

## General Terms of Sales and Delivery

General terms of delivery of Wilhelm Schröder GmbH in Herscheid.

**Translation – the German version has priority**

### § 1 General conditions

(1) Legal relationships between us and the customer are subject to the conditions stated herein and any other agreement between us and the customer. Any other General Terms and Conditions shall not apply, even if they are not expressly contradicted in individual cases.

(2) Any agreements, reached between us and the customer for the purpose of execution of this contract, as well as any declarations and any other statements shall be put down in the contract in writing. Telephone conversations, telefax, electronic mail, etc. shall only be legally valid when confirmed in writing by either us or the customer.

(3) These terms and conditions shall apply to all future business transactions with the customer.

#### A. General Provisions

##### § 1 Conclusion of the contract

(1) Our offers are non-binding, unless we explicitly state their binding force. All documents, drawings, indications of weights, etc. attached to our offers are only approximations.

(2) Our offers shall be kept valid for 6 (six) weeks from the date of quotation.

(3) Orders from the customer shall only be considered accepted if expressly confirmed by us. Silence in response to an order shall not constitute acceptance thereof. The same shall apply to confirmations sent electronically, unless both parties to the contract have agreed upon electronic communication as form of communication for this particular business relationship and electronic communication is transmitted to the address expressly agreed upon for the acceptance of such declarations. Solely the text of our confirmation shall be deemed binding.

(4) Our declarations with regard to the conclusion, alteration or termination of contracts shall be in writing; a qualified electronic signature is not required, unless otherwise agreed with the customer.

(5) We reserve all property rights and copyrights in any illustrations, drawings, calculations and any other documents. These shall not be made available to third parties. This applies in particular to those documents marked as confidential. Prior to passing on any documents to a third party, the customer has to obtain our express written agreement.

##### § 2 Prices, terms of payment

(1) Unless otherwise agreed, our prices are quoted ex works, excluding packaging; the latter shall be invoiced separately. Our prices are based on those calculation factors customary and applicable at the time of submitting the quotation. Should a substantial alteration in costs for staff, material, energy, freight or any other factor occur, due to circumstances beyond our control, we reserve the right to adjust prices agreed upon appropriately and according to the influence of these cost factors.

Unless otherwise agreed, our prices are quoted for the annual volume and the delivery lot size on which the offer is based. Should actual volumes and/or delivery lot sizes required differ substantially from those taken as a basis, we reserve the right to adjust prices. If spare parts shall be produced or stocked after discontinuation of a series production, prices therefor shall be agreed separately.

(2) Our prices do not include statutory VAT. The latter shall be shown as a separate item in the invoice at the statutory amount on the day of invoicing.

(3) Any payments by the customer for serial deliveries of direct material shall be due 30 days after receipt of invoice without deductions and free of any charges to our bank account. We grant a cash discount of 2% for payment within 14 days from the date of the invoice. Defaults in payment and payment by bill of exchange exclude any cash discount.

(4) Any payments for tools, equipment, machines, facilities and suchlike, unless otherwise agreed upon in individual contracts, are due 14 days from the date of the invoice without any deductions and free of

any charges to our bank account, this is 30% of the total invoice amount when placing the order, 40% after completion of order and 30% after release of series production, at the latest 14 days after our release proposal of series production (presentation of prototype test report).

(5) If we are to maintain tools, equipment, machines, facilities and suchlike in a ready-to-use condition (preservation, storage, periodic examination, maintenance, insurance, etc.) exceeding the period for series production, for instance in order to ensure that spare parts will be available when needed, we shall invoice the customer in advance at the beginning of each year for the costs incurred therefor and state the costs on request. Payment is due 14 days from the date of the invoice without any deductions free of any charges to our bank account. Should payment not be effected within this period or after granting an adequate extension, we shall be entitled to hold the tool, equipment, machine, facility and suchlike ready for collection. Should the customer fail to collect said things within this period or after having been granted an adequate extension, we shall be entitled to scrap the tool at the customer's expense.

(6) If it is agreed that the goods shall be released for dispatch by our buyer (call-off order) within a certain period after our notice of readiness for dispatch, we shall be entitled to invoice the goods from the date of the notice of readiness for dispatch. We reserve the rights according to section (7).

(7) Payment has to be effected in such a way that we have the amount at our disposal on the due-date. The buyer shall only be entitled to claim set off, if his counterclaims are undisputed or have been established as final and absolute; the buyer shall only be entitled to exercise his right of retention insofar as his counterclaim is based on the same contractual relationship.

(8) Any non-observance of the time allowed for payment shall result in the charging of interests of 8% p.a. above the respective base rate. If we are able to prove a higher amount of damage caused by default, we shall be entitled to claim it. However, the customer shall be entitled to provide evidence that, as a consequence of the default in payment, we have incurred damage substantially lower than that amount or no damage at all.

(9) Insofar as our claim for payment is endangered as a result of circumstances which occurred subsequently and which result in a substantial deterioration in the financial circumstances, we shall be entitled to accelerate payment – irrespective of the terms of the bills of exchange accepted on account of payment.

(10) In the cases of section 7 as well as section A § 4 (8) we shall be able to revoke the collection authorization (section A § 4 (7)) and demand payment in advance for still outstanding deliveries.

(11) The buyer is able to avoid such legal consequences as stated in section 7 and section A § 4 (8) by providing security in the amount of our endangered claim of payment. If the buyer fails to effect payment in advance in accordance with section 7 or section A § 4 (8) within an appropriate period of time or if he fails to provide adequate security, we shall be entitled to rescind the contract excluding a claim for compensation from the buyer.

(12) Statutory provisions for defaults in payment shall not be affected.

(13) In the case of defaults in payment due to a recognizable deterioration of the financial circumstances of the buyer, we shall be entitled to rescission without being obligated to fix an appropriate time limit.

(14) Bills of Exchange and cheques shall only be accepted on account of payment; bank charges, discount charges and collection charges shall be paid by the customer.

##### § 3 Securities

We are entitled to the standard type and scope of securities for our accounts receivable, also if these are conditional or limited.

##### § 4 Retention of title

(1) All goods delivered shall remain our property (reserved goods) until all of our claims have been satisfied, in particular any outstanding balance claims we are entitled to resulting from this business relationship. This also applies to future and conditional claims, e.g. from return bills.

(2) Handling and processing of reserved goods shall always be performed for us as manufacturer, in the sense of § 950 BGB (German Civil Code), without any obligation on our part deriving therefrom. Handled and processed goods shall be deemed to be reserved goods in accordance with section 1.

(3) In case the reserved goods are processed, combined and mixed with other goods by the buyer, we are entitled to co-ownership of the new goods in the proportion of the invoiced value of the reserved goods to the invoiced value of the other goods processed. If, as a result of combining, mixing or processing, our ownership expires, then it is hereby agreed that the buyer transfers to us his ownership rights and contingent rights on the new stock or object to the extent of the invoiced value of the reserved goods, in case of processing in the proportion of the invoiced value of the reserved goods to the value of the other goods processed, and the buyer shall store the goods for us free of charge. Our co-ownership rights shall be deemed reserved goods in accordance with section 1.

(4) The buyer shall only be entitled to resell the reserved goods in the normal course of business subject to his normal terms and conditions as long as he is not in default, provided that the buyer reserves the title and that the accounts receivable from the resale are transferred to us in accordance with section 5 and 6. The buyer is not entitled to any other disposition of the reserved goods. If reserved goods are used as material for the execution of contracts for work and services, this shall constitute a resale in accordance with section A § 4.

(5) The buyer herewith assigns to us all and any accounts receivable from the resale of reserved goods. They serve as security to the same extent as the reserved goods in the sense of section 1.

(6) If the reserved goods are resold by the buyer together with other goods, the account receivable from the resale shall be assigned to us in the proportion of the invoiced value of the reserved goods to the invoiced value of other goods. If goods are sold in which we have a co-ownership share in accordance with section 3, we shall be assigned a share of the account receivable that corresponds to our co-ownership share.

(7) The buyer is entitled to collect accounts receivable from the resale, unless we revoke the collection authorization in the cases stipulated in section A § 2 (7) and section 8. Upon our request the buyer shall be bound to immediately inform his customers of such assignment - provided that we do not do this ourselves - and to furnish the information and documents required for the collection. Under no circumstance shall the buyer be entitled to assign the accounts receivable.

(8) Should the buyer default in payment and should we expect that a considerable proportion of our account receivable may become uncollectible, we shall be entitled to prohibit the processing of the delivered goods, to retrieve the goods and for that purpose, if necessary, enter the customer's premises. The retrieval shall not constitute a rescission of contract.

(9) The customer is not entitled to pledge reserved goods or to assign the reserved goods as security to a third party. The buyer shall notify us immediately about impairment by a third party.

(10) If the value of the existing security exceeds the value of accounts receivable to be secured by more than 10%, we shall be obligated, upon the buyer's request, to release securities to this extent selected by us.

## B. Execution of delivery

### § 1 Terms of delivery, delivery dates

(1) Delivery periods begin with the date of our order confirmation, but not before all order details have been clarified; this shall apply analogously to dates of delivery.

All delivery dates and delivery periods are conditional on there being no unforeseeable production stoppages and on our being supplied on time with the required input material, insofar as such incidents occur through no fault of the Wilhelm Schröder GmbH.

(2) Failure by the buyer to perform his contractual obligations in time - including the duty to cooperate or ancillary obligations, for instance opening a Letter of Credit, furnishing domestic or foreign certificates, effecting advance payment or similar, we shall be entitled - without prejudice to our rights resulting from the buyer's default - to extend our delivery periods and delivery dates pursuant to the requirements of our production processes.

(3) The date of dispatch ex works shall be decisive for determining our compliance with the delivery periods and delivery dates.

(4) In cases of force majeure, the contractual obligations of both parties shall be suspended and the delivery periods and delivery dates

for meeting contractual obligations shall be postponed accordingly; cases of force majeure include industrial disputes on our own or others' premises, delays in transport, machine breakdown, sovereign measures and any other circumstance beyond the control of either party. The other contractual party shall be notified immediately in the event of force majeure. Both contractual parties shall be entitled to withdraw from the contract at the earliest six weeks after receipt of said notification.

(5) In case we fail to comply with delivery periods, the buyer may only exert his rights in accordance with §§ 281, 323 BGB (German Civil Code) if he grants us an appropriate period for delivery combined with his declaration - in derogation of §§ 281, 323 BGB (German Civil Code) - that the buyer will refuse acceptance of the delivery after expiry of said period; after expiry of the period without delivery, claims for fulfillment shall be excluded.

(6) In case of default on our part, we shall be liable pursuant to section C for the damage caused by the default substantiated by the buyer.

We shall notify the buyer forthwith about the estimated period of the delay in delivery. Upon receipt of such notification, the buyer shall inform us forthwith of the probable amount of damages caused by the delay in delivery. If the anticipated amount of damages caused by the delay in delivery exceeds the value of the volume affected by the delay by more than 20%, the buyer shall be obligated to immediately make an effort to make corresponding covering purchases, if necessary, to utilize alternative supply sources identified by us, while withdrawing from the contract for the volume affected by the delay in delivery; additional costs resulting from such covering purchase and damages caused by the delay in the interim period shall be reimbursed by us on presentation of evidence. If the buyer fails to perform his duty to reduce the damage in accordance with the previous paragraph, our liability for damages verifiably caused by the delay in delivery shall be limited to 50% of the value of the quantity affected.

(7) The buyer may withdraw from the contract without notice if the entire delivery becomes impossible for us prior to the transfer of risk. In addition, the buyer may withdraw from the contract if part of the delivery for a purchase order becomes impossible and the buyer has a justified interest in rejecting the partial delivery. If this is not the case, the buyer shall pay the agreed price for the partial delivery. The same shall apply in the event of incapacity on our part. Otherwise section C shall apply.

### § 2 Dimensions, weight, grade

(1) Deviations in dimensions, weight and grade shall be permissible in accordance with DIN/EN/ISO or standard commercial practice.

### § 3 Dispatch, packaging, passing of risk

(1) We shall be free to choose the forwarder or carrier.

(2) If the buyer is responsible for a delay of loading or shipment of the goods, we shall be entitled, at the buyer's expense and risk, to store the goods in equitable discretion, to take measures deemed suitable to preserve the goods and to invoice the goods as delivered.

The same applies if the goods have been declared ready for dispatch and are not collected within four days. The statutory regulations on default of acceptance remain unaffected.

(3) Insofar as it is standard commercial practice, we shall deliver the goods packed and with rust protection; at the buyer's expense. An express agreement is required for packaging beyond the purpose of transport or any other type of protection, e.g. for a longer-term safekeeping or storage.

(4) All risk shall pass on to the buyer upon transfer of the goods to the forwarder or carrier, however, no later than on the departure of the goods from the factory or warehouse.

(5) If the goods are damaged in transit, the buyer shall immediately arrange for an ascertainment of facts by the competent authorities and inform us in writing about the outcome forthwith, however, no later than 8 (eight) days after receipt of delivery. The damaged parts shall be returned to us or the respective warehouse carriage paid.

(6) If we undertake transport insurance for transportation with factory-owned trucks within the comprehensive policy taken out by us or the chosen forwarder, adjustment of the claim for damage in transit shall be effected in accordance with our terms of insurance on presentation of the truck driver's statement of facts, the original way-bill as well as the transfer of rights for the damages incurred.

### § 4 Claims for defects

(1) Goods shall be deemed to be in conformity with the contract, if they, at the time of the transfer of risk, do not or only insignificantly deviate from the specification agreed upon; conformity with the contract and absence of

defects of our goods shall be determined exclusively according to the express agreement on quality and quantity of the ordered goods. Liability for a particular purpose of use or specific suitability is only assumed insofar as expressly agreed upon; otherwise, the risk of suitability and use lies exclusively with the buyer. We shall not be liable for deterioration or loss or improper handling of the goods after the transfer of risk.

(2) Contents of the agreed specification and any expressly agreed purpose of use shall not establish a guarantee; assumption of a guarantee requires a written agreement.

(3) The buyer shall examine the goods immediately on receipt. Claims for defects shall only exist if defects are immediately notified in writing, concealed defects must be notified immediately after detection. After agreed acceptance of the goods, any complaint of defects which can be detected during said acceptance shall be excluded.

(4) In case of a complaint, the buyer shall give us the opportunity to examine the goods complained of; on request the buyer shall make the goods complained of or a sample thereof available to us at our expense. In case of an unjustified complaint, we reserve the right to charge the buyer the freight and transshipment costs as well as the costs for examination.

(5) If goods are sold as downgraded goods - e.g. so-called II-a material - the buyer shall not be entitled to claims for defects either indicated by us or such defects one would expect of goods sold as downgraded goods.

(6) If a defect exists, we may, at our discretion - taking into account the buyer's interests - meet our obligations either by delivering a replacement or by repair of the said defect.

If we fail to remedy the defect within a reasonable period of time, the buyer may grant us a reasonable period of grace for meeting them. If the period allowed for subsequent performance expires without success the buyer may be entitled to either reduce the purchase price or to withdraw from the contract. No further claims shall exist. Section C remains unaffected.

(7) If a defect in title exists, we shall be entitled to meet our obligations by rectifying the defect in title within two weeks from receipt of goods. Otherwise section 6 sentence 2 shall apply accordingly.

(8) The limitation period in case of defective deliveries shall expire - except in case of intent - at the end of one year after buyer's receipt of delivery. Statutory limitation periods for goods shall remain unaffected thereof, if the goods have been used in line with their usual purpose for a building and caused the latter's defectiveness; repairs of defects or supply of replacement shall not cause the limitation period to commence again.

(9) Claims under a right of recourse by the buyer in accordance with § 478 BGB (German Civil Code) shall be restricted to the statutory limitations of the asserted claims for defect by a third party against the buyer and shall be permissible provided that the buyer has fulfilled his duty of inspection, notification and rejection pursuant to § 377 HGB (German Commercial Code).

(10) Any collection of tools, equipment, machines and facilities, etc., which are our property, requires a mutual written consent of both parties. Without any such agreement, the collection of the aforementioned items shall not be permissible, even if they serve the exclusive production of one customized product.

A collection of tools, equipment, machines, facilities or any such thing, which are in our possession, but are the property of the customer or a third party, shall only be permissible due to intent or gross negligence on our part. A requirement therefor is that it has been established that it is our fault in writing in good time, that the consequences thereof are substantial and that we have been granted an appropriate period of time to rectify the causes. Should tools, equipment, machines, facilities or any such thing be collected, any products produced therewith, whether semi-finished or finished, shall also be purchased; for finished products the agreed sales price shall be paid, for semi-finished goods the price which corresponds to the value already added. Furthermore, input materials and bought-in parts shall be purchased at the respective purchase prices plus an appropriate lump sum for processing, insofar as it serves the production of the respective products.

#### **C. General limitation of liability**

(1) Unless otherwise stated in these terms and conditions, we shall be liable for compensation for violating contractual or non-contractual obligations or in the event of contract negotiations only in case of

intent or gross negligence of our legal representatives or vicarious agents as well as in case of culpable violation of fundamental contractual obligations. In case of culpable violation of fundamental contractual obligations, we shall only be liable – except in cases of intent or gross negligence of our legal representatives or vicarious agents – for the losses which are foreseeable and typical for this type of contract.

(2) The aforementioned limitations of liability shall not apply in cases of injury to life, body and health.

(3) Personal injury claims or claims for damaged goods used privately pursuant to the Produkthaftungsgesetz (German law regulating liability for products) shall not be affected.

#### **D. Miscellaneous**

##### **§ 1 Export certificate**

If a buyer domiciled outside the Federal Republic of Germany (foreign buyer) or his representative collects the goods and transports or ships them abroad, the buyer shall furnish the export certificate required under tax law. If such certificate is not furnished, the buyer shall have to pay value added tax in proportion to the invoice amount applicable to deliveries within the Federal Republic of Germany.

##### **§ 2 Law applicable**

(1) The laws of the Federal Republic of Germany shall apply, excluding the provisions of the United Nations Conventions on Contracts for the International Sale of Goods of 11 April 1980.

(2) The parties to the contract shall be bound in case of a dispute resulting from this contract to conduct mediation in accordance with the Hamburg rules of Mediation for economic Conflicts prior to any institution of legal proceedings before a court of general jurisdiction or an arbitration tribunal.

##### **§ 3 Place of fulfillment and jurisdiction**

(1) Place of fulfillment and jurisdiction for any types of proceedings is exclusively our address of record.

(2) Should any provision of these terms and conditions and any provision of further agreements be or become null and void, the validity of this contract is not affected otherwise. The parties to the contract are bound to replace such invalid provision by a valid provision that best approximates the economic success of the invalid one.

Herscheid, June 2008