

## General Terms of Delivery and Payment

Version 01.01.2019

### § 1 Validity

(1) All deliveries, services and offers by the Vendor shall be based solely on these General Terms of Delivery. These are an integral part of all contracts concluded between the Vendor and their contract partners (hereinafter also referred to as "Clients") regarding the deliveries and services offered. These terms also apply to all future deliveries, services or offers to the Client, even if the terms have not been agreed upon separately.

(2) Client or third party business terms and conditions shall not apply, even if the Vendor does not object to their validity in certain cases

### § 2 Offers and concluding contracts

(1) All offers made by the Vendor are non-binding, unless they specify an acceptance deadline or are otherwise marked as binding. The Vendor can accept orders or contracts within fourteen days of receipt.

(2) Only the written order confirmation is relevant for the legal relationship between the Vendor and the Client, in addition to the General Terms of Delivery. This fully reflects all agreements between the contracting parties regarding the object of the contract. Verbal commitments made by the Vendor prior to the conclusion of this contract are not legally binding. Verbal agreements between the contractual parties shall be replaced by a written agreement, unless their continued validity is explicitly stated in the written agreement.

(3) Supplements and amendments to the agreements made, including these General Terms of Delivery, must be made in writing in order to be valid.

(4) The Vendor's description of the delivery item or services (e.g. weight, size, user value, capacity, tolerance and technical data), as well as our representations of such (e.g. drawings and illustrations) are only approximations, unless use for the purposes intended by the contract requires a precise conformity. They are not a guaranteed characteristic of their state, but a description or designation of the delivery or service. Deviations according to custom and usage and deviations resulting from legal provisions or deviations constituting technical improvements, as well as component replacements by equivalent parts are permissible as far as they do not impair usability for the contractually agreed purpose.

(5) The Vendor retains the ownership or copyright of all offers and cost estimates issued by them as well as of drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Client. The Client is not permitted to make the above cited items available to third parties in form or in content, nor may they, either themselves or via third parties, publish, copy or use them without the explicit consent of the Vendor. Upon request by the Vendor, the Client is required to return any such above-mentioned materials in full and destroy all copies of documentation, if they are no longer needed in the regular course of business or if a contract is not concluded. The electronic storage of data provided for the purpose of conventional data security is exempt from this.

### § 3 Prices and payment

(1) The prices are valid for the scope of services and deliveries defined in the order confirmation. Additional or special services shall be billed separately. Prices are in EUROS and ex works plus the costs for packaging and the statutory value added tax; in the case of export deliveries they will also include customs duties and other fees and public charges.

(2) The amounts billed are to be paid within 8 days at 2% discount or within thirty days without discount, unless otherwise agreed upon in writing. The payment date is the date upon which the Vendor received payment.

(3) Offsetting with counterclaims by the Client or the withholding of payments against such claims is permitted only insofar as the counterclaims are undisputed or have been legally upheld.

(4) The Vendor is entitled only to make deliveries or provide services against prior payment or deposit if, after the conclusion of the contract, circumstances become known to them which are of a nature that would considerably reduce the Client's credit worthiness and on account of which the payment of the Vendor's outstanding demands from the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk. For any ancillary orders, the Vendor is not bound by previous prices.

### § 4 Delivery and delivery time

(1) Deliveries are ex works.

(2) Terms and deadlines announced by the Vendor in advance are always only approximate unless a fixed term or a fixed deadline is explicitly promised or agreed. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier, or other third party assigned to transport the goods.

(3) Notwithstanding their rights with regards to default on the Client's part, the Vendor may ask the Client for an extension to deadlines for deliveries and services or a postponement of delivery and completion deadlines by the period of time for which the Client fails to meet his contractual obligations with respect to the Vendor.

(4) The Vendor is not liable for an inability to deliver or for delays in delivery insofar as these have been caused by force majeure or other events which were not foreseeable at the time of concluding the contract (e.g. operational disruptions of all kinds, difficulties in procuring materials or power, transport delays, strikes, lawful lockouts, workforce, energy or raw material shortages, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), for which the Vendor is not responsible. If such occurrences cause the delivery of the item or service to be considerably delayed or impossible to provide and the situation will not be rectified in the near future, then the Vendor has the right to withdraw from the contract. For obstructions which are temporary in nature, the delivery or service periods shall be extended or their deadlines shall be postponed beyond the period of obstruction with an appropriate start-up time. As soon as the Client cannot be expected to bear the delay on a delivery or service, they are eligible to withdraw from contract following an extended deadline of 4 weeks.

(5) The Vendor shall only be entitled to make partial deliveries if the partial delivery can be used by the Client within the scope of the contractually intended use.

(6) If the Vendor is in default with a delivery or service or if a delivery or service should become impossible to deliver for whatever reason, the liability of the Vendor for damages is restricted as defined in § 7 of these General Terms of Delivery.

#### **§ 5 Place of fulfillment, shipping, packaging, transfer of risk and acceptance**

(1) The place of fulfillment for all obligations arising from the contractual relationship is Garbsen, the location of the Vendor's headquarters, unless other arrangements have been made.

(2) The choice of shipping and packaging is at the Vendor's due discretion.

(3) At the latest, the transfer of risks to the Client takes place upon the handover of the delivery item (whereby the start of the loading process is decisive) to the forwarding agent, freight carrier or other third party specified for carrying out the dispatch. This also applies in the case of partial deliveries or other services (e.g. shipping or installation). If dispatch or handover is delayed due to circumstances for which the Client is responsible, the transfer of risks to the Client shall take place on the day when the Vendor is ready for dispatch and has notified this to the Client.

(4) Warehousing costs incurred after risk has been transferred shall be borne by the Client.

(5) The shipment shall only be insured by the Vendor against theft, breakage-, transport-, fire-, water- and other damages at the request and expense of the Client.

#### **§ 6 Guarantees and material defects**

(1) The guarantee period is one year from the date of delivery. This deadline does not apply to damage claims by the Client arising from injury to life, body or health or due to a deliberate or grossly negligent breach of contract by the Vendor or their vicarious agents. Such cases shall lapse in accordance with the relevant statutory provisions.

(2) The items delivered are to be inspected by the Client or a third party appointed by the Client immediately following their delivery. With regards to visible or other defects discovered by careful inspection, the items shall be regarded as accepted by the Client if such defects are not reported by the Client in writing within seven working days of delivery. With regards to other defects, the delivered items shall be regarded as accepted by the Client if the defect is not reported to the Vendor within seven working days of discovery; if the defect was already visible to the Client through normal use at an earlier point in time, this previous point in time shall be regarded as the start of the complaint period. Upon the Vendor's request, the contested item is to be sent to the Vendor free of delivery charges. If the defect complaint is valid, the Vendor shall reimburse the costs for the most cost-effective form of transport; this does not apply if costs rise due to the delivered item being in a location other than the place of its intended use.

(3) In the event of material defects to delivered items, the Vendor shall, at their own discretion and within a reasonable period, be obliged and entitled to either repair the delivered items or deliver replacement items.

(4) If the Vendor is to blame for a defect, the Client may demand compensation for damages under the conditions stipulated in § 7.

(5) In case of defects in components from other manufacturers, which the Vendor cannot remedy for reasons of licensing law or for factual reasons, then, at their own choice, the Vendor shall make their warranty claims against the manufacturer and supplier on the Client's account or transfer the title to this to the Client. In the case of such defects, warranty claims against the Vendor under the other prerequisites and in accordance with the stipulations of these General Terms of Delivery are only valid if court assertion of the aforementioned claims against the manufacturer and suppliers has been unsuccessful or, for example, these claims are not reasonable due to insolvency. During the legal dispute, the statute of limitations for the relevant guarantee claims by the Client against the Vendor does not apply.

(6) The warranty does not apply if the Client modifies the items or has them modified by third parties without permission from the Vendor and this makes repair/replacement impossible or more difficult. In each case the Client must bear the additional costs of remedying defects caused by the modification.

(7) A supply of used items agreed in individual cases with the Client is done under exclusion of any warranty.

#### **§ 7 Liability for compensation due to fault**

(1) The Vendor's liability for damages, regardless of the legal grounds but in particular due to impossibility, delay, defective or incorrect delivery, contractual infringement, infringement of duties during contract negotiation and action in tort is, in so far as there is a question of blame in each case, limited in accordance with § 7.

(2) The Vendor shall not be liable in the event of simple negligence by the officers of the company, employees or other agents unless a violation of contractual obligations is involved. Essential to the contract are the obligations for prompt delivery and installation free of defects and legal issues which more than reasonably affect the items' functionality or usability, as well as consultation, protection and care, which will make the use of the delivered item, in accordance with the contract, possible for the Client or which serve the purpose of protecting the life and limb of the Client's personnel or third parties or the Client's property against considerable damage.

(3) Insofar as the Vendor is liable for damages on the grounds of and in accordance with § 7 (2), this liability is limited to damage which the Vendor has foreseen when concluding the contract as a possible consequence of a contractual infringement or which, by applying due care and attention, they should have foreseen. Indirect damage and consequential damage resulting from defects in the item delivered are only subject to compensation insofar as such damage is typically to be expected when using the item delivered as stipulated.

(4) The aforementioned exclusions and limitations of liability equally apply to the officers, legal representatives, employees and other agents of the Vendor.

(5) Insofar as the Vendor provides technical information or acts as a consultant and this information or advice is not part of the contractually agreed scope of services owed by them, this is done free of charge and with the exclusion of any liability.

(6) These restrictions, as stipulated under § 7, do not apply to the Vendor's liability due to willful conduct, guaranteed characteristics of the state of the item, damage to life, body or health or that in accordance with the stipulations provided under the Product Liability Act.

#### **§ 8 Retention rights**

(1) The item delivered to the Client by the Vendor shall remain property of the Vendor until the full payment of all secured claims. The item and the its replacement, covered by the retention rights stated below, are hereinafter referred to as the reserved item. The Client shall look after the reserved item free of charge on behalf of the Vendor. The Client is entitled to sell the item in the course of normal business until a claim is made against them. Any pledge or use of the item as collateral is not valid. In the event that the reserved item is sold on, the Client hereby transfers the resulting claim against the acquirer to the Vendor by way of security. The same shall apply to any other claims that take the place of the secured item or otherwise arise from the secured item, e.g. insurance claims etc. The Vendor empowers the Client, in a revocable manner, to collect the claims transferred to the Vendor in his own name on behalf of the Vendor. The Vendor may only revoke this right to collect claims in the event of recovery.

(2) If, in the event of non-contractual behaviour by the Client - in particular late payment - the Vendor withdraws from the contract (case of recovery) they are entitled to demand the reserved item.

#### **§ 9 Final provisions**

(1) If the Client is a business person, a legal person or a special fund under public law, or if they have no place of jurisdiction in the Federal Republic of Germany, then the place for any disputes arising from the business relationship between the Vendor and the Client shall be Hannover or the Client's headquarters, at the Vendor's own choice. For disputes against the Client, however, Hannover shall be the only place of jurisdiction. Compelling statutory provisions regarding sole places of jurisdiction remain unaffected by this provision.

(2) The relationship between the Vendor and the Client is solely subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Should the contract or these General Delivery Terms contain any loopholes, then the regulations that would have been agreed upon with respect to the economic goals of the contract and the scope of these General Delivery Terms had the loopholes been recognised in advance, shall apply.

B.u.W.Schmidt GmbH

Porschestraße 29

D-30827 Garbsen