

## General Terms and Conditions of Purchase

Schroedahl GmbH Alte Schönenbacher Str. 4  
51580 Reichshof-Mittelager  
Germany

Status: September 2017

### § 1 General, scope

- (1) These General Terms and Conditions of Sale shall apply to all our business relations with our customers (also referred to in the following as: "the Buyer"). The General Terms and Conditions of Sale shall only apply if the Buyer is a business entity ("Unternehmer", § 14 of the German Civil Code), a legal entity under public law or a special public-law asset ("öffentlich-rechtliches Sondervermögen").
- (2) The General Terms and Conditions of Sale shall in particular apply to contractual agreements relating to the sale and/or the supply of movable objects (also referred to in the following as: "the goods") without it mattering whether we manufacture the goods ourselves or purchase such from suppliers (§ 433, § 651 of the German Civil Code). The General Terms and Conditions shall also apply in their respective version as a skeleton agreement including for future contractual agreements on the sale and/or the supply of movable objects with the same buyer without our having to make reference to these once again in each individual case; we shall in the event of changes in our General Terms and Conditions of Sale inform the Buyer thereof without undue delay.
- (3) Solely our General Terms and Conditions shall apply. Any general terms and conditions of the Buyer contradicting these or going above and beyond these shall only become part of the agreement if we expressly agree to their applicability. This applicability requirement shall always apply, including for example if we perform a delivery to the Buyer without any reservations in awareness of its general terms and conditions.
- (4) Individual covenants and agreements concluded with the Buyer in individual cases (including subsidiary agreements, amendments or changes) shall in any case have priority over these General Terms and Conditions. A written agreement or our written confirmation shall be required for such covenants and agreements to apply.
- (5) Declarations and notifications of legal importance which are issued to us following the conclusion of the Agreement by the Buyer (e.g. deadlines, notification of defects, declaration of withdrawal or reduction in price) must be in writing to be effective.
- (6) Any reference to the applicability of statutory provisions shall only be deemed to be of a supplement nature to establish clarity. For this reason, statutory provision

thus apply to the extent that they are not directly modified or expressly excluded in these General Terms and Conditions of Purchase.

### § 2 Conclusion of the Agreement

- (1) Our offers are subject to change and are non-binding. This also applies if we are provided catalogues, technical documentation (e.g. drawings, plans, calculations, instructions with reference to standards), other product descriptions or documents - including in electronic form - by the Buyer, to which we reserve rights of title and copyright.
- (2) We shall submit a non-binding offer in response to an enquiry by the Buyer. Only the ordering of the goods by the Buyer shall be deemed to constitute a binding contractual offer. If nothing to the contrary emanates from the order, we shall be entitled to accept this contractual offer within a period of 30 days after we have received it (confirmation of order).
- (3) Acceptance must be declared to the Buyer in writing (for example by means of a confirmation of order). Notification by means of telecommunications, in particular by e-mail, shall be deemed to meet the writing requirement.
- (4) Any changes or amendments to the covenants and agreements that have been concluded must always be confirmed by us in writing.

### § 3 Period of delivery and delay in delivery

- (1) The delivery periods and deadlines stated by us shall only be binding if they have been confirmed by us as binding in writing. Confirmed delivery periods shall be subject to the requirement that the Customer provide documents, permits, releases or licenses which have been obtained in due time and that it has met all obligations it is subject to in due time. In the event of any amendments/additions/changes in orders, delivery periods and prices must be confirmed by us in writing once again.
- (2) If we are unable to meet binding delivery periods for reasons for which we are not responsible (unavailability of the performance), we shall inform the Buyer hereof without undue delay and at the same time notify it about the probable new delivery date. If the performance is not available within the new delivery period, we shall be entitled to withdrawal from the Agreement in whole or in part. Unavailability of the performance in this meaning shall in particular apply to our suppliers not being able to supply us in time.
- (3) We shall be deemed to be in delay in effecting delivery in accordance with statutory provisions. Admonishment by the Buyer shall be required in any case, however. If we are in delay in effecting delivery, the Buyer may only demand contractual penalties or lump-sum compensation for damage it incurs as a result of the delay if we have expressly provided our consent to such. The contractual penalty or

flat-sum claim to damage may be no more than a maximum of 5% of the value of the consignment which is late being delivered, however.

- (4) This shall not affect the rights of the Buyer as set out in § 8 of these General Terms and Conditions of Sale and our statutory rights, in particular in the event of exclusion of the performance obligation (for example, as a result of the impossibility or unreasonableness of performance and/or subsequent performance).

#### **§ 4 Delivery, transfer of danger, acceptance, delayed acceptance**

- (1) Delivery shall be effected in accordance with Incoterms 2010 ex works (Alte Schönenbacher Str. 4,51580 Reichshof-Mittelagger), which is also the place of performance. The goods shall be sent to another destination if so requested by the Buyer; such shall be at the Buyer's expense. In the case of such sale to destination, we shall be entitled to determine the type of shipping as we see fit if nothing to the contrary has been agreed upon (in particular, the forwarding company, shipping route, and packaging). We work exclusively with forwarding companies which have the status of "regulated agent" within the framework of EU Regulations (EC) 300/2008 and (EC) 185/2010. Forwarding companies which do not have this status shall be rejected by us.
- (2) Danger of accidental loss and accidental deterioration of the goods shall be transferred to the Buyer no later than upon the transfer of the goods. In the case of sale to destination, the danger of accidental loss or accidental deterioration of the goods and the danger of delay shall be transferred already when the goods are handed over to the forwarding company, the freight agent or any other person or institution commissioned with the shipping. It shall be deemed to be tantamount to transfer if the Buyer is late in providing acceptance.
- (3) If the Buyer is late in providing acceptance, it fails to cooperate or our delivery is delayed for any other reason for which the Buyer is responsible, we shall be entitled to demand compensation for any damage incurred as a result thereof including additional expenses (for example, storage costs or new packaging). We shall charge a flat compensatory amount of 0.5% of the net price (delivery value) per calendar week beginning with the delivery date or - if there is no delivery date - upon notification of readiness to ship the goods, but no more than a maximum of 5% of the consignment value. This shall not affect the right to demonstrate a greater amount of damage and satisfy our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination); the flat rate shall be credited to monetary claims going above and beyond this, however. The Buyer shall be allowed to demonstrate that we have not incurred any damage whatsoever or only much less damage than the aforementioned flat sum.

#### **§ 5 Prices and terms and conditions of payment**

- (1) If nothing to the contrary is agreed upon in the individual case, our prices at the respective point in time of the conclusion of the Agreement shall be deemed to be in Euros, ex works plus value-added tax.
- (2) The customer warrants and represents that all the prerequisites and evidence required for value-added tax treatment of the consignment and/or performance have been met. If we have to pay German or foreign value-added tax, the customer shall herewith indemnify us from any additional claims upon the first demand notwithstanding any claims above and beyond such.
- (3) In the case of a purchase to destination (§ 4, section 1), the Buyer shall bear transport costs ex works and the costs of any transport insurance desired by the Buyer. Any duties, fees, taxes or other public levies shall be borne by the Buyer. We shall not take back any transport or other packaging in accordance with the German Packaging Regulation; such shall be deemed to be title of the Buyer with the exception of pallets.
- (4) The purchase price shall be due and payable within the agreed-upon period payment commencing with the invoicing. We shall be entitled to invoice upon receiving notice of readiness to ship the goods.
- (5) The Buyer shall be deemed to be in arrears upon expiry of the agreed-upon payment deadline. The purchase price shall be assessed interest at the rate of the respectively applicable statutory interest rate (8 percentage points above the base interest rate). We reserve the right to claim for additional damage from arrears. This shall not affect our claim to the interest on amounts due from businesspersons (§ 353 of the German Commercial Code).
- (6) The Buyer shall only be entitled to rights to set off or retain amounts to the extent that its claims have been recognized by a court of law or are uncontested. In the event of defects in delivery, the counter-rights of the Buyer shall remain unaffected, in particular in accordance with § 7 of these General Terms and Conditions of Sale.
- (7) If upon conclusion of the Agreement it can be recognized that our claim to the purchase price is jeopardized by deficient ability of the Buyer to perform (for example as a result of application for the opening of an insolvency procedure), we shall be entitled to withdraw from the Agreement in accordance with statutory provisions pursuant to refusal to render performance and if applicable following the setting of a deadline (§ 321 of the German Civil Code).

#### **§ 6 Reservation of title**

- (1) We reserve title to the sold goods until complete payment is effected on our current and future claims emanating from the Purchase Agreement and the ongoing business relationship (collateralized claims).

- (2) The goods subject to reservation of title may not be pledged to third parties or transferred as collateral prior to complete payment of the collateralized claims. The Buyer shall inform us without undue delay in writing if and to the extent third parties try to take the goods belonging to us.
- (3) In the event of conduct on the part of the Buyer in violation of the Agreement, in particular in the case of failure to pay the due purchase price, we shall be entitled to withdrawal from the Agreement in accordance with statutory provisions and demand handover of the goods as a result of the reservation of title and to withdraw from the Agreement. If the Buyer does not pay the due purchase price, we shall only be able to forward these rights if we have first set a reasonable grace for the Buyer to pay this amount or no such grace period is required under statutory provisions.
- (4) The Buyer shall be entitled to resell and/or process the goods for which there is reservation of title in regular business. In such case, the following provisions shall apply in addition.
  - (a) The reservation of title shall also include all products which come about through processing, mixture or linkage of our goods in their complete value, whereby we shall be deemed to be manufacturer. If property rights of third parties apply in the case of processing, mixture or linkage with goods of such parties, we shall acquire co-title in the ratio of the invoice value of the processed, mixed or linked goods. Otherwise the same shall apply to the product which comes about as for goods delivered subject to our reservation of title.
  - (b) Claims against third parties which arise from free sale of the goods or the products shall be transferred to us already here and now in the entire amount or in the amount of our possible co-title to such in accordance with the preceding section as collateral. We herewith accept this transfer. The obligations of the Buyer cited in section 2 shall also apply in view of the transferred claims.
  - (c) The Buyer shall be authorized to collect the claim along with us. We shall be obligated to refrain from collecting the claim as long as the Buyer meets its payment obligations towards us, does not fall into arrears on payment, does not file for the opening of an insolvency procedure and there is otherwise no deficiency in its capacity to perform. If this is the case, however, we may demand that the Buyer disclose the claims transferred and the respective parties owing such, provide all information required to effect collection, hand over the documents belonging to such and notify the debtors (third parties) of such transfer of claims.
  - (d) If the realisable amount of collateral exceeds our claims by more than 10%, we shall release collateral as we see fit upon the request of the Buyer.
- (5) The Customer shall be obligated to take all measures required to maintain the reservation

of title or the functional equivalent of collateral rights recognised in the country of destination (registered offices of the Customer). If the Customer violates this obligation, this shall be deemed to constitute an important violation of the Agreement.

#### **§ 7 Claims of the Buyer to defect**

- (1) If nothing to the contrary is stipulated in the following, statutory provisions shall apply to the rights of the Buyer in the event of material and legal defects (including incorrect or insufficient delivery and improper installation or defective supervision of assembly). In any case, this shall not affect special statutory provisions upon the final delivery of the goods to a consumer (recourse to the supplier set out in § 473, § 479 of the German Civil Code).
- (2) Our liability for defect shall above all be based on the quality of the goods pledged in the confirmation of order. Product descriptions described as such which are issued to the Buyer or which have been included in the Agreement in the same manner as these General Terms and Conditions shall be deemed to constitute an agreement on the quality of goods. In the event of subsequent orders, the respective state of the art in technology shall be adjusted. We shall not be responsible for the goods being suited for any use other than that stated in the product description or meeting any further-reaching expectations on the part of the Customer.
- (3) If the quality has not been agreed upon, the decision as to whether there is a defect or not shall be decided in accordance with statutory arrangements (§ 434, section 1, subsections 1 and 3 of the German Civil Code). In the case of public statements by third parties (e.g. advertising statements), we shall not assume any liability, however.
- (4) Any claims to defect on the part of the Buyer shall require that it has met its statutory obligations to inspect the goods and issue complaints (§ 377, § 381 of the German Commercial Code). If a defect is found in the inspection or later, we shall be notified hereof in writing without undue delay. Notification shall be deemed to have been given without undue delay if it is issued within two weeks, whereby it shall be deemed to suffice if notification has been sent within this period. Independently of its inspection and complaint obligation, the Buyer shall provide written notice of obvious defects (including incorrect and deficient delivery) within two weeks after receiving the goods, whereby here as well the time when notification is sent shall be deemed to suffice in meeting the deadline. If the Buyer fails to properly inspect and/or provide notification of defects, our liability shall be excluded. The Buyer shall bear the complete burden of proof with regard to all prerequisites for claims, in particular for the defect itself, for the point in time when the defect occurred and for complaint of defect being issued in due time.

- (5) If the good supplied is defective, we shall be entitled and obligated to effect subsequent performance, to rectify the defect (subsequent improvement) or to supply an object free of defect (substitute delivery) within a reasonable period of time as we see fit.
- (6) We shall be entitled to make subsequent performance contingent upon the Buyer having paid the due purchase price.
- (7) The Buyer shall provide us the time and opportunity required to render subsequent performance, and in particular hand over the goods subject to complaint for inspection purposes. In the event of delivery of replacements, the Buyer shall return the defective object to us in accordance with statutory provisions. Subsequent performance shall not include the removal of the defective object or mounting it once again if we were not originally obligated to mount such.
- (8) We shall bear the expenses required for inspection or subsequent performance, in particular labour and material costs (not transport, dismantling and mounting costs) if there is indeed a defect. If a claim to defect by the Buyer turns out to be unjustified, however, we can demand that the Buyer reimburse us for the costs which have been incurred.
- (9) In urgent cases, e.g. in the event of plant safety being jeopardised or to prevent unreasonable damage, the Buyer shall be entitled to rectify defects itself and to demand compensation for objectively necessary expenses from us. We shall be informed about such rectification by the Buyer itself without undue delay and always in advance. The right of the Buyer to rectify defect itself shall not apply if we would be entitled to refuse respective subsequent performance under statutory provisions.
- (10) If subsequent performance fails or a grace period set by the Buyer for subsequent performance expires without subsequent performance being rendered or is dispensable under statutory provisions, the Buyer may withdraw from the Purchase Agreement or reduce the purchase price. In the event of insignificant defects there shall be no right to withdrawal, however.
- (11) Any claims of the Buyer to compensation or reimbursement for expenses in vain shall only apply in accordance with § 8 and shall otherwise be excluded.

#### § 8 Other liability

- (1) If nothing to the contrary emanates from these General Terms and Conditions of Sale including the following provisions, we shall bear liability in the event of a violation of contractual and non-contractual obligations in accordance with applicable statutory provisions. The Customer shall bear the complete burden of proof with respect to all prerequisites for claims, in particular for the violation of an obligation, the manner in which damage occurred and the causal

connection between the violation of an obligation and the occurrence of the damage.

- (2) We shall only be liable for damages - regardless of the legal reason for such - in the event of wilful intent and gross negligence. In the event of minor negligence, we shall only be liable
- a) for damage due to fatality, physical injury or health impairment,
- b) for damage due to violation of an important contractual obligation (an obligation, the fulfilment of which makes possible proper execution of the Agreement in the first place and adherence to which the parties to the Agreement can and may generally place their trust in); in this case, our liability shall be limited, however, to foreseeable damage which typically occurs. Any liability for foregone profit and immaterial damage is excluded. In this case we shall bear liability up to a maximum of 200% of the respective net price (delivery value).
- (3) The limitations on liability emanating from section 2 shall not apply if we maliciously conceal a defect or have assumed a guarantee for the quality of the goods. The same shall apply to any claims on the part of the Buyer under the German Product Liability Act (Produkthaftungsgesetz).
- (4) If it is not contractually pledged, we shall in any case not be responsible for the fulfilment of obligations which are linked to introduction of the goods in commerce outside of Germany or fees or levies accruing outside of Germany or measurement and weighing systems, packaging, labelling or marking provisions, registration or certification obligations or any other legal provisions of importance to the goods applying outside of Germany. Translations of documents or papers relating to the goods which are required or warranted in any other manner in any language other than German or English shall be undertaken by the Customer at its own expense and under its own responsibility.
- (5) In the event of a violation of an obligation which is not related to a defect, the Buyer may only withdraw or give notice to terminate the Agreement if we are responsible for the violation of the obligation. The Buyer shall not have any free right to terminate the Agreement (in particular under § 651, § 649 of the German Civil Code). Otherwise statutory requirements and legal consequences shall apply.

#### § 9 Cancellation - suspension - termination

- (1) The Customer is aware that the products manufactured by us are special orders.
- (2) Notices of termination, cancellations and suspensions of an order which has been effectively placed shall only be allowed until the completion of a product. The order may be suspended upon the written request of the Customer for a period no longer than six months. The suspended order may be revived by a respective written declaration to such

effect. The respective receipt of the declaration shall be used in deciding whether this deadline has been met.

- (3) In the event of termination or cancellation for reasons for which we are not responsible, we shall be entitled to be paid for the work done until the receipt of the termination notice, including: reimbursement for actual costs incurred plus reasonable overhead and necessary expenses resulting from the termination. That which we have saved through the effectiveness of the termination or cancellation of the Agreement or acquired by means of using labour for other purposes or that which we maliciously failed to acquire shall be credited to this, however. In the event of suspension, the aforementioned arrangement shall apply accordingly if the order is not resumed within a period of 3 months. In the event that the suspension is lifted, delivery dates shall be reset. We shall moreover be entitled to charge lump-sum compensation for storage costs and suspension costs beginning with the third month of suspension at 2.5% of the net price of the suspended goods for each additional month of suspension completed.

#### **§ 10 Statute of limitations**

- (1) The statute of limitations for claims and rights relating to material and legal defects to the goods we supply shall be 24 months after delivery in the case of traffic in goods within the EU - regardless of the legal reason for such. If later commissioning is demonstrated, this period shall be extended to 36 months. If the sale or the delivery is in a non-EU country, however, the statute of limitations shall be 12 months after delivery. If later commissioning is demonstrated, the period shall be extended to 18 months.
- (2) This shall not affect special statutory regulations applying to claims to hand-over in rem of third parties (§ 438, section 1, no. 1 of the German Civil Code), in the event of wilful or malicious intent on the part of the Seller (§ 438, section 3 of the German Civil Code) and for claims in connection with recourse to suppliers upon final delivery to a consumer (§ 479 of the German Civil Code). The statute of limitations periods shall moreover not apply to damage claims in the case of a grossly negligent violation of an obligation, physical injury or damage to health or in the case of claims under the German Product Liability Act (Produkthaftungsgesetz).
- (3) The aforementioned periods for the statute of limitations under purchase law shall also apply to contractual and non-contractual claims to damages by the Buyer which are based on a defect in the goods unless application of the regular statutory statute of limitations (§ 195, § 199 of the German Civil Code) would lead to a shorter statute of limitations in individual cases.

#### **§ 11 Body of law and legal venue**

- (1) The law of the Federal Republic of Germany shall apply to these General Terms and Conditions of Sale and all legal relations between the Buyer and ourselves. Uniform international law, in particular UN Purchase Law, shall be excluded. The preconditions and

effects of the reservation of title set out in § 6 shall be subject to governing law at the respective site where the object is kept if with this selection the body of law selected is inadmissible or invalid in prejudice of German law.

- (2) If the Buyer is deemed to be a businessperson (Kaufmann) in the meaning of the German Commercial Code, a legal entity under public law or a special public-law asset ("öffentlich-rechtlich Sondervermögen"), the exclusive legal venue - including internationally - for any disputes emanating directly or indirectly from the contractual relationship shall be our registered offices in Reichshof. We shall also be entitled, however, to file suit at the general legal venue of the Buyer.
- (3) All notices, declarations, complaints, etc., shall be written exclusively in German or in English. Notices sent by telefax or e-mail shall be deemed to meet the writing requirement.