

# General Terms and Conditions of Business (Ts & Cs) of FRITZ SCHÄFER GMBH

## Validity

The following Terms and Conditions of Business shall apply only to contractors, legal entities and public special resources.

## I. Pursuance

- Our deliveries and services are based exclusively on these conditions, in the absence of separate contractual agreements in written form, excluding the validity of the buyer's terms of business, unless these have been expressly accepted.
- These conditions shall also apply to ongoing business relations without direct reference to future transactions, if the buyer has previously agreed to them by means of a purchase order confirmed by us.
- All quotations are non-binding unless explicitly stated as binding.
- Orders become only binding upon our order confirmation.
- Verbal explanations from our staff, subcontractors or other representatives only form part of the contract upon written confirmation.
- Should any individual clause be, or become, ineffective, the effectiveness of the remaining clauses shall remain unaffected.

## II. Prices

- The prices apply for delivery ex works, excluding packing and freight charges, plus the relevant value added tax in Euro at the rate valid on the day of delivery.
- Should critical cost factors, e.g. raw material costs, change substantially 6 weeks after a quotation was provided or an order confirmation was issued, we shall be entitled to an appropriate adjustment of the prices previously agreed.
- No obligation to previous price agreements exists for follow-up orders.
- For order values under € 200, a low-quantity surcharge of € 20 shall apply.

## III. Terms of payment

- A payment shall be deemed received on the day that the amount clears in our bank account.
- We reserve the right to refuse cheques or bills, whereby cheques and re-discountable bills are accepted only in payment of debt and all associated costs are paid by the buyer.
- The buyer's rights of lien or retention exist only to the extent that its demands are undisputed or valid in law.
- In the event of late payment, the legal rate of interest of 8 %, calculated in line with the relevant base interest rate of the European Central Bank, shall apply, unless we are able to prove a higher damage level or the buyer can prove a lower damage level.
- All amounts outstanding shall become due immediately and in full following the long-term non-observance of terms of payment or if circumstances are brought to our attention which justify serious doubts about the credit-worthiness of the buyer.

In addition, we shall be entitled in such a situation to make deliveries dependent on the receipt of advance payments or the putting into place of appropriate collateral and/or to withdraw from the contract after a reasonable period has passed.

## IV. Delivery time

- The observance of binding, agreed delivery times by us – regardless of correct and prompt incoming deliveries received by us – shall depend on the fact that all commercial and technical queries between the contracting parties relating to the order execution have been clarified, and in particular that the buyer complies with all agreed (collaborative) obligations in a timely manner, e.g. obtaining the necessary official certificates and authorisations, design approvals, availability of the installation site appropriate to the contractual purposes, additional orders of material, personnel or other equipment, or the release of agreed pre-payments.
- In case of a contract modification after the sending of our order confirmation, only the date of delivery specified in the new order confirmation shall apply.
- On-time delivery is regarded as fulfilled on notification of readiness to dispatch, if the dispatch process proves to be delayed or not possible for reasons outside our responsibility.

4. If an agreed time for delivery is exceeded due to our own fault, neither deliberately nor as a result of gross negligence, and damages arise for the buyer due to this delay, then the buyer shall be entitled to liquidated damages for delayed completion, in full satisfaction of our liability for the said failure, upon expiration of an appropriate additional grace period, of 0.5 % per week, however, not exceeding a total of 5 % of the value of that part of the complete delivery which could not be used due to the delay and/or as stipulated.

5. No rescission of the buyer shall be permissible, in case of acceptance default.

6. The disregard of the agreed delivery time due to acts of God, labour disputes or other circumstances outside our influence shall entitle us to an appropriate delivery time extension. Apart from that, we shall in this case be entitled to rescind the contract in total or in part, regarding the non-fulfilled part of the contract, even if the aforementioned circumstances arise during the delay period or with regard to a subcontractor.

7. An agreed time for delivery shall also be extended by the duration of the delay of the buyer's contractual obligations.

## V. Dispatch, freight, packing

- If the goods are being dispatched in accordance with the buyer's request, then the risk shall be deemed transferred to the buyer as soon as the consignment leaves our delivery works or depot even if the delivery is not being dispatched from the place of performance.
- If the delivery of goods ready for dispatch is being delayed due to reasons not within our control, the risk shall be deemed transferred to the buyer with the sending of an announcement of readiness for dispatch either in writing or by fax.
- If the buyer does not immediately accept delivery of goods after completion and/or dispatch notification, or the dispatch is delayed in accordance with the buyer's wishes, we shall be entitled to charge the buyer for storage expenses.
- Packaging will be charged for supplies of office products and office furniture of under € 1000. In case of transport by truck, the resulting freight charges shall be charged, with a minimum charge of € 30. Supplies of office furniture and office equipment of over € 1000 are freight-free to the receiving station, and are freight-free to place of use when transported using our own trucks, provided that the unloading point is freely accessible and the routes of transportation can be used unhindered within the building.

## VI. Retention of title

- All deliveries shall remain our property until paid for in full. If any amounts remain outstanding on the account, the title of ownership to the deliveries (goods subject to retention of title) shall be retained as security against the balance due.
- The customer may modify or process goods from us as manufacturers pursuant to section 950 of the German Civil Code, provided that we acquire a proportion of the ownership title, without giving rise to any obligations on our part. The customer shall be required to carefully secure and store the goods for us.
- The buyer shall be permitted in the usual course of business to re-sell the goods to which retention of title applies under the condition that he likewise agrees upon an appropriate retention of title with its customers. However, the buyer shall not be entitled to pledge such goods, transfer them by way of security or assign them for security purposes.
- The customer shall hereby transfer and assign to us, and we hereby accept such transfer and assignment of, any and all claims under the sale of the conditional goods owned solely or jointly by us, together with any and all secondary rights and security interests.
- In the event of an application to commence bankruptcy proceedings relating to the buyer's property, we shall be entitled to withdraw from the contract and to request the immediate return of the goods supplied.

## VII. Liability for material defects

- Any and all information relating to the specifications of the goods and any data relating to technical standards in catalogues, brochures, illustrations and price lists, and any references to performance specifications, shall be understood solely as a description of the goods, and

shall only represent an assurance of specific features in the spirit of sections 443, 444 of the German Civil Code when specifically agreed in writing.

2. Regarding consultations with the buyer outside of existing contract obligations, we shall accept liability regarding the operability and suitability of the goods only with confirmation in writing.

3. The warranty period shall be limited to a period of twelve months, commencing upon the date transfer of risk, save for any longer mandatory periods, according to clauses 438 I No. 2, 479 I and 634 a I No. 2 of the German Civil Code.

4. Any damage notified immediately in writing, and incurred due to circumstances arising before the transfer of risk, will be repaired or replaced with a damage-free item at our discretion as part of our supplementary performance obligations.

5. In the event that we are in default with delivering substitute goods or if we fail to perform the delivery correctly, the customer shall, after having set a reasonable grace period, be entitled to rescind the contract or reduce the purchase price; additional claims, especially claims for damages and incurred expenses due to defects shall be subject to section VIII.

6. Liability shall be waived if operational or maintenance instructions of the seller such as an inappropriate installation site, are not being followed by the buyer or a contracted third party, changes are implemented to the products, parts are replaced or consumable materials applied which do not match the original specifications, or normal wear and tear.

7. Colour deviations in follow-up deliveries, as well as faults due to faults in supplied parts, are excluded from any such liability, unless a specific warranty has been provided by us to this effect, or the fault was already obvious to us when the supplied part was received.

8. Rights of recourse according to clauses 478 and 479 of the German Civil Code only apply insofar as the utilisation of these by the consumer are justified and only to the extent as provided for by law, but not in respect of goodwill agreed with the supplier, and presuppose that the party entitled to recourse has met its own obligations, in particular in respect of notification of defects.

## VIII. Liability

In all cases in which, notwithstanding the above terms and conditions, we (including any of our related corporations within the SSI SCHÄFER-Group, e.g. any subsidiary, affiliated or holding company or any corporate entity in which any such company has a 10 % or larger share-holding from time to time), shall be liable on the grounds of contractual or legal bases for claims to effect compensation for damage or expenditures only insofar as we, a managing executive or vicarious agent can be accused of intent, gross negligence or injury to life, body or health.

In the event of minor negligence, we shall accept no liability for indirect damage, consequential damages or loss of profit.

Strict liability in accordance with the product liability act is not affected by this. Liability for negligent infringement of major contractual obligations is also unaffected by this; however, except for cases as per clause 1, liability is limited to the foreseeable loss or damage which is typical of the contract.

If our liability is exempted or restricted by this clause, this shall also apply to the personal liability of our employees and freelance staff.

The aforementioned regulations shall not involve modification of the burden of proof to the detriment of the buyer.

## IX. Place of performance and place of jurisdiction

- The place of performance for deliveries and payment shall be, unless agreements stating otherwise exist, D-57290 Neunkirchen/Siegerland, Germany.
- The relationships between the buyer and ourselves are subject solely to the laws of the Federal Republic of Germany. The UN Treaty of 11th April 1980 (Contract for international sale of goods) shall not apply to the sale of goods is excluded.
- Venue shall be Siegen, Germany or, at our discretion the buyer's headquarters.