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## **General Terms of Sale and Delivery of Schützing GmbH**

### **§ 1 Scope**

- (1) These terms of sale and delivery are valid for all business transactions between Schützing and the Buyer, even if they are not mentioned in later contracts. They apply by analogy for work and services. In the case of work the acceptance of the work applies instead of the delivery and in the case of services it is the rendering of the service that applies.
- (2) Conditions of the Buyer which contradict supplement the scope of or deviate from these sale and delivery terms shall not be included in the content of the contract unless Schützing would have expressly agreed to the validity of these conditions in writing. These terms of sale and delivery also apply in the event that Schützing makes a delivery to the Buyer without reservation while having knowledge of its contradictory or deviating conditions.
- (3) Agreements concluded between Schützing and the Buyer for the performance of a contract which supplement or deviate from these terms of sale and delivery must be set out in writing in the contract. This also applies to a waiver of this written form requirement.
- (4) Rights accorded to Schützing in accordance with statutory provisions beyond the scope of these terms of sale and delivery shall remain unaffected.

### **§ 2 Concluding and amending contracts**

- (1) Offers are without engagement and not binding.
- (2) Diagrams, drawings, information about weight, measurements, colour and output as well as other descriptions of the goods from the documents belonging to the offer are only approximate unless they are expressly referred to as binding. They do not constitute an agreement or a guarantee of a quality of the goods.
- (3) Schützing reserves all proprietary rights and copyrights to all offer documents. These documents shall not be made available to third parties.
- (4) An order does not become binding until confirmed in writing by Schützing, unless the items ordered can be delivered forthwith ex warehouse. Order confirmations prepared using automatic devices and which do not have a signature or name are deemed to be written confirmations. Schützing's failure to respond to offers, orders, requests or other declarations of the Buyer shall not be interpreted as agreement. In the event that the order confirmation contains obvious mistakes, orthographic or arithmetic errors it is not binding for Schützing.

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### **§ 3 Scope of delivery and services**

- (1) The written order confirmation from Schützinger is authoritative for the scope of delivery. Changes to the scope of delivery require written confirmation from Schützinger in order to be valid. The right to make changes to the goods is reserved provided that the changes are not material and can be reasonably expected of the Buyer.
- (2) Schützinger reserves the right to make deliveries which exceed or fall short of the delivery volume by up to 10%. There will be a refund if the volume delivered falls short of the scope of delivery.
- (3) Partial deliveries are permitted.
- (4) Schützinger reserves the right to make the delivery of the goods conditional on the payment of the delivery price if it becomes aware of facts that allow conclusions as to the Buyer's ability to pay, in particular, if the Buyer discontinues payment or an application for the institution of insolvency proceedings against the assets of the Buyer is filed. If an order is placed for the first time, Schützinger reserves the right to deliver the goods only against prepayment or subject to cash on delivery.

### **§ 4 Delivery time**

- (1) Delivery periods and deadlines must be agreed in writing. Delivery periods and deadlines are not binding unless they are expressly described as binding.
- (2) The delivery period begins when Schützinger sends the order confirmation, but not before the Buyer has supplied in full all documents, authorizations, and releases, or before all technical queries are resolved and the agreed deposit has been received. The delivery deadline is only binding if the Buyer promptly and correctly fulfils its other obligations.
- (3) The delivery deadline is deemed to have been met in the event that the goods have left the factory by the deadline or in the event Schützinger has indicated that it will dispatch the goods. Delivery is subject to Schützinger promptly and correctly obtaining supplies
- (4) In the event that delivery is delayed, the Buyer is entitled to withdraw from the contract if, upon occurrence of the delay in delivery, the Buyer sets an additional deadline for delivery with the warning that delivery will not be accepted after the expiration of this additional deadline and if the deadline should not be met.
- (5) To the extent that Schützinger has entered into a master agreement with the Buyer for future deliveries with fixed delivery dates and the Buyer goes not order the goods in time, Schützinger is entitled to delivery and bill the goods, withdraw from the agreement or, if the Buyer acted culpably, to demand indemnification instead of performance if, upon occurrence of the delay in ordering, Schützinger sets an additional deadline for the orders with the warning that orders will not be accepted after the expiration of this additional deadline and if the deadline should not be met.

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## **§ 5 Transfer of risk**

- (1) Risk is transferred to the Buyer as soon as the goods are transferred to the person transporting the goods or as soon as the goods have left the Schützing warehouse for dispatch. This also applies for part deliveries or in the event that Schützing assumed other costs such as transport costs. Schützing will insure the goods on request from and at the cost of the Buyer using transport insurance which covers risks set out by the Buyer.
- (2) If the Buyer is in default of acceptance or breaches other duties to co-operate, Schützing can demand that damages be reimbursed including any additional expenses. The risk of accidental loss or accidental deterioration of the goods is transferred to the Buyer as from the time it is in default of acceptance. After a reasonable period has elapsed without acceptance, Schützing is entitled to use the goods for another purpose and to supply the Buyer within a reasonably extended period.
- (3) Notwithstanding claims based on defects, the Buyer must also accept supplies goods if they have minor defects.

## **§ 6 Prices and payment**

- (1) Prices are „ex works“, but without packaging. The packaging is invoiced separately and will not be taken back. Statutory VAT is not contained in the price and is disclosed separately in the invoice at the statutory rate valid on the day of invoicing.
- (2) For orders with a net order value of less than 75.00 Euro for domestic deliveries and less than 200.00 Euro for international deliveries, a handling fee of 25.00 Euro per order will be charged.
- (3) Orders for which no fixed prices have been expressly agreed are invoiced using the Schützing list prices valid on the date of delivery. Entry of the list price valid on the order date on an order form or an order confirmation does not constitute agreement of a fixed price. Should production-related price increases be made prior to the delivery date, in particular, if the prices of raw materials rise, Schützing is entitled to adjust the price accordingly regardless of the offer and order confirmation.
- (4) The delivery price is payable within 30 days of the date on the invoice without deductions. If payment is made within eight days, Schützing grants a 2% discount. In the case of deliveries made to buyers residing abroad, the delivery price is due immediately without any deduction. The date of payment is deemed to be the date on which Schützing has power of disposal over the payment. Sales and technical staff are not entitled to collect payments in cash. If the Buyer defaults on payment, it must pay a penalty of 8% above the base interest rate p.a.. Claims for further damages are not excluded.
- (5) Schützing is entitled first to allocate the payment of the Buyer against its oldest liability. Should costs and interest have already been incurred, Schützing is entitled first to credit the payment against the costs and then the interest and lastly the main payment.
- (6) Counterclaims of the Buyer will only be offset if these are legally valid and not disputed. The Buyer can only assert a right of retention if its counterclaim relates to the same contractual relationship.

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## **§ 7 Warranty and liability**

- (1) The claims of the Buyer based on defects presuppose that it examines the goods on receipt and reports defects to Schützinger immediately in writing – at the latest within two weeks of receiving the goods.
- (2) The Buyer is obliged to send the goods to Schützinger for examination for alleged defects at its own expense.
- (3) In the case of defects, Schützinger is entitled to choose between remedying the defect and exchanging the faulty goods. In the case of a remedy of defects, Schützinger bears all costs needed to remedy the defects, in particular transportation, tolls, labor and material costs to the extent that they are not increased by the fact that the goods have been brought to a place other than the delivery address. Personnel and material costs claimed by the Buyer in this respect are calculated at cost.
- (4) Should Schützinger be unwilling or unable to remedy the defect, the Buyer is entitled to rescind the contract or to reduce the delivery price. The same applies should efforts to remedy the defect be unsuccessful, pose an unreasonable burden on the Buyer or are delayed for an unreasonable period on the part of Schützinger.
- (5) The Buyer's right of rescission is excluded if it is not in the position to repay the payments received and this is not based on the fact that repayment is impossible due to the nature of the payment received or is the responsibility for the defect, has to pay compensation instead of reimbursing costs and has delivered customized goods.
- (6) Defects based on natural wear and tear, incorrect treatment, improper changes or repairs to the goods by the Buyer or third parties do not lead to a claim based on defects. The same applies to defects that can be ascribed to the Buyer and for defects attributable to causes other than the original defects.
- (7) Claims of the Buyer to a reimbursement of costs in place of compensation for non-performance are ruled out unless a prudent third party would have reimbursed such costs.
- (8) Schützinger assumes unlimited liability for damages arising from the breach of a guarantee or injury to life, health or physical injury. The same applies to gross negligence and wilful misconduct. In case of slight negligence Schützinger will assume liability only in the event that material duties have been breached which result from the nature of the contract and are of particular significance for achieving the purpose of the contract. In the event that these duties are breached, delayed or frustrated, Schützinger's liability is limited to cover those damages which can usually be expected to occur in the course of such a contract. This does not affect compulsory statutory liability for product defects.
- (9) The statute of limitations for claims of the Buyer based on defects is one year to the extent that the defective goods have not been properly used for a construction and caused its defectiveness. This also applies to claims from tortious acts based on a defect in the contractual goods. The limitation period commences upon delivery of the goods. This shall not affect the unlimited liability of Schützinger for damages from the breach of a guarantee or injury to life, health or physical injury, from wilful misconduct and gross negligence and from product defects. A statement by Schützinger concerning a warranty claim made by

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the Buyer must not be regarded as an entry into negotiations regarding the claim is rejected in full by Schützinger.

- (10) In the event that Schützinger takes back goods to oblige the Buyer, it will issue credit notes. Schützinger is entitled to deduct from these credit notes renewed storage costs in an amount equal to 15% of the net order value, at minimum, however, 15,00 Euro.

## **§ 8 Retention of title**

- (1) The goods supplied remain the property of Schützinger until all Schützinger's claims against the Buyer ensuing from the business transaction are settled in full. The Buyer is obliged to handle any goods subject to retention of title with due care for the duration of this period. In particular it is obliged to bear the cost of adequately insuring the goods at replacement value against fire and water damage and theft. The Buyer herewith assigns all damages from this insurance to Schützinger. Schützinger herewith accepts this assignment. Where an assignment is not permitted, the Buyer herewith irrevocably instructs its insurer to make such payments only to Schützinger. This does not affect more extensive rights of Schützinger. Upon demand, the Buyer must prove to Schützinger that it has taken out such insurance.
- (2) The Buyer is only permitted to sell goods covered by the retention of title clause within the course of normal operating business. The Buyer is not entitled to pledge, assign as collateral or otherwise grant any entitlements endangering Schützinger's right to any goods covered by the retention of title clause. In the case of pledges or other encroachments by third parties, the Buyer must inform Schützinger in writing immediately and provide all information necessary. The Buyer must also inform the third party of the proprietary rights of Schützinger and cooperate in protecting the goods of Schützinger covered by a retention-of-title clause.
- (3) The Buyer hereby assigns the receivables arising from resale of the goods to Schützinger including all ancillary rights, regardless of whether the goods covered by the retention of title clauses are resold with or without processing. Schützinger hereby accepts the assigned receivables. Where an assignment is not permitted, the Buyer herewith irrevocably instructs the third-party debtor to make such payments only to Schützinger. The amounts collected must be passed on to Schützinger immediately. Schützinger can revoke the Buyer's authority to collect and entitlement to resell if the Buyer fails to duly fulfil payment obligations to Schützinger, if the Buyer is in default or stops payment, or if insolvency proceedings have been filed against the Buyer's assets.
- (4) If the Buyer is in default, Schützinger is entitled to withdraw from the contract without allowing a period for payment, without prejudice to its other rights. In such cases the Buyer must grant Schützinger or its appointed representatives immediate access to the goods covered by the retention of title clause and hand over these goods. Having given appropriate warning in good time, Schützinger can use the goods subject to retention of title to satisfy its receivables due from the Buyer.
- (5) Processing or changes made to the goods covered by the retention of title clause by the Buyer are carried out solely for Schützinger. The expectant right of the Buyer to the goods covered by the retention of title clause continues to exist when the item has been processed or transformed. If the goods are processed, combined or mixed with items not belonging to Schützinger, Schützinger becomes co-owner of the new item in proportion to

the value of the goods delivered in relation to the other processed items at the time of processing. The Buyer keeps the new items in custody for Schützinger. The same provisions apply to an item resulting from processing or transformation as to goods covered by the retention of title clause.

- (6) At the request of the Buyer, Schützinger is obliged to release the collateral allocated to it to the extent that the realizable value of the collateral exceeds Schützinger's receivables arising from the business relationship with the Buyer by more than 20%, taking customary mark-downs made by the banks into account. The goods covered by retention of title are hereby valued at invoice value and the receivable are valued at nominal value.
- (7) In the case of goods delivered to destinations with other legal systems in which the retention of title provision ((1) to (6) above) does not provide as much security as in the Federal Republic of Germany, the Buyer herewith grants Schützinger a security interest accordingly. Should this require further declarations or action, the Buyer will make such declarations or take such action. The Buyer will cooperate in taking all measures necessary for and conducive to the effectiveness and implementation of such security interests.

## **§ 9 Product liability**

- (1) Buyer will not modify the goods in any respect relevant to safety. In particular, it will not modify or remove existing warnings relating to the hazards associated with improper use of the contractual goods. If this duty is breached, Buyer will hold Schützinger harmless *inter se* against product liability claims by third parties, to the extent that Buyer is responsible for the fault triggering the liability.
- (2) Should a product defect in the contractual goods cause Schützinger to recall products or issue a product warning, the Buyer will support Schützinger and take any reasonable action demanded of it by Schützinger. The Buyer bears the costs for the recall or warning to extent that it is responsible for the product defect and the damage that has occurred in accordance with the principles of product liabilities law. This does not affect more extensive rights of the Schützinger.
- (3) The Buyer will inform Schützinger without undue delay of any risks associated with the use of the contractual goods and of any possible defects that come to its attention.

## **§ 10 Force majeure**

- (1) In the event that Schützinger is prevented from fulfilling its contractual duties by a force majeure, in particular from delivering goods, Schützinger will be released from liability for the duration of the impediment and for an appropriate initial period without being obliged to pay damages to the Buyer. The same applies if Schützinger is gravely impeded or temporarily prevented from fulfilling its duties due to unforeseen circumstances for which Schützinger cannot be held responsible, including but not limited to industrial disputes, government measures, power shortages, delivery problems at a supplier or major interruptions of operations.
- (2) Schützinger is entitled to withdraw from the contract if any such impediment lasts for more than four months and fulfilment of the contract is thus no longer of interest to



Schützinger. At the request of the Buyer, Schützinger will, when the period allowed has elapsed, declare whether it will make use of its rights of rescission or deliver the goods within an acceptable period of time.

### **§ 11 Confidentiality**

The contractual parties agree to keep secret for an indefinite period any information to which they gain mutual access, and which is designated confidential or is recognizable in some other way as constituting trade and business secrets, and will not record, pass on or otherwise exploit such information. The contractual parties will ensure by means of suitable contractual agreements with their employees and agents that these persons will also desist permanently from any utilization, transfer or unauthorized recording of such trade and company secrets.

### **§ 12 Final provisions**

- (1) The Buyer may only transfer rights and obligations to third parties subject to the written approval of Schützinger.
- (2) The law of Federal Republic of Germany applies to the legal relationship of the Buyer to Schützinger, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (3) The sole court of competent jurisdiction for all disputes arising from the business relationship between Schützinger and the Buyer is the registered office of Schützinger. Schützinger is also entitled to file a suit at the registered office of the Buyer as well as at every other court of competent jurisdiction.
- (4) The place of performance for all performances of the Buyer and Schützinger is the registered offices of Schützinger.
- (5) Should an individual provision of these terms and conditions prove to be or become totally or partially invalid or unenforceable, or should the terms and provisions prove to have a gap, this does not affect the validity of the other provisions. In place of the invalid or unenforceable provision, the provision that best matches the purpose of the invalid or unenforceable provision applies. In the case of a gap, the provision applies that comes closest to what would have been agreed in accordance with the purpose of these terms and conditions if the parties to the terms and conditions had been aware of the gap in advance.

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