

**TERMS AND CONDITIONS OF DELIVERY AND BUSINESS OF SCHÄFFER MASCHINENFABRIK GMBH**  
(Revised: May 2016)

**Section 1 – General / Scope**

1.1 These Terms and Conditions of Delivery and Business (the "Terms and Conditions") govern all our business dealings with our customers. Only our Terms and Conditions apply. We do not acknowledge any conflicting or supplementary terms and conditions of customer unless we have expressly agreed to the application thereof in writing. Our Terms and Conditions apply including in those cases where we make an unconditional delivery to customer regardless of being aware of conflicting or deviating terms and conditions the customer may have. Our Terms and Conditions are binding only upon commercial enterprises within the meaning of section 310 para. 1 of the German Civil Code (BGB).

1.2 Our Terms and Conditions as amended from time to time will also have the effect of a framework agreement for future business dealings, including without limitation for future deliveries, without having to be referred to again in each individual case; notwithstanding the above, we shall inform customer of any changes and modifications of our Terms and Conditions.

1.3 Any collateral agreements, modifications or amendments require a written agreement and/or our written confirmation.

**Section 2 – Offer, Offering Documents**

2.1 Our quotations are subject to change without notice. This applies also where we have provided customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards, etc.), other product descriptions or records, including in electronic format; we reserve the title and copyright in such documentation. Customer is not entitled to disclose any of the above to third parties except with our express written consent.

2.2 Customer's purchase order is deemed to be a binding offer to contract, which we may accept within a period of four weeks.

2.3 The offer to contract is deemed accepted when we send an order acknowledgement to customer, or at the latest upon delivery of the goods.

**Section 3 – Delivery Period**

3.1 Any binding or non-binding delivery dates or deadlines which are agreed on an individual basis or which we may be quote upon acceptance of the purchase order by means of acknowledgement of order are valid and/or begin upon our acknowledgement of order only if all technical and commercial questions related to the delivery have been answered conclusively. Furthermore, the fulfilment of our obligation to deliver requires prior timely and proper performance of all obligations customer may have. We reserve the defence of non-performance of the contract.

3.2 Insofar as we are unable to meet binding delivery deadlines and/or delivery periods for reasons beyond our control (unavailability of goods and/or services), we shall endeavour to notify customer thereof immediately, providing details regarding the expected delivery period. If the goods and/or services are unavailable within the newly defined delivery period, we are entitled to rescind the contract in whole or in part; in that case, we shall immediately reimburse to customer the consideration already paid by customer in this regard. The same also applies in the event of unavailability of the goods and/or services as a result of force majeure, strike, lockout, etc.

3.3 We are in default (as defined by the law) only after having received a written notification by customer stating that we are in default.

**Section 4 – Prices and Terms of Payment**

4.1 Except as expressly agreed otherwise, all prices are "ex works" and do not include packaging. Our prices do not include value-added tax; value-added tax at the statutory rate on the date of the invoice is indicated separately in the invoice.

4.2 Any discount may be deducted only if a special written agreement has been made. All payments must be made in cash and without deduction, free of transaction charges, to our designated paying agent; only those payments made directly to us are deemed fully paid in performance of the contract.

4.3 If more than four months have passed from the conclusion of the contract until the date of delivery, our prices as effective at the time of delivery or supply apply.

4.4 Customer is entitled to set off claims or to exercise any right of retention only insofar as customer's claim is undisputed or has been acknowledged by court judgment. Moreover, customer is entitled to exercise a right of retention only insofar as customer's counterclaim is based on the same contract.

4.5 If it becomes apparent after conclusion of the contract that our claim to payment of the purchase price is at risk due to customer's inability to pay (e.g. as a result of a petition in bankruptcy), we are entitled to refuse performance and/or to rescind the contract, after giving reasonable notice if necessary, in accordance with the legal provisions (section 321 of the German Civil Code [BGB]). In the event of a contract for the production of specific items (unvertretbare Sachen) (made to order items) we are entitled to rescind the contract immediately; the legal provisions regarding the dispensability of setting a deadline remain unaffected. In addition, we are entitled to revoke payment deadlines we may have granted and to demand immediate payment of accounts receivable.

4.6 If we have agreed with our customer on partial payments or payment by instalments and our customer defaults on more than two partial payments or instalments, the entire unpaid balance becomes payable immediately.

**Section 5 – Dispatch and Passage of Risk**

5.1 Unless otherwise provided, delivery is "ex works". The risk passes to our customer as soon as the goods have been handed over to the carrier and/or dispatched from our works. If shipping is delayed at the request of customer, the risk passes to customer upon notification that the goods are ready for shipment.

5.2 At the request of customer we shall take out transport insurance for the shipment in the name of customer; customer shall bear the costs of such transport insurance.

**Section 6 – Liability for Defects and Other Liability**

6.1 Our liability for defects is based principally on the representations made about the condition of the goods, including without limitation product descriptions and operating manuals and more specifically the limitations of use contained therein, which were provided to customer prior to customer's purchase order or were included in the contract in the same manner as the present Terms and Conditions of Delivery and Business. However, we assume no liability for public statements given by third parties, including without limitation advertising messages.

6.2 The goods delivered must be carefully examined immediately after handover to customer or any third party designated by customer. The goods are deemed to have been approved unless we have received written notice of defect with respect to apparent defects or other defects which were perceivable upon immediate, careful inspection immediately upon delivery of the goods or otherwise immediately after detection of the defect or at any earlier time at which the defect was perceivable for customer during normal use of the goods without closer examination.

6.3 In the event the item of sale is defective we are entitled to subsequent performance, at our option either by rectifying the defect or by supplying a new item that is free from defects. In the event of subsequent performance we shall bear any costs required for rectification, including without limitation costs of transport, travelling, labour or materials; provided, however, that such costs are not increased by moving of the item of sale to a place other than the place of performance. In the event of subsequent performance our liability for expenses is limited in any case to the amount of the purchase price. If we are unable to rectify the defect within a reasonable period of time, customer is entitled to either reduce the purchase price or – in case of a material defect and/or breach of duty – to rescind the contract.

6.4 Any claims our customer may assert for damages and/or compensation for wasted expenditures are subject to the following provisions and are otherwise excluded. Any claims for defects fall under the statute of limitations after the expiry of twelve (12) months from the passage of risk.

6.5 Unless otherwise provided in these Terms and Conditions including the following provisions, our liability in case of breach of contract or tort is based on the relevant legal provisions.

6.6 We are liable for damages – irrespective of their legal basis – in case of intent and gross negligence. In the event of slight negligence, we are only liable for claims arising from loss of life, bodily injury or illness and damage caused by material breach of contract (i.e. a duty whose fulfilment is of the very essence for the proper implementation of the contract and on whose fulfilment the contractual partner has generally relied or may generally rely); in that case, however, our liability is limited to compensation for foreseeable damage that typically occurs.

6.7 The aforementioned limitations on liability do not apply where we have fraudulently concealed a defect or warranted that the goods are of a certain nature. The same applies to any claims of customer pursuant to the Product Liability Act (Produkthaftungsgesetz). Our representations concerning the products may be regarded as warranties or an assumption of the supply risk only if expressly designated as such.

6.8 Customer is entitled to rescind or terminate the contract for breach of duty other than a defect only if we are responsible for such a breach.

6.9 Any liability for damages beyond the scope of liability provided for herein above is excluded regardless of the legal nature of the claim asserted. This applies particularly with regard to damage claims arising from a violation of a pre-contractual obligation (culpa in contrahendo) or from any other breach of duty or with regard to tortious claims for property damage pursuant to section 823 of the BGB. The same applies if, instead of a claim for damages the customer demands reimbursement of expenditure incurred in vain.

6.10 Where our liability for damages is excluded or limited, such exclusion or limitation of liability applies also to the personal liability for damages on the part of our employees, staff members, representatives or agents.

**Section 7 – Reservation of Ownership**

7.1 We reserve the right of ownership in goods sold (hereinafter referred to as "Reserved Goods") until full payment of all our present and future receivables from the contract for sale and from the ongoing business relationship (secured claim).

7.2 Customer shall handle Reserved Goods with due care; more specifically, customer shall insure the Reserved Goods against fire and water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value. If any maintenance work and servicing is necessary, customer shall carry out such work in a timely manner and at its own expense.

7.3 In the event of attachment or any other intervention by third parties, customer shall inform us immediately in writing so that we can bring action in accordance with section 771 of the ZPO (German Code of Civil Proceedings). Customer shall reimburse us for any resulting costs and losses.

7.4 Customer is entitled to resell Reserved Goods in the ordinary course of business; provided, however, customer hereby assigns to us all claims in the amount of the total invoice amount (including VAT) against customers' buyers or third parties which accrue to customer from the resale of the goods, regardless of whether such goods have been resold without or after further processing. Customer retains its right to collect such claims even after the assignment. This does not affect our own right to collect the claims ourselves. We agree that we will not collect such claims provided that customer meets its payment obligations on the basis of any consideration collected, that customer does not default on payment and that no petition in bankruptcy has been filed against customer and that customer does not suspend payment. If any of the above does occur, we are entitled to demand that customer notifies us of the claims assigned and of the identity of the relevant debtors, that customer provides us with all details necessary for collection, that customer hands over the relevant documents and informs the debtors and/or third parties of such assignment.

7.5 If the realisable value of the security exceeds our claims by more than 10%, we shall, at customer's request, release securities at our option.

7.6 In the event of breach of contract on the part of customer, in particular in the event of default in payment, we are entitled to take possession of the Reserved Goods. Our taking possession of the Reserved Goods constitutes rescission from the contract. We are entitled to turn into cash Reserved Goods that we have taken back. The realisation proceeds are set off against customer's liabilities, less appropriate realisation expenses.

7.7 Goods Reserved must not be pledged or transferred by way of security.

**Section 8 – Governing Law; Jurisdiction and Venue**

8.1 These Terms and Conditions and the legal relationship between us and the customer are governed by the laws of the Federal Republic of Germany without giving effect to international uniform law, including without limitation the UN Sales Convention. Conditions and effects of any retention of title according to Section 7 herein above are governed by the laws at the location of the item if the above choice of law in favour of German law is impermissible or ineffective.

8.2 The place of performance for all and any obligations arising during the business relations between us and the customer, including without limitation claims from bills of exchange and cheques, is our place of business, Erwitte, Germany.

8.3 If customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a public-law special fund, the exclusive place of jurisdiction for all disputes – including without limitation international disputes – arising directly or indirectly out of this contract, is Erwitte, Germany. However, we are also entitled to take legal action against customer at customer's place of jurisdiction.