



General Conditions of Business of Schulte-Henke GmbH

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General provisions

(1) The following General Conditions of Sale are an essential part of the contractual relationship between ourselves and the purchaser. This applies for current business relations as well as for contracts concluded by telex, telephone, or any other (in particular electronic) form. Conditions of purchase of the orderer or purchaser which differ from these Conditions of Business will apply only in special cases and only if this has been specifically confirmed in writing. Fulfilment of the contract on our part will not replace such written confirmation.

(2) The contract will be regarded as binding only when formally acknowledged in written form. All quotations submitted before the written order acknowledgement are without obligation or engagement. In case of immediate execution of contract, the delivery note or invoice will be regarded as acknowledgement of order.

(3) Supplementary agreements, amendments or additions to the contract must be confirmed in writing by us.

(4) Any documents appended to the quotation or order acknowledgment such as drawings, illustrations and other data or performance data, even if these appear in published statements or advertising, will be regarded as binding only when explicitly stated to be so. In addition, information on the object of supply or service should be regarded as approximations only. They do not represent a guarantee regarding the quality of the article, but description or identification of the goods only. Any reference to technical regulations such as DIN standards will not represent any guarantee regarding quality on our part.

(5) We reserve the right to modify and improve our products inasmuch as this may be reasonable for the orderer or purchaser with due regard to our interests.

(6) We reserve title to and copyright in documents appended to the quotation such as illustrations, drawings, samples etc. These must not be made available to third parties and must be returned to us on request.

(7) The contractual rights of the orderer or purchaser may be transferred only with our prior consent.

Prices and conditions of payment

(1) The prices quoted by us do not include statutory value-added tax, transport costs and costs for standard packaging. Prices quoted free of transport costs apply only on the assumption of unrestricted communications by road, rail or water for the routes in question. The costs for undelivered consignments will be charged to the orderer or purchaser. Special packaging will be invoiced separately.

(2) The prices stated in the order acknowledgement are binding for delivery within four months of conclusion of contract. In case of delivery at a later date, we reserve the right to increase our prices if, after conclusion of the contract, circumstances should change, in particular with regard to increases in the price of raw material, labour costs or in our own purchase prices. In such cases, the changes in our prices will be such that they compensate for the increases in the above-mentioned prices. Should our prices, due to these circumstances, change by more than 5% with reference to the prices stated in the order acknowledgement, purchasers or orderers, who are not businessmen as defined by the German Civil Code, or special funds under public law or legal entities under public law will be entitled to withdraw from the contract. Businessmen as defined by the German Civil Code will be entitled to the same right in the case of transactions which are not part of their trade or business.

(3) Special packaging requirements of the orderer or purchaser must be notified to us in writing four weeks before the date of delivery or dispatch at the latest.

(4) Pallets, containers or other objects which are designated as returnable packaging in the invoice, must be returned to us clean and undamaged and free of freight charges.

(5) We will arrange for the insurance of the products against theft, breakage, damage by fire or water, transit damage and any other insurable risks should such a wish be expressed in writing by the purchaser or orderer. The costs for such insurance will be charged to the purchaser or orderer.

(6) Unless otherwise agreed in our quotation or written acknowledgement of order, payments will be due on receipt of invoice and payable in full within 30 days of invoice date, or with discount of 2% within 10 days of receipt of invoice. Partial payments will not qualify for discount. Freight and packaging costs which are invoiced separately will not qualify for discount. Bills of exchange will not be acceptable as means of payment.

(7) Payments will not be reimbursed to the orderer or purchaser in cases where payments are still outstanding from other contracts.

(8) The orderer or purchaser may deduct payments from counter claims of his own only when these counter claims are undisputed or have been duly recognised by a court of law.

(9) Bills of exchange will be accepted only on prior agreement, for payment only and under reservation of discounting possibilities. Should the payment be made by bill of exchange, cheque or other order document, the orderer or purchaser will be responsible for the costs of discounting and collection unless otherwise agreed.

(10) If liability (processing of check or bill of exchange) on the part of seller is established in connection with the payment of the purchase price by the orderer or purchaser, the claim for payment of the purchase price will not expire before the bill of exchange has been honoured by the orderer or purchaser as drawee. Until the bill of exchange has been honoured, the payments of the orderer or purchaser will be regarded as security for the risk associated with the bill of exchange. When the orderer or purchaser honours the bill of exchange, the payment will be deducted from the purchase price, and the orderer or purchaser will be entitled to claim discount in accordance with the provisions of paragraph 6 of this section.

(11) Should the orderer or purchaser be in arrears with regard to a claim or partial claim, our entire claim arising from the business relationship will become due for payment immediately in cash, regardless of any bills of exchange received. The orderer or purchaser will no longer be entitled to sell the products which are our sole or partial property and must return them to us on request. In addition, the orderer or purchaser may not collect claims ceded to us in connection with the extended reservation of title, but must notify the transfer of the claim to us to the third-party debtor without delay.

(12) Should we be entitled to withdraw from the contract due to delay in payment of a claim on the part of the orderer or purchaser, we will also be entitled to withdraw from all other contracts which have not yet been fulfilled. In addition, in case of delay in payment of a claim on the part of the orderer or purchaser, we will also be entitled to refuse fulfilment of all other contracts until our claim against the orderer or purchaser has been met in full. The orderer or purchaser can avert this right of refusal on our part by providing an unlimited directly suable guarantee with an established West German bank for an amount corresponding to all outstanding claims. Our right to claim further compensation for damages will remain unaffected.

(13) The orderer or purchaser declares his agreement to our making deductions from his claims even if the due dates of the counter claim have expired or if cash payment has been agreed by one side and payment by accepted bill or trade bill has been agreed by the other.

Credit basis

(1) The creditworthiness of the orderer or purchaser is the precondition for the supply of products by us. Should we, after conclusion of the contract, receive information which seem to make it inadvisable to grant credit for the amount concerned in the contract, or if events should occur giving rise to doubts in this respect, or if a substantial deterioration in the assets of the orderer or purchaser should occur (seizure of property, suspension of payments, insolvency, liquidation of business, transfer to business), we reserve the right to require payment in advance, securities or payment in cash regardless of any previous agreement which may preclude such a course.

(2) Under the same conditions, we reserve the right, following delivery of products to the orderer or purchaser, to inspect his storage facilities and to secure temporarily any products subject to retention of title regardless of any previous agreement precluding such a course, until payment in cash has been made. The costs for transport and shelter will be met by the orderer / purchaser.

(3) We will also be entitled to exercise the rights stated in sections 1 and 2 above in the case of non-observance of payment conditions by the orderer or purchaser.

Delivery times and periods

(1) Unless specifically stated otherwise in the order acknowledgement, the delivery dates stated are without engagement, and no guarantee is assumed for their observance.

(2) The delivery period commences on the date of the final acknowledgement of the order, however not before all the details concerning the execution of the order have been settled, in particular receipt of documents to be provided by the orderer or purchaser, and receipt of any deposit sums whose payment on conclusion of the contract has been agreed. The observance of an agreed delivery period also depends on fulfilment of all contractual obligations on the part of the orderer or purchaser.

(3) The agreed delivery period will be extended, without prejudice to our rights due to arrears, by the period during which the orderer is in arrears with his obligations arising from this or another contract.

(4) The delivery period will be regarded as having been observed if the object of delivery has left our plant before its expiry or, in the case of collection by the orderer or purchaser, the consignment is ready for dispatch and the orderer or purchaser has been notified accordingly. Partial deliveries may not be refused by the orderer or purchaser.

(5) The delivery period will be extended by a reasonable period in case of legal labour disputes, in particular strikes and lockouts in our own plant and in third-party plants regardless of their legality, inasmuch as no blame attaches to us regarding precaution against or aversion of such disputes, and in case of unforeseen events such as war, blockade, import and export prohibitions, special governmental regulations or decrees, shortage of fuel or raw material, fire or traffic restrictions or force majeure, where such events can be shown to affect the completion or delivery of the product and where they occur in our own or a supplier's or a carrier's plant and for which no responsibility attaches to us, and liability on our part is excluded is excluded only for slight negligence. Should these circumstances occur, we will also be entitled to withdraw from the contract.

(6) In case of delay on our part, the orderer or purchaser will be entitled only to withdraw from the contract where the other legal conditions are fulfilled. In such case, the orderer or purchaser will not be entitled to claim compensation for damages unless it can be shown that we have acted with criminal intent or gross negligence.

(7) If the dispatch of the product is delayed at the request of the orderer or purchaser or for reasons for which the orderer or purchaser is responsible, we will charge the orderer or purchaser for the costs of storage in our plant at a rate of at least 0.5% of the invoice sum for each month or part thereof, commencing one month after notification of readiness for dispatch. Our exercise of other rights arising from delay or arrears will remain unaffected.

(8) In addition, we will be entitled after expiry of a reasonable period of notice for collection of the product, to dispose of the product alternatively and to re-supply the orderer or purchaser after a reasonable period of notice or to withdraw from the contract and/or to claim compensation for damages suffered.

Reservation of title

(1) We reserve title to the goods supplied by us and to the products arising from their processing until all our claims against the orderer arising from the business relationship have been fulfilled in full.

(2) The orderer or purchaser is under obligation to store and identify separately the goods subject to reservation of title. Any processing of the goods by the orderer or purchaser will entail no obligation on our part. Where the orderer or purchaser processes the goods subject to reservation of title by adding other products to them of which he is proprietor, we will obtain exclusive title to the products thus created. Where the orderer or purchaser processes the goods subject to reservation of title by adding other products to them of which he is not proprietor, we will obtain partial title to the products thus created corresponding to the share in their value constituted by the goods subject to reservation of title at the time of processing. As of now, the orderer or purchaser transfers his share in the ownership of the products created by joining mingling or mixing the goods supplied to or with other goods. Should the orderer or purchaser acquire the rights of ownership of third parties in the products created, in particular by paying the claims of the third party, such rights of (co-) ownership will also pass to us. Furthermore, the orderer or purchaser transfers his claim to acquire co-ownership to us as of now. The orderer or purchaser retains the products in the capacity of trustee. He is liable for his own criminal intent or negligence and for that of his legal representatives and persons entrusted with the fulfilment of his obligations. The orderer or purchaser may sell the goods supplied and the products resulting from joining, mingling or mixing them with other goods only in the course of his normal business, in return for payment in cash or under reservation of title. Transfer for purposes of security, mortgage, or any other arrangement which may affect our rights is prohibited.

(3) The orderer or purchaser transfers to us in full as of now the claims to which he is entitled by virtue of the sale of the goods subject to reservation of title or other legal transaction, including those for compensation due to damage or destruction of the goods subject to reservation of title, or unjustified enrichment, regardless of whether these are contractual or legal claims against the damager, insurance company or other third party, and for compensation for utilisation.

(4) If the goods subject to reservation of title are re-sold in the unprocessed state by the orderer or purchaser along with goods belonging to the orderer or purchaser or third parties, the orderer or purchaser transfers the share of this resulting claim corresponding to the value of the goods subject to reservation of title to us.

(5) Should we, through processing or combination of the goods subject to reservation of title with the goods of other manufacturers, obtain a share in the ownership of the new product, the cession in case of re-sale includes the share of the claim corresponding to our share in the ownership, if this can still be determined, and if not, the invoice value of the processed goods subject to reservation of title. The additional claim resulting from the sale of the product as a whole, is transferred to us under the suspensive condition of satisfaction of secured claim of the entitled supplier(s). The orderer or purchaser transfers to us as of now any claims against other entitled suppliers for re-transfer of the claim arising from re-sale.

(6) Should the goods be processed or combined on the basis of a contract of manufacture or contract of manufacture and delivery, the orderer or purchaser also transfers to us in advance his claim for labour costs corresponding to the value of the processed goods subject to reservation of title.

(7) If the above mentioned claims of the orderer or purchaser are treated as a current account, the current-account claims are hereby transferred to us in full. Following balancing, they are replaced by the balance which is regarded as having been repaid, up to the amount of which the original current-account claims were composed. When the current-account arrangement is terminated, this applies accordingly for the final balance.

(8) As long as the orderer or purchaser fulfils his obligations, the transfer is treated as a latent transfer and the orderer or purchaser empowered to collect the claim. The orderer or purchaser must separately book and deposit the amounts received which relate to the transferred claim.

(9) In case contracts concluded by the orderer or purchaser concerning the re-sale of the goods subject to reservation of title are ineffective or null and void, the orderer or purchaser hereby transfers to us his legal claims in place of his contractual claims up to the same amount.

(10) Should the registration and/or fulfilment of other requirements be a condition for the effectiveness of the reservation of title, the orderer or purchaser must, without delay, take all the actions necessary to this effect at his own cost and carry out all the required notifications.

(11) If, in case of payment in cash of the purchase price by the orderer or purchaser, a bill liability on the part of the seller is created (bill of exchange or cheque process), the reservation of title will not expire before the bill has been honoured by the orderer or purchaser as drawee.

(12) Should the value of the securities exceed our claims by more than 20%, the orderer or purchaser will be entitled to demand the corresponding release of these securities. The orderer or purchaser must, on request, provide proof of the status of the securities and provide all the information necessary for their evaluation.

(13) The orderer or purchaser must notify us immediately of claims to or seizure of the goods subject to reservation of title or to the transferred claims by third parties and of the documents necessary for intervention. The costs for such intervention will be borne by the orderer or purchaser.

(14) The costs for the return of the goods subject to reservation of title will be borne by the orderer or purchaser.

(15) In case the liabilities of the orderer or purchaser are paid by means of direct debit, all our rights arising from reservation of title as described above will remain in effect until it is no longer possible to revoke the direct-debit payment unless our rights are already secured by the above provisions.

Transfer of risk - guarantee - claims for compensation

(1) All risks are transferred to the orderer or purchaser on collection of the goods by the carrier or transporter. This applies equally to consignments free of transport costs and similar transport provisions. In case of transport of the goods on our own vehicles, all risks are transferred to the orderer or purchaser on completion of the loading operation. In case of delay in delivery for which we are not responsible, all risks are transferred to the orderer or purchaser on the date of receipt by the orderer or purchaser of the notification of readiness for dispatch.

(2) For deficiencies in the goods existing at time of transfer of risk, we provide a guarantee in accordance with the following provisions:

(3) Apparent or recognised deficiencies must be notified to us immediately in writing by the orderer or purchaser, and all processing operations suspended immediately. Any infringement of the obligation on the part of the orderer or purchaser to examine the goods and notify deficiencies will invalidate any claims under guarantee. Other statutory obligations or duties of the orderer or purchaser will remain unaffected. This applies equally to any other legal consequences of an infringement of such obligations or duties.

(4) Should the orderer or purchaser give us no opportunity to verify the deficiency, or should he not make the defective goods or samples available to us without delay, especially when requested to do so, all his rights under guarantee will lapse.

(5) In case of justified complaints of which we are notified in time, we will repair or replace the goods in question at our discretion. Should the repair fail or should we fail to provide replacement or adequate replacement in accordance with our contractual obligation, the orderer or purchaser may, at his discretion, demand a reduction in price or declare his withdrawal from the contract. In case of only slight infringements of contract, in particular of slight deficiencies, the orderer or purchaser will not be entitled to withdraw from the contract.

Should the orderer or purchaser, in view of a contractual right or deficiency in the goods following failed repair or replacement, choose to withdraw from the contract, he will not be entitled to receive further compensation for the deficiency.

(6) For whatever legal reason, we will be liable for damage to the property of the orderer or purchaser only in cases of criminal intent or gross negligence, except when such damage is due to the absence of an agreed property intended to secure the orderer or purchaser against the risk of damage. Slight negligence on our part will give rise to liability for damage where important contractual obligations are affected. Important contractual obligations are obligations whose observance is essential for the achievement of the purpose of the contract. In case of slightly negligent conduct, we will assume liability for damage only to the extent that such damage was predictable on conclusion of the contract or in case of infringement of contractual obligation.

The above restrictions on liability do not refer to claims by the orderer or purchaser arising from product liability. Moreover, the restrictions on liability will not apply in cases of injury, death or damage to health of the orderer or purchaser which are attributable to us.

(7) All claims by the orderer / purchaser due to product defect will expire one year after delivery of the goods and in the case of work orders, one year after acceptance of the work. This condition will apply in all cases except where we have intentionally concealed the defect or where a building or building goods are concerned, which have been correctly used for a building and have given rise to deficiency in the building. All claims for compensation by the orderer / purchaser due to product defect will expire one year after delivery of the goods or one year after acceptance of the work. This will not apply where the defect is due to negligence, criminal intent or non-observance of guarantees and in cases of death, injury or damage to health for which we are responsible.

Negotiations between the parties will have no delaying effect on the expiry in accordance with §203 BGB.

The period of limitation will not be extended by the replacement of parts during repair or improvement work or by the supply of spare parts.

Other provisions

(1) The personal data of the customer will be stored electronically in accordance with BDSG to permit efficient execution of orders and business correspondence.

(2) The place of performance and legal domicile for all disputes arising from business to which these General Conditions of Business apply, is our company HQ, for legal proceedings taken by us as well as against us. This provision does not apply to special funds under public law, legal entities under public law or transactions with businessmen which are not part of their trade or business.

(3) The relations between ourselves and the customer are subject to the law of the Federal Republic of Germany only, excluding the Law of Conflict, the Unified Purchase Legislation of the Hague and the Vienna UNCITRAL Convention governing International Purchase Contracts.

(4) Should any provision of these General Conditions of Business be or become ineffective, the effectiveness of the remaining provisions will remain unaffected. In place of the ineffective provision, the legally effective regulation will apply whose intention approaches most closely to that of the ineffective provision.