

General Terms & Conditions of Sale of Schöler & Co. GmbH

1. Validity

- 1.1 Our deliveries and services are exclusively effected on the basis of our General Terms and Conditions. General Terms and Conditions used by a customer do not become part of the agreement, and also this applies if we do not expressly object to the differing General Terms and Conditions of the customer and also if we carry out deliveries and services knowing about differing contractual provisions, or terms and conditions.
- 1.2 Our Terms and Conditions also apply to future deliveries and services even if our General Terms and Conditions are not expressly referred to.
- 1.3 A difference from our General Terms and Conditions may only be validly effected by making a corresponding agreement in writing that is signed by both parties.

2. Orders

- 2.1 Our offers are subject to change without notice. Orders are only accepted by us if confirmed by us in writing.
- 2.2 Subsequent changes in confirmed orders (such as changes in the ordered quantity or changes in the ordered articles, colors or qualities) are only possible with our confirmation.
- 2.3 If we have already rendered services on the basis of orders that are to be subsequently changed, the costs that have accrued by rendering the service are fully invoiced to the customer.
- 2.4 Orders that are already in the process of production may no longer be changed or cancelled unilaterally by the customer. Costs arising from the cancellation or changes are fully invoiced to the customer.
- 2.5 Minimum order quantities may apply as communicated by us.
- 2.6 Goods from call-off orders are to be accepted within the agreed period, however, in six months at the latest.

3. Product Specifications

- 3.1 We may change its product specifications at any time.
- 3.2 Information appearing in catalogs, brochures, etc. or qualities of a product such as color, quality or dimensions will be binding only when referenced in the order acknowledgment.
- 3.3 Deviations due to manufacturing process, e.g. in quantities, colors, dimensions, weights and product qualities are permissible.

4. Prices

- 4.1 Unless agreed otherwise in writing, our prices are net prices, to which value-added tax is to be added in the applicable statutory amount. This also applies to flat fees.
- 4.2 We reserve the right to adjust the agreed prices for deliveries and services to the wage and material costs corresponding to the time of the performance of services unless these are rendered within three months from making the agreement. This does not apply if a fixed price has been expressly agreed with the customer for the entire duration of the agreement.
- 4.3 Our prices apply to the agreed purchase quantities. In the event of reduced quantities, we reserve the right to adjust the prices correspondingly.
- 4.4 Services in addition and supplemental to the agreed scope of services are separately invoiced to the customer.

5. Terms of Payment

- 5.1 Payments are to be made by the customer to the accounts given on the invoice and within the period stated there.
- 5.2 Payment is effected when we may freely dispose of the funds. In case of payment in a freely convertible currency other than the invoice currency, the exchange risk and all related charges shall be borne by the client. All bank charges shall also be borne by the client.
- 5.3 Delay in payment by the customer occurs after the due date also without a reminder.
- 5.4 In the event of delay in payment by the customer, we charge interest on arrears in the amount of 12% p.a.
- 5.5 In addition, the customer is obligated to make good any costs of reminders and pursuing the claim including the costs of pursuing the claim out of the court. We reserve the right to assert higher damage claims caused by a delay.
- 5.6 Set-off by the customer with claims against us is excluded unless the counter-claim has been expressly acknowledged by us as existing and being due or has been declared by a final judicial title.
- 5.7 Complaints do not entitle the retention of payments.

6. Terms of Delivery

- 6.1 The delivery time arises under the agreement between the parties. A transaction for delivery on a fixed date is only provided if this has been expressly agreed on a fixed date is only provided if this has been expressly agreed by the parties in writing. Delivery periods relevant for us only start to run when all commercial and technical questions have been clarified and the customer has fulfilled any of its obligations (such as making a deposit-payment). A delivery time relevant for us is considered met if the service to be fulfilled by us is substantially rendered according to the agreement.
- 6.2 Should the dispatch of goods ready for shipment be delayed by circumstances beyond our control or for reasons attributable to the customer, we may have the goods stored at the risk and the expense of the customer. Upon such action, delivery and acceptance shall be deemed to have taken place, and payment becomes due accordingly.
- 6.3 If performance of the delivery is delayed for reasons that the customer is responsible for, we have the right to make other dispositions of the goods after expiration of a reasonable extension of time without rectification or, at our discretion, to render the goods within a reasonable extended period regardless of any other claims.
- 6.4 If performance of the service is delayed for reasons that are to be attributed to force majeure or other events outside our influence, a reasonable extension of the delivery period is agreed. As far as possible, the customer is immediately notified of the beginning and end of such circumstances.
- 6.5 If we delayed deliveries or services to be rendered by us for reasons that we are responsible for, we are liable for damage caused to the customer in the event of gross or wilful negligence. This is to be proven by the customer. Liability is limited to a maximum of 0.5% for each week of delay, however, in total to a maximum of 5% of the net value of the order. Otherwise the customer is entitled to repudiate the agreement in the scope of statutory provisions subject to the additional precondition of the expiration of a reasonable extension of time without rectification. In any event, our claim to payment of partial deliveries remains unaffected by any repudiation of the customer. Further claims of the client and claims exceeding this are excluded.
- 6.6 Claims of damages on the basis of non-performance are excluded excepting the event of gross or wilful negligence. In this event, our liability is limited to 5% of the net value of the order.
- 6.7 If it arises during the performance of our deliveries or services that the order cannot be carried out, we are entitled to cancel the agreement unless the customer agrees to a change of the agreement. In the event of repudiation, we are entitled to the pro-rata fee; the customer does not have any claims.
- 6.8 Our deliveries are effected on the basis of the international Incoterms 2000 that are specified in the offer or in the order confirmation. If not stated otherwise, we deliver ex works.
- 6.9 Effecting partial deliveries or rendering partial services is permitted as far as this is reasonable for the customer.
- 6.10 In absence of specific agreements the packaging is chosen by us.

7. Limited Warranty and Liability

- 7.1 Samples only represent and approximate condition of the goods to be delivered. Deviations in quantity and quality of the delivered goods that are customary in the trade do not represent defects that constitute warranty claims.
- 7.2 Deliveries from different production batches may also be subject to deviations customary in the trade that do not constitute any claims of the customer.
- 7.3 Details about characteristics of our products only represent a mere description of properties and are not to be regarded as a representation or warranty of characteristics.
- 7.4 We may prove the quality of our goods by means of certificates. Further examinations and certificates may be initiated on request. They are separately invoiced by us.
- 7.5 The customer is obligated to confirm acceptance in writing without delay. In any event, every delivery and service (also partial deliveries or partial services) is deemed as performed without defects if the customer does not report defects in writing without delay and within fourteen days after receipt of goods at destination at the latest.
- 7.6 The notification of defects in writing is to contain the following details: a) type of defect, b) complete article number, c) number of pieces, d) invoice number, e) date of receipt of the goods.
- 7.7 The warranty period is six months. Within this period, we warrant proper delivery or service and, at our discretion, warranty is restricted to improvement or exchange provided that the circumstance constituting the defect has already been given on the passing of risk and the customer has reported the defect in writing without delay. Unless expressly agreed otherwise, warranty is effected at the place of performance.
- 7.8 After notification by the customer, sufficient time and opportunity is to be granted to us to make the required improvements or additional deliveries; if this does not occur, we are not liable for any disadvantageous consequences arising from this. Only if it is absolutely necessary to prevent a threat to operational security or to avoid disproportionate damage, the customer is allowed to remove the defect itself or through third parties. In this event, the customer is to notify us without delay. The costs of a substituted removal are reimbursed by us up to the amount that we saved due to the substituted removal.
- 7.9 If the defect is not rectified in spite of improvement or exchange, the customer is entitled to reduce the fee; a right of repudiation is excluded.
- 7.10 No warranty exists for defects that are to be attributed to instructions of the customer or occur in materials or products made available by the customer. We are not obligated to comment on the suitability of instructions of the customer or on materials or products made available by the customer if we were not expressly charged with the examination. Likewise, claims of the customer are excluded if the customer or a third party makes improper improvements.
- 7.11 In the scope of deliveries and services that are essentially based on products of third parties, we only have a warranty obligation or liability for damages to the extent we are also entitled to warranty claims or claims for damages against third parties. We have the choice to be released from our obligation or liability by offering to the customer the assignment of our claims against third parties.
- 7.12 The customer is entitled to claims for damages on the basis of deficient performance only if it proves wilful or gross negligence to us. With regard to damage that does not arise in the deficient corporeal property itself, liability exists only provided that this is a damage that is to be attributed to culpable injury to life, body or health, fraudulently concealed defects or the absence of expressly represented characteristics. Per damage event, liability is limited to damages that are typical of agreements and can be reasonably foreseen by us as well as to compensation paid by our insurance. Further claims are excluded.
- 7.13 Our liability is limited to direct damage with respect to the goods themselves, and shall in no event exceed the amount paid to us for the relevant goods. In no event, we are liable for any indirect, incidental, special, punitive, consequential or other damages, however based and irrespective of whether we had knowledge of the possibility thereof, unless where liability is enforced by law in cases of wanton or gross negligence. The burden of proof is with the client.
- 7.14 Any recourse claims that parties or third parties address to us under the title of product liability in the meaning of the Product Liability Act are excluded unless the party entitled to recourse proves that the defect has been caused in our sphere and, at least, by gross negligence.
- 7.15 Returned goods require the confirmation of the seller. Costs that accrue from damages due to improper packaging during return transport are charged to the customer.
- 7.16 Avoidance of the agreement on the basis of error is excluded.

8. Industrial Protection Rights

- 8.1 The customer is entitled to utilize the trademark which is affixed to the goods or its packaging by us for the purpose of identification of the unchanged or originally packed goods. Any further utilization (e.g. the utilization of the trademark, the name, the logo or other industrial protection rights of us, together with trademarks, names or other industrial protection rights of the customer or third parties or for the purposes of identification of the customer's products or third parties' products) is prohibited. The utilization of our industrial protection rights in publications, irrespective of the medium, is only permitted after the prior written consent by us. Upon utilization of our trademark, the registration thereof should be identified, by way of the ® symbol.
- 8.2 Drawings and other technical documentation remain our property just the same as the models, catalogs, brochures, illustrations and such like and protected by the appropriate statutory provisions with regard to copying, imitation, competition etc. At the least upon takeover of such documentation, the customer accepts our right thereto and customer's obligation to keep this documentation confidential. The customer undertakes not to allow third parties partial or entire access thereto without the prior written consent of us or to utilize same for any other purpose than for the purpose for which such was submitted. In the event of orders not placed, all documentation has to be returned to us, in the event of orders being placed, only upon request.
- 8.3 The customer is obligated to point out our industrial protection rights and other before mentioned rights to its customers (this excludes consumers) and to obligate its customers to comply with and pass on the before mentioned provisions. This especially applies to the obligation to commit each further customer (with the exception of consumers) to comply with the before mentioned provisions.
- 8.4 We are not liable for the violation of industrial protection rights of third parties if goods are manufactured or brought into circulation due to drawings, designs, models, specifications or other manufacturer statements of the customer. The customer shall defend, indemnify and hold us harmless from any and all third party claims based on industrial protection rights or otherwise relating to uses of our products purchased by customer, and waives all its own claims.
- 8.5 The customer shall ensure that this article is made binding on all subsequent purchasers.

9. Retention of title

- 9.1 The goods delivered by us remain our exclusive property until they are completely paid. This retention of title also extends to the proceeds from the resale of goods delivered by us. These proceeds are to be separately kept without being mixed with other means of payment.
- 9.2 Processing or reprocessing of goods delivered and still owned by us is effected without any liabilities accruing to us from this. The exclusive title to the goods created by processing or reprocessing is also held by us until payment of our open accounts receivable.
- 9.3 The customer shall promptly oppose any third-party attachments (e.g. seizure or attachment) in respect of goods on which we have retained title or in respect of claims assigned to us, indicating our rights. Moreover, the customer shall inform us forthwith in writing of any such attachment, providing the necessary documentation (e.g. copy of the attachment order) for intervention.
- 9.4 Should the customer default on payment or should it otherwise breach its contractual obligations, we shall be entitled to enter customer's premises and to repossess goods that are its reserved property at the customer's expense or to demand assignment of the customer's claims for surrender against third parties.
- 9.5 The assertion of title retention rights, the repossession of goods or the seizure by us of its own goods shall not be deemed as withdrawal from the sales agreement.

10. Limitation

- 10.1 Any claims against us lapse after six months from the agreed acceptance of the delivery or service at the latest.

11. Final Clauses

- 11.1 If any provision of these General Terms and Conditions is invalid or becomes invalid on the basis of new statutory provisions, the other provisions not affected by this remain valid. The parties agree to replace the invalid provision by a valid provision whose content fulfils the commercial purpose of the invalid provision as closely as possible.
- 11.2 Modifications, amendments and supplemental agreements to contractual agreements are to be made in writing to take effect. This also applies to declarations that serve the establishment, exercise or preservation of rights.
- 11.3 The customer is forbidden from assigning contractual rights to third parties without our written consent.
- 11.4 Place of performance for any contractual obligations is 4550 Kremsmünster, Austria.
- 11.5 The exclusive venue for asserting claims against us is the court competent in 4550 Kremsmünster, Austria, with regard to the subject matter. We are entitled to make claims against the customer at our discretion either at the court competent in 4550 Kremsmünster, Austria, with regard to the subject matter or at the court competent with regard to the subject matter where the customer has its general jurisdiction or at a court of arbitration. Disputes that we bring before a court of arbitration are finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The language to be used in the arbitral proceedings is German.
- 11.6 Austrian law applies with the exclusion of the conflict-of-law rules and with the exclusion of the UN Sales Convention.
- 11.7 In placing an order on the basis of this price-list, the customer expressly accepts the application of these General Terms and Conditions as most recently revised, and acknowledges their receipt.