

# General terms and conditions

dated 28 June 2023

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## 1 Scope of Application

1.1 These General Terms and Conditions ("GTC") form an integral part of all contracts of SMOLSYS AG, Platz 4, 6039 Root D4 ("SMOLSYS") with its customers ("Customer") for any and all products, services and other contractual obligations of SMOLSYS ("Work Results").

1.2 The individual agreements and the GTC shall govern the content of the contract conclusively, whereby the individual agreements shall take precedence in the event of contradictions. The Customer's general terms and conditions shall only apply if this has been expressly agreed in writing. The GTC shall in any case take precedence over the Customer's general terms and conditions.

1.3 SMOLSYS may amend the GTC at any time and without prior notice. The version of the GTC published on [www.smolsys.com](http://www.smolsys.com) at the time of the conclusion of the contract shall apply in each case.

## 2 Order Placement and Conclusion of Contract

2.1 Service and product information, product illustrations, technical drawings, performance parameters and other specification of the Work Results in brochures, catalogues, advertisements or on websites of SMOLSYS are non-binding and do not constitute an offer to conclude a contract.

2.2 Upon request SMOLSYS shall submit a written offer to the Customer for the Work Results requested by the

Customer ("Offer"). If the Offer expressly refers to additional documents (e.g. performance and requirement specifications, technical specifications, etc.), these shall also become part of the Offer, provided they do not contradict the other information in the Offer or the GTC. In the absence of any written assurance to the contrary, Offers are always non-binding.

2.3 The Customer shall review and, if appropriate, confirm the Offer by submitting a binding order to SMOLSYS ("Order"). SMOLSYS shall review the Order and, if appropriate, send an order confirmation to the Customer ("Order Confirmation"). Upon Customer's receipt of the Order Confirmation, the contract is concluded and binding for both parties.

2.4 All samples, plans, drawings and other technical and commercial documents provided to the Customer in the course of contract negotiations shall be confidential and shall only be used by the Customer with regard to the conclusion of the contract with SMOLSYS.

## 3 Specification of the Work Results

3.1 The scope and specification of the Work Results shall be exclusively determined by the Offer. However, in the course of the contract performance, SMOLSYS may unilaterally make improvements or optimizations to the Work Results provided that such improvements or optimizations do not lead to cost increases.

3.2 SMOLSYS shall provide the Work Results in a professional, faithful and careful manner, observing standards and practices customary in the industry. Service and product information, product illustrations, technical drawings, performance parameters and other specification of the Work Results shall however only be binding in the sense of warranted characteristics, if their compliance is expressly assured in writing in the Offer ("Warranted Characteristics"). Apart from the Warranted Characteristics, SMOLSYS does not undertake to achieve any specific success or technical or other effect.

#### **4 Technical Standards and Regulations**

4.1 Unless otherwise explicitly agreed in writing, only the norms, legal regulations and protection standards ("Norms") applicable in Switzerland at the time of the Order Confirmation shall be authoritative.

4.2 SMOLSYS is not obliged to identify on its own initiative any deviating Norms in the country of destination to which the Work Result is delivered or where it may be used.

#### **5 Involvement of Subcontractors**

5.1 SMOLSYS may at its own discretion subcontract any of its contractual obligations in writing to its subcontractors. If the Customer requests the replacement of a subcontractor, the Customer shall bear the additional costs and delays caused thereby.

5.2 If the Customer requests the involvement of a specific subcontractor or specifies a selection of permissible subcontractors, the Customer shall bear the risk associated with the subcontractors in question. In particular, the warranty and liability for the Work Results of these subcontractors shall always be limited to the claims granted by the subcontractor in question.

#### **6 Intellectual Property**

6.1 All immaterial goods such as e.g. data, know-how, plans, prototypes, designs, inventions and copyrights etc. created by SMOLSYS or its subcontractors when preparing an Offer or providing Work Results ("SMOLSYS Intellectual Property") shall be fully and exclusively owned by SMOLSYS, irrespective of the protectability of the Intellectual Property. The reverse engineering of Work Results is prohibited under all circumstances.

6.2 Insofar as the authorized use of the Work Results requires the use of SMOLSYS Intellectual Property, SMOLSYS shall grant the Customer a corresponding non-exclusive license to the SMOLSYS Intellectual Property concerned upon full payment of the agreed remuneration.

6.3 Insofar as the authorized use of the Work Results requires the use of intellectual property of third parties ("Third-Party Intellectual Property"), SMOLSYS shall ensure that the Customer is granted a non-exclusive license in the Third-Party Intellectual Property in accordance with the license provisions of the third party concerned upon full payment of the agreed remuneration.

#### **7 Rights to Software**

7.1 If the Work Results include software, the Customer is not entitled to make copies (unless for archiving purposes, troubleshooting or replacing defective data carriers) or to edit the software, unless otherwise agreed in writing. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the Software without SMOLSYS' prior written consent. In case of infringement SMOLSYS may completely revoke the right of use.

7.2 In the case of third-party software, the terms of use of the third-party concerned shall always be prevailing. The customer guarantees full compliance with these terms of use and acknowledges that the third-party may assert its own claims against the customer in the event of license infringements.

#### **8 Confidential Information**

8.1 All information of the other party obtained or otherwise brought to the attention of the parties during negotiations or the provision of Work Results ("Confidential Information") shall be kept strictly confidential unless otherwise agreed in writing and may only be used for the provision of Work Results or the authorized use of Work Results. The parties shall take adequate security measures to maintain the confidentiality of the Confidential Information.

8.2 Information that can be proven to be (i) already known to the party at the time of knowledge; (ii) already in the public domain at the time of knowledge or will become in the public domain without a breach of contract; (iii) lawfully received by the party from a third-party or (iv) required to be disclosed due to a legal obligation or an official or judicial order shall not be deemed Confidential Information.

#### **9 Remuneration and Expenses**

9.1 The remuneration owed by the Customer for the Work Results shall be determined in the Offer. All cost information is in Swiss francs and without VAT. Unless otherwise agreed in writing, all price quotations are indicative prices or approximate cost estimates and not fixed prices.

9.2 Work results charged at cost according to the quotation will be invoiced to the customer according to the work actually performed. SMOLSYS shall document the

expenses in question and provide the Customer with a detailed report upon request.

9.3 Any ancillary costs (e.g. freight, insurance, permits, certifications, etc.) shall be borne by the Customer. The same applies to any taxes, fees, customs duties and similar charges levied in connection with the provision of the Work Products as well as the associated administrative costs. The Customer undertakes to reimburse SMOLSYS upon presentation of the receipts.

9.4 Expenses incurred as well as the travel time required shall be remunerated additionally insofar as they were necessary for the provision of the Work Results.

## 10 Adjustment of Remuneration

10.1 SMOLSYS may adjust offered prices if labour costs, purchase prices or energy costs change between Order Confirmation and provision of the Work Result. The price adjustment shall be made in accordance with the sliding price formula in Annex A of these GTC.

10.2 SMOLSYS may also make reasonable price adjustments if (i) delivery periods are extended for reasons for which SMOLSYS is not responsible; (ii) the Customer requests changes to the Work Result; (iii) the material to be provided by the Customer does not have the agreed or customary properties; (iv) the documents to be provided by the Customer are incomplete, incorrect or unusable; (v) adjustments are necessary due to changed Norms; or (vi) a statutory reason for price adjustments occurs.

## 11 Payment Terms and Invoicing

11.1 The Customer shall pay the invoices issued by SMOLSYS in accordance with the agreed terms of payment. Unless otherwise agreed, a payment period of 30 days from the invoice date shall apply. Payments shall always be made net (i.e. without deduction of discounts, rebates, expenses, taxes, fees, customs duties and other charges, etc.).

11.2 Unless otherwise specified in the Offer, the agreed price shall be paid in the following instalments: (i) 50% as a down payment after Customer's receipt of the Order Confirmation; (ii) one 30% upon expiry of two thirds of the delivery period and (iii) the remaining amount 10 days after notification by SMOLSYS that the Work Results are ready for dispatch.

11.3 If SMOLSYS has cause to believe that there will be a partial or complete default of payment, SMOLSYS may set the Customer a deadline of 30 days in writing for the full advance payment of the agreed remuneration or the provision of appropriate securities.

11.4 The Customer must comply with agreed payment deadlines if transport, delivery, assembly, operation or acceptance of the Work Results are delayed or made impossible for reasons for which SMOLSYS is not responsible or if insignificant parts are missing or minor rectifications are necessary.

11.5 The Customer's remuneration obligation shall be fulfilled with the timely and complete receipt of the amount at the paying office specified by SMOLSYS. If payment by irrevocable letter of credit has been agreed, the Customer shall bear the costs for the opening, notification and confirmation of the letter of credit. Payment by bill of exchange and set-off against own claims is excluded.

11.6 If the Customer does not make a timely and complete payment or provide appropriate securities, he is in default with immediate effect within the meaning of Article 108 Swiss Code of Obligations. In this case, SMOLSYS may suspend the performance of the contract or withdraw from the contract without granting a grace period. SMOLSYS is also entitled to interest on delayed payment in the amount of 5% from the due date. SMOLSYS reserves the right to claim further damages.

## 12 Terms of Delivery

12.1 Unless otherwise agreed in writing, delivery of the Work Results shall be unpacked and "Ex Works" in accordance with Incoterms 2020.

12.2 If SMOLSYS has agreed to assume packaging, transport and/or insurance of the work results, the Customer shall bear the associated costs in addition to the agreed remuneration. The Customer shall notify the desired specification in due time.

12.3 Packaging material shall not be returnable unless SMOLSYS expressly retains ownership to the packaging. In this case, the Customer shall return the packaging to the place of departure free of freight charges.

12.4 If the Customer asserts complaints in connection with the shipment or transport, it shall immediately notify the last carrier upon receipt of the delivery or the freight documents and document the complaint.

## 13 Term of Delivery

13.1 Delivery terms shall commence once the contract has been concluded, the essential technical points have been settled, all official formalities and approvals have been obtained and the agreed in advance payments and securities have been provided. A delivery term is observed if the Customer is notified by e-mail or in writing within the delivery term that the Work Results are ready for dis-

patch or, if the Parties have agreed on a formal acceptance procedure in accordance with Article 17, ready for acceptance.

13.2 Delivery terms shall be reasonably extended (i) if the Customer fails to comply with its contractual obligations (e.g. technical specifications, component deliveries, permits, certificates, down payments, etc.) in due time; (ii) if the Customer requests amendments to the contract; (iii) in case of late delivery by a subcontractor engaged by SMOLSYS, insofar as SMOLSYS could not foresee the delay despite due care; or (iv) in case of delays due to force majeure.

13.3 In the event of a delay in delivery for which SMOLSYS is responsible, the Customer must issue a written warning and set a reasonable grace period of at least 14 days. After expiry of such grace period, the Customer may claim compensation for the proven damage caused by the delay of max. 0.5% per full week, but not more than 5%. The basis for calculation shall be the price of the delayed Work Products.

13.4 If the maximum claim for damages for delay has been reached, the Customer must set a further reasonable grace period of at least 30 days. If SMOLSYS does not comply with this grace period for reasons for which it is responsible, the Customer may refuse to accept the Work Results concerned. If acceptance of the remaining Work Results is unreasonable from an objective point of view, the Customer may withdraw from the contract and reclaim payments made against return of Work Results already delivered. Any additional liability for damages caused by delay is excluded as far as legally permissible.

#### **14 Retention of Title**

14.1 The Work Results remain the property of SMOLSYS until full payment of the agreed remuneration, irrespective of where the Work Results in question are located prior to the transfer of ownership.

14.2 SMOLSYS is authorized to have the retention of title entered in public registers in Switzerland and abroad. The Customer shall assist SMOLSYS with the necessary formalities to secure the retention of title and shall refrain from any action, which impairs SMOLSYS' title.

#### **15 Delivery and Transfer of Benefit and Risk**

15.1 Subject to the Agreement of a formal acceptance procedure in accordance with Article 17, the delivery of the Work Result and the transfer of benefit and risk shall take place "Ex Works" in accordance with INCOTERMS 2020. This shall also apply if SMOLSYS assumes or organizes the packaging, transport and/or insurance of the Work Results based on an individual agreement.

15.2 If delivery is delayed for reasons beyond SMOLSYS' control, the benefit and risk shall pass to the Customer at the time originally foreseen for the Ex Works delivery, but no later than 20 days after notification of readiness for shipment. SMOLSYS shall arrange for appropriate storage of the Work Results and may charge the Customer for the additional costs reasonably incurred as a result. From the pass of benefit and risk, the Customer is solely responsible for insuring the Work Results against damage of any kind.

#### **16 Quality Control and Notification of Defects**

16.1 SMOLSYS shall carry out a quality control as is customary in the industry before delivery of the Work Result. A more extensive inspection shall only be carried out on the basis of an individual agreement and against corresponding compensation for expenses. Upon successful completion of the quality control SMOLSYS shall notify the Customer of the readiness for dispatch or acceptance.

16.2 The Customer shall carefully inspect the delivered Work Results immediately upon receipt and shall give written notice of any visible defects immediately upon acceptance and of any concealed defects immediately upon their discovery, but no later than within five working days.

16.3 If the Customer fails to report defects in due time, the Work Result shall be deemed approved by the Customer and all warranty and liability claims shall be lapsed.

16.4 If there is no demonstrable defect in the Work Result for which SMOLSYS provides a warranty in accordance with the Order Confirmation concerned, SMOLSYS may demand reasonable compensation from the Customer for the testing and administrative effort incurred.

#### **17 Agreement on Acceptance Procedure**

17.1 If the Parties agree on a formal acceptance procedure, the delivery of the Work Results and the transfer of benefits and risks shall take place with the acceptance. If the acceptance of the Work Results is delayed for reasons for which SMOLSYS is not responsible, benefit and risk shall pass to the Customer at the time originally foreseen for the acceptance procedure, but no later than 20 days after notification of readiness for acceptance.

17.2 The Parties shall set the date of the acceptance procedure so that both parties can attend with the required personnel. The Parties shall create and sign an acceptance report, which lists the attending persons and records whether the acceptance (i) took place unconditionally (ii) took place with reservations or (iii) was refused by the Customer. In the event of reservations or if acceptance is refused, the Deficiencies asserted by the Customer shall be recorded in detail in the acceptance report. The signing

of the acceptance report by SMOLSYS does not imply any acknowledgement of the asserted Deficiencies .

17.3 If the Customer asserts minor Deficiencies which do not materially impair the functionality of the Work Results, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the Customer (i) does not participate in the acceptance; (ii) prevents the acceptance from being carried out; (iii) refuses acceptance without justification; (iv) refuses to sign the acceptance report; or (v) uses the Work Results or allows them to be used by third-parties.

17.4 If there are considerable Deficiencies which substantially impair the functionality of the Work Results, SMOLSYS shall remedy these Deficiencies within a reasonable period of time. After the rectification of such Deficiencies a second acceptance procedure shall take place. If the Deficiencies reported in the acceptance report have not been rectified or if new considerable Deficiencies appear, the Customer shall be entitled to an appropriate price reduction or a renewed attempt of rectification free of charge.

17.5 The Customer may only refuse acceptance or partial acceptance of the Work Result in the event of substantial Deficiencies if the third acceptance attempt reveals again considerable Deficiencies and the Customer cannot objectively be expected to accept these Deficiencies despite the price reduction. In this case the Customer may withdraw from the Order Confirmation in whole or in part and demand reimbursement of the payments made to SMOLSYS. Further claims for damages or other claims are excluded to the fullest extent permitted by law.

## 18 Warranty of SMOLSYS

18.1 SMOLSYS warrants the timely delivery of the Work Results and, for the duration of the warranty period, that (i) the Work Results observe the Warranted Characteristics; (ii) the Work Results do not show any material, construction or production defects and (iii) the intended use of the Work Results does not infringe any intellectual property rights of third-parties ("Deficiencies").

18.2 Subject to Article 18.1, any warranty is disclaimed to the fullest extent permitted by law. No warranty exists in particular for damage or impairment of the Work Results: (i) due to wear and tear, improper handling, incompetent maintenance or repair, excessive stress, disregard of operating instructions, unsuitable operating materials or accidents; (ii) when using lubricants and maintenance products other than those prescribed by SMOLSYS; (iii) if modifications or repairs have been made by third parties without the written consent of SMOLSYS; (iv) if the Customer has not taken measures or has taken unsuitable measures to prevent or reduce the damage or impairment (e.g. incorrect settings, worn components, continued operation

in the damaged state, etc.); (v) if other than original spare or add-on parts or mounting devices are used which have not been approved in writing by SMOLSYS for such use; or (vi) in a Force Majeure Event, fortuitous or unforeseeable events or for other reasons beyond SMOLSYS' control.

18.3 For third party products SMOLSYS warrants to the Customer only insofar as the third party provider warrants to SMOLSYS. SMOLSYS shall forward such warranty claims to the third party provider for examination and in case of a positive decision of the third party provider shall pass on its warranty services to the Customer. Further claims for damages or other claims are excluded to the fullest extent permitted by law.

18.4 If Work Results are created according to drawings or other documents of the customer, SMOLSYS' warranty shall in any case be limited to the execution of such drawing or other documents as agreed in writing and shall in particular not extend to the functionality or suitability of the Work Result for the intended purpose.

18.5 All warranty claims must be made in writing and require the presentation of the signed acceptance protocol or, where there was none, the invoice receipt concerned.

## 19 Remedies for Third-party Rights Infringement

19.1 The Customer must notify SMOLSYS immediately in writing if third parties assert any infringement of intellectual property rights with respect to the Work Results.

19.2 The Customer shall leave the settlement of the dispute to SMOLSYS, e.g. the conduct of legal proceedings or their out-of-court settlement. SMOLSYS shall inform the Customer appropriately about the status of the dispute and shall consult the Customer on important decisions. The Customer's participation in the dispute shall be at its own expense.

19.3 If the intended use of the Work Results infringes intellectual property rights of third parties according to a court ruling or at the discretion of SMOLSYS, SMOLSYS may, at its own discretion: (i) make changes to the Work Result at its own expense in order to eliminate the infringement of intellectual property rights; (ii) acquire the necessary rights of use from the holder of the intellectual property rights concerned at its own expense; or (iii) compensate for the infringement of intellectual property rights by refunding the remuneration paid (with deduction of reasonable compensation for the previous use). Any further claims for damages or other claims are excluded to the fullest extent permitted by law.

## 20 Remedies for Non-Conforming Work Results

20.1 The warranty services are provided on the basis of a warranty request that must be submitted in full by the

Customer. Defective parts must be presented to SMOLSYS on request and at the expense of the Customer before warranty work can be carried out.

20.2 SMOLSYS will repair or replace parts with Deficiencies as soon as possible at its own expense and at its own discretion. Replaced parts become the property of SMOLSYS unless explicitly waived.

20.3 Unless otherwise agreed in writing, Deficiencies shall be remedied exclusively by SMOLSYS or SMOLSYS's subcontractors. Upon Agreement, the Customer shall give SMOLSYS or its subcontractor the opportunity and time to remedy the Deficiency and shall provide the necessary access to the Work Result.

20.4 If the Parties have agreed that the repair is carried out by the Customer or a third party, SMOLSYS will reimburse the spare parts and the amount per documented working hour in accordance with the applicable tariff rates of SMOLSYS or the agent concerned. The calculation of the hourly expenditure determining the repair compensation shall be made according to the guideline times of SMOLSYS or its subcontractor.

20.5 Customer's travel times, transport costs, shipping and customs charges, etc. associated with the rectification of Deficiencies will only be reimbursed by prior agreement. The costs of additional efforts which delays the start of the repair, such as cleaning of the affected area, denied or delayed access to the Work Result or inaccurate location information, may be invoiced by SMOLSYS in accordance with the SMOLSYS tariff system applicable at the time of the warranty.

20.6 If a Deficiency cannot be completely remedied, the Customer shall be entitled to a reasonable reduction of the agreed remuneration. If a Deficiency impairs the functionality of the Work Result to such an extent that the Customer cannot objectively be expected to continue using it despite an appropriate price reduction, the Customer may withdraw from the contract with regard to the affected Work Result or, if this is unreasonable, withdraw from the contract altogether. In this case SMOLSYS shall refund the amounts received from the Customer less compensation for the previous use of the Work Result. Further claims for damages or claims are excluded to the fullest extent permitted by law.

20.7 The claims of the Customer due to defective Work Results are conclusively regulated in these GTC. All statutory claims and remedies not expressly mentioned in these GTC, e.g. reduction, cancellation, replacement or withdrawal from the contract, are excluded to the extent permitted by law.

## **21 Duration of the Warranty Period**

21.1 Unless otherwise agreed in writing, the warranty period shall be 24 months and begins with the transfer of benefit and risk to the Customer.

21.2 The warranty period ends prematurely if (i) the Customer or third parties carry out modifications or repairs; or (ii) the Customer does not immediately take all appropriate measures to minimize damage in the event of a Deficiency or (iii) does not give SMOLSYS the opportunity to immediately inspect or rectify the Deficiency.

21.3 The rectification of Deficiencies by repair and/or replacement of defect parts during the current warranty period for the Work Result shall not lead to a new warranty period or an extension of the current warranty period of the Work Result concerned.

## **22 Liability of SMOLSYS**

22.1 SMOLSYS shall be liable for the damage incurred by the Customer as a result of the improper performance of the contract, provided that SMOLSYS can be proven to be at fault. Statutory presumptions of fault are excluded to the extent permitted by law.

22.2 Liability for services, advisory activities and contractual ancillary obligations is limited to gross negligence or intent, subject to any written assurance to the contrary.

22.3 The claim for damages is limited to the total amount of compensation paid by the Customer. Under no circumstances shall the Customer be entitled to claim compensation for damage that has not occurred to the Work Result itself, such as loss of production, loss of use, loss of orders, recall costs, loss of profit, consequential damage caused by a Deficiency and other direct or indirect damage. In particular, any liability for damages that may be incurred by the Customer or third parties through the use of the Work Results is also excluded.

22.4 The Customer's liability claims due to improper performance of the contract are conclusively regulated in these GTC. All claims not expressly provided for by law in these GTC are excluded to the extent permitted by law.

## **23 Right of Recourse of SMOLSYS**

23.1 .1 If persons are injured or die or property is damaged due to actions or omissions of the Customer, its employees, its agents or auxiliary persons and a claim is made against SMOLSYS for this reason, SMOLSYS shall be entitled to recourse against the Customer in respect of the associated damage.

## 24 Termination of Contract by SMOLSYS

24.1 Insofar as unforeseen events significantly change the economic significance or the content of the Work Results or have a significant effect on SMOLSYS, as well as in the case of subsequent impossibility of the fulfilment of the contract, the contract shall be adapted appropriately by the Parties. Insofar as this is not reasonable, SMOLSYS may withdraw from the contract or, insofar as objectively reasonable, from the affected part of the contract.

24.2 If SMOLSYS intends to make use of the possibility of dissolution, it shall notify the Customer thereof without delay, even if an extension of the delivery period has initially been agreed. In the event of termination of the contract SMOLSYS shall be entitled to remuneration for the Work Results performed against delivery of such Work Results. Claims for damages and other claims of the Customer due to such a termination of the contract are excluded to the extent permitted by law.

## 25 Termination of Contract by Customer

25.1 As long as the Work Results are unfinished, the Customer may withdraw from the contract at any time against remuneration of the Work already performed and against full indemnification of SMOLSYS (incl. loss of profit). If the Work Results are completed, the Customer may only withdraw from the contract against full payment of the agreed remuneration.

## 26 Force Majeure

26.1 Force majeure is deemed to be any external circumstance the occurrence of which the affected party or the affected subcontractor could not prevent or avert despite the timely application of all reasonable precautions, in particular fire, natural disasters, war, trade sanctions, confiscation, epidemics and pandemics, unforeseeable shortages of raw materials or materials, government-imposed restrictions on energy consumption or energy supply interruptions, trade sanctions or government-imposed import or export restrictions ("Force Majeure Event"). Strikes and lockouts shall only be deemed to be Force Majeure Events if they assume such proportions as to make it impossible for SMOLSYS to provide the contractual services on time.

26.2 In case of a Force Majeure Event the Parties shall immediately inform the other Party in writing. The existence of a Force Majeure Event shall not constitute good cause for either party to withdraw from the contract. If the consequences of a Force Majeure Event significantly impede the delivery of one or more Work Results, SMOLSYS may postpone the fulfilment of its obligations by a period appropriate to the circumstances. Deliveries delayed by SMOLSYS shall be paid for in full by the Customer despite

the delay in delivery and all claims for damages by the Customer in this respect shall lapse. The agreed warranty periods shall be extended by the duration of the delay.

## 27 Export Control

27.1 The Customer acknowledges that the Work Results may be subject to Swiss and/or foreign legal provisions and regulations on export control and may not be sold, leased or otherwise transferred or used for any other purpose without an export or re-export permit from the competent authority.

27.2 The Customer undertakes to comply with such provisions and regulations without reservation and shall indemnify SMOLSYS in this respect without reservation. The Customer acknowledges that the applicable provisions may change and that the provisions of the law in force at the time of export or re-export shall apply to the contract.

## 28 Privacy Policy

28.1 SMOLSYS shall at all times comply with the applicable provisions of data protection law. The Customer hereby authorizes SMOLSYS to process personal data of the Customer or its employees as far as required for (i) the provision of the Work Products, (ii) the fulfillment of the contract, or (iii) the purpose of processing and maintaining the business relationship between the parties. The Customer agrees that SMOLSYS may disclose such data to third parties in Switzerland and abroad.

## 29 Reference Permit

29.1 The Customer hereby grants SMOLSYS permission to use its name and logo as a reference on the internet and on electronic or printed documents and records in order to refer in an appropriate manner to the business relationship between the Parties. This right may be withdrawn or limited by the Customer at any time.

## 30 Applicable Law and Venue

30.1 The contract shall be governed by, and construed in accordance with the **laws of Switzerland** without further reference to its conflict of law rules and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

30.2 The courts having jurisdiction for the **city of Bern, Switzerland** shall have exclusive jurisdiction over all disputes arising out of or in connection with the contract. Mandatory places of jurisdiction remain reserved.

## 31 Final Provisions

31.1 The single or repeated waiver of the exercise of a right, power or remedy shall not constitute a general

waiver thereof and the future exercise thereof shall not be limited thereby in any way.

31.2 Should any provision prove to be invalid in whole or in part, the remaining provisions shall remain unaffected. The parties shall replace the invalid provision by a valid provision which comes as close as possible to the intended economic success.

31.3 All agreements and legally relevant declarations must be in writing in order to be valid. Declarations in text

form which do not comply with the written form requirement shall only be deemed equivalent to the written form if the parties have explicitly agreed this in writing.

31.4 The offsetting of claims is only permitted with the written consent of the other party.

31.5 The contract or individual rights and obligations arising from these contracts may only be transferred or pledged to third parties with the written consent of the other party, whereby consent may not be refused in bad faith.



## Annex A

### Moving Price Formula<sup>1</sup>

$$P = P_o \left( a + b \frac{L_m}{L_o} + c \frac{M_m}{M_o} \right)$$

P = Sales price at the time of delivery

P<sub>o</sub> = Selling price according to Order Confirmation

a = Coefficient of the fixed cost share (e.g. = 0.1)<sup>2</sup>

b = Coefficient of the wage-related cost share (e.g. = 0.6)<sup>2</sup>

c = Coefficient of the material-dependent cost share (e.g. = 0.3)<sup>2</sup>

L<sub>o</sub> = Salary index<sup>3</sup> from Swissmem, Zurich, at the time of the Order Confirmation

L<sub>m</sub> = Average of all Salary indices<sup>3</sup> from the time of the Order Confirmation until delivery

M<sub>o</sub> = Weighted means of the price indices<sup>4</sup> of the materials from the group "Metals and metal products" predominantly required for production, related to their value shares in the delivery, at the time of the Order Confirmation

M<sub>m</sub> = Average of the weighted means of all price indices<sup>4</sup> of the materials from the group "Metals and metal products" predominantly required for production, related to their value shares in the delivery, from the time of the Order Confirmation until delivery

<sup>1</sup> Source: SWISSMEM General Conditions of Supply for Machinery and Equipment, 2016

<sup>2</sup> a + b + c must always = 1.

<sup>3</sup> Since the Swissmem wage index is calculated only quarterly, the index for the previous calendar quarter must be used.

<sup>4</sup> Sub-indices of the official producer price index calculated and published monthly. (If the base year for the determination of the index is changed by the competent bodies, the supplier may calculate the changes in prices according to the corresponding new index values).