individually for SMO, the Seller will grant SMO the non- exclusive right to use, transfer, utilize, distribute, copy, sublicense, edit and assign such software for the purpose of its intended and contractually agreed use. This right of use shall not be limited in duration in cases where the payment of a lump sum has been agreed for the use of such software. For software products which have been individually developed for SMO, the Seller grants SMO an exclusive and transferable exploitation right for all usage categories pursuant to the Austrian Copyrights Act (*Urheberrechtsgesetz*) that is unlimited in time and place and also excludes the Seller itself from using the software for any purpose. Unless otherwise agreed, the software shall be delivered together with the source code in its latest version. The Seller shall install the software and provide a data carrier which can be disclosed on SMO system both in source code and object code form together with the related documentation (contents and structure of the data carrier, programme and data flow charts, test procedures, test programmes, error processing, etc.). Apart from this documentation, the Seller shall provide SMO with comprehensive written user documentation in German language and/or in any language selected by SMO and in a sufficient number before acceptance
- 11.3. Software individually developed for SMO will be accepted explicitly in the form of a written acceptance protocol if it meets the agreed requirements specifications. Any repair to be performed by the Seller will be also included in the acceptance protocol. If SMO fails to accept delivery for four weeks after notification of readiness for acceptance by the Seller, or if SMO denies acceptance without justification, the software will be deemed accepted after it has been tested free of charge for at least four weeks and such testing has shown satisfactory results and produced no error messages. In case of doubt, the mentioned period shall commence with the commercial use of the software by SMO or by SMO' end SMO, whichever comes last.
- 11.4. The Seller undertakes to make available to SMO all subsequent programme versions in which errors have been eliminated (updates) free of charge within the warranty period. The Seller furthermore undertakes to offer SMO software maintenance at competitive market prices for at least five years from the date of acceptance. Within the warranty period, maintenance charges will be reduced accordingly.
- 11.5. The Seller shall inform SMO - at the latest at the time the order is confirmed - whether the products and services to be delivered contain open-source components. In the context of this provision "open-source components" means any software, hardware or other information that is provided royalty-free by the respective licensor to any user on the basis of a license with the right to modify and/or to distribute (e.g. GNU General Public License (GPL), the GNU Lesser GPL (LGPL), or the MIT License).
- 11.6. Should the products and services delivered by the Seller contain open-source components, the Seller shall comply with all applicable open-source license terms and shall grant all those rights to SMO and provide all information which SMO needs in order to comply itself with the applicable license terms. In particular, the Seller must deliver to SMO promptly after the order is confirmed the following:
- The complete source code of the relevant open-source software, including scripts and information regarding its generating environment insofar as the applicable open-source conditions require this.
  - A schedule of all open-source files used, indicating the relevant license, its version and including a copy of the complete text of such license and including a reference to copyright and/or authorship. Such schedule must have an understandable structure and contain a table of contents.

11.7. The Seller shall inform SMO - at the latest at the time the order is confirmed - whether any open source licenses used by the Seller will – within their intended use - be subject to a “Copyleft Effect” which will affect the products of SMO. In the context of this provision, “Copyleft Effect” means that the provisions of the open source license require that certain of the Seller’s products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

11.8. Should the Seller not indicate until receipt of the order that its products and services contain open-source components or whether the described “Copyleft Effect” would occur, then SMO is entitled to cancel the order within 14 (fourteen) days upon receipt of this information.

## 12. Special provisions for planning activities

12.1. Any and all documentation, such as plans, drawings, and models shall become the property of SMO, even if the contract should be terminated prematurely, and shall be handed over to SMO upon request. The Seller shall grant to SMO an exclusive and transferable exploitation right for all usage categories pursuant to the Austrian Copyrights Act (Urheberrechtsgesetz) that is unlimited in time and place and also excludes the Seller itself from using without claim for additional remuneration, same applies for works resulting from this contract. SMO thus is entitled to exploit, by means of implementation of the respective plans, or otherwise use said plans and other documentation in their original form or after modification without any further participation or approval by the Seller.

## 13. Drawings, Tools, Auxiliary Devices, Authorisations

13.1. Drawings and technical calculations shall be made available by the Seller free of charge, where necessary. Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by SMO, as well as any materials derived therefrom, shall remain SMO’ property and shall not be made available to any third party nor be used for any other purposes than those contractually agreed, without SMO’ prior written authorisation. Tools, patterns, etc., that have been produced at SMO’ expense, shall become SMO’ property upon payment.

13.2. All tools and related auxiliary devices, in a broad sense, shall be clearly marked as SMO’ property and protected against unauthorised access or use, or maintained and repaired, if and where applicable. They shall be returned either upon execution or cancellation of the order. Subject to any further rights, SMO may demand the return of such materials if the Seller violates the duties referred to above. The Seller has no right of retention.

13.3. The Seller expressly states that it is in possession of all industrial authorisations as well as any other authorisations necessary to ensure the performance of the services as agreed in the contract and that it will, upon SMO’ request, make available to SMO the respective documents. Insofar as for the performance of the deliveries and services special regulatory approvals, authorisations or inspections are required, such approvals, permissions and inspections will be obtained by the Seller without entitlement to special remuneration in a timely manner.

## 14. Confidentiality, Data Protection

14.1. The Seller undertakes to keep confidential information pertinent to SMO or the subject matter of the contract, which he has rightfully obtained in connection with the purchase order, unless this information has become generally known or known to the Seller in another lawful manner. Furthermore, the Seller shall keep confidential the results or partial results obtained by the Seller in fulfilment of the purchase order and use them exclusively for the performance of the present purchase order. In the event that the Seller makes use of a third party for the performance of its contractual obligations, it shall make sure that such third party contractually commits itself to at least the same degree of confidentiality.

14.2. The same applies to personal data relating to SMO or any third party, information according to Sect. 38 Banking Act (*Bankwesengesetz*), insider information according to market abuse regulations (Regulation (EU) No 596/2014) etc. that the Seller has acquired in connection with the contract with SMO. The Seller shall protect such information from access by third parties, ensure compliance with the statutory data protection regulations, in particular with Sect. 6 Data Protection Act (*Datenschutzgesetz*) and commit its employees (including employees, hired staff, freelancer) dealing with contractually relevant tasks to the same level of confidentiality.

14.3. The Seller’s data (commercial register data, address, telephone and facsimile number as well as other information required for correspondence following from modern communication tools, locations, contact persons, ordered goods, and supply volumes) which become known to SMO in connection with the respective business transaction will be automatically processed only for the execution of the contract, in particular, for administration and billing purposes. For technical reasons, it may be necessary to store such data on servers of a company that is a member of the SMO-group or on servers of a service provider.

14.4. The protection of personal data is very important to SMO. Therefore, SMO processes personal data only in accordance with all applicable data protection and data security regulations. In the course of doing business with suppliers SMO processes personal data of contact persons at the Seller, at interested parties (potential suppliers) or at other business partners. Details to the categories of the processed data, the purposes of the processing and its legal grounds can be found for SMO Mobility GmbH as member of the SMO group in the “SMO Data Privacy Policy” available in detail on [www.SMO.at/datenschutz](http://www.SMO.at/datenschutz).

## 15. Cybersecurity

15.1. The Seller shall take appropriate organizational and technical measures to ensure the confidentiality, authenticity, integrity and availability of Seller Operations as well as products and services. These measures shall be consistent with good industry practice and shall include an appropriate information security management system consistent with standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable).

15.2. “Seller Operations” means all assets, processes and systems (including information systems), data (including SMO data), personnel, and sites, used or processed by the Seller from time to time in the performance of this contract.

15.3. Should products or services contain software, firmware, or chipsets:

15.3.1. the Seller shall implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code, and security incidents in products and services which shall be consistent with good industry practice and standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable)

15.3.2. the Seller shall continue to support and provide services to repair, update, upgrade and maintain products and services including the provision of patches to the SMO remedying vulnerabilities for the reasonable lifetime of the products and services;

15.3.3. the Seller shall provide to the SMO a bill of materials identifying all third-party software components contained in the products. Third party software shall be up to date at the time of delivery to the SMO;

- 15.3.4.** the Seller shall grant to the SMO the right, but the SMO shall not be obliged, to test or have tested products for malicious code and vulnerabilities at any time, and shall adequately support the SMO;
- 15.3.5.** the Seller shall provide the SMO a contact for all information security related issues (available during business hours).
- 15.4.** The Seller shall promptly report to the SMO all relevant information security incidents occurred or suspected and vulnerabilities discovered in any Supplier Operations, services and products, if and to the extent the SMO is or is likely to be materially affected.
- 15.5.** The Seller shall take appropriate measures to achieve that its subcontractors and suppliers shall, within a reasonable time, be bound by obligations similar to the provisions of this section
- 15.6.** Upon the SMO request, the Supplier shall provide written evidence of its compliance with this section 15 including generally accepted audit reports (e.g. SSAE-16 SOC 2 Type II).
- 16. Information, Declaration of Materials, RoHS, Disposal, Packaging, Dangerous Goods**
- 16.1.** If the Seller delivers products that are subject to regulatory or other legal requirements with regard to their placement on the market and further marketing in the European Economic Area, or comparable requirements in other countries of use named by SMO, the Seller must ensure that the products fulfill these requirements in their version applicable at the time of acceptance (cf. 5.1). The Seller must further ensure that all documents and information necessary for proof of conformity of the products with the applicable requirements can be supplied to SMO immediately upon request.
- 16.2.** Notwithstanding any legal information duties, the Seller shall provide SMO with all necessary and useful information pertinent to the goods and services to be delivered, in particular, information on proper storage as well as safety data sheets in accordance with EU Regulations in the version applicable as of conclusion of the contract. In addition, the Seller shall raise SMO' attention to the possibility of hazardous waste or waste oils arising from the goods delivered by the Seller and shall, in particular, advise SMO on their disposal. Upon SMO' request, the Seller shall take back, free of charge, any waste resulting from the ordinary use of the delivered goods or similar products, as defined in the applicable Waste Disposal Act (*Abfallwirtschaftsgesetz*). However, such obligations shall be limited to the amount delivered by the Seller. Should the Seller refuse or should the Seller not be able to accept such waste, SMO shall be entitled to dispose of it at the Seller's expense.
- 16.3.** The Seller ensures that deliveries under the order are RoHS-compliant and therefore in conformity with the EC Directive on the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (EU Regulations in the version applicable as of conclusion of the contract) at the time of delivery. In the event that deliveries fail to comply with this EC Directive, the Seller shall – without prejudice to any warranty claims SMO may raise – compensate SMO for any damage arising from such non-compliance.
- 16.4.** Should the Seller deliver legally permissible products, which are, however, subject to statutorily-imposed substance restrictions and/or information requirements (e.g. REACH – Registration, Evaluation, Authorisation and Restriction of Chemicals), Seller shall declare such substances in the web database BOMcheck (<https://www.bomcheck.net/>), together with the information requested therein. The foregoing shall only apply with respect to laws which are applicable at the registered seat of Seller or SMO or at the designated place of delivery requested by SMO. Furthermore, the Seller shall also declare all substances which are set out in the so-called "SMO list of declarable Substances" applicable at the time of delivery in the manner described above. (<http://einkauf.SMO.at>)
- 16.5.** Should the delivery contain goods which – according to international regulations – are classified as dangerous goods, the Seller will inform SMO hereof in a form agreed upon between Seller and SMO, but in no case later than the date of order confirmation.
- 16.6.** Any transport, sales and service packaging of domestic supplies to SMO must be disposed of by the Seller exclusively through Altstoff Recycling Austria AG ("ARA AG"). The Seller shall indemnify SMO for any costs arising from a lack of disposal or from disposal by a collecting and disposing system other than that of ARA AG.
- 17. Legal Succession**
- 17.1.** The Buyer may assign its rights and obligations arising from the contract with the Seller to another company within the SMO-group. The Seller has no right to cancel the contract for reasons of such assignment.
- 17.2.** Contracts between SMO and the Seller cannot be transferred without the written consent of SMO.
- 18. Anti-corruption**
- 18.1.** The Seller shall notify SMO – at the latest upon submission of the Seller's offer to SMO – in writing if the Seller or members of its management board have been sentenced by final judgment of a national court for corruption of a public officer within the last five years prior to the submission of the Seller's offer to SMO, and, without undue delay, if the Seller or members of its management board are charged with corruption of a public officer before a national court at any time between submission of the Seller's offer to SMO and acceptance of the supplies/services of the Seller pursuant to Sect. 9.2. Such notification shall ensure compliance with the requirements laid down by the OECD Recommendation on Anti-Corruption.
- 19. Code of Conduct for Sellers, Security in the Supply Chain**
- 19.1.** The Seller is obliged to comply with the laws of the respective jurisdiction. In particular, the Seller shall not engage, actively or passively, directly or indirectly, in any form of bribery, violation of fundamental rights of its employees or child labour. The Seller has the sole responsibility to comply with all legal, regulatory and professional requirements with respect to its employees, especially regarding the fulfillment of the provisions of the Austrian Code *Lohn- und Sozialdumpingbekämpfungsgesetz (LSD-BG)*. In the case of cross-border assignments of employees, the Seller has to observe all statutory regulations of the country of operation. In particular, the Seller shall fulfill all statutory wage requirements as well as the wage requirements from all collective bargaining agreements, shall fulfill his statutory obligations to pay taxes and social insurance contributions, shall comply with all statutory and official requirements for work safety, and shall only use employees who have the necessary working permits and have proper social security and accident insurance. In case of involvement of third parties and/or involvement of further third parties involved by these third parties, the Seller equally ensures the compliance with these requirements. Upon request the Seller has to provide to SMO with respective written proof of compliance with these obligations, by itself and the third party. The Seller shall fully indemnify and hold harmless SMO from and against claims based on the infringement of the obligations according to this article 18.1. by the Seller or third parties.
- 19.2.** The Seller shall act in accordance with the applicable environmental laws. He will take adequate measures to avoid the deployment of so-called conflict minerals and to create transparency over the origin of raw materials and will use best efforts to promote this Code of Conduct among its suppliers.

- 19.3. The Seller is obliged to comply with all legal requirements regarding the health and safety of its employees. It must ensure that the health and safety of its personnel as well as the personnel from his direct or indirect subcontractors employed to perform the deliveries and services and all other persons who are entitled to stay in the work area, is protected.
- 19.4. If the work or services are to be performed on premises of SMO or on construction sites on behalf of SMO, additional safeguard instructions as described in the document AS-111e "EHS instruction sheet for employees of external companies" (<http://einkauf.SMO.at>) apply.
- 19.5. The Seller shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT). The Seller shall protect the goods and services provided to SMO or provided to third parties designated by SMO against unauthorized access and manipulation. The Seller shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.
- 19.6. Without prejudice to other rights and remedies SMO may have, SMO may terminate the contract if the Seller has culpably violated any of these obligations. If, however, the Seller's breach of duty is capable of remedy, SMO may terminate the contract only if the Seller has failed to comply with a period granted by SMO for remedying its breach of contract.

## **20. Place of Performance, Applicable Law, Place of Jurisdiction**

- 20.1. The place of performance for deliveries or services shall be the place of destination. For payments, the place of performance shall be the Buyer's seat.
- 20.2. Austrian law shall apply with the exception of such legal provisions that make reference to the law of other countries. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded.
- 20.3. Disputes, in particular those relating to the formation of contract or any claims arising thereunder, shall be exclusively decided by the Vienna Commercial Court. However, SMO shall also be entitled to bring proceedings against the Seller before any other court, e.g. before the Seller's court of general jurisdiction.
- 20.4. The Seller shall compensate SMO for any costs necessary for bringing appropriate legal action, in particular for attorneys' fees, and for any pre-trial expenses incurred by SMO.

## **21. Severability, Proviso**

- 21.1. The invalidity of individual provisions shall not affect the validity of the remaining provisions of the contract. In such a case SMO and the Seller will agree on a valid provision of economically equivalent content.
- 21.2. SMO shall not be obligated to fulfil this agreement if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.