

SSI SCHÄFER AUTOMATION GMBH - General Terms and Conditions

The conditions hereinafter shall only apply to companies, legal persons under public law, and public special funds.

I. Application

1. In the absence of a separate written contractual agreement, our supply and services shall be provided exclusively on the basis of the conditions set forth here-under, exclusive of the validity of Customer terms and conditions, unless expressly accepted.
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. Orders shall become binding upon SSI Schäfer Automation GmbH only after a written order confirmation has been issued.
5. Any verbal statements from our staff, auxiliary persons, or other representatives shall become part of the contract upon receipt of written approval only.
6. We reserve all property and copyrights for drafts, project studies, drawings or similar information, including electronic format. This information may not be disclosed to third parties.
7. If any clause of these conditions is held to be invalid or unenforceable or shall at any time become invalid or unenforceable for any reason, the remainder of these conditions shall be deemed unaffected and shall continue in full force and effect.

II. Prices

1. In the absence of a separate agreement, all prices are in Euro, ex works, excluding packaging and freight, plus statutory VAT at the rate valid on the day of delivery.
2. With regard to subsequent orders, previous price arrangements shall not be binding.

III. Payment Terms

1. In the absence of any other separate agreement, payment shall be effected without deduction as follows: 30% upon conclusion of contract, against invoice; 30% upon start of steel structure installation, against invoice; 20% upon installing stacker cranes in the rack system, against invoice; 10% upon completion of installation, against invoice; 5% after acceptance, but no later than one month after start-up, against invoice; 5% after expiry of the warranty.
2. The Customer shall be entitled to execute offset or retention rights only if his claim is found to be undisputed or legally enforceable.
3. In the event the agreed payment date is exceeded, interest shall be imposed at the statutory rate of 8% above the applicable ECB's basic interest rate unless we can prove more or the Customer can prove less damage.
4. Consistent 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.
5. In this 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 time period.

IV. Deadlines

1. Precondition for us to meet agreed upon deadlines is that – irrespective of correct, timely internal supply – all commercial and technical issues relevant to the execution of the order must be clarified among the contracting parties. In particular, the Customer must have fulfilled all obligations imposed on him on time. For example, such obligations include providing all required official certificates and authorizations, subscription releases, providing an appropriate installation site in compliance with the contractual purposes, providing material, man-power or other auxiliary means, or payment of sums due according to Fig. III.
2. In the event modifications are made to this contract after order confirmation has been sent, the date exclusively valid shall be the date stated in the new order confirmation.
3. Should we fail to meet a set deadline strictly due to our own fault, however neither willfully nor by gross negligence, and should this cause any damage to the Customer, the latter shall be entitled, excluding any further claims and after an appropriate grace period, to a lump sum compensation for delayed performance amounting to 0.5% per week, however not exceeding a total of 5% of the value of that part of the delivery that

cannot be used on time, and/or as per agreement, due to the delay.

4. In the event of acceptance default on the part of the Customer, the Customer shall be excluded from rescission.
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 we shall be entitled to fully or partially rescind the un-fulfilled 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 us.

V. Transfer of Risk, Acceptance

1. The burden of risk shall be placed on the Customer as soon as the delivery item has left the works. This shall also apply to partial deliveries or when we bear shipping costs. Insofar as an acceptance is required, this acceptance shall be decisive for the transfer of risk. Acceptance has to be effected immediately upon notification of hand-over readiness by us. Acceptance cannot be refused if minor defects exist that do not impair functionality. Start-up of operation and subsequent commercial use shall be regarded as acceptance.
2. Partial deliveries shall be permissible insofar as they are acceptable to the Customer.

VI. Retention of Title

1. We reserve the ownership of any and all goods delivered under the delivery contract until they have been paid for in full. In the case of combining, mixing, or processing the delivery item, the Customer, upon conclusion of the contract, shall assign the relevant co-ownership rights and/or the claims against his customers to us in full. Insofar as the value of the security exceeds our total claim by more than 20%, reassignment, at the Customer's request, shall be obligatory for us.
2. We shall be entitled to take out appropriate insurance on the delivery item at the Customer's expense unless the Customer can prove that he has taken out the relevant insurance himself.
3. 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 us immediately.
4. In the event that the Customer acts in non-compliance with the contract, particularly in case of default in payment, we shall be entitled, after demand for payment, to take back the delivered items, and the Customer, in turn, shall be obliged to hand them over accordingly. Our assertion of retention of title and pledge of the delivered item shall not be regarded as rescission of contract.
5. An application to initiate insolvency proceedings with regard to the customer's assets shall give us the right to rescind the contract and ask for immediate return of the delivered items.

VII. Liability for defects

1. Portions of the delivered items, which turn out to be defective as a result of circumstances occurring prior to the transfer of risk, shall either be repaired or replaced, at our choice. We shall have to be notified in writing immediately upon detection of such defects. Replaced parts shall become our property.
2. The Customer shall give us time and opportunity to carry out all repairs and substitute deliveries we consider to be necessary, as agreed upon, otherwise we shall be excluded from liability for any consequences that might result thereof. Only in cases of imminent operational safety hazards or to prevent unproportionately big losses, in which case we must be notified immediately, shall the customer be entitled to repair defects himself or have them repaired by third parties and ask for reimbursement of the expenditures.
3. With regard to costs incurred due to repair or substitute delivery, we shall bear the costs for the substituted part, including dispatch as well as appropriate costs for assembly and disassembly, provided that the complaint proves to be justified.
4. After two failed repair attempts, the customer shall have the right to rescind the contract within the framework of prevailing legislation in the event that – legal exceptions taken into account – we miss a reasonable deadline set by the Customer to carry out repair or substitute delivery due to a redhibitory defect. The Customer shall have the right to reduce the contract price for minor defects only.

5. We shall assume no liability with regard to the following: Inappropriate or improper use, incorrect assembly and/or start of operation by the orderer or a third party, normal wear and tear, improper maintenance, inappropriate machinery and equipment, unsatisfactory construction work, unsuitable site, defects, deterioration of the delivery item due to defects of other system components or other influences beyond our control.

6. In case of improper repair by the Customer or third parties, we shall not be liable for any consequences that might result thereof.

7. The same shall apply in case of unauthorized modifications to the delivered items.

VIII. Liability

In all cases – deviating from the conditions hereunder – where we are obliged to pay damages or compensation due to a contractual or legal basis for a claim, we shall be liable only insofar as we, our managing staff, or our agents can be blamed for deliberate acts, gross negligence, or harm to life, body or health.

Liability independent of fault under the Product Liability Law as well as liability for the consciously negligent violation of essential obligations under the contract shall remain unaffected hereof with liability being limited to predictable losses and losses that are typical to the contract, except for cases of S.1.

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

IX. Statutory Limitation

Any claim by the Customer, for whatever legal reason, shall expire after 12 months. For consciously negligent or malicious acts as well as for claims under Product Liability Law, the relevant statutory periods shall apply.

X. Software use by the Customer

1. Upon acceptance and full payment we shall give the Customer a non-recurring, non-exclusive right and the license to use the standard software products licensed by us for the purpose stipulated by contract at the place of performance.
2. Use of hardware and software delivered under this contract by third parties (operating system, data base, etc.) is in accordance with the license conditions of the manufacturer.
3. The granted usufruct shall be inalienable and without time limits.
4. Except for the above granted usufruct, we retain ownership of all rights, in particular the copyright with regard to transferred software products, accompanying documents and the like, and all complete and incomplete backup copies made by the customer in the course of his scope of use.
5. All awarded licenses are limited to the computer systems designated in the offer/order and to the number of users and workplaces stated therein.
6. With regard to hardware and software purchased by us from third parties, we shall fulfill our warranty obligations under this contract by assigning our claims against the relevant software and/or hardware manufacturers to the Customer at the latter's request.

XI. Place of Performance, Governing Law, Place of Jurisdiction

1. Unless expressly stated otherwise, the Place of Performance for delivery and payment shall be D-97232 Giebelstadt.
2. These Terms and conditions shall be governed by and construed in accordance with the laws of Germany. Application of the United Nations Treaty from April 11, 1980 concerning contracts on international goods purchases (UN – Purchasing Law) shall be excluded.
3. Place of jurisdiction, at our choice, shall be Würzburg or the Customer's place of business.