

# General terms and conditions of sale and delivery for spare parts

# SCHUMAG

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## I. General

All supplies and performances are based on these terms and conditions as well as any separate contractual agreements. Purchasing conditions of the ordering party that deviate from these terms and conditions are not binding even upon acceptance of the order.

We are not bound by the purchasing conditions of the ordering party even if we do not expressly contradict them. Furthermore we are not bound by explanations which deviate from our General Terms and Conditions, for example, in the order acknowledgement of the ordering party sent after conclusion of the agreement; we contradict any such explanations right at the outset.

## II. Quotation and conclusion of contract

The documents, such as illustrations, drawings, weights and dimensions specified are only approximately relevant unless they have been expressly deemed binding.

The right of ownership and copyright in respect of cost estimates, drawings and other documents shall remain with us; these may not be used or made available to third parties without our approval. The same shall apply to other technical details which are obtained from our delivery or which we reveal to the customer in the quotation, in other correspondence or during negotiations. Already by commencing contractual negotiations with us, the customer shall recognise these obligations regardless of whether a delivery order becomes effective.

All our quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for us only when we have confirmed acceptance in writing.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with our written confirmation.

## III. Price, payment, security

The prices shall in the absence of a special agreement be valid ex works, including loading in the works, but excluding packaging. Should there be an increase in the cost factors (prices of materials, operating materials, wages and freight) decisive for the pricing, we are entitled to adapt the price accordingly.

Our prices do not include the statutory VAT; it shall be itemised separately in the invoice in the statutory amount on the date of invoicing.

Our prices shall be calculated unless otherwise agreed on the following basis:

- 1/3 of down payment upon receipt of order confirmation
- 1/3 upon expiry of half of delivery time
- 1/3 upon notification of readiness for dispatch

Payments are to be made immediately upon receipt of the corresponding invoice, but not later than within a period of 30 days from the date of the invoice.

The ordering party is under no circumstances entitled to exercise a right of retention, not even if he has objections to the delivery item. If we accept bills or cheques, the debt shall be cancelled only upon encashment. Discount charges and all costs incurred in conjunction with the encashment of the bill or cheque amount shall be borne by the ordering party.

If the agreed payment dates are exceeded, we can without the need for a special notice of default demand interest and commissions according to the relevant bank rates for short-term loans. This shall not exclude the assertion of a further claim for damages in the event of delay on the part of the Buyer. We can withdraw from the contract soon after an appropriate grace period set by us has also expired unsuccessfully.

We have the right to request security at all times for our demands, insofar as sufficient security has not been provided or is no longer available.

## IV. Delivery

The agreed delivery clauses shall be interpreted in line with the INCOTERMS valid at the time of conclusion of the contract.

Should the contract not contain any specific delivery clauses, the subject of delivery shall be deemed to have been delivered "ex works" (EXW).

Part deliveries are unless otherwise agreed permitted.

The delivery period depends on the agreements among the contracting parties. The prerequisite for meeting the delivery dates is that all commercial and technical queries between the contracting parties must be clarified. If this is not the case, the delivery period shall be extended accordingly.

The delivery period commences with the dispatch of the order acknowledgement, however not before the furnishing of the documents and approvals to be provided by the ordering party, furthermore, not before receipt of the agreed downpayment.

The delivery dates are deemed met if the delivery item has left the works or notification of readiness for shipment has been submitted by the time of expiry of the delivery period.

The delivery period shall be extended accordingly in the event of unforeseeable hindrances occurring which are beyond our control, regardless of whether they occur in our works or in the works of our subsupplier, e.g. operating malfunctions or delays in the supply of essential raw and construction materials, insofar as such hindrances influence the completion or delivery of the delivery item. We shall also not be responsible for the aforementioned circumstances if they occur during a delay that has already occurred.

Events that adequately extend the delivery period are also measures within the scope of industrial action, in particular strikes and lockouts.

If we default on delivery, the ordering party can, insofar as the delay is attributable entirely to us and the ordering party has suffered damage as a result of the delay, demand for each week starting from the expiry of the appropriate grace period 0.5%, in total however maximum 5% of the value of that part of the overall delivery which cannot be used as a result of the delay.

Other claims, in particular for further compensation, such as consequential damage and loss of profit, are excluded regardless of the legal grounds for this.

If the delivery dates are not met for reasons of force majeure, industrial action or other events which are outside our sphere of influence, the delivery period shall be extended appropriately. We shall inform the ordering party about the beginning and end of such circumstances as soon as possible.

## V. Passage of risk and receipt

The risk shall be passed to the ordering party at the latest with the dispatch of the delivery parts and also if partial shipments are made or if we take on other services, e.g. the shipment costs or transportation and erection/assembly.

At the ordering party's request, we shall insure the consignment at his expense against damage caused by breakage, transport, fire and water. If shipment is delayed as a result of circumstances attributable to the ordering party, we have the right to store the delivery item or have it stored by our previous supplier at the ordering party's expense and risk at our discretion. The due date of the purchase price shall not be affected by the delay in shipment. We have the right to set the ordering party a grace period for acceptance and, in the event of unsuccessful expiry of said grace period, to use the delivery item for other purposes. The ordering party must reimburse the damage hereby incurred.

The ordering party has to take delivery of the goods, even if they have defects, notwithstanding the rights under Section VII.

A special examination or acceptance can be demanded by both parties only on the basis of an agreement in this respect. The ordering party shall bear the costs of the test or acceptance.

## VI. Reservation of ownership

The ownership of the delivery items shall be passed to the ordering party only after receipt of all payments from the business connection with the ordering party.

From the time of delivery to the transfer of ownership, the ordering party must insure the delivery items against any infringement up to the full value. The ordering party shall inform us immediately in case of seizure or any other infringement of our rights by third parties.

Insofar as the validity of the reservation of ownership is linked to formalities or other preconditions or is legally not possible outside the Federal Republic of Germany, the ordering party shall ensure that a corresponding security is granted to us.

## VII. Liability for defects in delivery

For defects in delivery, we shall in the absence of an alternative agreement be liable as follows precluding all further claims:

1. All those parts which within six months of delivery prove to be unusable or are considerably impaired in terms of their usability as a result of a circumstance that has occurred prior to the passage of risk, in particular due to faulty manufacturing or faulty workmanship, are either to be remedied or delivered anew at our reasonable discretion and at no charge. The ordering party shall inspect the consignment immediately after arrival for defects and inform us of such defects forthwith. If the

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ordering party fails to inspect the item forthwith, all claims shall be inapplicable, insofar as the defects were identifiable during proper performance of the inspection. The claims shall likewise be inapplicable if the ordering party fails to inform us forthwith of the defects.

Replaced parts shall become our property.

If shipment is delayed for reasons not attributable to us, the liability shall expire at the latest 12 months after passage of risk.

For outside equipment items, our liability shall be limited to the assignment of the liability claims to which we are entitled against the supplier of the bought-out items.

We shall be liable in case of manufacture according to the ordering party's drawings only for the execution according to the drawing and shall not be liable for defects based on the materials provided by the ordering party or a design stipulated by the ordering party.

2. The ordering party's right to assert claims from defects shall in all cases become statute-barred within 6 months from the time of timely notification of the defect, at the earliest, however, with the expiry of the warranty period. The aforementioned statutory limitation applies regardless of whether an acceptance was agreed upon or not.
3. No warranty shall be assumed for damage which has occurred for the following reasons:  
Inappropriate or improper use, faulty installation or putting into operation by the ordering party or by a third party, normal wear, faulty or negligent treatment - in particular excessive strain or load -, unsuitable operating materials, substitute materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences insofar as these are not attributable to us.
4. To perform all the rectification work and substitute delivery which is considered necessary at our reasonable discretion, the ordering party shall give us the necessary time and opportunity after notification; otherwise we are exempted from any liability for the defects. Only in urgent cases of jeopardy to operational safety, of which we have to be notified forthwith, or when we have delayed the elimination of the fault, does the ordering party have the right to eliminate the defect himself or have it eliminated by a third party and demand appropriate reimbursement of his costs.
5. Of the direct expenses incurred by the rectification and/or substitute delivery, we shall bear - insofar as the objection proves to be justified - the costs of the replacement item, including shipment, as well as the appropriate costs of dismantling and installation; furthermore, we shall also bear the costs of providing fitters if necessary, if this can be reasonably demanded in the individual case. In all other cases, the ordering party shall bear the costs, in particular for auxiliary personnel, lifting equipment etc.
6. In the event of a complete operational interruption, the term of the liability for defects for the delivery item shall be extended accordingly insofar as said item cannot be put into operation appropriately as a result of the rectification and/or substitute delivery.
7. The provisions concerning the delivery date and liability shall apply accordingly if rectification work or replacement items are insufficient or defective; compensation for delay cannot be claimed.
8. We are entitled to refuse elimination of the defects as long as the ordering party does not fulfil his obligations.
9. We shall not be liable for the consequences of modifications, e.g. the use of parts not authorised by us, or repair work, which have been carried out improperly by the customer or by third parties and without our prior approval.

All cases of contractual violations and their legal consequences as well as all claims of the ordering party, notwithstanding the legal grounds on they have been raised, are exclusive regulated in these conditions. In particular, all claims for damages, price reduction, and cancellation of the contract or withdrawal from the contract that have not been expressly mentioned are excluded.

Other claims, in particular for compensation of indirect and/or consequential damage, such as loss of profit, loss of production, loss of use, loss of orders, shutdown costs as well as other direct or indirect damage, on whichever legal grounds, are explicitly excluded.

The maximum total liability arising out of or in conjunction with this contract on whatever legal grounds - with the exception of the liability stipulated above - is limited to the order value of the delivery in question.

This exclusion of liability does not apply to illegal intent or gross negligence; however, it applies to illegal intent or gross negligence on the part of auxiliary personnel.

## VIII. Right to rescission

We can rescind the contract in full or in part in the event that unforeseen events in accordance with Section IV of this Terms and Conditions of Delivery considerably change the economic significance or the content of the service or considerably affect our operations and, furthermore, if it subsequently turns out that execution is impossible. A partial rescission is only possible if the ordering party is interested, solely for his own purposes, in that part of the agreed delivery that is not affected by the aforementioned circumstances.

The ordering party is not entitled to claim damages on account of such a rescission. We shall, should we wish make use of the right to rescission, inform the ordering party hereof immediately after finding out about the implications of the event, also if an extension of the delivery period had initially been agreed upon with the ordering party.

## IX. Confidentiality

The contracting parties undertake to keep secret any information which is made available to them in conjunction with this contract or within the scope of the business relationship and which is described as confidential or can be identified as a business or operating secret on the basis of other circumstances and not to record or use them in any way unless appropriate for attaining the contractual purpose.

## X. Applicable law, invalidity of individual provisions

Unless otherwise agreed, the Swiss substantive federal law shall apply. The application of United Nations Convention on Contracts for the International Sale of Goods is excluded.

Any and all disputes arising from or in conjunction with the present contract shall be definitively resolved according to the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to these rules. Place of arbitration is Zurich, Switzerland. The language of the court is English.

In the event that individual terms become ineffective, the other terms shall remain binding.