

# General Terms and Conditions of Supply and Payment

SCHUEERMANN + HEILIG GmbH – Buchener Straße 29 – D-74722 Buchen-Hainstadt



## I. General matters, scope, meaning of terms

1. All contracts relating to goods and services supplied which we enter into with companies, legal entities under public law or special funds under public law as from 1 January 2002 shall be subject to the following conditions.
2. Our terms of business shall apply exclusively; any additional terms of the customer's which are different or unfavourable to us shall not form part of the contract even if we do not specifically oppose them.
3. The content of the contract shall be governed by the written agreements. No additional agreements have been made. Changes or additions to the contract shall only be effective if they are confirmed by us in writing.
4. Our terms of business shall also apply to future transactions with the customer.
5. In the case of long-term debt relationships, the customer shall be notified in writing of any changes in the terms, with the changed provisions being pointed out, and such changes shall be deemed to have been agreed if the customer continues the long-term debt relationship without opposing them within a reasonable period.
6. The language of the contract shall be German.

## II. Offer, offer documents, orders

1. Our offers shall be subject to change. The customer's offers are accepted if we have confirmed them in writing or have supplied the goods or services.
2. We shall retain title and copyright to all documents passed on to the customer, particularly drawings, samples, data carriers, documentation, diagrams and calculations. Such items may not be used for non-contractual purposes or made available to third parties without our express consent and shall immediately be returned to us, free at site, when the contract is terminated or where the purpose of the contract has been fulfilled; this shall apply in particular to documents and information designated as confidential. We shall be entitled to require the return of documents at any time if confidentiality is not ensured. Drawings, calculations, prepared samples, tools, moulds and templates shall be separate from the price of the product for cost purposes and shall be paid for by the customer or the principal.
3. The information and drawings contained in brochures and catalogues shall be approximate figures normal in the sector unless they are expressly designated by us as binding.
4. The costs of maintaining tools, moulds, templates etc. shall be borne by us until the agreed quantity to be provided has been achieved. The customer or principal shall bear the costs of replacement parts which have become necessary for production as a result of wear and tear. The costs of the proper retention of tools shall be borne by us until three years after the last supply of goods by us at the latest. If our contracting party suspends or terminates the cooperation during the period in which the tools are produced, that party shall bear all costs incurred up to that date. If the costs of tools are not agreed separately but are accounted for in the number of units, the costs shall be refunded pro rata if the agreed number of units is not achieved.
5. We shall be entitled to place suborders.
6. Contracts for an indefinite period shall be terminable on 6 months' notice.

## III. Supply and transfer of risk

1. Agreed dates and periods must be complied with absolutely. They may not be unilaterally postponed by our contracting party without a corresponding settlement being agreed for the loss incurred. The delivery period shall commence as soon as all details or designs have been set out or when both parties are in agreement about all parts of the transaction, and it shall relate to preparation or completion at our works. It shall be extended by a reasonable amount in the event of unforeseeable, extraordinary occurrences, even if such occurrences occur at our previous supplier's premises, provided that they have a substantial effect on the completion or delivery of the goods to be delivered. In the case of sales ex works, the delivery periods and dates shall be complied with when notice is given of readiness for shipment, even if the goods cannot be dispatched at the proper time for no fault of ours or on the part of the supplier.
2. Delivery quantities differing from the order within a tolerance of +/- 10% shall be acceptable and shall be deemed to be contractual performance. Delivery before the expiry of the delivery period and partial deliveries shall be permissible. They shall be invoiced separately and shall be payable on the due date.
3. The goods shall be packaged in the manner normal in the sector. The packaging shall be charged for separately. Unless otherwise agreed, shipment shall be ex works without any commitment as to the most favourable manner of shipment. Otherwise, the goods shall be made available with regard to the normal period for loading and shipment. Goods notified as being ready for shipment shall be collected immediately; they shall otherwise be temporarily stored at the purchaser's expense and may be dispatched by us at our option after setting a time limit.
4. The risk shall pass to our contracting party when the goods are handed over to the shipment agent, but at any rate no later than when they leave our works or the store or when the notice of readiness for shipment is received, even if it is agreed that delivery is to be "free" or "free at site".
5. Where a delay in delivery by us occurs for the first time, a reasonable subsequent period shall be set. Our contracting party shall be entitled, once such a period has expired without any result, to cancel the contract with regard to the part of the contract which has not been performed. No claims shall be made for losses caused by delay.
6. The customer shall have no claim for compensation in the event of inability on our part occurring after the contract has been entered into, provided we have given notice of the impossibility of performing the service.

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7. The contracting party shall only be entitled to cancel if we are responsible for the non-compliance with the delivery date and if that party has given us a reasonable subsequent period without success.

## IV. Qualities of the goods and/or services

1. The information about characteristics contained in our public statements such as catalogues, brochures, circulars, notices, drawings, advertising and price lists shall only form part of the qualities of the goods and/or services where they have become a component of the contract. Public statements by an outside producer or his agent shall only form part of the qualities of the goods if they are agreed in the contract or have been expressly adopted by us in writing in public statements.

2. We reserve the right, up until delivery, to make technical changes which are normal in the trade, particularly improvements, if only insignificant changes in quality occur as a result and the customer is not adversely affected to an unreasonable extent.

3. Information about the qualities or useful life of goods or services shall not contain any guarantee (warranty) within the meaning of Section 276(1) of the German Civil Code, nor any guarantee as to qualities or useful life within the meaning of Section 443 of the German Civil Code, unless we have expressly undertaken such a guarantee in writing.

## V. Prices and payment terms

1. Prices shall be in EUROS, ex works, excluding VAT at the statutory rate and the costs of packaging, carriage and insuring the value; these items shall be charged for separately.

2. Any subsequent reduction in the order quantity shall require an increase in the unit price and the agreed shares of the tool costs, with special regard to any additional preparatory and run-up costs. If a substantial alteration in particular cost factors occurs (wages, raw materials, power, etc.), the agreed price may be adjusted appropriately in accordance with the effect of these factors.

3. The prices of earlier or current orders shall not be binding for the purpose of subsequent orders.

4. Payments shall be made without deduction, in legal tender, within 30 days of the invoice date. A 2% discount shall be granted if payment is received within 10 days of the invoice date. Separate agreements shall be required for the acceptance of bills of exchange and cheques, which shall only be accepted for performance purposes and subject to the proviso that they are discountable. Discount charges shall be charged from the due date. If payment is delayed or deferred, interest for delay shall be claimed at the statutory rate.

5. If the principal fails to comply with his payment obligations or if we become aware of circumstances which are likely from a commercial point of view to put the principal's creditworthiness in question, all our claims shall be due for payment immediately even if we have accepted bills of exchange in respect thereof. We shall in this case only be obliged to make additional deliveries if the principal immediately settles any overdue obligations and pays in advance for new deliveries.

6. In the event of delay in payment, we may, after notifying our contracting party in writing, suspend performance of our obligations until the payments have been received.

7. If a substantial change in the costs of wages, materials or power occurs in the case of long-term contracts (contracts for a period of more than 24 months and contracts for an unlimited period), either contracting party shall be entitled to demand a reasonable adjustment of the price taking these factors into consideration.

8. If no binding order quantity is agreed, the non-binding order quantity (the target quantity) expected from the contracting party for a specific period shall form the basis of our calculation. If the contracting party purchases less than the target quantity, we shall be entitled to increase the unit price appropriately. If he purchases more than the target quantity, we shall reduce the unit price appropriately where the contracting party has given at least 3 months' notice of the additional requirement prior to delivery.

9. In the case of supply contracts with a call date, we shall be entitled to produce the quantity ordered. The customer shall purchase the ordered goods within a one-year time limit and shall pay the purchase price charged. The invoice shall be due for payment even if the customer does not purchase the goods.

Additional costs caused by a delayed call or subsequent changes to the call by our contracting party in respect of period or quantity shall be borne by that party; our calculation shall be decisive in this respect.

## VI. Retention of title

1. The goods supplied shall remain our property until all current and future (including conditional) claims arising from the business relationship with our contracting party have been satisfied. In the case of a current account, the title which is reserved shall secure the balance of the claim.

2. The contracting party shall be permitted to resell the goods subject to retention of title as part of his normal course of business, subject to the proviso that he also agrees a retention of title with his contracting party. At the same time, he hereby assigns to us in advance the claims to which he is entitled as a result of his resale, in the amount of the value of the respective goods subject to retention of title. We hereby accept this assignment. Pledging and transferring security for our goods which are subject to retention of title shall not be permitted.

3. Any processing by our contracting party of the goods which are subject to retention of title within the meaning of Section 950 of the German Civil Code shall always be done on our behalf. In the event of the goods which are subject to retention of title being combined or mixed pursuant to Sections 947 and 948 of the German Civil Code,

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we shall acquire joint ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the other combined or mixed items at the time when they are combined or mixed. If, in the event of the goods which are subject to retention of title being combined or mixed pursuant to Section 947 and 948 of the German Civil Code, our contracting party has become the sole owner, the pro rata transfer of joint ownership in the main item to us shall be deemed to have been agreed accordingly; our contracting party shall in this case retain the item for us free of charge (anticipated constituting of ownership).

4. The customer shall immediately notify us in the event of enforcement measures in respect of our property subject to retention of title or in respect of the claims assigned in advance and shall supply us with the necessary documents.

5. The upper limit of cover for the securities shall be 120%. On application by our contracting party, we shall release the securities held by us in so far as their realizable value exceeds the claims to be secured by more than 20%.

6. For the purpose of agreeing the retention of title, a separate agreement has been entered into between the parties which shall be covered by the contract. The agreement shall have legal effect even if it is not signed by our contracting party.

## VII. Confidential matters, property rights

1. The contracting parties shall treat all commercial and technical details which come to their knowledge as a result of the business relations, and which are not public knowledge, as business secrets. Drawings, models, templates, samples, data and similar items may only be copied in the context of operational requirements and copyright provisions.

2. If goods are produced and delivered in a design particularly specified by our contracting party, that party shall guarantee that no third party rights, particularly patents, utility models and other property rights and copyrights and know-how, are infringed by the design. If that is nevertheless the case, the contracting party shall indemnify us against all claims.

## VIII. Guarantee and liability

1. Limitation of liability in terms of grounds:

The customer shall only be entitled to claims for compensation or claims for the refund of expenditure incurred in vain because of breaches of duty or if performance due from us is either not made at all or is not made in accordance with our obligations, because of delay or in the event of defects, in respect of the following:

1.1. loss arising from loss of life, physical injury or damage to health, based on a breach of duty on our part which is at least negligent or on an intentional or negligent breach of duty by one of our lawful representatives or vicarious agents,

1.2. other losses which are based on a breach of duty on our part which is at least grossly negligent or on a breach of duty, which is at least grossly negligent, by one of our lawful representatives, executives or vicarious agents or on the breach on our part, being a breach which is at least negligent, of obligations which are essential to the contract (a cardinal obligation) or on a breach of duty, being at least a negligent breach, by one of our lawful representatives, executives or vicarious agents, and

1.3. losses which come within the scope of a warranty provided by us (a guarantee under Section 276(1) of the German Civil Code) or a warranty as to qualities or useful life (Section 443 of the German Civil Code).

2. Limitation of liability in terms of quantum:

Where our liability in respect of ordinary negligence and our liability in respect of grossly negligent conduct by our vicarious agents who are not lawful representatives or executives is not excluded under subclause 1, we shall only be liable in respect of the loss typically to be expected at the time when the contract is entered into and for the refund of expense incurred in vain only up to the amount of the interest in performance. In respect of loss of data or damage thereto, we shall only be liable for the cost of restoration where proper back-up copies are available.

3. Liability resulting from precontractual debt relationships and business contacts:

The above subclauses shall also apply to claims by the customer for compensation arising from debt relationships which come into existence as a result of the commencement of contractual negotiations, initiating a contract or similar business contacts. If a contract comes into existence between us and the customer, the customer shall be deemed to waive claims for compensation which would not be justified under the above provisions where a contract existed.

4. Claims arising from a right which has been transferred or assigned:

The above provisions shall also apply to claims asserted by the customer as a result of a right which has been transferred or assigned.

5. Limitation of liability in favour of third parties:

Where our liability is excluded or limited, this shall also apply to the personal liability of our executives, employees, collaborators, representatives and other vicarious agents.

## IX. Customer's claims in case of defects (material and legal defects)

1. The customer's rights in respect of material defects shall be subject to the proviso of proper examination and complaint (Section 377 of the German Commercial Code). If an inspection of the goods or an examination of an initial sample was agreed, there shall be no complaint about defects which the party could have established on careful inspection or examination of the initial sample.

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2. The qualities of the goods shall be governed exclusively by the agreed technical supply provisions. If we are required to supply in accordance with drawings, specifications, samples etc. from our contracting party, that party shall accept the risk as to suitability for the intended purpose.
3. We shall be entitled to remedy the defect, at our option, by subsequent reconditioning or by supplying an item which is free from defects (subsequent performance). If the subsequent performance is unsuccessful, the customer may reduce the purchase price or, at his option, cancel the contract.
4. We shall only be obliged to pay compensation in the event of fault on our part. Liability for minor negligence shall be excluded. Warranted characteristics must be expressly and specifically designated as such, in writing. Indirect losses and consequential losses resulting from defects shall be excluded, as shall any claim for loss of profit and processing costs.
5. The guarantee shall come to an end 12 months after the transfer of risk.
6. Time limit for claims in respect of defects not already excluded by these conditions:
  - 6.1. the statutory limitation period shall apply in respect of claims for compensation on the grounds of defects and claims arising from unlawful acts,
  - 6.2. all other claims by the customer in respect of material defects, particularly claims for subsequent performance, refund of expenditure in the event of action by the customer himself, cancellation, reduction and the refund of expenditure incurred in vain shall be statute-barred after one year,
  - 6.3. the running of time in respect of the customer's claims shall only be suspended in the event of negotiations if we have agreed in writing to negotiations. The suspension shall terminate three months after our last written statement.

## X. Final provisions

1. Force majeure, industrial disputes, unrest, measures by public authorities, failure to supply on the part of our suppliers and other unforeseeable, unavoidable and serious occurrences shall, for the duration of the disruption and to the extent of the effect thereof, release the contracting parties from their performance obligations. This shall also apply if these occurrences take place at a time when the relevant contracting party is in default. The contracting parties shall, within reasonable bounds, immediately provide the necessary information and adjust their obligations in accordance with the changed circumstances.
  2. The place of performance for deliveries and payments shall be Buchen-Hainstadt.
  3. These terms of business and the entire legal relationship of the parties shall be subject to substantive German law. The United Nations Convention on Contracts for the international sale of goods shall not apply.
  4. Our place of business shall be the venue for jurisdiction in respect of all legal disputes, including disputes in connection with proceedings relating to a cheque or bill of exchange. We shall however also be entitled to commence proceedings against the customer in a different legal jurisdiction.
  5. If any provisions in these contractual terms or any other provision agreed between the parties are ineffective, this shall have no influence on the effectiveness of the remaining provisions of these General Terms of Business or of any other agreements.
- In the case of other provisions agreed between the parties, the parties shall replace the ineffective provisions with provisions which approximate as closely as possible to the purpose of the ineffective provisions.