

General Terms and Conditions

General Terms and Conditions of Sale, Delivery and Payment of SmartDec GmbH, Dingolfing, for automation technology, switchgear and commissioning

As of: September 2026 · Version 1.2 · Applicable to contracts with entrepreneurs (B2B)

I. Scope of application

1. These General Terms and Conditions (hereinafter the “GTC”) apply to all offers, deliveries and services of SmartDec GmbH (hereinafter “we” or “SmartDec”) vis-à-vis entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law (hereinafter the “Customer”). These GTC do not apply vis-à-vis consumers. Typical services, to the extent commissioned in each case, are project management, electrical hardware engineering (in particular using EPLAN), supply of switchgear and control cabinets, electrical installation and assembly including installation of cable trays, creation and adaptation of control, visualisation and robot software, and virtual and on-site commissioning.
2. Our GTC apply exclusively. Deviating, conflicting or supplementary terms of the Customer shall not become part of the contract, even if we do not separately object to them or perform the service without reservation in knowledge of such terms. They shall apply only to the extent that we have expressly agreed to them in writing.
3. These GTC also apply to all future transactions with the Customer without any further reference being required.
4. Individual agreements, in particular framework agreements, purchase orders and our order confirmation, take precedence over these GTC. A written contract or our written confirmation shall be decisive for the content of such agreements.
5. Declarations and notices of legal relevance that the Customer must give to us after conclusion of the contract must be in text form (Section 126b BGB) in order to be effective. Transmission by e-mail is sufficient.

II. Offer, conclusion of contract, documents

1. Our offers are subject to change and non-binding unless expressly designated as binding. Orders of the Customer are binding offers to contract; we may accept them within 14 days of receipt.
2. The contract is concluded by our written order confirmation or by performance of the service. Our order confirmation is decisive for the content of the contract.
3. Oral promises, side agreements and statements of our employees or agents are binding only if we have confirmed them in writing.
4. Information in catalogues, brochures, data sheets, illustrations, drawings as well as weight, dimension, performance and consumption data is approximate and does not constitute an agreement on quality or a guarantee unless expressly designated as binding in writing.
5. We retain title, copyright and other intellectual property rights in offers, cost estimates, concepts, circuit diagrams, drawings, calculations, simulation models, programs and other documents. They may be used only for the contractually agreed purpose, may not be reproduced and may not be made accessible to third parties – in particular competitors. Upon request they shall be returned to us without delay or demonstrably deleted.
6. Cost estimates are non-binding unless expressly marked as binding. Expenses for the preparation of extensive technical concepts or feasibility studies may be remunerated separately if agreed in advance.
7. We are entitled to engage subcontractors to fulfil our performance obligations. This applies in particular to the manufacture of control cabinets and switchgear. In every case we remain the Customer’s contractual partner; the use of subcontractors does not release us from our obligations towards the Customer.

III. Scope of services, changes

1. The type and scope of our services are conclusively set out in the specification of services in our order confirmation including annexes. Typically this may include: project management; electrical hardware engineering including circuit diagrams in EPLAN; supply of switchgear, control cabinets and related components; electrical installation and assembly including installation of cable trays; PLC, drive, HMI, SCADA and robot programming; virtual commissioning and on-site commissioning. Services not listed in the order confirmation – in particular plant mechanics, civil works, building electrical installation (building services), third-party network infrastructure, other trades, third-party licences and official permits – are not owed.

2. Contracts may combine elements of sale, contracts for work and services. For the supply of switchgear and components the rules on sale or contracts for work and materials apply in addition; for engineering, installation, programming and commissioning the rules on contracts for work apply in addition, unless otherwise agreed.
3. If we assume project management, we owe professional coordination, schedule tracking and interface management within the agreed scope of services. Project management does not create overall responsibility for the plant, site management under HOAI or VOB, or assumption of CE marking of the overall plant, unless this is expressly agreed in writing.
4. Hardware engineering is performed on the basis of the specifications, mechanical data, interfaces and safety requirements provided by the Customer. Unless expressly agreed, we are not obliged to verify the completeness or accuracy of the mechanical design, risk assessment or safety concept of the overall plant. We owe handover of the agreed engineering documents, in the case of EPLAN in the agreed version and as an editable project file.
5. We supply switchgear and control cabinets in accordance with the agreed specification and the applicable standards, in particular DIN EN 61439 where applicable. We may have manufacture performed by subcontractors. Conformity assessment of the cabinet as a switchgear assembly is not CE marking or a declaration of conformity of the overall machine or plant.
6. For engineering, programming, installation and commissioning services, unless a specific work result has been expressly agreed, we owe due professional performance in accordance with the state of the art and the recognised rules of technology. A particular economic result, cycle time, output or plant availability is owed only if expressly agreed in writing as a quality feature.
7. It is not possible according to the state of the art to produce software entirely free of defects. No agreement is made as to complete freedom from defects of control, visualisation or simulation software. Simulation models and results of virtual commissioning represent the plant on the basis of data and assumptions supplied by the Customer; they neither replace actual commissioning nor safety acceptance and do not constitute an assurance as to the behaviour of the real plant.
8. Changes to the agreed scope of services (change requests) require text form. We will notify the effects of a requested change on remuneration and dates in writing; the change becomes binding only upon confirmation by both parties. Until then we will continue performance unchanged.
9. Technical changes serving technical progress or caused by supply shortages remain reserved, provided they do not impair the contractually agreed purpose and are reasonable for the Customer. This applies in particular to the replacement of components by equivalent parts.
10. Responsibility for the overall plant, in particular the risk assessment, the safety concept, CE marking and the declaration of conformity of the overall plant, remains with the Customer unless we have expressly assumed these services in writing.

IV. Customer's duties to cooperate

1. The Customer shall provide us, in good time, complete and free of charge, with all information, data and documents required for performance, in particular specifications, plant and process descriptions, mechanical design data and layout drawings, interface descriptions, risk assessments, safety concepts, customer standards, end-customer requirements and approvals of circuit diagrams within the agreed periods.
2. The Customer warrants the accuracy and completeness of the specifications, data and models it supplies. We are not obliged to verify them for accuracy, completeness or consistency. Defects based on such specifications or on components provided by the Customer do not fall within our area of responsibility.
3. Where work is performed on the premises of the Customer or a third party, the Customer shall ensure unimpeded access, suitable workplaces and storage areas for control cabinets, power, compressed air, network access, lifting equipment, scaffolding and the necessary permits, briefings and safety precautions. Wall openings, foundations and other civil works shall be provided by the Customer unless they expressly form part of the scope of services.
4. The Customer shall appoint a competent contact person authorised to take decisions in the course of the project and shall provide trained personnel during testing, commissioning and acceptance.
5. Before any intervention in existing systems, the Customer shall back up its data and program versions to an adequate extent and ensure restorability.
6. If the Customer fails to perform its duties to cooperate, or fails to do so in time or properly, agreed dates and periods shall be extended accordingly. Additional effort resulting therefrom, in particular waiting times, wasted travel and idle time of our personnel, shall be remunerated by the Customer at our then applicable hourly rates.

V. Prices, terms of payment

1. Our prices are in euro, ex place of delivery or ex our registered office, plus packing, freight, insurance and the statutory value added tax applicable from time to time.

2. For services on a time-and-materials basis, the agreed rates or, failing agreement, our then applicable hourly rates apply. Travel time counts as working time. Travel expenses, overnight accommodation, additional meal expenses and out-of-pocket costs are charged separately on an actual-cost basis or according to agreed lump sums. Surcharges for overtime as well as night, weekend and public-holiday work are charged according to our then applicable price list.
3. Time-and-materials services are invoiced monthly on the basis of services rendered. Time or activity records signed by the Customer or its agent are deemed accepted unless the Customer objects in text form within ten working days of receipt.
4. For orders relating to plants, switchgear and system supplies, unless otherwise agreed in writing, the following terms of payment apply: 30% of the order value upon order confirmation, 30% upon notice of readiness for dispatch or start of installation, 30% upon commissioning and 10% upon acceptance, but no later than 30 days after commissioning.
5. Invoices are payable without deduction within 14 days of the invoice date unless expressly otherwise agreed. Timeliness of payment is determined by the unconditional receipt of funds in our account.
6. If the payment term is exceeded, the Customer is in default without further reminder. We charge default interest at nine percentage points above the respective base rate. We reserve the right to claim further default damage and the lump sum under Section 288 (5) BGB.
7. If the Customer is in default of payment or if circumstances become known after conclusion of the contract that substantially call into question its creditworthiness, we are entitled to declare all outstanding claims immediately due, to perform outstanding services only against advance payment or security and, after fruitless expiry of a grace period, to withdraw from the contract.
8. The Customer may set off only against undisputed or finally adjudicated claims. Rights of retention exist only insofar as they are based on the same contractual relationship and the counterclaim is undisputed or finally adjudicated.
9. We are entitled to invoice partial performance separately to the extent this is reasonable for the Customer.

VI. Dates, periods, default, force majeure

1. Dates and periods are binding only if expressly agreed in writing as binding.
2. The delivery or performance period begins upon dispatch of our order confirmation, but not before all technical and commercial details have been fully clarified, not before documents and permits to be procured by the Customer have been provided, and not before receipt of any agreed down payment.
3. Timely and correct self-supply by our suppliers remains reserved. We will inform the Customer without delay of any untimely availability and, if the service is permanently unavailable, refund any consideration already received without delay.
4. Events of force majeure and other circumstances for which we are not responsible – in particular strike, lockout, operational disruptions, shortage of energy or raw materials, supply-chain disruptions, cyberattacks, official measures, epidemics and pandemics including related governmental measures – extend the delivery and performance periods by the duration of the impediment plus a reasonable restart period. If the impediment lasts longer than four months, either party may withdraw from the contract in respect of the affected part of the performance; the Customer has no further claims in that case.
5. Our default requires a written reminder by the Customer setting a reasonable additional period.
6. If we are in default due to our fault and the Customer thereby suffers delay damage, such damage is limited to 0.5% of the net value of the delayed part of the performance for each completed week of delay, but in total not more than 5% of that value. Further claims are governed by Clause XIV.
7. If dispatch or performance is delayed for reasons for which the Customer is responsible, the risk passes to the Customer upon notice of readiness for dispatch or performance. From the eleventh day after such notice we charge storage costs of 0.1% of the net value of the stored items per calendar day, up to a maximum of 5%. Proof of higher or lower costs remains reserved to both parties.

VII. Performance, acceptance

1. In the case of deliveries, our performance obligation is deemed fulfilled when the item has been completed and is ready for dispatch, the execution corresponds to the contractual agreements and readiness for dispatch has been notified to the Customer.
2. Where our performance is subject to acceptance, the Customer shall accept it without delay after notice of completion. Acceptance shall be recorded in writing.
3. We are entitled to require partial acceptance of distinguishable parts of the performance, in particular EPLAN or engineering release, factory testing or FAT of switchgear, delivery, electrical installation, software, virtual commissioning and on-site commissioning.

4. Acceptance may not be refused for immaterial defects. Open points are recorded in a punch list; they do not prevent acceptance.
5. The performance is deemed accepted if the Customer does not refuse acceptance within two weeks of notice of completion, stating at least one material defect, or if the Customer uses the performance productively.
6. If the Customer puts the performance or parts thereof into operation or uses it for production purposes, acceptance is deemed to have occurred no later than 30 days after the start of such use.

VIII. Dispatch, passing of risk

1. Unless otherwise agreed, dispatch is at our reasonably exercised discretion; there is no obligation to choose the cheapest mode of dispatch.
2. The risk of accidental loss and accidental deterioration passes to the Customer as soon as the goods have left our works or warehouse or have been handed over to the person commissioned with transport, even in the case of carriage-paid delivery or where we carry out the transport ourselves.
3. We take out transport insurance only at the Customer's request and expense.
4. Transport damage shall be notified by the Customer to the carrier without delay and reported to us.

IX. Retention of title

1. We retain title to all delivered items until full payment of all claims arising from the business relationship with the Customer.
2. The Customer shall treat the reserved goods with care, carry out any necessary maintenance and inspection work at its own expense and insure them at its own expense against fire, water, theft and vandalism at replacement value.
3. Any processing of the reserved goods is carried out for us without creating obligations for us. In the event of processing, combination or mixing with other items, we acquire co-ownership of the new item in the proportion of the value of the reserved goods to the value of the other items at the time of processing.
4. The Customer may resell the reserved goods in the ordinary course of business. It hereby assigns to us all claims from such resale in the amount of our final invoice amount; we accept the assignment. The Customer remains authorised to collect as long as it meets its payment obligations. Our right to collect the claim ourselves remains unaffected.
5. If the realisable value of the security exceeds our claims by more than 10%, we will, at the Customer's request, release security of our choice.
6. Pledges, transfers by way of security and other dispositions over the reserved goods that endanger our rights are not permitted. In the event of attachments or other third-party access, the Customer shall notify us without delay and provide all documents required for intervention; the costs of intervention shall be borne by the Customer insofar as they are not reimbursed by third parties.

X. Installation, commissioning, work at the Customer's site

1. If we assume electrical installation, assembly or commissioning services, our installation terms apply in addition if they have been agreed. The scope of services then includes the agreed placement of control cabinets, installation of cable trays, connection in accordance with our drawings and commissioning of the trades supplied or programmed by us. Earthworks, masonry, core drilling, foundation and other civil works as well as building electrical installation (building services) are not part of our scope of supply unless expressly agreed. Lifting equipment, scaffolding, energy and media at the place of work shall be provided by the Customer unless expressly otherwise agreed.
2. The Customer is responsible for occupational safety at the place of work, shall instruct our personnel in the local safety and operating rules and shall appoint the safety officer and, where required, the coordinator pursuant to Section 6 of DGUV Regulation 1.
3. Work on live parts and interventions in safety-related functions of existing plants are carried out only after the Customer's written release and only in compliance with the applicable regulations.
4. Required isolations, lockouts and production interruptions shall be arranged by the Customer in good time. Waiting times of our personnel for reasons for which the Customer is responsible shall be remunerated at our then applicable hourly rates.
5. Our personnel are subject exclusively to our right of direction. There is no integration into the Customer's organisation; the contract does not create a temporary employment relationship. Technical coordination in the course of the project remains unaffected.

XI. Software, rights of use, source code

1. Where we create or adapt software – in particular control, drive, robot, visualisation or simulation programs – we grant the Customer, upon full payment of the agreed remuneration, a non-exclusive right, unlimited in time and territory, to use such software for the contractually intended purpose on the agreed plant.
2. The right of use includes the right to copy and back up the software for operation, maintenance and servicing of the plant. Transfer to third parties is permitted insofar as it occurs in the course of a sale or relocation of the plant and the third party acknowledges the restrictions on use.
3. We remain the owner of all copyright and other intellectual property rights in software created by us, in function-block libraries, frameworks, simulation models, standards and know-how. We remain entitled to continue using generally reusable blocks, methods and experience without restriction.
4. There is no entitlement to disclosure of source code unless expressly agreed. For control programs (PLC, HMI, robotics), the customary project file shall be deemed source code if so agreed.
5. If third-party standard software is supplied, the licence and terms of use of the respective manufacturer apply with priority. We will make them available to the Customer upon request. Procurement of required licences forms part of our scope of supply only if expressly agreed.
6. Interventions by the Customer or third parties in program code supplied by us that are not expressly permitted by documentation or agreement result in the loss of claims for defects, unless the Customer proves that the defect is not based on the intervention.

XII. Third-party rights, confidentiality, data protection

1. If performance is based on drawings, models, specifications or other requirements of the Customer, the Customer shall indemnify us against third-party claims for infringement of intellectual property rights resulting from compliance with those requirements.
2. If the Customer is claimed against for infringement of third-party rights by our performance, it shall inform us in writing without delay, leave the conduct of the dispute to us and not make any acknowledgements without our consent.
3. Both parties undertake to treat as confidential all trade and business secrets of the other party becoming known in the course of contract negotiations and performance, as well as other information marked as confidential or recognisably confidential, to take appropriate confidentiality measures within the meaning of the German Trade Secrets Act (GeschGehG) and not to make them accessible to third parties. The obligation continues for five years after the end of the contract.
4. We are entitled to name the Customer as a reference after prior coordination. We will not publish project-related details without the Customer's consent.
5. We process personal data solely within the framework of applicable data-protection law, in particular the GDPR and the German Federal Data Protection Act (BDSG), for the performance of the contractual relationship. Where processing on behalf occurs, the parties shall conclude a separate agreement pursuant to Article 28 GDPR.

XIII. Claims for defects

1. The quality of our performance is determined exclusively by the contractually agreed specifications. Public statements of third parties or information in advertising materials do not constitute an agreement on quality. We assume guarantees only if we have expressly designated them as such in writing.
2. The Customer shall inspect the performance without delay after receipt or completion and notify apparent defects without delay, at the latest within ten working days, and hidden defects without delay after discovery, in writing and in as much detail and in as reproducible a manner as possible (Section 377 of the German Commercial Code (HGB)). If notification is omitted, the performance is deemed approved in that respect.
3. In the event of justified notices of defect, we will, at our option, provide subsequent performance by remedying the defect or by delivering a defect-free item. In the case of software, subsequent performance may also consist of providing an update, a patch or a reasonable workaround, provided functionality is not substantially impaired.
4. If subsequent performance fails twice or we finally refuse it, the Customer may, at its option, reduce the price or withdraw from the contract. Claims for damages are governed by Clause XIV.
5. Liability for defects does not extend to damage and malfunctions based on: natural wear and tear, improper handling, operation or storage, defective installation or commissioning by the Customer or third parties, omitted maintenance, unsuitable operating materials, environmental influences, changes to hardware or software without our consent, the Customer's specifications or supplies, or third-party products and third-party software.

6. For third-party products and third-party standard software, our liability is limited to assignment of the claims we have against the upstream supplier or manufacturer. If the Customer does not succeed with those claims, our subsidiary liability for defects under these GTC remains unaffected.
7. Claims for defects become time-barred twelve months after passing of risk or after acceptance. This does not apply to claims based on intent, fraudulent concealment, injury to life, body or health, claims under the German Product Liability Act, the cases of Section 438 (1) no. 2 and Section 634a (1) no. 2 BGB, or claims for damages that remain unlimited under Clause XIV; in those respects the statutory limitation periods apply.
8. For replacement deliveries and remedial work, the limitation period is twelve months from subsequent performance, but does not end before expiry of the original limitation period.
9. If, after a notice of defect, it transpires that there is no defect for which we are responsible, the Customer shall reimburse us for the costs of inspection and troubleshooting at our then applicable hourly rates, unless it is not responsible for the unjustified claim.
10. The Customer shall provide us with the information required for diagnosis and remedy, appoint a competent contact person, grant access to the plant – including remote access if necessary – and allow the time and opportunity required for subsequent performance. Otherwise we are released from liability for defects to that extent.

XIV. Liability

1. We are liable without limitation in cases of intent and gross negligence, fraudulent concealment of a defect, assumption of a guarantee, injury to life, body or health, and under the German Product Liability Act.
2. In the event of slightly negligent breach of a material contractual duty (cardinal duty) the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the Customer may regularly rely, our liability is limited to the damage typically foreseeable at the time of conclusion of the contract.
3. Otherwise our liability for slight negligence is excluded.
4. Liability under Clause XIV.2 is limited in amount to the net order value of the affected order, but at least to the cover of our public-liability and professional-indemnity insurance. Upon request we will evidence the scope of cover.
5. For loss of or damage to data we are liable only up to the amount of the effort that would have been required for restoration if the Customer had performed proper and regular data backups.
6. The foregoing limitations of liability also apply to claims arising from pre-contractual obligations and tort, and in favour of our legal representatives, employees, vicarious agents and subcontractors.
7. The foregoing provisions do not entail a reversal of the burden of proof to the Customer's detriment.

XV. Non-solicitation

1. During the term of the contract and for twelve months thereafter, the Customer undertakes not to actively solicit or cause to be solicited any of our employees or persons working for us who are involved in performing the contract. Public job advertisements and applications on the employee's own initiative remain unaffected.
2. For each culpable breach, a reasonable contractual penalty may be demanded, not exceeding one gross monthly salary of the employee concerned. The right to claim further damage remains reserved; the contractual penalty shall be credited against it.

XVI. Export control

1. When passing on delivered goods, software and technology to third parties in Germany or abroad, the Customer shall observe the applicable national and international foreign-trade and export-control laws as well as applicable embargo and sanctions rules.
2. Performance of our obligations is subject to there being no obstacles arising from national or international foreign-trade law or from embargoes or other sanctions.

XVII. Place of performance, venue, governing law, final provisions

1. The place of performance for delivery and payment is the registered office of SmartDec GmbH in Dingolfing, unless otherwise agreed.
2. The exclusive place of jurisdiction for all disputes arising from and in connection with the contractual relationship is Landshut if the Customer is a merchant, a legal entity under public law or a special fund under public law, or has no general place of jurisdiction in Germany. We are also entitled to sue at the Customer's general place of jurisdiction.

3. The law of the Federal Republic of Germany applies exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. The language of the contract is German. In the event of translations of these GTC, the German version prevails in case of doubt.
5. Assignment of the Customer's claims against us requires our written consent; Section 354a HGB remains unaffected.
6. Should any provision of these GTC be or become wholly or partly invalid or unenforceable, the validity of the remaining provisions shall not be affected. In place of the invalid provision, the statutory rule shall apply.