

# General conditions of sale and delivery

## 1. Preliminary remarks

The following conditions apply to all our sales and deliveries including subsequent orders. Conditions of our business associates shall not be accepted even if we do not expressly object. Should our conditions be or become invalid in part, this shall not affect the validity of the remaining conditions.

## 2. Offers and orders

**2.1** Our offers are non-binding. We shall be bound by offers only once we have accepted orders in writing. The documents belonging to the offer, such as illustrations, drawings, weights and measurements shall only be deemed to be approximate and are subject to technical alterations and modifications regarding form, colour and/or weight as far as those alterations are reasonable. We retain rights of ownership as well as copyright to cost estimates, descriptions, drawings and other documents. They may not be made accessible to third parties.

**2.2** We may accept orders within 7 business days after receipt of the purchase order. During this period, the purchase order shall remain binding for the buyer. Orders are accepted by means of a separate declaration to this effect, the mere confirmation of receipt of a purchase order shall not constitute an acceptance of the order. Upon dispatch of the goods by us, the order is deemed to be accepted.

**2.3** The contents of our obligation are shown solely in the text of our order acceptance. Additional agreements or verbal assurances are binding only if they are reflected in such acceptance.

**2.4** Unless otherwise agreed, our obligations are subject to the fact that we receive supplies correctly and in due time from any sub-suppliers. In case of any disturbances Section 4.4 applies.

## 3. Prices and payment

**3.1** All prices stated by us are to be understood excluding value added tax and any other public duties.

**3.2** Our prices are applicable FCA Ingolstadt, Germany, including packaging.

**3.3** Unless otherwise agreed, payment shall be made within 30 days net after the date of the invoice. In the event of delayed payment the buyer shall owe interest at 8 percentage points above the basic interest rate as it is published regularly by the Federal German Bank as well as any other damage caused by the default. The date of payment is the date on which the amount is credited unconditionally into our bank account.

**3.4** The buyer may only exercise a right of retention for counterclaims under the same order. Set-off is only permitted with uncontested claims or a claim recognised by declaratory judgement.

**3.5** We reserve the right to decide whether to accept bills of exchange and cheques in each individual case. At all events such discounting is effected only on account of performance.

**3.6** In the event of non-performance, we may demand damages for non-performance after setting an additional period of 2 weeks. All claims, including deferred claims, shall become immediately due and payable in the event of non-performance of the Buyer. Non-compliance with our terms of payment releases us from any further duty under the contract, particularly any further duty to deliver.

**3.7** Should the creditworthiness of a buyer or a jointly obligated party diminish, we are entitled to demand the immediate payment of all claims, to take back goods already delivered as security and to make future deliveries subject to the prior payment of the entire purchase price. Negative information provided by a respected credit agency shall suffice as proof of creditworthiness, in which connection it suffices if a lawyer or a notary confirms the existence of such information on our behalf.

## 4. Delivery time

**4.1** Agreed delivery periods commence at the earliest upon posting the acceptance of the order and after all documents, approvals, clearances to be procured by the buyer have been provided and any down payment agreed upon has been received.

**4.2** The delivery period has been observed if, before the expiry thereof, the delivery item has left the works or notification has been given of readiness for dispatch.

**4.3** In the event of a delay in delivery we shall be granted a reasonable additional period of at least 8 weeks. After the expiry of the reasonable additional period the buyer is entitled to withdraw from the contract; it shall have the right to claim for damages only if and insofar as the delay in delivery and the expiry of the additional period has been caused intentionally or by gross negligence of the supplier.

**4.4** Circumstances for which the supplier is not responsible and which render the execution of accepted orders impossible, or delay, significantly complicate or make such execution economically unreasonable, e.g. force majeure, state of emergency, official orders, strikes and lockouts, traffic breakdowns, unforeseen

material defects or similar circumstances, (also if those circumstances apply to sub-suppliers) entitle the supplier, excluding all claims for damages on the part of the buyer, to delay delivery for the duration of the impediment or to withdraw from the contract. The supplier shall notify the buyer of such circumstances without delay.

**4.5** The buyer may demand that the supplier declares within two weeks whether it will withdraw from the contract or effect delivery within a reasonable additional period. If the supplier fails to make such a declaration, the buyer may withdraw from the part of the contract not yet performed. If the buyer does not fulfil its obligation to accept delivery in due time, it shall be charged the costs incurred for storage commencing one month after notification of the readiness for dispatch, however at least 0.5% of the total invoice per month. Irrespective thereof, the supplier is also entitled to dispose of the delivery item otherwise after the setting and the expiry in vain of a reasonable period and to effect delivery to the buyer later with a reasonably extended period.

## 5. Passing of the risk and receipt of goods

**5.1** The risk passes to the buyer upon the dispatch of the parts delivered, even if the supplier has assumed the transport costs or assembly of goods. Upon request by the buyer, insurance may be taken out for insurable risks at the buyer's expense.

**5.2** If the buyer delays the receipt of the goods, the risk passes to the buyer on the date on which notification is given of the readiness for dispatch.

**5.3** Partial deliveries are permitted.

**5.4** The buyer shall accept receipt of delivered items even in the event of a notification of defects irrespective of claims based on a defect of quality.

## 6. Reservation of ownership

**6.1** Delivered goods remain the property of the supplier until payment in full has been made by the buyer. Payment has been made only after it has been credited unconditionally to the supplier's account.

**6.2** Subject to revocation at any time, the buyer is entitled to resell, to further process and to incorporate the reserved goods in the customary course of its business. This entitlement ends upon the revocation of the supplier, which is permitted at any time.

**6.3** Should goods on which property has been reserved be processed or incorporated to form a new moveable item by the buyer, the processing shall be effected on behalf of the supplier without the latter being bound thereby. Upon the processing or incorporation of the reserved goods into goods not belonging to the supplier, the supplier acquires co-ownership of the new item in relation to the value of the reserved goods to the total value.

**6.4** The buyer hereby assigns the claim under the resale of the reserved goods with all ancillary rights to the supplier. In the event of processing or incorporation, the buyer assigns the delivery claim to the supplier in due proportion to the value of the reserved goods. The supplier accepts the assignments above.

**6.5** The buyer is entitled to collect the claims assigned in the ordinary course of business until revocation by the supplier, which is permitted at any time. The buyer is obliged to provide information at any time about the existence and the extent of, and all of the details on, the claims assigned, also by sending written lists.

**6.6** The buyer shall store the reserved goods free of charge on behalf of the supplier and shall insure them against customary risks to the customary extent at its own expense. Rights to claims payment against the insurance relating to the reserved goods are hereby assigned to the supplier who accepts such assignment.

**6.7** Should the value of the security provided for the supplier exceed the supplier's claims by more than 10% in total, the supplier shall declare the release thereof in due proportion upon demand, in which connection it retains the right of decision over the security to be released.

## 7. Warranty, liability for defects

**7.1** The buyer is obliged to immediately duly inspect the goods delivered upon receipt and to immediately notify the supplier of any identified or identifiable defects in writing. In case of hidden defects and defects unable to be identified during the incoming goods inspection, the supplier has to be notified immediately upon discovery of the defect. If the buyer breaches this duty to inspect or the duty to notify, all warranty claims shall be excluded.

**7.2** The warranty granted by the supplier relates and is restricted to the faultlessness of the delivered item at the time of delivery. Future wear and tear through use as intended or wear and tear or damage through improper use or insufficient care and maintenance do not constitute a claim under the warranty.

**7.3** No warranty is assumed particularly in the following cases:

- unsuitable or improper use,
- faulty assembly and/or commissioning through the buyer or third parties,
- natural wear and tear,
- faulty or negligent treatment,
- improper maintenance,
- unsuitable operating material,
- faulty building work,
- unsuitable building ground,
- chemical, electrochemical or electric influences – unless the supplier is responsible for them or the supplier has guaranteed resistance against these influences.

**7.4** If we repair damaged parts or carry out any other work on parts, we shall only grant a warranty for the processed or exchanged components and not for the other parts of the workpiece.

**7.5** The warranty period amounts to one year after delivery of the goods or the repaired or processed workpiece.

**7.6** If a good is defective, the warranty shall be effected by the supplier at its option either by supplementary performance or by delivery of a replacement. Replaced parts shall become the property of the supplier. The buyer shall give the supplier the time and the opportunity to effect supplementary performance or to deliver a replacement. The buyer has the right to eliminate the fault itself or have it eliminated by third parties and to demand the reimbursement of the necessary expenditure from the supplier only in urgent cases when operational safety is endangered or to prevent excessively large damage, in which connection the supplier must be notified thereof immediately.

**7.7** If the supplier is unable to repair the defective product or to deliver a replacement within a reasonable period of time set by the buyer or if subsequent performance has finally failed, the buyer has the right to withdraw from the contract in accordance with statutory provisions. A claim for damages is excluded subject to Section 8 of these conditions. In the event of insignificant defects, the buyer may not withdraw from this agreement but has the right to reduce the contract price.

**7.8** If the buyer or a third party effects supplementary performance either without being authorized by the supplier or improperly, the supplier is not liable for the consequences resulting therefrom or for the future faultlessness of the product in question. The same applies to an alteration to the product effected without the prior approval of the supplier.

**7.9** Should the buyer receive faulty assembly instructions, the supplier is merely obliged to subsequently supply faultless assembly instructions or to rectify the faults in the assembly instructions.

**7.10** Only those characteristics are guaranteed which the supplier expressly referred to as warranted characteristics in the acceptance of the order. As a basic principle, only the manufacturer's product description mentioned in the contract is applicable as quality. Public comments, acclamation or advertising statements by the manufacturer do not constitute a contractual quality description.

**8. Exclusion of claims for damages and general limitations of liability**

**8.1** In all cases in which we are obliged to pay damages or reimburse expenses on the basis of mandatory and non-alterable legal provisions, these obligations shall remain unaffected. In other cases we shall be liable only insofar as we, our executive employees and auxiliary persons did act with wilful intent or gross negligence or in cases of a culpable injury to life, body or health.

**8.2** Liability regardless of fault under the Product Liability Act and liability for performance under a warranty as to quality remains unaffected.

**8.3** Liability for the culpable breach of essential contractual duties also remains unaffected. However, liability is limited to the foreseeable damage typical for the contract except in the cases set out under item 8.1.

**8.4** The regulations above do not entail a change in the burden of proof to the detriment of the buyer.

**8.5** Unless liability ensues from item 8.1 to 8.4, we shall not be obliged to pay damages, particularly not for damage that was not caused to the delivery item itself.

**9. Confidentiality**

All the documents provided to the buyer, e.g. models, samples, drawings and information sheets remain the supplier's property. All the documents handed over shall be treated as confidential. The buyer expressly undertakes not to make copies or make them accessible to third parties. The supplier may demand the return thereof at any time. All other information provided to the buyer in connection with the placing and execution of the order regarding the number of units, prices etc. and other knowledge received on all supplier's company affairs shall be treated as confidential by the buyer and kept secret even after the termination of the business relations.

**10. Operational safety**

**10.1** The buyer undertakes to comply with the operating instructions and safety notices supplied with the delivered goods and to instruct its personnel so that safe operation of the delivered goods is ensured. The buyer is obliged to confirm the receipt of instruction manuals and safety notices. Should such instructions not have been supplied with the delivery, it must notify the supplier thereof without delay.

**10.2** Existing safety devices and danger notices on the products supplied may not be removed. Poorly affixed or defective ones shall be immediately reaffixed or replaced. The supplier hereby undertakes to replace safety notices, which have become useless at any time and at a reasonable quantity. The buyer must accept receipt of, and comply with, any improvements to safety instructions at any time upon demand by the supplier.

**10.3** Technical alterations to products delivered, particularly if they impair the safety of the operating personnel, may only be carried out with the written consent of the supplier. If there is no such consent, they shall be immediately removed again.

**10.4** The buyer is obliged to notify the supplier in writing without delay if an accident has happened with the delivery item or it is discovered that a danger is entailed in the operation of the delivery item.

**10.5** If the buyer fails to meet any one of the above obligations to ensure operational safety, it is obliged to indemnify the supplier from all obligations to pay damages arising therefrom as against third parties.

**11. Safety of the supply chain**

Being an Authorized Economic Operator (AEO-F), we are committed to ensure the safety of the complete international supply chain. This includes the compliance with the applicable customs regulations as well as the safe movement of goods. This commitment is also transferred to the buyer. With the conclusion of the contract the buyer hereby confirms that all goods bought, stored, transported from Schubert & Salzer Inc. or sold or delivered to the buyer or taken over by him are stored and handled at secure business premises and at secure transshipment points and are protected from unauthorized access during the storage, transport and taking into charge of such goods. Furthermore the buyer undertakes to ensure that the personnel employed for storage, transshipment and acceptance of such goods are reliable and that subcontractors acting on behalf of the buyer are informed that they must also take measures to secure the supply chain in the same way.

**12. Jurisdiction and applicable law**

**12.1** In case of any and all disputes arising under or in connection with the contractual relationship, the courts in Ingolstadt, Federal Republic of Germany, shall have jurisdiction and venue. The supplier is also entitled to bring an action against the buyer at its place of ordinary jurisdiction.

**12.2** These Conditions of Sale and Delivery are governed solely by the laws of the Federal Republic of Germany. The UN Sales Convention is not applicable.

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