

General Terms and Conditions of SWARCO SCHÖNBORN GmbH

As of: 01/2019

I. General Application

All legal relationships (deliveries and services) between purchasers and us shall be exclusively governed by the following terms, unless otherwise agreed upon in the offer in writing. They are also applicable to all future deliveries, services or offers, even if they are not agreed upon again separately.

II. Order

Our offers are non-binding. Orders as well as oral agreements are only binding upon us if we confirm them in writing or if we confirm them according to the form sheet or if we conform with the offer by sending you the goods and the invoice. Our confirmation of order is solely authoritative for the content of the contract.

Deviations from our General Terms and Conditions of Sale, in particular conditions of the purchaser are only applicable if they have been confirmed by us in writing. They also shall not become an integral part of the contract by silence or by our deliveries.

III. Calculation

The dispatch weight as well as the prices valid on the date of dispatch or, respectively, agreed upon in the confirmation of order are authoritative for the calculation. If prices of a single cost element (for example, of one or several primary product(s)) have changed prior to delivery, the price of our final product will also change; this change, however, shall only apply to the extent that the price changing occurring for the respective primary product has had an effect on the price of the final product. If the price then increases compared to the price at the time of the conclusion of the contract, the purchaser is entitled to withdraw from the order within 14 days after notification of the increase in price. The withdrawal right does not exist in case of price increases that result from the increase of the VAT. Should the exercise of the withdrawal right be unreasonable for the purchaser, the purchaser may object to the price increase and demand delivery at the originally agreed price being invoiced.

IV. Prices and Payment

All prices are in Euro, unless otherwise agreed upon in writing, including packaging plus statutory VAT.

The payment is due net 30 days after receipt of the invoice or, respectively, receipt of the goods or in accordance with the convened payment period. The date of receipt of the payment by us is decisive. Payments are first used to cover the costs, then the interests and the surplus is used to cover the longest outstanding accounts payable.

Payment by bill of exchange is generally excluded.

Credit notes for cheques as fulfilment of payment are issued at the value on the day on which the amount of money is credited to our account.

In case of default in payment as well as in case of justified doubts regarding the solvency or the creditworthiness of the purchaser, we are – notwithstanding our other rights – entitled to ask for advance payments for outstanding services and to declare any and all claims arising out of the business relationship immediately due.

In case that the payment deadline is exceeded, we are furthermore entitled to invoice default interests of up to 9 % p.a. above the currently applicable base interest rate based on the invoiced amount.

V. Resale

Sale and delivery of our goods shall be made exclusively to entrepreneurs for the purposes of their own use or further processing. Any resale of products supplied by us to third parties within the country or abroad is therefore not admissible without our express written approval.

Our sale prices are designed individually taking into consideration several factors. In case of unauthorised disclosure of prices to third parties, we reserve the right to claim damages.

VI. Delivery and Acceptance

Delivery dates agreed upon refer to the dispatch date of the goods. Dates and delivery periods indicated by the purchaser are only binding if we have either offered such or confirmed such in writing to him/her. Same shall also be valid for call-off dates. Prerequisite that such dates are respected is that the purchaser timely satisfies his/her duty to cooperate imposed on him/her; otherwise, the period shall be extended proportionately. Compliance with dates and deadlines is subject to correct and timely delivery from our suppliers.

If acceptance is agreed upon or if such is prescribed by law, the acceptance date shall be decisive, or alternatively the notification of the willingness to accept, should the purchaser refuse acceptance in an unjustified manner. If dispatch or, respectively, acceptance is delayed due to reasons that are attributable to the purchaser, he/she has to bear the costs resulting from the delay starting with the month after notification of the willingness of dispatch or acceptance.

In the event that the delivery period is exceeded, the purchaser may withdraw from the contract after expiration of an appropriate period of grace having been set in writing by him/her or claim damages in accordance with the prerequisites set out in the following clause VIII in the event that the deadline was culpably exceeded by us. We are entitled to perform partial deliveries at the same conditions without leading to the application of the operative event of "violation obligation".

Should the non-respect of the delivery period be caused by force majeure, i.e. by events that lie outside of our sphere of influence and that are not attributable to us, the delivery period shall be prolonged appropriately. We shall immediately inform the purchaser in writing when such circumstances begin and end. In this case, we as well as the purchaser may withdraw from the contract without observing a time limit if the performance finally becomes impossible before the risk is transferred.

The purchaser may further withdraw from the contract if in the course of an order the fulfilment of a partial delivery becomes impossible and if he/she has a legitimate interest to refuse the partial delivery which is still possible.

VII. Claims for Defects and Complaints

Claims for defects of the purchaser made against us require that the purchaser has duly complied with his/her obligations to inspect and give notice of defects as defined in sec. 377 of the Commercial Code (Handelsgesetzbuch, HGB), which are specified below. All claims for defects shall become statute-barred 12 months after delivery of the goods shipped by us to the purchaser. The purchaser shall verify, if necessary by sample processing, if the goods delivered meet the contractually agreed characteristics and if they are suitable for the intended purpose of use. If this examination is not carried out, if it is not carried out to an appropriate extent or if we are not immediately, but within

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14 days after receipt of the goods at the latest, notified of recognisable defects, the goods are deemed approved as regards such defects. Non-recognisable defects are deemed approved if we are not notified thereof immediately after their detection, but 6 months after delivery of the goods at the dispatch place at the latest. Complaints have to be made in writing, indicating the ordering information, delivery note number or, respectively, batch number of the goods subject to complaints. Goods subject to complaints shall only be sent back with our express consent.

In case of properly lodged and justified claims for defects, we shall, at our discretion, either remedy the defect or subsequently deliver defect-free goods.

We do not assume liability for advice and information on processing and application possibilities of products delivered by us which are provided to the purchaser as a favour outside of the contractually owed extent; the same shall also apply accordingly to free assistance services.

We do not assume any warranty for any improper and inappropriate processing of our delivered material by the purchaser or third parties. The accurate and successful application of our products is not subject to our control.

VIII. Liability

a) We shall be liable for claims:

- resulting from a culpable injury to the life, the body or the health of persons,
- resulting from the Product Liability Act (Produkthaftungsgesetz),
- resulting from non-compliance with a guarantee,
- that are due to a fraudulent concealment of a defect, or
- resulting from a violation of one's duty caused by wilful intent or gross negligence

without any restrictions in accordance with the legal provisions.

b) Apart from that, our liability shall be limited or excluded as follows:

aa) In the event of a violation of substantial contractual obligations caused by simple negligence, liability shall be limited to the typical foreseeable damage at the time of conclusion of contract. A substantial contractual obligation is a duty that the contract wants to impose upon us in accordance with its content and purpose or the fulfilment of which is essential for duly executing the contract and on the observance of which the purchaser regularly relies and may rely.

bb) In the event of a violation of non-substantial contractual obligations caused by simple negligence and other violations of one's duty caused by simple negligence, our liability shall be excluded.

c) Contractual claims for damages by the purchaser against us shall become statute-barred 12 months after knowledge of the prerequisites giving rise to the claim. This shall not apply to the claims mentioned in par. a).

d) To the extent that the liability for damages towards us is excluded or restricted, this shall also be applicable with regard to the personal liability for damages of our staff, our representatives and our vicarious agents.

e) A change in the burden of proof to the detriment of the purchaser shall not be related to the aforementioned provisions of par. a) to d).

IX. Reservation of Title

The delivery of our goods is subject to reservation of title until fulfilment by the purchaser of any and all payment obligations arising out of the present delivery as well as of future delivery and of the entirety of business relationships.

For as long as the property rights have not passed to the purchaser, he/she is obliged to treat the goods with care and to keep them with the due diligence of a due merchant. Our property rights shall also extend to all new goods created by processing of the goods subject to reservation of title. The purchaser shall produce the new goods on our behalf, excluding his/her own acquisition of property, and stores them for us. He/she shall not be entitled to assert any claims herefrom towards us. When processing our goods subject to reservation of title with goods of other suppliers, whose property rights also continue to exist regarding the new goods, we acquire co-ownership in the new goods together with these other suppliers – excluding the acquisition of co-ownership share by the purchaser – up to its entire value as follows:

a) The co-ownership share results from the relation of the invoiced value of the goods we retained title in to the entire invoiced value of all processed goods subject to retention of title.

b) Should there be a remaining share which was not taken into account so far by the reserve of title since other suppliers did not extend the retention of title on the valued added by the purchaser, our co-ownership share shall be increased by this remaining share. If other suppliers have also extended their retention of title to this remaining share, we shall only be entitled to receive one share that results from the relation of goods we retained title in to the invoiced values of all jointly processed goods of such other suppliers.

The purchaser shall already now – as a security – cede to us his claim arising out of the sale of goods subject to retention of title resulting from our present and future deliveries of goods together with all ancillary rights to the extent of the ownership proportion. In case of processing in the framework of a Service Contract, the claim for the remuneration for the work rendered shall be already now ceded to us to the extent of the pro rata amount for the jointly processed goods subject to retention title. Insofar as the purchaser properly fulfils his/her obligations resulting from the business relationship, he/she shall be entitled to dispose of the goods subject to our property rights in the course of the ordinary course of business and shall be entitled to collect himself/herself the claims ceded.

We undertake to release, at the request of the purchaser, the securities to which we are entitled, provided that their value exceeds the claims to be secured by more than 20 %.

In case of default in payment or justified doubts as regards the solvency of the purchaser, we shall be entitled to collect the ceded claims and to mutually withdraw goods subject to retention of title. The mutual withdrawal of the purchase object shall not be considered a withdrawal from the contract.

X. Packaging and Rental devices

The packaging (e.g. containers, IBC) expressly marked as returnable packaging in the invoice or in the delivery note / consignment note shall be sent back to us – freight and cost free – immediately after emptying, but within a period of 3 months after invoice date at the latest, in a closed, not contaminated state and entirely suitable for the intended use.

Same shall apply to rental devices.

During the rental period, the packaging, the devices, etc. shall be insured accordingly by the contractor. If those are not sent back in time or sent back in a state excluding their re-usability, we shall be entitled to charge the purchaser

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with the replacement costs and to request immediate payment.

XI. Shipment and Insurance

Our goods are – in absence of an agreement to the contrary – principally shipped for the account and at the risk of the purchaser. If no special agreements are made regarding the method of dispatch / dispatch route, this shall be decided according to dutiful commercial discretion.

Generally, the goods ordered are delivered in one consignment; we shall be entitled to partial deliveries.

Transportation insurances of any kind whatsoever that exceed the general insurance coverage of the common carriers, are concluded by us solely upon express request of the purchaser charging the latter with our so incurred amounts.

XII. Applicable Law

These General Terms and Conditions and all contracts concluded under their applicability shall be governed by German substantive law under exclusion of the UN Sales Law (CISG – United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980).

XIII. Place of Performance and Place of Jurisdiction

Place of performance regarding any and all rights and duties arising out of these General Terms and Conditions and all contracts concluded under their applicability shall be the seat of our company (Schönborn). For contracts concluded with merchants, persons acting in the exercise of their commercial or independent professional activities (entrepreneurs) upon the conclusion of contract as well as with legal persons under public law, the respective competent court for Schönborn shall be agreed as exclusive place of jurisdiction.