

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

from

Schunk Wien Ges.m.b.H.
Oberlaaer Straße 316
1230 Wien, Österreich

effective as of/valid since: 01.01.2007

1. Applicable conditions

Our offers and acknowledgements of orders are made subject to the condition that the following Terms and Conditions of Sale and Delivery shall be applicable in their entirety and any general terms and conditions of the customer shall be applicable only to the extent that they are in accordance with our present Terms and Conditions.

2. Offers

Our offers are without obligation, unless otherwise stated by us in writing.

3. Contents of contracts, reservation of export licence

- 3.1. The scope of our obligation of delivery shall be in accordance with our written acknowledgement of order. In case of a binding offer on our part and its legally binding acceptance without acknowledgement of order, in accordance with our offer. Any collateral agreements or modifications shall be effective only when confirmed by us in writing. Production-related deviations from the quantity ordered shall be permitted within a reasonable scope (plus/minus 10 percent) and may be invoiced separately.
- 3.2. Our statements shall be deemed warranties as to quality only when expressly designated as such in our acknowledgement of order.
- 3.3. Any licenses or permits required for the production or operation of the goods to be delivered shall be obtained by the customer at its own costs. In case we assist the customer in obtaining the said permits the customer shall bear the costs incurred by us in this respect.
- 3.4. Shipment by instalments shall be permitted.
- 3.5. In case of goods to be delivered abroad our offers and acknowledgements of order are subject to the condition precedent that any required export licences are granted by the competent authorities.

4. Copyright, confidentiality

Our drawings, models, designs, templates, patterns, etc., as well as offers and acknowledgements of order remain our exclusive property. They are submitted for the purpose agreed upon only and may not be used for any other purpose. Copies shall be made only for the purpose agreed upon. Neither originals nor copies shall be submitted or disclosed to any third party. We reserve the right to demand at any time that any of the aforementioned items be returned to us. They shall be returned to us immediately when the order is placed with another supplier. The customer assumes liability that the use of any drawings, samples or similar items submitted to us will not infringe against any patent, copyright in design, or trademark protection right.

5. Prices

The computation is based upon the valid prices on the dispatch day.

Unless otherwise agreed upon our prices shall be ex-works, including loading on our premises, however exclusive of packing and any other costs. Our prices are exclusive of Value Added Tax in the statutory amount where applicable.

On changes of the material cost prices, wages or other achievements we reserve ourselves a price adjustment.

6. Cost of tools

In the event that any new tools, moulds or other devices are required for executing an order they shall remain our exclusive property and will not be surrendered by us even if paid for by the customer in part or in full.

In order to ensure delivery within the deadlines agreed-upon we are obliged to keep a sufficient quantity of wear parts on stock and available in time. In case that a part is not needed any more the customer shall advise us of this fact as soon as possible. Otherwise, we will be entitled to invoice the costs incurred by us.

In the event that any part for which we prepare a special tool by the customer's order is not introduced we shall be entitled to subsequently invoice the full tool costs.

Any agreement departing from these provisions shall be valid only when made in writing.

7. Payment, default in payment, withholding of payment

7.1. We are not obliged to accept bills of exchange. Any bill charges shall be borne by the customer. If a bill is not honoured any and all claims against the customer shall fall due immediately.

7.2. The amount of any invoice plus value added tax shall be due for payment 30 days from the date of invoice, whereby the input information of the payment and/or the date of the credit note on our account is determining. From this date onward, we will be entitled to demand payment of default interest at a rate of 8 % above the then current European Central Bank base rate. We reserve the right to furnish proof of any major loss to be compensated for. Our invoices are payable without any discount. Any tacitly tolerated deduction of discounts shall not give rise to any legal claim even after having been practised over a prolonged period of time.

7.3. We are entitled to invoice EUR 8.00 for each reminder; 3rd reminder plus interests.

7.4. The customer shall not be entitled to withhold payment or to offset the amount of any invoice against any counterclaims contested by us. In the event that specific circumstances give us reasonable cause to do so, in particular if our trade credit insurance refuses to cover in full any claims against a customer, we may accelerate maturity of any claims arising out of this business relationship which shall be due for payment immediately. In this case, we shall be under no obligation of advance performance.

8. Date and term of delivery, default in delivery

8.1. Any date or term of delivery shall be binding only if designated as such in our acknowledgement of order.

8.2. The term of delivery shall commence when sending the acknowledgement of order, however not before receiving the drawings authorised by the customer, release of documents to be procured, not before having obtained any required licenses or permits, not before having received any and all information required for executing the order, and not before receipt of any deposit agreed upon or any payments due from previous orders.

8.3. The term of delivery shall be extended reasonably in the event of industrial action, including but not limited to strike and lockout, as well as in the event of unforeseeable obstacles beyond the supplier's control to the extent that proof can be furnished that any such obstacles have a relevant effect on the production or delivery of the goods ordered. This shall also be applicable if any such circumstances occur with our subcontractors.

We shall not be held liable for any circumstances as aforesaid even if they occur while already being in default. In important cases, we will inform the customer of the occurrence and end of any such obstacles as soon as possible.

8.4. The date or term of delivery shall be deemed complied with if the goods to be delivered leave our plant or the customer is advised that they are ready for shipment prior to the lapse of the said term.

8.5. Any claims for compensation on the part of the customer in any case of delayed delivery shall be excluded, even after the lapse of a grace period granted to the supplier, to the extent that this is permitted by law. This shall not be applicable in case of imperative liability for loss or damage caused intentionally or by gross negligence. This provision shall not affect the right of the customer to rescind a contract after a grace period granted to the supplier has lapsed without delivery being made.

8.6. In the event that delivery or collecting is delayed upon the customer's request we will invoice the costs incurred for storage starting one month after having advised the customer that the goods are ready for shipment, at a rate of at least 0.5 % of the amount of the invoice per month of storage on our premises. At the same time, the invoices for all goods delivered and services provided previously shall be due for payment.

8.7. In case of call orders we are entitled to manufacture the goods at once. Shipment by instalments is permitted. In the event that no fixed dates or deadlines have been agreed upon for taking delivery we shall be entitled to make delivery within reasonable periods if the customer fails to issue call-forward notices.

9. Taking delivery, acceptance, passage of risk, default in acceptance

- 9.1. The risk shall pass to the customer upon shipment or when collecting the parts to be delivered at the latest, even in case of shipment by instalments, and even in case we bear the shipping costs or have undertaken to perform additional services such as delivery to the customer's premises and/or installation. We shall be entitled to take out transport insurance for all consignments at the customer's expense. In the event that transport damage is detected upon arrival of a consignment at the customer or at a later date the customer shall immediately demand ascertainment and a written statement of facts from the carrier.
- 9.2. In the event that dispatch or collecting is delayed due to circumstances to be attributed to the customer the risk shall pass to the customer as of the day the goods are ready for shipment. However, we shall be obliged to take out insurance at the customer's request and expense, and in accordance with the customer's instruction.
- 9.3. Notwithstanding the rights defined in Clause 12 the customer shall take delivery of goods delivered even if they have irrelevant defects.
- 9.4. In the event that any material supplied by the customer is damaged or becomes unfit for use in our plant, particularly in the course of machining, processing or repairs, we shall be held liable only if loss or damage was caused by gross negligence. This liability shall be limited to 10 % of the processing value, unless imperative provisions of law provide for unlimited liability.
- 9.5. We take out fire insurance at our own cost for any materials owned by the customer and stored on our premises. Any additional insurance will be taken out only upon written application by the customer and at the customer's expense.

10. Retention of title

- 10.1. The seller retains ownership of any and all goods supplied by it until the amount of the respective invoices plus any costs and interest have been paid in full. Up to that point, the customer may re-sell, machine, process or combine the goods with other goods only subject to the seller's consent in writing unless any such goods have been supplied for re-sale, machining, processing or for being combined with other goods. The customer undertakes to assign its claim arising from re-sale to the seller as security for the seller's purchase price claim and to make a note of any such assignment in its books or on its invoices. In case of seizure or any other third-party claim to the goods the customer shall draw attention to the ownership right of the seller and shall inform the seller forthwith.
- 10.2. If the customer is in breach of contract, in particular in case of default in payment, after having requested the customer to remedy the said breach, we shall be entitled to demand that the goods be returned to us, and the customer shall be obliged to surrender the goods.
- 10.3. The customer assigns to us already at this point any and all of its future claims against its customers or any third party arising out of the re-sale of goods supplied by us in the pro-rata amount of our invoice including Value Added Tax, as well as any and all ancillary rights. This provision shall also be applicable in the event that the customer allocates the claim to which it is entitled in respect of the re-sale to a current account agreed upon with its customer or with any third party. We accept this assignment.
- 10.4. In the event of connection to a plot of land or to personal property owned by any third party or machining/processing based on a contract for work and services, the customer assigns to us already now the claim to compensation for work and/or the share in joint property created by any such procedure in the pro-rata amount of our invoice for the goods used which are subject to retention of title including Value Added Tax. We accept this assignment.
- 10.5. The customer is hereby authorised to collect the claims assigned as aforesaid in the course of ordinary business, provided that it shall transfer to us any amounts received without delay. The authorisation to collect any claims assigned shall expire automatically in the event of default in payment, if an application for an out-of-court arrangement with creditors or a petition in bankruptcy is filed, as well as in case of protest in connection with bills of exchange or cheques.

- 10.6. In the event that any goods delivered shall have become a relevant part of a plot of land the customer undertakes to permit us to remove the goods which can be removed without affecting the building structure in any relevant way in case of non-compliance with the terms of payment agreed upon, and to re-transfer to us the ownership title in the said goods. In the event that the customer impairs our rights as aforesaid it shall be liable for damages. The cost of removal and any other costs shall be borne by the customer.
- 10.7. We shall be entitled to take out insurance against theft, fire, water, and other loss or damage to the goods delivered at the customer's expense unless the customer furnishes proof that it has taken out such insurance.

11. Liability for defects in goods delivered

With respect to any defects in goods delivered or services provided, including the absence of expressly warranted quality or characteristics, we shall be liable notwithstanding the provisions of paragraph 13.4 and excluding any further claims as follows:

- 11.1. Any parts which turn out to be unfit for use or considerably impaired in their fitness for use within a period of 6 months (3 months in case of shift operation) from the date of passage of risk as a result of any circumstance originating before the passage of risk, including but not limited to defective design, poor quality of materials or defects in workmanship shall be replaced or repaired free of charge at our discretion. If any such defect is detected the customer shall inform us forthwith in writing. Any replaced parts shall become our property. In the event that shipment, installation or commissioning are delayed without any fault on our part, liability shall expire no later than 12 months after the passage of risk. With respect to relevant products manufactured by third-parties our liability shall be limited to the assignment of the claims to which we are entitled against the third-party supplier.
- 11.2. We do not assume liability for any defect or damage due to any of the following reasons: improper or inexperienced use, lack of maintenance or insufficient maintenance, faulty installation and/or commissioning by the customer or any third party, natural wear, inexperienced or negligent treatment, use of unsuitable consumables, replacement of materials, deficient building work, installation/erection on unsuitable land, chemical, electrochemical or electrical effects unless to be attributed to our fault.
- 11.3. After having contacted us in case of any defects, the customer shall give us the required time and opportunity to make the repairs and/or replacement deliveries required at our discretion. Otherwise we shall be relieved of our liability for defects. The customer shall be authorised to remove a defect on its own or to have it removed by a third party and entitled to demand reimbursement of necessary costs from us only in urgent cases where there is a danger to operational safety and in order to prevent unreasonably high loss, or in case we are in default in removing a defect, and shall inform us forthwith of any such measures taken.
- 11.4. With respect to the direct cost of repairs and/or delivery of replacement parts in case of justified complaints we shall bear the cost of the replaced parts including shipment free Austrian border, as well as reasonable costs of removal/installation. In addition, if within Austria, and if this can be reasonably demanded in the given case we shall bear the cost of sending the required installation personnel and helpers. Any other costs shall be borne by the customer. Any replaced parts shall become our property.
- 11.5. The warranty period for any replaced parts and repairs shall be 3 months: However it shall not end prior to the expiry of the initial warranty period for the goods supplied. Liability for defects in the goods supplied shall be extended by the duration of the interruption of operations due to repair work.
- 11.6. In the event the customer or any third party make any modifications in an inexperienced manner without our prior consent we shall not be held liable for any consequences thereof.
- 11.7. In the event that the customer supplies parts or materials for processing or as a contribution to the execution of an order we shall not be obliged to perform acceptance tests for covert defects unless otherwise agreed upon.

- 11.8. Any further claims on the part of the customer against us, our staff, or any other person employed by us in performance of our obligations, in particular any claim for compensation of any loss or damage to any objects other than the goods supplied shall be excluded. This exclusion of liability shall not be applicable in case of loss or damage caused intentionally or by gross negligence on the part of management or executives, and in the event of culpable breach of any material provisions of contract. In case of culpable breach of any material obligations under the contract we shall be liable only for the reasonably foreseeable loss typically related to the contract - except in cases of intentional breach or gross negligence on the part of management or executives. Furthermore, the exclusion of liability shall not apply in those cases where we are liable under the Product Liability Act ("*Produkthaftungsgesetz*") for personal injury or damage to privately used property due to defects in the goods supplied. Furthermore, it shall not apply if expressly warranted quality or characteristics are not present where the purpose of warranty was to protect the customer against loss or damage other than damage to the goods supplied.
- 11.9. Quantity complaints can be considered only within 8 days. Further requirements of the customer, in particular a requirement on replacement of damage, in particular lack damages, are impossible - so far legally permissible.

12. Liability with respect to ancillary obligations

If the goods supplied cannot be used according to contract by the customer for our fault, as a result of failure to implement or faulty implementation of any proposals or counselling before or after signature of the contract, and/or as a result of our failure to comply with any other ancillary obligations under the contract, including but not limited to providing instructions for operation and maintenance of the goods supplied, the provisions of Clauses 11 and 13 shall be applicable analogously. Any further claims on the part of the customer against us shall be excluded.

13. Customer's right of rescission, additional liability on our part

- 13.1. The customer may rescind the contract if it becomes definitely impossible for us to perform the contract in its entirety before the passage of risk. The customer may also rescind the contract in case of orders of identical objects if it becomes impossible to deliver part of the goods ordered and the customer has a legitimate interest to refuse partial delivery. If this is not the case, the customer may reduce the purchase price proportionally.
- 13.2. In case of default in delivery/performance within the meaning of Clause 8 of these Terms and Conditions the customer may rescind the contract after having granted us a reasonable grace period declaring that it will refuse to take delivery after the said period has lapsed, if we fail to perform the contract within the grace period.
- 13.3. If it becomes impossible for us to perform the contract while the customer is in default of acceptance or due to the customer's fault the customer shall be obligated to pay the purchase price according to contract.
- 13.4. Furthermore, the customer may rescind the contract if for our fault we fail to remove a defect or replace defective goods within a reasonable grace period granted in respect of a defect to be attributed to us within the meaning of the Terms of Delivery. The customer may also rescind the contract in other cases of unsuccessful removal of defects or delivery of replacement parts.
- 13.5. Any further claims against us or our employees on the part of the customer, in particular any claim for rescission of contract, notice of termination or reduction of the purchase price, for compensation of any loss or damage, even damage caused to other objects than the goods delivered, shall be excluded.

14. Our claim for damages in case of non-performance by the customer

In case we are entitled to demand damages for non-performance the liquidated minimum damages shall be 20 % of the price agreed upon not including Value Added Tax. The amount of damages shall be increased if we furnish proof that the actual loss is in higher, and lowered if the customer furnishes proof that the actual loss is lower.

15. Binding character of the contract

In the event that any provisions of a contract are invalid the remaining provisions of the contract shall remain in full force and effect. This shall not be applicable if sticking to the contract would cause unreasonable hardship for one of the parties.

In the event that any provision is invalid in its entirety or in part the parties to the contract shall immediately make efforts to achieve the economic intention of the invalid provision in another legal manner.

16. Data privacy protection, BGBl. Nr. 565/78

We would like to inform you that the personal data that you transmit to us (e.g.: your name, company name and address or email-address) will be used by us for corresponding to you, or only for the purpose for which you provided the data. Using your transmitted data we may also contact you by telephone or electronically in order to conduct a survey about customer satisfaction, for market research or advertising purposes.

17. Place of jurisdiction, applicable law

The place of fulfilment for delivery and payment shall be the headquarters of the seller, even in those cases where delivery takes place at another place according to agreement. The place of jurisdiction for settling any dispute arising directly or indirectly out of the contract shall be the court having subject-matter jurisdiction in Vienna, Austria. However, the seller may also sue in another court having jurisdiction over the customer. The parties may agree on the settlement of disputes by arbitration. The contract shall be subject to Austrian law.