

General Terms and Conditions of Delivery for the tool manufacture, mechanical engineering and plant construction divisions of the SCHERDELGroup

To be used with respect to companies and corporate bodies under public law or a special asset under public law.

I. General

- All deliveries and services are subject to these terms and conditions as well as to any separate contractual agreements. Any opposing, deviating or additional purchasing conditions of the Orderer shall not become part of the contract, nor upon acceptance of the order nor in the absence of express objection by the Supplier. If there is no specific agreement, a contract shall be concluded upon written order confirmation by the Supplier.
- If an export licence of the Federal Office for Economic Affairs and Export Control (BAFA) is required for the provision of the contractual service outside Germany and if BAFA finally refuses to grant such a licence, either of the contracting parties may terminate the contract. In this case, the provisions for revocation according to §§ 323 et seq. German Civil Code (BGB) shall apply accordingly.
- The Supplier reserves his ownership and copyrights to samples, cost estimates, drawings and other similar corporeal and incorporeal information – including, but not limited to electronic information; these items shall not be made accessible to third parties.

II. Price and payment

- The prices shall apply for the scope of supply and services mentioned in the order confirmation. Any subsequent extra or special services will be invoiced separately. Moreover, unless otherwise specified, the prices shall apply ex works, including loading at the plant but excluding packaging and unloading. The prices do not include the turnover tax nor any costs related to other country-specific tax law provisions.
- In the absence of specific agreement, payment shall be made without any deduction as follows: 40 % following order placement, 55 % two weeks before supply of delivery item, 5 % after acceptance.
- The receipt of the amount on the Supplier's account is decisive for the observation of the legal payment term.
- The Orderer's right to withhold payments or to set off payments against any counterclaims shall be limited to uncontested or finally and unappealably established counterclaims that are based on the same contractual relationship with the Supplier.
- If the Orderer is required to pay a withholding tax on the contractual services, it is obliged to immediately hand over the original tax certificate to the Supplier. If a confirmation of receipt is required within the EU for the Supplier's contractual services which is exempt from turnover tax, the confirmation must be checked by the Orderer immediately after receipt before being signed and handed over to the Supplier in the original.

III. Delivery time, delay

- The delivery time is provided in the agreements between the contracting parties. Compliance with the delivery period by the Supplier presupposes that all commercial and technical questions have been clarified between the contracting parties and that the Orderer has fulfilled all obligations to which it is subject, such as for example the provision of the necessary official certificates or permits or the performance of a down payment. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
- If additional or extension orders are placed after the conclusion of the contract, the agreed delivery time shall be extended accordingly.
- Adherence to the stipulated delivery time is subject to a correct and timely delivery on the part of our own suppliers. If a delay becomes evident, the Supplier shall notify the Orderer of this as soon as possible.
- The delivery time is deemed observed if, upon its expiry, the delivery item has left the Supplier's plant or the item's readiness for dispatch has been notified. Insofar as an acceptance test is to be performed – other than by legitimate refusal of acceptance – the acceptance date is

decisive, or alternatively the declaration of readiness for the acceptance test.

- If the delivery or the acceptance of the delivery item is delayed for reasons for which the Orderer is responsible, the costs arising from the delay shall be charged to the Orderer, beginning one month after the notification of readiness for dispatch or the acceptance test.
- If non-observance of the delivery period is due to measures taken in the course of industrial disputes or other circumstances beyond the Supplier's control, including, but not limited to war, fire, confiscation, restrictions in energy consumption, extreme natural events, outbreaks of disease or epidemics, terrorist acts, operational disruptions, shortage of materials, transport-related delays, the Supplier shall be released from its obligation to perform for the duration of these circumstances and the delivery period shall be extended accordingly. The Supplier shall notify the Orderer of the beginning and end of such circumstances as soon as possible. If an export licence of the Federal Office for Economic Affairs and Export Control (BAFA) is required for the provision of the contractual service, the delivery period shall be extended according to the duration of the licence procedure. The same consequences shall apply if the circumstances mentioned above occur with subcontractors.
- If, after the conclusion of the contract, it becomes apparent that the performance by the Supplier in whole or in part violates national or international regulations of customs and foreign trade law, or conflicts with embargos and/or other sanctions, the Supplier shall be released from the obligation to perform in whole or in part (to the extent of the restriction/prohibition). In the event of an export ban, the Supplier shall have the right to withdraw from the contract in whole or in part, without prejudice to the foregoing. Claims for damages or other claims of the Orderer for this reason are expressly excluded. Any consideration already provided by the Orderer up to that point shall be reimbursed by the Supplier to the extent that the Supplier has been released from the obligation to perform.
- The Orderer may withdraw from the contract without notice if the Supplier is finally unable to perform the entire contract before the transfer of risk. The Orderer may also withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the Orderer has a justified interest in refusing partial delivery. If this is not the case, the Orderer shall pay the contract price attributable to the partial delivery. The same applies in the event of incapacity on the part of the Supplier. Otherwise, Section VII.2 shall apply. If the impossibility or incapacity occurs during the delay in acceptance or if the Orderer is solely or predominantly responsible for these circumstances, the Orderer shall remain obliged to pay a consideration.
- If the Orderer incurs damage as a result of a delay attributable to the Supplier, the Orderer may claim a lump-sum compensation. It amounts to 0.5 percent for every full week of delay up to a maximum of 5 % of the value of those parts of the overall delivery that cannot be used in time or in accordance with the contract as a result of the delay. Further claims from delayed delivery are excluded.

IV. Transfer of risk, acceptance test

- Unless otherwise agreed between the contracting parties, the risk shall pass to the Orderer when the goods have left the Supplier's plant even when partial deliveries are executed or other services have been assumed by the Supplier, e.g. dispatch costs or transportation and installation. Unless otherwise agreed and if an acceptance test has to take place, the latter is decisive for the transfer of risk. It must be performed without delay on the date set for the acceptance test, or alternatively upon the declaration of readiness for the acceptance test by the Supplier. The Orderer may not refuse acceptance on the evidence of an insignificant defect. If the Orderer refuses acceptance, but produces on or with the delivery item (including, but not limited to test and prototype phases), the delivery item shall be deemed accepted two weeks after the start of use.
- In the event that dispatch, or, as the case may be, accep-

tance is delayed or is not carried out at all due to circumstances for which the Supplier is not responsible, the risk shall pass to the Orderer on the date of notification of readiness for dispatch or acceptance. If this is the case, the Supplier undertakes to conclude the insurance requested by the Orderer at the cost of the Orderer.

- Partial deliveries are permitted as far as they are reasonable for the Orderer.

V. Retention of title

- The Supplier retains title to the delivery item until the receipt of all payments for all claims arising from the business relationship.
- If goods subject to retention of title (retained goods) become part of a new object belonging to the Orderer, it is agreed that the Orderer shall transfer co-ownership of the new object to the Supplier and shall keep it safe for the Supplier free of charge. The Supplier's proportion of ownership is determined by the value of the retained goods in relation to the value of the new object.
- The Orderer hereby transfers to the Supplier all claims arising from the resale of the retained goods. If the retained goods are resold together with other goods, which are not the property of the Supplier, the Orderer shall assign the Supplier the part of the claim arising from the resale that corresponds to the invoice amount of the retained goods. If retained goods belonging to the Supplier only proportionally are resold, the part of the claim assigned to the Supplier and arising from the resale shall be measured according to the Supplier's proportion of ownership.
- The Orderer remains revocably entitled to collect claims from the resale. If requested, the Orderer shall report the assignment of the claims to its customers and provide the Supplier with all information and documents required by the Supplier to assert its rights.
- The Supplier undertakes to release the securities to which it is entitled insofar as their value exceeds the claims to be secured by more than 10 %.
- Insofar as the mandatory regulations of the respective country do not allow any retention of title under the terms of Section V.1 – 5, but contain other rights to secure the claims arising from the Supplier's invoices, the Supplier reserves the right to assert these. The Orderer undertakes to contribute to the measures to which the Supplier is entitled to protect its right of ownership or any other replacing right to the retained goods.
- The Supplier is entitled to insure the delivery item against theft and damage resulting from breakage, fire, water and other risks at the expense of the Orderer, insofar as the Orderer cannot prove to have concluded such insurance itself.
- The Orderer may neither sell the delivery item nor pledge or assign it as security. In the event of attachment, seizure or other acts of intervention by third parties, the Orderer shall inform the Supplier without delay.
- If the Orderer is in breach of contract, including, but not limited to, if it is in default of payment, the Supplier is entitled to take back the delivery item following a payment reminder, and the Orderer is obliged to return it.
- An application to open insolvency proceedings for the Orderer entitles the Supplier to withdraw from the contract and to demand the immediate return of the delivery item.

VI. Claims for defects

The Supplier is liable for material defects and title defects to the exclusion of further claims, subject to Section VII., as follows:

Material defects

- All parts proving to be defective as a result of circumstances occurring prior to the transfer of risk shall be repaired or replaced defect-free at the Supplier's discre-

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tion. The discovery of such defects must be reported to the Supplier in writing without delay. Parts replaced shall become the property of the Supplier.

2. Upon agreement with the Supplier, the Orderer shall provide the Supplier the time and opportunity deemed necessary by the Supplier to perform all repairs and replacement deliveries; otherwise the Supplier shall be exempted from liability for the resulting consequences. Only in urgent cases where operational safety is in danger or disproportionate damage has to be avoided, in which cases the Supplier is to be notified immediately, the Orderer shall be entitled to remove the defect itself or have the defect removed by a third party and claim compensation for the incurred expense from the Supplier.

3. The Supplier shall assume the direct costs arising from repair work or replacement deliveries, including the shipping costs insofar as the complaint proves to be justified and if this does not result in a disproportionate burden on the Supplier. If the expenses increase due to the fact that the Orderer has taken the delivery item to a place other than the place of performance after delivery, any additional costs incurred shall be borne by the Orderer. When selling a newly manufactured item, the Supplier shall also reimburse the expenses incurred by the Orderer in the context of recourse claims in the supply chain to the extent of its legal obligation.

4. Within the framework of the statutory provisions, the Orderer shall have the right to revoke the contract if the Supplier lets expire without result a reasonable period of time set for it to remedy the defect or make a replacement delivery due to a material defect, taking into account the statutory exceptions. If there is only an insignificant defect, the Orderer is only entitled to a reduction of the contract price. The right to reduce the contract price is otherwise excluded. Further claims shall be determined exclusively in accordance with Section VII.2. of these terms and conditions.

5. No liability shall be assumed in the following cases: Inappropriate or improper use, incorrect assembly or commissioning by the Orderer or a third party, normal wear and tear, incorrect or negligent handling, incorrect maintenance, unsuitable operating resources, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences insofar as these are not the responsibility of the Supplier.

6. If the Orderer or a third party carries out improper repairs, the Supplier is not liable for the consequences. The same shall apply to modifications to the delivery item carried out without the prior consent of the Supplier.

Title defects

7. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany and if the Supplier is exclusively responsible for this, the Supplier shall, at its own expense, generally procure the right of further use to the Orderer or modify the delivery item in a manner acceptable to the Orderer in such a way that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the Orderer shall be entitled to revoke the contract. The Supplier shall also be entitled to revoke the contract under the aforementioned conditions. In addition, the Supplier shall indemnify the Orderer against undisputed or legally established claims of the respective owners of the property rights.

8. The Supplier's obligations stipulated in Section VI.7 are conclusive in the event of an infringement of property rights or copyrights, to Section VII.2.

They shall apply only if

- the Orderer notifies the Supplier without delay of any asserted violation of industrial property rights or copyrights,
- the Orderer supports the Supplier to a reasonable extent in the defence against the asserted claims, or enables the Supplier to perform modifications pursuant to Section VI.7,
- the undertaking of all defence measures including out of court regulation are reserved for the Supplier,
- the title defect is not based on an instruction of the

Orderer and

- the infringement of rights was not caused by the fact that the Orderer has arbitrarily changed the delivery item or used it in a manner not in accordance with the contract.

VII. Supplier's liability, exclusion of liability

1. If the delivery item cannot be used by the Orderer in accordance with the contract as a result of suggestions or advice culpably omitted or incorrectly provided by the Supplier before or after conclusion of the contract or as a result of the culpable breach of other contractual ancillary obligations – in particular instructions for operation and maintenance of the delivery item – the provisions of Sections VI. and VII.2 shall apply with the exclusion of any further claims of the Orderer.

2. The Supplier's liability for damage other than to the delivery item itself, based on whatever legal grounds, shall be limited to:

- a. intent,
- b. gross negligence on the part of the owner/executive or senior employees,
- c. culpable injury to life, body, health,
- d. defects the Supplier has fraudulently concealed,
- e. cases where a specific guarantee undertaking exists.
- f. defective delivery items insofar as liability exists under the product liability law in terms of personal injury or property damage to privately used items.

In the case of a culpable breach of fundamental contractual obligations whose fulfilment makes the proper execution of the contract possible and on whose compliance the customer regularly relies and may rely, the Supplier shall also be liable for gross negligence on the part of its non-executive staff and for slight negligence, the latter being restricted to reasonably foreseeable contract-typical damage which must be in an appropriate relation to the value of the delivery item.

Further claims shall be excluded.

VIII. Statute of limitations

All claims on the part of the Orderer, independently of the legal grounds, shall expire after 12 months. This shall also apply to the statute of limitations for recourse claims in the supply chain according to § 445b section 1 German Civil Code (BGB), provided that the last contract in this supply chain is not a purchase of consumer goods. In this case the suspension of the statute of limitations according to § 445b section 2 German Civil Code is excluded. The statutory limitations shall apply to claims for damages under the terms of Section VII.2. a - d and f. They shall also apply to defects to a building or to delivery items, which in accordance with their normal usage were used for a building and caused its defectiveness.

IX. Use of software

Insofar as software is included in the scope of delivery, the Orderer shall be granted a non-exclusive right to use this software including its documentation. It is provided for use in conjunction with the specified delivery item only. The software shall not be used on more than one system.

The Orderer may only duplicate, modify or translate the software or transcribe the object code into the source code to the extent permitted by applicable law (sections 69a et seq. German Copyright Act (UrhG)). The Orderer undertakes not to remove any manufacturer information, in particular copyright notices, nor to modify it without the express prior consent of the Supplier.

All other rights to the software and documentation, including any copies that may exist, shall remain with the Supplier or the software supplier. No sublicenses shall be granted.

X. Language of contract, applicable law, legal venue, miscellaneous

1. Unless expressly agreed otherwise, the contract language is German. If the contracting parties use other languages as well, the German wording shall prevail.

2. Amendments and additions to these terms and conditions require written form. This shall also apply to the waiver of this written form requirement.

3. If both parties have their registered office in Germany, the law of the Federal Republic of Germany shall apply exclusively between them. The place of jurisdiction is the court responsible for the Supplier's registered office.

4. If one of the contracting parties or both contracting parties does/do not have its/their registered office in Germany, all disputes arising from these terms of delivery or all legal relationships established on the basis of these terms of delivery shall be subject to the jurisdiction of the International Court of Arbitration of the International Chamber of Commerce (ICC). Any disputes shall be finally settled under the ICC Rules of Arbitration, excluding the ordinary courts of law. The arbitration tribunal shall consist of three arbitrators appointed in accordance with the said rules. The place of arbitration shall be Munich. The language of the arbitration proceedings shall be German. The substantive law of the Federal Republic of Germany shall apply under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).

5. Should any provision of these terms and conditions be or become invalid in whole or in part, the remaining provisions of these terms and conditions shall not be affected thereby. The contracting parties undertake to replace the invalid provision with such valid provision which corresponds to the sense and purpose of the invalid provision. The same shall apply to any gaps in these terms and conditions.

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