

# General Terms and Conditions of SCHUNK SE & Co. KG

Valid as of  
01/01/2016

## 1. Application of the Terms and Conditions

- 1.1. All our offers, sales and deliveries shall be based on these terms and conditions of sale and delivery; this also applies in an on-going business relationship, even if these terms and conditions are not expressly referred to in the regular correspondence. The buyer's terms and conditions of purchase or other deviating agreements, if any, apply only if confirmed by us in writing.
- 1.2. We hereby expressly object to any references or counter-confirmations made by the buyer with reference to its terms and conditions of purchase.

## 2. Offer and Formation of Contract

- 2.1. All our offers are non-binding and, therefore, may be revoked by us at any time until we receive written notice of acceptance, such as a purchase order, from the buyer or, unless notice of acceptance has already been given, until the goods to be supplied are delivered.
- 2.2. The buyer's purchase orders (which are offers in the legal sense) shall only become legally binding when they are confirmed by us in writing or when we deliver the goods to be supplied. The buyer's purchase order/offer shall be binding upon the buyer for a period of 14 days. During this 14-day period, which shall commence at the time of receipt of the purchase order by us, we shall have the right to decline the conclusion of the corresponding contract. If we do not decline the conclusion of the contract within this period of time, or if the goods are delivered before the expiry of this period of time, the contract shall – as an exception – be concluded without the order having been confirmed by us.
- 2.3. Any information about weight, dimensions, volume, prices, or performance that is contained in catalogues, brochures, circulars, advertisements, illustrations and price lists is to be understood as an example only. Such information shall only constitute a contractual quality where this has been expressly agreed upon. In all other cases, the properties which our products must possess pursuant to the contract shall be determined solely by our product specifications. Ideas or wishes expressed by the buyer unilaterally shall not be taken into account.

## 3. Scope of the Delivery

- 3.1. The scope of our deliveries shall be as specified by us in our confirmation of the order or, if we do not confirm the order, as specified in our offer.
- 3.2. The buyer shall have full responsibility for the accuracy of the documents, such as drawings, templates, samples and similar records, which are to be provided by the buyer. All information about measures and similar data must be confirmed by us in writing.
- 3.3. Samples will only be provided for a fee.

## 4. Prices

- 4.1. Our prices are "ex works", plus value-added tax at the rate applicable from time to time in the Federal Republic of Germany. Extra costs for packaging, transport, insurance, customs duties, product certification for the sales territory, etc. shall be charged. This also applies if part deliveries or express delivery have been agreed upon.
- 4.2. The prices stated in our offer/confirmation of the order are based on the calculation available at the time the offer is made or order confirmed. If the prices of raw materials change significantly – by at least 10 percent – three months after the contract was entered into, we may raise the agreed-upon prices by the proportionate additional cost. The buyer shall be so advised if the situation arises.
- 4.3. The minimum order value is 75 euros.

## 5. Time of Delivery, Default, Lump-sum Damages

- 5.1. The time of delivery shall be the date stipulated in writing in our order confirmation. If the buyer fails to timely provide the documents to be procured by it, or to perform its obligations under the individual contract (e.g., payment in advance, compliance with the deadline for approval of the drawing to be approved, etc.), the delivery date shall be postponed for the period of time which corresponds to the delay.
- 5.2. The delivery date shall be deemed met if, by the time of its expiry, the goods to be supplied have left our works or we have made such goods available for delivery and informed the buyer that the goods are ready to be shipped.
- 5.3. To the extent that the buyer suffers damage or losses as a result of a delay, the damages shall be limited for each full week of the delay to an amount equal to 0.5% of the value of the part of the total shipment that is affected by the delay and shall not exceed 5% of such value in total. We reserve the right to prove that the amount of the damage or losses actually suffered is smaller. Any consequential damage shall be expressly excluded from our liability for damages. The above limitation of liability does not apply in the event of wilful misconduct or gross negligence.

## 6. Force Majeure/Delivery by Our Own Suppliers

- 6.1. Upon conclusion of the contract, we are prevented from performing our obligation by unforeseeable, exceptional circumstances – in particular, business disruptions, official sanctions and interventions, delays in the supply of important raw materials and energy supply problems – that we were unable to prevent even though we used reasonable care under the circumstances, the delivery date shall be reasonably postponed to the extent that these circumstances lead to delays. If the above circumstances make delivery impossible, we shall be released from our obligation to deliver.
- 6.2. In the event of strike or lockout, the delivery date shall be reasonably postponed to the extent that such events lead to delays. If delivery becomes impossible, we shall be released from our obligation to deliver.
- 6.3. If we prove that we are not timely supplied by our own suppliers even though we have selected our suppliers with due care and have entered into the required agreements on reasonable terms, the delivery date shall be postponed for the period of time which corresponds to the delay caused by our being supplied late by our own suppliers. If it is impossible for our suppliers to provide us with supplies, we shall have the right to rescind the contract.
- 6.4. If the impediment lasts longer than 2 months in the cases set forth in clauses 6.1 to 6.3 above, either party to the contract shall have the right to rescind the parts of the contract that have not yet been performed.

## 7. Payment

- 7.1. As long as the buyer is not in default with payments owed for previous deliveries from us and there is no significant deterioration in the buyer's financial position that would jeopardize our claim for payment, the buyer shall have the right to make payment within 30 days, calculated from the date of the respective invoice.
  - 7.2. If there are outstanding invoices which are payable by the buyer, the buyer's payments shall be used to cover always the oldest claim due.
  - 7.3. If the buyer defaults on payment, we may charge interest from the relevant date at the rate charged by our commercial bank for outstanding overdrafts, but in any case at a rate of 9% above the German Federal Bank's (Deutsche Bundesbank) base rate applicable from time to time. The amount of interest charged shall be reduced if the buyer proves to us that the actual burden is smaller.
  - 7.4. If the buyer is in default with payments owed for previous deliveries from us or the buyer's financial position deteriorates significantly after the conclusion of the contract and such deterioration jeopardizes our claim for consideration, payment shall be made concurrently with the delivery of the goods to be supplied. The buyer can prevent having to make payment concurrently with the delivery by providing security in an amount equal to the purchase price.
- By placing a purchase order, the buyer gives a guarantee for its solvency or creditworthiness. If doubts exist in this respect, in particular, if we receive adverse notices from credit insurers, we may rescind the contract or demand to receive adequate security or advance payments within 4 working days. If this 4-day period expires without our request having been complied with, we may rescind the contract. In the event that any security agreed upon in the contract is not provided within the agreed-upon period of time, we hereby rescind the contract. In the event of rescission, we shall have the right to claim damages, in particular, damages for the cost of procuring primary material that cannot be used otherwise.
- In the event of default of payment, we shall have the right to combine all quantities yet to be supplied in a single delivery and make such delivery contingent upon the buyer paying all invoices due and making an advance payment on the invoices which remain to be paid. In addition, we shall have the right to demand immediate payment of all claims outstanding at the time of default of payment, irrespective of the underlying legal basis, in particular, irrespective of the underlying contractual relationship, and cancel any agreements on payment in installments that may exist. We shall have a right of retention with respect to all goods yet to be supplied or services yet to be provided until all our outstanding claims have been settled.

## 8. Retention of Title

- 8.1. All goods supplied shall remain our property until the purchase price has been paid in full.
- 8.2. The buyer shall have the right to resell the goods which are subject to this retention-of-title clause in the ordinary course of business; however, the buyer must obtain our consent when pledging or transferring such goods by way of security.
- 8.3. The buyer hereby assigns to us its claims arising from the resale of the goods which are subject to this retention-of-title clause; we accept this assignment. Notwithstanding the assignment and our right to collect such claims, the buyer shall be authorized to collect the claims as long as it performs its obligations to us and does not experience financial difficulties.
- 8.4. If so requested by us, the buyer must provide us with the information needed to collect the assigned claims, in particular, with a list containing the debtors' names and addresses, the amount of the claim and the date on which the invoice was issued, and notify the debtors of the assignment.
- 8.5. Any machining and processing of the goods which are subject to this retention-of-title clause by the buyer shall be carried out on our behalf, without this arrangement giving rise to any obligations on our part. If the goods which are subject to this retention-of-title clause are processed, combined or mixed with other goods which are not our property, we shall be entitled to the co-ownership interest thus created in the new item according to the ratio of the invoice value to the other processed goods at the time the processing, combination or mixing occurs. If the buyer acquires sole ownership of the new item, the contracting parties agree that the buyer shall grant us co-ownership of the new item pro rata to the invoice value of the processed, combined or mixed goods which are subject to this retention-of-title clause and store the new item for us free of charge.
- 8.6. If the goods which are subject to this retention-of-title clause are resold together with other goods, whether without or after being processed, combined or mixed, the above advance assignment shall be limited to an amount equal to the invoice value of the goods which are subject to this retention-of-title clause and are resold together with the other goods.
- 8.7. The buyer shall notify us without undue delay if a third party levies execution against the goods which are subject to this

retention-of-title clause or the claims that have been assigned to us in advance and deliver to us any documents and records needed to intervene.

- 8.8. The buyer's authorization to dispose of the goods which are subject to this retention-of-title clause and collect the assigned claims shall expire in the event of default of payment by the buyer, notice of protest with respect to bills and checks and/or financial difficulties on the part of the buyer, in particular, if a petition is filed to institute composition and/or insolvency proceedings. In such cases, we shall especially have the right to take possession of the goods which are subject to this retention-of-title clause, and the buyer shall be obligated to surrender the goods which are subject to this retention-of-title clause to us without us having to first give notice of rescission of the contract. The buyer is obligated to surrender the goods which are subject to this retention-of-title clause to us even if such goods have been combined with other movable items by the buyer and can only be surrendered upon disassembly. This obligation shall only cease to apply if the goods supplied by us have become an integral part of a uniform item within the meaning of Sec. 947 German Civil Code (Bürgerliches Gesetzbuch). If the buyer is a registered merchant, our taking back the goods which are subject to this retention-of-title clause shall only constitute a rescission of the contract if we give express notice of rescission.
- 8.9. We undertake to release the security to which we are entitled according to the above provisions at our option if so requested by the buyer, to the extent that the value of the security exceeds our claim by 10% or more.
- 8.10. If and to the extent that any of the preceding provisions is invalid under the applicable ownership laws, a retention-of-title clause that is permitted under the applicable laws shall be deemed agreed upon. If formal acts, such as the registration of the goods serving as security, are required in order for the retention-of-title clause to be valid, the buyer must so advise us and assist us in performing said acts in a legally valid manner; if the buyer violates the above obligations, it must compensate us for any damage or losses suffered as a result of such violation.

## 9. Complaints and Rights in Respect of Defects

- 9.1. The buyer is obligated to examine the goods supplied by us for defects immediately upon delivery. This examination shall include appropriate random checks.
- 9.2. The buyer shall notify us of any complaints about incomplete or incorrect deliveries or about defects that can be identified during the examination according to clause 9.1 above without undue delay in writing and return the defective parts concerned to us at our request. Hidden defects that cannot be identified through random checks shall be reported to us immediately upon discovery. If complaints or defects are not reported to us in a timely manner, the delivery shall be deemed approved and all claims for incomplete, incorrect or defective delivery shall be excluded.
- 9.3. The obligation to examine the goods supplied and report defects also applies to any excess or short delivery.
- 9.4. If the goods supplied contain defects, or if they become defective within the 12-month limitation period for claims for defects, calculated from the delivery date, we are obligated to remedy the defects by either making a replacement delivery or, at our option, carrying out repairs. The above limitation period may be longer in particular cases, also on the basis of the information contained in the operating instructions with respect to, for example, certain parts that are subject to wear and tear (this does not, however, constitute a guarantee as to durability).
- 9.5. If we fail to make a replacement delivery or repair the defect within a reasonable additional period of time set for this purpose, or if the remediation of the defect fails, the buyer shall have the right to rescind the contract or, at its option, reduce the purchase price.
- 9.6. We shall bear all costs and expenses that are incurred in delivering goods that are free from defects, to the extent that such goods are delivered to the place of performance agreed upon in the supply contract. Any costs which are incurred as a result of the buyer having brought the goods supplied to a different place shall be borne by the buyer.
- 9.7. The buyer shall have no rights or claims for defects:
  - (i) with respect to damage caused by improper handling or excessive use by the buyer or the buyer's customers;
  - (ii) if the buyer or the buyers' customers fail to comply with statutory installation and handling requirements or with installation and handling instructions issued by us, unless the defect is not due to such non-compliance;
  - (iii) if the goods supplied were manufactured on the basis of the buyer's specifications, in particular according to drawings provided by the buyer, and the defect of the goods supplied is due to these specifications/drawings;
  - (iv) if we perform a design task given to us by the buyer and the solution corresponds to the state of the art in science and technology at the time of production.
- 9.8. If the buyer holds us liable for claims for defects and it is subsequently found that a defect does not exist or that the reported defect is due to circumstances not covered by our warranty obligation, the buyer must reimburse us for all costs incurred in this connection.

## 10. Other Liability

- 10.1. We shall be liable without limitation for material breaches of contract, in particular with respect to the quality of the goods, if we have acted wilfully or with gross negligence, as well as in cases where the breach of contract causes damage to health. In all other cases where we commit a material breach of contract, our liability shall be limited to the damage or losses that could be foreseen from an objective point of view at the time of conclusion of the contract. To the extent that the laws to be applied in assessing the validity of these terms and conditions permits a further-reaching limitation of liability or an exemption from liability, such further-reaching limitation or exemption shall be deemed agreed upon.
- 10.2. Our liability for the violation of non-material contractual obligations, such as the accessory obligation to advise the buyer, shall be excluded in cases of slight negligence; our liability for wilful misconduct and gross negligence and also our liability in cases where the breach of contract results in damage to health shall continue to exist. To the extent that the laws to be applied in assessing the validity of these terms and conditions permit a further-reaching limitation of liability or an exemption from liability, such further-reaching limitation or exemption shall be deemed agreed upon.
- 10.3. We shall cooperate with the buyer on all measures that serve the purpose of preventing risks for the users of the products or of anticipating official measures by the market regulatory authorities (measures to correct market developments). The assessment by the market regulatory authorities shall be decisive for this purpose. Measures involving costs shall require our prior consent, as a general rule. Costs shall be reimbursed only as provided in clause 10.1 above and if and to the extent that a reimbursement of costs is provided for by law.

## 11. Infringement of Third-party Copyrights and Industrial Property Rights, Export Control, Confidentiality

- 11.1. The buyer shall be responsible for checking whether the documents made available by it infringe any third-party rights, in particular, copyrights and industrial property rights (design rights, patents, utility models, trademarks). If a third party holds us liable for copyright and/or industrial property right infringements or for a violation of the German Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb) due to our use, exploitation or reproduction of the documents and samples, the buyer must assist us in our defense in connection with such infringements and compensate us for any and all damage and losses (including lawyers' fees and the cost of judicial proceedings) that we suffer as a result of this fact.
- 11.2. The supply of goods and the provision of services by us shall be subject to there being no obstacles to performance resulting from national or international export control provisions (in particular, embargos or other sanctions). The buyer undertakes to provide us with all information and documentation needed to export the goods or move them to another place. If export inspections or approval procedures cause delays, the deadlines and delivery periods shall be suspended. If required approvals are not granted or the supply of goods or the provision of services is not capable of being approved, the contract shall be deemed not entered into with respect to the parts concerned. We shall have the right to terminate the contract without notice if such termination is necessary in order for us to comply with national and international law. In the event of a termination pursuant to this clause 11.2, the buyer shall have no right to claim damages or assert other rights due to the termination. If passing the goods that have been supplied by us on to third parties, whether in the same or in another country, the buyer must comply with the respective applicable provisions of national and international export law.
- 11.3. To the extent that the buyer obtains knowledge of information that we consider confidential (information that is marked as confidential or the confidential nature of which is obvious, such as information about internal procedures or the construction of our products), the buyer must treat such information as strictly confidential. Any disclosure to third parties is prohibited. Such information may only be used for the purposes specified by us. At our request, the information, including any and all copies thereof, shall be surrendered to us without undue delay (unless a statutory duty exists to retain such information); the complete surrender shall be confirmed to us in writing. The preceding provisions shall not apply to information that is publicly available or has lawfully come into the buyer's possession.

## 12. Transfer of Risk

- 12.1. If the goods are shipped to the buyer at the request of the buyer, the risk of accidental loss or destruction or accidental deterioration of the goods to be supplied shall pass to the buyer when the goods are handed over to the forwarding agent, carrier or person in charge of carrying out the shipment. This also applies if the goods are shipped from a place other than the place of performance and/or if we bear the freight costs.
- 12.2. If the goods are ready to be shipped and the shipment is delayed for reasons for which the buyer is responsible, the risk shall pass to the buyer upon receipt of the notice of readiness for shipment.

## 13. Place of Performance, Governing Law, Place of Jurisdiction, Written Form, and Severability

- 13.1. The place of performance for payment and delivery shall be 74348 Lauffen/Neckar, Germany.
- 13.2. These terms and conditions of sale and delivery and all legal relations between the buyer and us resulting from the contract shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany, without regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG). If the buyer is based or domiciled in a country other than the Federal Republic of Germany, the preceding sentence shall apply with the proviso that the laws applicable in the country where the buyer is based or domiciled shall apply with respect to the valid inclusion of these terms and conditions in the contract and the assessment of their validity.
- 13.3. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Heilbronn, Germany. However, if we are the plaintiff or the claimant, we shall have the right, but not the obligation, to turn to the courts of competent jurisdiction for or at the place where the buyer has its registered office.
- 13.4. All subsidiary agreements, reservations, changes and additions shall only be valid if confirmed by us in writing.
- 13.5. Should any provisions of these terms and conditions of sale and delivery or of other agreements relating to the supply contract be or become invalid, this shall not affect the validity of the remaining provisions or agreements.

SCHUNK SE & Co. KG Spanntechnik | Greiftechnik | Automatisierungstechnik

Local court Stuttgart HRA 103726, Headquarters: Lauffen/Neckar

Personally liable partner: SCHUNK Beteiligungs SE, Headquarters: Lauffen/Neckar, Local court Stuttgart HRB 789324

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