

# General Terms and Conditions of Sale of SSI SCHÄFER GES.M.B.H

## I. Scope

1. The following terms and conditions shall apply in the contract for the sale of goods (and/or for the carrying out of work) specified in the order placed with SSI Schäfer (hereinafter "SSI"). The term "the Customer" shall mean the party to whom goods are sold or supplied or for whom work under this contract is performed. These conditions shall form the basis of the contract between the Customer and SSI. Notwithstanding anything to the contrary in the Customer's standard conditions of purchase, these conditions shall apply except so far as expressly agreed in writing by an executive of SSI, provided always that no servant or agent of SSI has the power to vary these conditions orally or to make any representations or promises about the condition of the goods, their fitness for purpose or any other matter whatsoever.

2. In case of a long-term business relationship, these conditions shall be valid for future business deals, even without a direct reference, if such conditions were submitted to the Customer in a previously acknowledged order.

3. All offers shall be subject to change without notice unless they are otherwise expressly stated as binding.

4. The Customer's order is an offer and will become binding upon SSI Schäfer posting its confirmation of the order.

## II. Prices and Payment Terms

1. In the absence of a separate agreement, all prices are quoted in Euro, ex works (EXW INCOTERMS 2000), excluding packaging and freight, plus statutory VAT at the rate valid on the day of delivery.

2. Payment is to be made in full within 30 days from the date of invoice. Invoices will be dated the day on which the goods are ready for shipment. In cases where shipment or collection of the goods is delayed at the request of the Customer, SSI shall have the right to store the goods for the account of the Customer and at his risk until shipment or collection. If payment of the contract price or if any other sum payable by the Customer is not made on the due date, SSI may suspend manufacture, delivery or supply of any further goods or services and determine any unexecuted contract with the Customer without prejudice to any other remedy which SSI may have.

3. Payment of the invoice may not be withheld by reason of non-completion of the order in minor respects.

4. The Customer shall pay all accounts in full and not exercise any right of set off or counterclaim against invoices submitted.

5. Discounts allowed by SSI may only be taken if payment is made within the time specified on the invoice failing which such discount shall forthwith cease to be available and the gross price shall be payable forthwith.

6. In the event the agreed payment date is exceeded, interest shall be imposed at the statutory rate of 9% above the applicable ECB's basic interest rate.

7. Persistent non-compliance with our payment terms will result in outstanding payments becoming due immediately. This shall also apply if we are made aware of circumstances creating reasonable doubt about the credit worthiness of the Customer, in which event we shall also be entitled to make pending deliveries subject to advance payment or presentation of appropriate collateral security and/or to cancel the contract after expiration of a reasonable deadline.

### 1.1 III. Delivery

1. SSI will use its best endeavors to complete the order on the date agreed but any times quoted for completion and/or for delivery of goods and services are to be treated as estimates only and shall not be of the essence. In all cases, whether the time for completion be quoted or not, it shall be extended by reasonable period if delay is caused by instructions or lack of same by the Customer or by industrial dispute or by any other cause whatsoever beyond SSI's reasonable control. Where SSI is prevented from complying with such dates by circumstances beyond its reasonable control, it shall not be liable for any delay or any loss or damage resulting directly or indirectly therefrom howsoever caused. Any such delay shall not be sufficient for cancellation of the contract by the Customer.

2. Where the goods are not delivered by SSI but by an independent carrier organized by the Customer, delivery to the carrier shall be deemed to be delivery to the Customer.

3. SSI will deliver as near as possible to the Customer's site as safe hard road permits. The Customer shall provide at its own expense the labor for unloading and stacking,

such labour to be available during normal working hours on the date notified by SSI for delivery. Damage due to inadequate site access or careless unloading shall be at the Customer's risk.

4. If SSI, for reasons wholly or substantially attributable to it, fails to meet a date agreed for the delivery, it shall pay liquidated damages for delay equal to One Half of One Percent (5%) of the price of the order for each full week of delay, up to a maximum of five percent (5%) of the value of that part of the delivery that cannot be used on time, always provided that such liquidated damages shall be conclusive with respect to any relevant loss or damage suffered by the Customer.

5. The noncompliance with contractually agreed upon deadlines attributable to force majeure, labor actions, or other circumstances beyond our control, e.g. hindrances on the part of the Customer, shall result in an appropriate extension period. Irrespective thereof, in this case SSI shall be entitled to fully or partially rescind the unfulfilled contractual portion even if the aforementioned circumstances occur during the delay or at a subcontractor.

6. Agreed upon delivery deadlines shall further be extended equal to the duration of the delay by the Customer, regarding the existing contractual obligations vis-à-vis SSI.

## IV. Retention of Title

1. SSI reserves the ownership of any and all goods delivered and copyrights for drafts, project studies, drawings or similar information, including electronic format, until they have been paid for in full.

2. The Customer shall not be entitled to sell, pledge or otherwise transfer the delivered items. In case of pledge, attachment, and other dispositions by third parties, the Customer shall be obliged to notify SSI immediately.

3. In case of Customer's default in payment, SSI shall be entitled, following a respective demand, to take back the delivered items, and the Customer, in turn, shall be obliged to hand them over accordingly, provided always that such assertion of retention of title and pledge of the delivered item shall not be regarded as rescission of contract.

## V. Warranty

1. Subject to the conditions set out below, SSI warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from the date of their initial delivery.

2. Technical data, drawings, reports and any other information or documents whatsoever which SSI has submitted to the Customer in the course of or prior to the execution of this contract together with the copyright therein are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract. Without prejudice to the foregoing SSI reserves to make modifications to the goods provided that the approximate capacity and operation of the goods are not thereby.

3. In case of any valid claim in respect based on any defect in the quality or condition of the goods or their failure to meet specification notified to SSI in writing in accordance with these conditions, SSI shall be entitled to replace the goods (or the part in question) free of charge or, at the SSI's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price), but SSI shall have no further liability to the Customer.

4. No warranty shall apply in respect of any defect in the goods arising from any drawing design or specification supplied by the Customer. SSI shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the SSI's instructions (whether oral or in writing), misuse or alteration or repair of the goods without SSI's approval or other influences beyond SSI's control.

5. Also, SSI shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the goods has not been paid by the due date of payment. The above warranty does not extend to parts, materials or equipment not manufactured by SSI, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to SSI.

## VI. Liability

1. Except in respect of death or personal injury caused by SSI's negligence, SSI shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any statutory duty, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of SSI, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Customer, except as expressly provided in these conditions.

2. The aforementioned regulations shall not involve modification of the burden of proof to the disadvantage of the Customer.

## VII. Customer's Insolvency

1. If the Customer commits an act of bankruptcy or become insolvent or makes an composition or arrangement with his creditors or being a company is placed in liquidation or suffer a Receiver to be appointed, the Company may without liability or notice and without prejudice to its other rights determine any contract with the Customer who shall bear any loss resulting from a resale of the goods comprised therein.

2. This clause applies if the Customer :

- a) makes any voluntary arrangement with its creditors;
- b) becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- c) or a receiver is appointed, of any property or assets of the Customer;
- d) ceases, or threatens to cease, to carry on business;
- e) or SSI reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

3. In case of application of this clause, SSI, without prejudice to any other available rights or remedies, shall be entitled to cancel the contract for provision of goods or services, suspend any further deliveries without any liability to the Customer, or ask for immediate return of the delivered items, provided always that the price of any goods delivered but not paid for will become immediately due and payable notwithstanding any previous agreement to the contrary.

## VIII. Force Majeure

1. SSI shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any obligations in relation to the goods, if the delay or failure was due to any cause beyond SSI's reasonable control.

2. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond SSI's reasonable control: Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by laws, prohibitions or measures of any kind on the part of any Government, or local authority, import or export regulations or embargoes, or any delays at the port of entry or exit, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of SSI or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

## IX. Governing Law, Place of Jurisdiction

1. These terms and conditions shall be governed by and construed in accordance with the laws of Austria. Application of the United Nations Treaty from April 11, 1980 concerning contracts on international goods purchases (UN – Purchasing Law) shall be excluded.

2. Place of jurisdiction, at SSI's sole discretion, shall be Wels, Austria, or the Customer's place of business.