

## **§ 1 Scope**

- (1) These general terms and conditions for goods and services apply only to legal persons under public law, separate estates under public law, and companies as defined in § 310 Para. 1 GERMAN CIVIL CODE.
- (2) All goods and services delivered to the ordering party will be completed exclusively on the basis of these general terms and conditions for goods and services. Any terms or conditions from the ordering party that are contrary to or deviate from our terms and conditions will only be recognised if we expressly approve them in writing. Schmöle's general terms and conditions for goods and services also apply if Schmöle, in full knowledge of conditions of the ordering party that are contrary to or deviate from these terms and conditions for goods and services, performs these services to the ordering party without reservation.
- (3) The ordering party cannot transfer rights deriving from this contract. These conditions also apply to future transactions with the ordering party, to the extent that these are legal transactions of any kind.

## **§ 2 Bids and Orders**

- (1) Our bids are always subject to change, to the extent they are not time-limited.
- (2) Orders issued by the ordering party are binding for that party and are considered accepted once we have issued a written order confirmation.
- (3) The order confirmation contains the final and exhaustive description of the goods and services that Schmöle is to provide and is especially the basis for technical performance features of the goods and services and their technical and commercial details.
- (4) The documents provided to Schmöle by the ordering party prior to assignment of the order, such as drawings, specifications, patterns, tools, models and the like, are a binding basis for the production and completion of the bid. The ordering party must indicate any subsequent changes in the order.

## **§ 3 Entrusted Documents**

We retain ownership of and copyright on all documents entrusted to the ordering party in connection with the assignment of the order, such as specifications, tools, drawings, calculations, etc. These documents may not be made accessible to third parties unless we grant the ordering party our express written permission for this. In the event that we do not accept the ordering party's bid, these documents are to be returned to us without delay.

## **§ 4 Price and Payment**

- (1) Our prices are valid ex works, excluding packaging, freight and VAT. Significant changes in order-related cost factors entitle us to adjust the price accordingly. Prices set for metals are valid only with reservation of the possibility of covering [the cost] of raw materials and currencies.
- (2) Payment of the purchase price must be made only to one of our accounts. The deduction of a discount for on-time payment is only permitted on condition of a separate written agreement.
- (3) To the extent that nothing else is agreed to in writing, the purchase price must be paid within 10 days of delivery.
- (4) We only accept bills of exchange with prior approval and only for purposes of fulfilment; the ordering party will pay the fees. Credit for bills of exchange and checks is subject to their encashment.

## **§ 5 Payment Default and Creditworthiness**

- (1) Under the law, we are entitled in cases of default on payment to charge default interest in the amount of 8% above the current annual prime lending rate. We reserve the right to assert higher default damages.
- (2) If, after the conclusion of contract, facts become known to us, especially default on payment by the ordering party with respect to earlier goods and services, which would lead to the conclusion on dutiful and rational assessment that the payment claim is endangered by insufficient capacity, we are entitled to call any outstanding payments immediately and refuse further performance until the payment is made or security for the payment is provided. If the payment is not completed or security is not provided within a period that we will determine, we will have the right to withdraw from the contract and demand damages. Partial shipments that have been completed are to be paid for immediately, regardless of withdrawal [from the contract]. We reserve the right to assert additional rights and claims.
- (3) The ordering party may only exercise a right to off-set if its counter-claims are legally established, uncontested or recognised by us. The ordering party has no right of retention in the case of contested counter-claims.
- (4) The ordering party may not resell goods in our ownership or co-ownership and is obligated to provide us with security. The like applies if we can assert justifiable doubts about the ordering party's creditworthiness.
- (5) The ordering party grants us lien rights to the materials ceded to us for the completion of this contract and any claims that take the place of that property as a security for all current and future claims deriving from our business relationship with it. If the ordering party comes into default of payment or loss of creditworthiness, we are entitled to sell the material security [collateral] under lien at market value (quoted on the London Metal Exchange), if they are not quoted [on the LME] at the average market price in Germany at our discretion on the day of default on loss of creditworthiness.

## **§ 6 Delivery Period**

- (1) The beginning of the delivery period that we state is only binding if the ordering party has communicated all of the technical details necessary for realisation promptly, such that timely completion is assured. The like applies for all other obligations on the part of the ordering party. We reserve the right to plea non-fulfilment of contract. If in the course of fulfilling the contract it becomes clear that timely completion is endangered due to absence of information that the ordering party was to provide, we will make the ordering party aware of this.
- (2) If the order party comes into default of acceptance or otherwise culpably violates other duties of cooperation, we are entitled to demand compensation for any damages we incur as a result, including any increased expenses. We reserve the right to assert additional claims. To the extent that herein described preconditions are fulfilled, the risk of accidental loss or pejoration of the object of purchase transfers to the ordering party in the moment in which this party enters into default of acceptance or payment.

- (3) To the extent that nothing to the contrary is stated in the order confirmation, delivery/fulfilment 'ex works' applies. Delivery day is the day shipped. If shipping is delayed for reasons not attributable to us, the day the order is ready to ship is considered delivery day. If your service is not completed by the date and time stated in the order confirmation, the ordering party is obligated to grant us a reasonable period to remedy this, insofar as no fixed date transaction was agreed upon. For damages that result from such a delay in delivery, we are only liable if we have been informed of the liability claims and their amount in writing by the ordering party. Liability is limited in these cases to 0.5% of the shipment value per complete week of delayed delivery, a maximum of 5% of the shipment value. Partial shipments are permitted.
- (4) If we are kept from timely delivery due to events or acts of force majeure, the delivery period will be extended correspondingly. This also applies to labour disputes, disruptions in our own business operations, and other disruptions that proved unavoidable in spite of the exercise of reasonable diligence, including disruptions in the business operations of our sub-suppliers, including transportation contractors, disruptions caused by public authorities and disruptions in traffic routes, as well as difficulties in the procurement of raw materials and consumables. We must inform the order party of the disruption without delay. If the shipment becomes impossible due to the disruption, our duty to supply is voided under exclusion of damage claims. We will only pay penalties according to express written agreement.
- (5) In the case of master agreements, covering purchases and on-call commissions [orders], we can demand a binding arrangement at three months after award of contract. If the ordering party does not respond to this demand within two weeks or comes into default of acceptance, we are entitled to set an extended deadline of two weeks and, after it expires, to withdraw from the contract or demand compensation for damages.
- (6) If the ordering party wishes that we perform special tests, the type and scope of these tests must be agreed to at the conclusion of contract. Otherwise, the costs [of these tests] will be borne by the ordering party.
- (7) If acceptance according to special conditions by the ordering party or a third party contracted by it is arranged, this must be executed in our plant immediately after readiness for acceptance is announced. If acceptance is not completed in spite of our granting a reasonable deadline extension, we are entitled to ship the goods or to store them at cost and risk to the ordering party. At that point, the goods are deemed accepted.

## **§ 7 Place of Fulfilment and Transfer of Risk**

- (1) The place of fulfilment for shipments is the main site of the specific supplying plant. The place of fulfilment for all payments is our business headquarters.
- (2) All risk is transferred to the ordering party at the latest when the goods leave the supplying plant [or] are reported ready for pick-up or shipping. If shipping is delayed through no fault of ours, risk transfers on the day that the goods are ready to ship. In the case of return of goods and packaging as well as for processing materials or customer-provided materials, the ordering party bears the risk until [the item] arrives at our premises.

## **§ 8 Packaging Material**

If nothing else is agreed upon, the disposable packaging materials that we deem necessary will be charged at cost. Re-useable packaging materials will be re-credited at 2/3 of the charged value within 2 months of the invoicing date in cases of freight-and-carriage paid returns. Where rented containers are used, the rental fees will be charged.

## **§ 9 Properties, Dimensions, Weights and Delivery Quantities**

- (1) To the extent that these conditions do not specify otherwise and nothing else is arranged in writing, the DIN-Norms apply to the properties [composition and nature] of the manufactured products. Dimensions, technical characteristics and other properties of our products are disclosed to the best of our knowledge. Reasonable variations in view of their intended use do not justify complaints. Variations in weight and quantity of pieces of up to +/- 10% conditioned on production or shipping are permitted, both with respect to the overall order quantity and that of the individual partial shipments.  
The ordering party must provide assurance that the working drawings it has presented do not violate the copyrights or patents of third parties; if claims of recourse are raised, the ordering party will hold us harmless.
- (2) For processing and customer-provided materials, our input weights apply. Complaints concerning these data can only be considered if they are submitted to us within a week of delivery.

## **§ 10 Reservation of Title- and Security Interest**

- (1) The goods remain our property until all claims, even those arising in the future, are paid in full. The ordering party is obligated, as long as it does not own the goods, to store them separately and treat them with care and insure them adequately against fire, water and theft at its own cost. If maintenance and inspections must be performed, the ordering party will carry them out in a timely fashion and at its own expense. The ordering party is entitled to process the goods and sell them under due consideration of the following provisions. To the extent that the goods are re-processed or re-shaped by the ordering party, we are considered the manufacturer, as defined in § 950 of the GERMAN CIVIL CODE, and obtain ownership of the intermediate and final products. The processing, finishing or re-shaping of the purchased object is undertaken by the ordering party on our behalf, without producing any obligations on our party. If the goods under reservation of title are combined or processed with other objects that we do not own, we obtain co-ownership of the new object in proportion to the value of the goods under reservation of title to the value of the other objects. The ordering party will preserve ownership or co-ownership. The like applies to the object produced through processing or combination as for the property under reservation of title.

- (2) The goods may only be sold in customary and proper business transactions and that only if claims deriving from re-sale were not already ceded to third parties. The claims due to the ordering party that derive from re-sell are considered ceded to us on conclusion of the purchase contract, and that to the extent that our goods are combined or processed with other objects. In this case, the ceded claims serve as our security sold. The ordering party is entitled to collect the claims itself, as long as it has received no instructions from us. The amounts the ordering party collects must be forwarded to us immediately to the extent our claims are due. The ordering party is obligated however to surrender the third-party debtors to us on request and report the cession to them. Our authorisation to collect the claim ourselves is not affected by this. We will however not collect the claim, as long as the ordering party fulfils its payment obligations deriving from the collected proceeds, is not in default and no application for the initiation of bankruptcy proceedings or halting payment is in effect.
- (3) Liens on or transfer by means of security of the goods under reservation of title or of ceded claims are not permitted. The ordering party must immediately inform us in writing of any attempt to assert third-party claims on the goods under reservation of title or any ceded claims and surrender to us those documents necessary for intervention. To the extent that the third party is not able to compensate us for the legal or out-of-court costs of a legal complaint under § 771 ZPO [German Code of Civil Procedure], the ordering party will be liable for any losses we incur. If the value of the securities given to us exceeds our claims by a total of more than 20%, we are required to release the aforementioned securities – at our discretion – in that extent.
- (4) In the case of violations of the terms of contract or culpable breach of contract by the ordering party, especially default on payment, we are entitled to withdraw from the contract, after a reasonable grace period, granted the ordering party has expired without result, and demand return of the goods under reservation of title. The legal provisions concerning the waiver of a grace period remain unaffected. We are also entitled to withdraw or demand return, if a petition for the initiation of bankruptcy proceedings is submitted against the assets of the ordering party. Withdrawal from contract constitutes a component of the repossession of the goods under reservation of title. For the purpose of recovery, Schmöle is entitled to record or to have recorded the inventory and condition of the goods under reservation of title, and to enter the business premises of the ordering party for this purpose and for the purpose of recovery. The costs of pick-up and repossession will be borne by the ordering party.
- (5) If, in the case of sales made abroad, the reservation of title stated in this item is not permitted with the same enforceability as under German law, the goods remain our property until all of our claims deriving from the contractual relationship created by the sale of these goods are paid. If this reservation of title, too, is not permitted with the same enforceability as under German law, but it is nonetheless permitted that we reserve other rights to the goods, we are entitled to exercise all of these rights. The ordering party is obligated to cooperate in measures that we wish to undertake in order to protect our ownership right or any other right to the goods taking its place.

## **§ 11 Warranty and Defect Claims as well as Recourse/Manufacturer's Recourse**

- (1) The ordering party's warranty rights assume that this party properly fulfils its duty to inspect and give notice of defects as defined under § 377 of the HGB [German Commercial Code]. If there are complaints, then obvious defects must be reported immediately in compliance with § 377 of the HGB, at the latest, however, within 14 days of receipt of goods; hidden defects must be reported immediately after they are discovered. Otherwise, the goods are deemed to have been accepted.
- (2) The ordering party is solely liable for the choice of materials and their use.
- (3) Warranty claims expire 12 months after successful delivery of goods we have supplied to our customer. Any previously existing provisions do not apply, to the extent that the law under § 438 Para. 1 No. 2 of the GERMAN CIVIL CODE (buildings and objects for buildings), § 479 Para. 1 of the GERMAN CIVIL CODE (right of recourse) and § 634a Paragraph 1 of the GERMAN CIVIL CODE (building faults) does not require longer periods. Our permission must be obtained before any goods are shipped back.
- (4) If, in spite of all exercised caution and care, the goods supplied do evince a defect, which was already present at the point of transfer of risk, we will either repair the defect or replace the goods, at our discretion, assuming that the warranty claim is submitted in a timely fashion. We must always be given an opportunity for subsequent fulfilment within a reasonable period of time; additionally, we must be provided on request with a sample of the goods found to be defective. In our choice of remedy and subsequent fulfilment, we must take the legitimate interests of the ordering party into account. The ordering party must compensate us for the costs incurred by the complaint, if it comes to light that the shipment or service was not defective.
- (5) If subsequent fulfilment cannot be effected within a reasonable period of time, the ordering party can – irrespective of any possible damage claims – withdraw from the contract or reduce compensation. The ordering party cannot demand reimbursement for futile expenditures. If the ordering party withdraws from the contract, it is no longer entitled to assert any claims for compensation for damages owing to defects. If only a portion of the shipment is defective, the ordering party can only withdraw from the entire contract if it has no interest in the remainder of the goods or service.
- (6) Warranty claims do not exist in cases of only insignificant deviations from the agreed-upon quality and characteristics, cases of damage from corrosion, cases of solely insignificant degradation of usability, natural wear and tear or, in the case of damages that occur after the transfer of risk as a consequence of negligent handling, excessive strain, use of improper consumables, defective construction, unsuitable foundation soil, or on the basis of particular external influences that are not assumed under terms of the contract. If the ordering party or third parties perform incorrect and improper repairs or modifications, no warranty claims can derive from any consequences resulting there from.

- (7) Claims on the part of the ordering party owing to expenses required for subsequent fulfilment, especially transport, shipping, labour and materials costs are excluded, to the extent that the expenses are increased because the goods we delivered were later stored at a location different than that to which they were delivered, unless relocation coincided with their proper and intended use.
- (8) The ordering party has recourse against us only to the extent that the ordering party has made no agreements with its clients [end-users] that go beyond the legally required damage claims. Paragraph 6 applies analogously to the scope of the ordering party's right of recourse against the supplier.
- (9) To the extent that the ordering party is entitled under the law (§ 637 of the GERMAN CIVIL CODE) to remedy or have a defect remedied at our cost after the futile expiration of reasonable period for subsequent fulfilment, the ordering party is only entitled to this if it has communicated the exercise of this right to us in a timely fashion and with it the expected costs.

## **§12 Limitation of Liability**

- (1) These general terms and conditions for goods and services exhaustively encompass the warranty obligations for goods, services and duties deriving from the order, and exclude any other warranty or damage compensation claims of any kind and without regard for the legal nature of the claim being asserted. Especially excluded are claims due to dereliction of duty deriving from the debt relationship, arising from impermissible acts, and claims to compensation for loss, profits or any other pejoration of assets belonging to the ordering party, such as loss of production by the ordering party or its customers. These or any other liability limitations included in these terms and conditions for goods and services do not apply in the event that a guarantee or procurement risk is assumed, to liability under the Product Liability Act for damages resulting from culpable injury to life, limb or health, or in the event of breach of contract. In the case of breach of contract, we are liable only for contractually typical, reasonably foreseeable damages, except in cases of gross negligence and liability for damages resulting from injury to life, limb or health. Any modification of the burden of proof against the ordering party is not herewith associated. This and any other liability limitation in these general terms and conditions for goods and services apply also to the personal liability of our employees, legal representatives and temporary employees.
- (2) We are liable for damages owing to delay in cases of slight negligence only in the amount of up to 5% of the agreed purchase price.

### **§13 Other Copyrights and Use Rights**

- (1) To the extent that nothing else is arranged, we are only obligated to provide the delivery in the country of the delivery site, free of industrial property rights and copyrights of third parties. Should a third party bring legitimate claims of violation of such protected rights against the ordering party, for deliveries provided by the supplier and used according to the contract, we are liable to the ordering party within the periods stated in § 12 above as follows:
  - a) At our discretion and cost, we will either obtain use rights for the deliveries in question, or modify them such that the copyright is not violated or replace them. Should this prove impossible for us under reasonable terms, the ordering party is entitled to exercise legal rights of withdrawal or reduction [of costs]. The ordering party cannot demand compensation for futile expenses.
  - b) The provisions of § 12 apply to any claims of compensation for damages.
  - c) Our obligations mentioned above only persist insofar as the ordering party informs us of the claims asserted by third parties in writing and in a timely fashion, has not recognized any violation and all defences and possibilities of comparison are reserved to us.
- (2) Claims from the ordering party are excluded to the extent that it is responsible for the infringement of proprietary rights.
- (3) If we have supplied to suppliers, manufacturers, operators or owners of nuclear power plants, the ordering party must indemnify us against nuclear plant damages irrespective of any other rights.
- (4) Claims from the ordering party are also excluded, to the extent that the violation of proprietary rights were caused by special directives from the ordering party, by a use we could not foresee or derive from the fact that the ordering party modified the delivery or used it in combination with goods that we did not supply.
- (5) In the event of infringements of proprietary rights, the other provisions of § 11 apply analogously to the types of claims from the ordering party dealt with in §13 1 a).
- (6) Additional or other claims against us or our contractors on the part of the ordering Party, other than those dealt with in this paragraph and that derive from a legal defect, are excluded.
- (7) In the event of malicious concealment of a defect or in the event of assumption of warranty of condition of goods at the time of transfer of risk in the sense of § 433 of the GERMAN CIVIL CODE, the ordering party's rights are solely determined by legal provisions.

### **§ 14 Tools**

The ordering party obtains no right to the tools through paying shares of their cost.

### **§ 15 Other**

- (1) Material law of the Federal Republic of Germany applies to all legal relationships established by the sale under exclusion of its reference rules for international private law and the rules of UN Convention on the International Sale of Goods (CISG).
- (2) Court of jurisdiction for both parties is our business headquarters. If we appear as plaintiffs, we also have the right to bring our suit at the headquarters of the ordering party.
- (3) Should individual provisions of this contract prove unenforceable or contain a loophole, the other provisions shall remain unaffected.