

# General Purchase and Ordering Conditions of SCHELL GmbH & Co. KG Armaturentechnologie

## I. Standard conditions, conclusion of contract

1. The following conditions apply exclusively for our orders. Conflicting delivery conditions have no validity, even if we do not expressly contradict them. With the acceptance of the order and/or the delivery, the contractor recognises our conditions.
2. Orders are only binding for us if they are made on our duly signed, pre-printed order forms.

If these orders are not confirmed in writing within 5 days (§ 126b, German Civil Code), we can withdraw from the order. The price and delivery date are to be specified in the confirmation. Our order number is to be specified on all documents. The supplier must adhere precisely to our order and is to notify us expressly in the case of deviations. The same applies when the supplier submits an offer to us.

3. All agreements met between us and the supplier, in regard to the execution of the present contract, are put in writing in the present contract.
4. Quotations of the contractor are free of charge and do not constitute any obligation for us.
5. Within reason for the supplier, we can request changes of the delivery item in construction and performance. Therefore, the repercussions, especially the increase or decrease in costs, as well as the delivery date, are to be appropriately regulated.
6. Without our agreement, the supplier is not entitled to pass our commissions or orders on to third parties; otherwise we are entitled to withdraw partially or completely from the contract and to demand compensation for damages.
7. The supplier observes the legally prescribed product markings and legal obligations to provide information about the composition of the delivery item, in particular in accordance with the REACH Regulation.

## II. Delivery, delivery date

1. Our guidelines, designs etc. are to be strictly observed. With excess deliveries which exceed the customary extent, we reserve the right to return the excessive goods delivered at the cost of the contractor. Partial deliveries are only allowed upon our consent.
2. The agreed delivery dates are binding and to be punctually adhered to without fail. As soon as the supplier can recognise that the fulfilment of his contractual obligations on the due date is not possible, partially or entirely, he must immediately provide us the reasons and the known prospective delivery date.
3. If the supplier does not deliver by the agreed time, he is liable for the damages due to delay. Furthermore, we can demand compensation instead of the deliverable and/or withdraw partially or entirely from the contract if we have unsuccessfully granted the supplier an appropriate period for service or supplementary performance, and the supplier does not perform the service due or not as it is owed.

## III. Packaging

The packaging is to be calculated at the cost price, insofar as the agreed price of the packaging is not included. The supplier has to choose the most favourable type of packaging for us. We shall reduce packaging costs that are calculated too high. With return of the packaging material to the contractor we deduct 2/3 of the calculated packaging costs. All damages arising through improper packaging are borne by the supplier. If packaging provisions are not complied with, e.g. use of pallets, we are entitled to deduct the additional costs that arise from the invoice.

## IV. Place of delivery, risk assumption, shipping instructions

1. In case no different agreement has been reached, the delivery, including packaging, is made to the address designated by us after being declared at customs (DDP according to Incoterms 2010). The contractor bears the risk of accidental loss or the deterioration of the delivered object (carrier's liability) until acceptance of the goods by us or our representatives at the location to which the goods are to be delivered as ordered.
2. Immediately after delivery, the vendor simply has to send us the dispatch note of the delivery, which must contain the exact designation, the quantity, the weight (gross and net), the type and the packaging of the goods and the article. If the requested delivery papers for a delivery are not delivered on time or the above-mentioned information is missing from the delivery papers so that the delivery cannot be accessed or processed, the goods are stored until the arrival of the delivery papers and/or of the completed designations at the cost and risk of the supplier.

## V. Acceptance

In cases of force majeure, strikes, lockout, catastrophes, or special circumstances that prevent acceptance of delivery on schedule, for which we are not responsible, we are entitled to reasonably postpone our obligation of acceptance or to withdraw from the order partially or completely, if its acceptance and utilisation become impossible or unfeasible. We will immediately inform the supplier. Claims of damage in this regard are excluded.

## VI. Invoicing, payment

1. Invoices are to be sent to us in a single copy; they must, without fail, contain our supplier number, order number, order date, and article number.
2. We make payments within 60 days after delivery and the receipt of the invoice, insofar as longer payment deadlines are not agreed in individual contracts. For invoices paid within 30 days after delivery and receipt of the invoice we are entitled to deduct a 3 % cash discount.
3. The payment period begins, at the earliest, with the arrival of the proper invoice, however not before arrival and technical acceptance of the goods ordered and/or acceptance of the delivery. The date of the receipt stamp applies as the date of arrival of the invoice.
4. Payments of the invoice amount before the arrival of the goods are made under the provision of arrival of the goods; the right to a notice of defects remains unaffected by a payment ahead of schedule.

## VII. Notices of defects, liability for material defects and defects of title, as well other breaches of duty, terms of liability

1. We are obligated to inspect the goods with regard to quality and quantity deficiencies.
2. Notices of defects are regarded as having been made on time if visible (overt) deficiencies are reported to the supplier within five working days after arrival of the goods at the latest. We also may reprimand unrecognisable or concealed deficiencies later, however at the latest five working days after the discovery and assessment of these deficiencies.
3. The supplier is obligated to provide the possession and the ownership of the goods to us free from material defects and defects of title. A material defect is especially present if the goods are not delivered in the agreed condition with passing of risk and/or are not suitable for the assumed use according to the contract and/or the nature and/or usefulness are not retained for the usual length of time.
4. In cases of material defects and defects of title, as well as other breaches of duty, our claims and rights are based on the German Civil Code. In addition to the legal rights, the following is agreed:

If the supplier does not perform his supplementary performance obligations within an appropriate period set by us, we can carry out the subsequent improvements ourselves, or let them be carried out by a third party, at the cost of the supplier, if the supplier does not refuse the supplementary performance with justification. § 323, para. 2, German Civil Code applies accordingly; the specification of a period is not required if the supplementary performance is improperly executed or unacceptable for us. If, in the case of supplementary performance, work (e.g. sorting, subsequent improvements) is not required in our facilities, at the location of our company, rather at another place or in another facility, in which the goods arrive as intended, the supplier is obligated to carry out or arrange for the supplementary performance there at his own expense. To prevent production or conveyor belt disruptions, this must take place immediately, without necessitating the notification of an additional deadline. Otherwise, we and/or the parties affected in the supply chain are entitled to carry out or have carried out this work at the expense of the contractor.

5. Our claims from material defects and defects of title, as well as other breaches of duty by the supplier are subject to statutes of limitations, unless longer legal deadlines or deadlines are agreed in individual cases and subject to the regulations in Number 6 and 7 for 3 years after the transfer of risk, and unless the mandatory regulations of §§ 478, 479, German Civil Code, come into effect. This applies, however, for 6 years from the legal beginning of the statute of limitation to items that are and have been used according to their usual manner of application for a building. The period extends for the timeframes while their limitation is inhibited.
6. If we are called upon, because of deficiencies of the item or special breaches of duty that are based within the sphere of the supplier, the supplier must exempt us from all claims by our contractual partners; in the case of claims for damages, however, only insofar as the supplier is responsible for the deficiency of the item or the special breach of duty. Our claims for damages and exemption from all damages and charges extend beyond the liability and limitation periods regulated in Number 5, however at the most up to 7 years from the legal beginning of the limitation, as long as we have to answer for the goods obtained from the contractor as well as the resulting damages and charges from reasons lying in the area of responsibility of the contractor. Demands from breaches of duty by the contractor which we make within the liability and limitation period, are prescribed to 3 months at the earliest from the time of the complaint. In the case of purchase of consumer goods, the provisions of §§ 478, 479, German Civil Code remain unaffected.
7. Advanced claims and longer periods of limitation according to the Product Liability Law, from an illegal activity, from fraudulent performance, and from a guarantee remain unaffected. The contractor is obligated to keep all construction and production components in regard to the delivered goods for 11 years, and to make them available to us at any time in the case of our demand regarding product liability.

### **VIII. Product liability, indemnification, liability insurance**

1. If the supplier is responsible for damage to a product, he is obligated to indemnify us from third party claims for damage from third parties at first demand to the extent that the cause lies in his domain of control and organisation and he is personally liable to third parties. Our claims for damage and indemnification from all damages and expenditures do not come under a statute of limitation as long as we must bear responsibility for goods purchased from the supplier as well as resulting damages and expenditures. However, the above mentioned claims of recourse become time-barred at the latest 7 years after the legal beginning of the statute of limitations. Claims from breaches of obligation of the supplier, which we reprimand within the period of liability and period of limitation, become time-barred at the earliest 3 months after the reprimand.
2. As part of his liability for cases of damage in accordance with Para. 1, the supplier is also obligated to compensate us any expenditure in accordance with §§ 683, 670, German Civil Code or §§ 830, 840, 426, German Civil Code, which result from or are related to a product recall campaign, which we legally carried out. We will inform the supplier – if possible and reasonable – in advance about the content and scope of such product recall campaigns and give him the possibility to provide an opinion.
3. We will inform the respectively responsible authorities in accordance with the provisions of the Product Safety Law (ProdSIG) in consultation with the supplier.
4. The supplier is obligated to maintain liability insurance with a coverage amount of 5,000.000.00 per harm to persons / material damage – lump sum – during the duration of this contract, i.e. up to the respective expiration of the period of claims for defects; if we are entitled to further compensation for damages, this remains unaffected.

The supplier must provide evidence of this insurance at our request.

### **IX. Third party proprietary rights**

The supplier assumes the guarantee that the article of sale is free from third party rights.

### **X. Nondisclosure, designs, models, tools**

1. The contractual parties are obligated to handle all non-obvious commercial and technical details, which are known to them in the scope of the section specifications, as trade secrets.
2. Designs, models, tools, templates, patterns, and other documents that we make available to the contractor for implementation of orders are to be handled confidentially and may only be used for execution of our orders, may not be copied, and may not be made available to third parties. These articles remain our property. The goods manufactured hereafter may neither be handed over to third parties in raw condition, nor as half or finished manufactures; the same applies for parts that the contractor has developed according to our designations.
3. Subcontractors are equally obligated to comply.
4. If the supplier finishes models, tools, or designs that are required for execution of the order, then these are to be handled confidentially in the same manner. It is agreed that these articles pass into our ownership as soon as we have paid the agreed compensation, or pass into our co-ownership, as soon as we have provided a down payment, and in the proportion of the agreed payment for the down payment. The supplier holds these articles for us free of charge. We are entitled to appropriation if the contractor is threatened by measures of foreclosure, or the opening of insolvency proceedings over his assets is requested. After execution of the order, these articles are to be handed over to us.

### **XI. Material supplies**

1. Material supplies remain the property of the customer and must be stored separately, labelled and managed free of charge. Material supplies may only be used for orders from the customer. Compensation must be provided by the contractor in the event of depreciation or loss, where the contractor has acted from ordinary negligence. This also applies to the calculated assignment of order-related material.
2. Processing or remodelling of the material is exclusively for the customer. The customer becomes direct owner of the new or remodelled object.
3. If this should not be possible for legal reasons, in particular if the material provided by the customer is processed with other objects not belonging to the customer, then the customer and contractor agree that the customer will become the owner of the new object at the time of processing or remodelling. The contractor will keep the new object for the customer free of charge with the due care of a proper businessman.
4. If, in respect of the aforementioned paragraph, transfer of ownership to the customer should not be possible for legal reasons, then, in the event of goods being processed using objects not belonging to the customer, the customer will acquire co-ownership of the new object in the proportion of object value for the customer vis-à-vis the other

objects being processed at the time of processing.

5. If the object provided by the customer is inseparably combined with objects not belonging to the customer, then the customer will acquire co-ownership of the new object in proportion to the value of the supplied goods vis-à-vis the other combined objects at the time of combining. If combining is such that the contractor's object is viewed as a primary object, then it is considered agreed that the contractor will transfer proportional co-ownership to the customer; the supplier will keep the sole property or joint property free of charge for the customer with the due care of a proper businessman.

### **XII. Transfer, retention of title**

1. Rights and duties from our orders may not be surrendered to third parties or be passed on. With the exception of extended retention of ownership, the supplier is not entitled to surrender demands against us to third parties.
2. The supplier is entitled to reserve for himself the ownership of the delivered goods until payment to us, without the encroachment of our rights to processing and resale of the goods.
3. We are entitled to process and resell the articles of delivery in the orderly business routine. As far as resale applies, the use of the reserved goods also applies for fulfilment of factory and factory consignment contracts. We are not entitled to transfer by way of security or pledging of reserved goods.

### **XIII. Place of Fulfilment, Legal Domicile, Applicable Law**

1. The place of fulfilment is the place of our company headquarters.
2. For contracts with buyers, legal entities of public law, or public legal fund assets, all disputes are to be decided in the courts relevant for our company headquarters. We are also entitled to dispute before the courts situated with our respective contracting parties.

German law applies to all orders, deliveries, and performances, with the exception of the UN-Convention on Contracts for the International Sale of Goods (CISG). The contract language is German. If the contracting parties use another language, the German wording has precedence.

### **XIV. Safeguarding clause**

If regulations of these conditions and/or the further agreements that have been reached should be or become ineffective, the validity of the contract remains unaffected in all other respects. The contracting parties are obligated to replace the ineffective provisions with an equivalent regulation to ensure successful business operations.

**Date: September 2019**