

Scope

For proposals, goods and services from SUMITOMO (SHI) CYCLO DRIVE GERMANY GMBH (SCG) in relation to:

1. A person concluding this contract as part of their commercial or self-employed activities (business enterprise);
2. A legal person under public law or special fund under public law.

I. General

1. All goods and services are subject to these Terms and Conditions and to any separate contractual agreements. Should the Purchaser's Conditions of Purchase conflict with these Terms and Conditions, acceptance of the order shall not mean that said conditions of purchase constitute part of the contract. Unless otherwise agreed, a contract is concluded upon the written order confirmation by SCG.
2. SCG reserves property rights and copyrights in relation to specimens, quotations, diagrams and other similar tangible and intangible information – including in electronic format; they may not be disclosed to third parties. SCG undertakes to disclose information and documents indicated as confidential by the Purchaser to third parties only with the Purchaser's consent.

II. Prices and payment

1. Unless otherwise agreed, the prices are factory prices, including loading at the factory but excluding packing and unloading. The prices are also subject to value added tax at the legally applicable rate.
2. Unless otherwise agreed, payment shall be due to SCG's account without deductions within 30 days. Notwithstanding the above, SCG retains the right to specify the condition of "delivery versus payment" for a delivery without providing grounds.
3. The Purchaser shall only be entitled to withhold payments or offset them with counterclaims to the extent that these counterclaims are undisputed or final and binding.

III. Delivery period, delivery delays

1. The delivery period shall be agreed between the contracting parties. For SCG to adhere to this period, any commercial or technical issues must have been resolved between the contracting parties and the Purchaser must have fulfilled all the incumbent conditions, such as providing the necessary official certifications or permits or paying a deposit; otherwise, the delivery period shall be reasonably extended. This shall not apply if SCG is responsible for the delay.
2. Adherence to the delivery period shall depend on correct and punctual deliveries from SCG's upstream suppliers. SCG shall provide notification of any apparent delays as soon as possible.
3. The delivery period is deemed to be observed if the delivered item is dispatched from the SCG factory within this period or is reported as ready for dispatch. If acceptance is required, the acceptance date, or alternatively the notice of readiness for acceptance, shall be decisive, except in cases in which acceptance is justifiably refused.
4. If the delivery item's dispatch or acceptance is delayed for reasons for which the Purchaser is responsible, the resulting costs shall be invoiced to the Purchaser beginning one month after the provision of the notice of readiness for dispatch or acceptance. In case of cancellations by the purchaser the cost occurred until the date of cancellation will be charged.
5. If the non-observance of the delivery period is due to force majeure, labour disputes or other events which are beyond SCG's control, the delivery period shall be reasonably extended. SCG shall notify the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The Purchaser shall be entitled to rescind the contract without notice if SCG becomes definitively unable to fulfil all its obligations under the contract before the risk passes. Furthermore, the Purchaser may rescind the contract if the provision of part of an ordered delivery becomes impossible and the Purchaser has a justified interest in refusing a partial delivery. Otherwise, the Purchaser shall pay the appropriate contractual price for the partial delivery. The same shall apply in the event of any inability to perform on the part of SCG. Clause VII paragraph 2 shall apply in all other respects. If such impossibility or inability occurs during the delay in acceptance or if the Purchaser bears sole or main responsibility for such circumstances, the Purchaser shall be bound to provide consideration.
7. If after expiration of the delivery period the Purchaser grants SCG a reasonable grace period for performance – taking into consideration the exceptions set forth by law – and such grace period is not observed, the Purchaser shall be entitled to rescind the contract within the limits of the statutory provisions. Further claims on the grounds of delayed delivery shall exclusively be subject to the provisions of Clause VII paragraph 2 of these Terms and Conditions.

IV. Transfer of risk, acceptance

1. The risk shall be transferred to the customer upon dispatch of the delivery item from the factory, including if partial deliveries are made or SCG has assumed responsibility for other services such as shipping costs or delivery and installation. If acceptance is required, it shall be decisive for the transfer of the risk. The risk shall be immediately transferred upon acceptance or, alternatively, upon the Purchaser's notification by SCG of the readiness for acceptance. The Purchaser may not refuse acceptance on the grounds of a minor defect.
2. In the event that dispatch and/or acceptance is delayed or not effected due to circumstances which are not attributable to SCG, the risk shall transfer to the Purchaser on the day on which it is notified of the readiness for dispatch or acceptance. SCG undertakes to obtain requisite insurance cover at the request and cost of the Purchaser.
3. Partial deliveries shall be allowed where these are reasonable for the Purchaser.

V. Retention of title

1. The goods delivered to the Purchaser shall remain the property of SCG until full payment of all receivables from the business relationship (goods subject to retention of title). This also applies when the purchase price for particular goods deliveries specified by the Purchaser has been paid. For running accounts, the retained title of the goods subject to retention of title shall act as SCG's guarantee of the outstanding balances.
2. The Purchaser shall be entitled to resell and further process goods that are subject to retention of title as part of its normal business activities providing that it does not default in payment to SCG. The Purchaser shall not be entitled to pledge or transfer by way of security goods that are subject to retention of title.
3. Any receivables the Purchaser derives from resale or other legal reasons (e.g. unauthorised use) with regard to the goods subject to retention of title shall, with immediate effect, be assigned to SCG at the rate of the invoice value of the goods subject to retention of title. This shall also apply to outstanding balances from an agreed current account. SCG authorises the Purchaser to collect the receivables assigned to SCG on SCG's behalf in the Purchaser's own name. SCG shall be entitled to withdraw this collection authorisation and demand disclosure of the receivables which have arisen for the Purchaser if the Purchaser defaults in payment, if the Purchaser is facing foreclosure, if there is a substantial deterioration in the Purchaser's financial situation or if insolvency proceedings are instigated against the Purchaser's assets.
4. In the event of third party access to the goods subject to retention of title, the Purchaser must refer to the title held by SCG and immediately notify SCG. If the duty of notification is breached, SCG shall be entitled to demand immediate payment of all receivables from the Purchaser; if the goods have not yet been delivered, SCG may choose to deliver them immediately or on a delivery versus payment basis.
5. The Purchaser shall undertake any processing or reworking of the goods subject to retention of title for SCG. SCG shall acquire property rights in the amount of the market value arising from the processing and reworking of the goods subject to retention of title.
6. If the goods subject to retention of title are combined with other items, SCG shall acquire co-ownership of the new goods proportionate to the value of the goods subject to retention of title compared with the other items at the time of their processing. If another item is to be regarded as the main item during the processing procedure, it is agreed that the Purchaser shall grant SCG, providing the item belongs to the Purchaser, co-ownership of the new item proportionate to the value of the goods subject to retention of title.
7. If the value of the collateral to which SCG is entitled from this agreement exceeds the amount of the receivables by more than 20%, SCG shall be obliged, at the Purchaser's request, to release collateral to which SCG is entitled from this agreement at its own discretion up to the specified limit amount.
8. If SCG demands the surrender of the goods subject to retention of title – providing that the *Abzahlungsgesetz* [Instalment Law] does not apply – this shall not constitute a rescind of the supply contract.
9. If the Purchaser defaults on payment or becomes insolvent, SCG shall be entitled, after declaring its rescission, to collect the goods subject to retention of title and for this purpose to enter the premises in which these goods are stored and to store the goods for SCG at its own discretion.

VI. Warranty claims

SCG provides the following warranty for material defects and defects of title, excluding all further claims, subject to Clause VII:

Material defects:

1. All parts found to be defective due to a circumstance that occurred prior to the transfer of risk shall be replaced or repaired free of charge at the discretion of SCG. SCG must be immediately notified of any such defects. Replaced parts shall become the property of SCG.
2. The Purchaser shall consult with SCG and give it the necessary time and opportunity to carry out any necessary repairs or make substitute deliveries; otherwise SCG shall be released from liability for the resulting consequences. The customer shall be entitled to repair a defect itself or have it repaired by a third party only in urgent cases where there is an operational safety risk or to avoid unreasonably serious damage, whereby SCG must be immediately informed.
3. With respect to the direct costs incurred for repairs or substitute deliveries, SCG shall bear the costs of the repair to the delivery item or the substitute item providing the complaint has turned out to be justified. Further acceptance of costs shall be excluded.
4. Within the limits of the legal regulations, the Purchaser shall be entitled to rescind the contract if SCG – taking into account any legal exemptions – allows a reasonable grace period for the repairs or substitute delivery on account of material defects to expire abortively. In the case of insubstantial defects, the Purchaser shall only be entitled to a contract price reduction. In all other cases the right to a reduction in the price shall be excluded. Further claims shall be subject to the provisions of Clause VII paragraph 2 of these Terms and Conditions.
5. Warranty shall, in particular, not be provided in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable foundations, chemical, electrochemical or electric influences – unless SCG is responsible.
6. SCG assumes no liability for the consequences of unauthorised improvements by the Purchaser or a third party.
The same shall apply to modifications made to the delivery item without SCG's prior consent.

Defects of title

7. Should the use of the delivery item result in the infringement of German industrial property rights or copyrights, SCG shall – as a matter of principle and at its own cost – procure the right of the Purchaser to make further use of the delivery item or modify the delivery item in a manner acceptable to the customer that ensures it no longer infringes the industrial property rights.
If this is not possible on reasonable business terms or within a reasonable period, the Purchaser shall be entitled to rescind the contract. SCG shall also be entitled to rescind the contract subject to the same requirements.
SCG will also release the Purchaser from undisputed or final and absolute claims asserted by the holder of the industrial property rights concerned.
8. Subject to the provisions of Clause VII paragraph 2, the obligations of SCG established in Clause VI paragraph 7 shall be exhaustive with regard to the infringement of industrial property rights and copyrights. They shall only apply if
 - The Purchaser immediately notifies SCG of any claims regarding the infringement of industrial property rights or copyrights,
 - The Purchaser provides SCG with an appropriate level of support in defence of such claims and enables SCG to carry out the modification measures referred to in Clause VI paragraph 7,
 - SCG shall be reserved the right to carry out all defensive measures, including out-of-court settlements,
 - The defect of title is not the result of instructions issued by the Purchaser and
 - The infringement was not caused by the Purchaser independently modifying the delivery item or using the delivery item in a manner which infringes the contractual provisions.

VII. Liability

1. If the delivery item cannot be used by the Purchaser as foreseen by the contract through the fault of SCG as the result of the omitted or improper implementation of proposals and consultations made prior to or after the conclusion of the contract or the infringement of other ancillary contractual obligations, in particular instructions on the operation and maintenance of the delivery item, the provisions of Clauses VI and VII paragraph 2 shall apply accordingly and any further claims by the Purchaser shall be excluded.

2. SCG shall be liable for damage not caused to the delivery item itself – regardless of their legal standing – only in the case of
 - a. intent,
 - b. gross negligence of the owner/the corporate bodies or executive employees,
 - c. negligent injury to life, limb or health,
 - d. SCG's fraudulent concealment of defects or where their absence has been warranted by SCG,
 - e. delivery item defects where liability for physical injuries or material damages is borne under the *Produkthaftungsgesetz* [German Product Liability Act].

In the event of a culpable breach of contractual obligations, SCG shall be liable for gross negligence on the part of non-executive employees and for slight negligence – in the latter case, limited to reasonably foreseeable damages intrinsic to the contract.
Any further claims shall be excluded.

VIII. Limitation period

All claims by the Purchaser – regardless of their legal standing – are subject to a 12 month limitation period. Compensation claims under Clause VII paragraph 2 a. to e. shall be subject to statutory limitation periods. Such statutory periods shall also apply to defects of a building or to delivery items which, in line with their customary usage, have been used for a building and caused it to become defective.

IX. Use of software

If the scope of delivery includes software the Purchaser shall be granted a non-exclusive right to use the delivered software and its documentation. The software is provided for use on the designated delivery item. Use of the software on more than one system shall be prohibited. The customer may only reproduce, reengineer or translate the software or convert it from object code into source code to the extent permitted by law (Sections 69a et seq. of the *Urhebergesetz* [German Copyright Act]). The Purchaser undertakes not to remove manufacturer information, in particular copyright notes, or to change them without the express prior consent of SCG.

All other rights to the software and documentation, including copies thereof, shall remain with SCG or the software suppliers.
The granting of sub-licenses shall not be permitted.

X. Applicable law, place of jurisdiction

1. The law of the Federal Republic of Germany relating to the legal relations between two German parties shall exclusively govern all legal relations between SCG and the Purchaser.
2. The place of jurisdiction shall be the court having jurisdiction over the registered office of SCG. SCG shall, however, be entitled to file suit at the location of the Purchaser's registered office.

Markt Indersdorf, June 2002