

General Sales, Delivery and Payment Conditions of SCHELL GmbH & Co. KG

I. Standard Conditions, Conclusion of Contract

1. For all quotations, deliveries, and payments the following conditions exclusively apply. Conflicting business and/or purchasing conditions have no validity, even if we do not expressly contradict them. With the placing of an order and/or the receipt of delivery the purchaser recognizes our conditions.
2. The order is obligatory for us with our written endorsement or with the beginning of execution of the order. All agreements met between us and the purchaser in regard to execution of the present contract, are put into writing in the present contract.
3. We can refuse the execution of given orders without declaration of reasons.

II. Quotation, Cost Estimate, Prices, Price Adjustment Provision

1. Our quotations as well as the prices and delivery availabilities indicated in our catalogs, printed matter, letters etc. are subject to confirmation; cost estimations are non-binding.
2. All orders will only be accepted based on the valid prices at the time of the order. Our prices are to be understood in EUROS, excluding customised special packaging, freight, tariff, plus the respective value added tax. With delivery of goods beyond EURO 500,00 the prices apply free of all charges from receiving station and/or German border.
3. With all orders - also with orders on call and successive delivery contracts - whose delivery according to contract or at the request of the purchaser takes place later than four months after the placement of the order, we are entitled to compute the applicable prices on the day of delivery.
4. For the smallest orders within the EU under a net invoice value of EURO 50,00, we compute a pro rated handling fee of EURO 5,00 for each small order. Orders for replacement parts are excluded from this rule. In non-EU states handling charges as well as the minimum order quantity conform to the shipping and administrative burdens for the respective country.

III. Shipment, Costs, Passing of Risk

1. Our deliveries take place principally from the Olpe facility at the purchaser's risk. With customer pick-ups the risk passes over to the customer when the goods leave the warehouse. We are not liable - also not with freight-paid delivery - for damages or losses during transport. If nothing else is agreed upon, we decide on the type of packaging and the shipping.
2. If delivery is delayed because of conditions that we do not have to assume responsibility for, the risk passes over to the purchaser from the day that the purchaser has communicated himself ready to take delivery.

IV. Change of Delivery Item

We reserve the right to construction and form changes as well as changes to the scope of the delivery as long as the goods are not significantly changed and the change is reasonable for the customer. The compliance of measurements, weights, and depictions is nonbinding for us.

V. Payment Conditions and Consequences for Non-compliance, Set-off

1. Within the EU our bills are payable postage and expense-free within 30 days of admittance of our bill or equivalent itemisation of an amount receivable, at the latest, however, 30 days after maturity and receipt of return service. Afterwards we calculate annual interest at a level of 8 %- points (with private consumers 5 %) above the respective basic interest rate. With payments within 14 days of the date of invoice the purchaser is entitled to deduct 2 % cash discount, with payments within 8 days of the date of invoice, 3 % cash discount, provided that all previous payments have been paid. In non-EU states the individual agreements met with the respective customer apply.
2. We accept changes and checks only against fulfillment of a debt, changes only according to a special agreement. The payment applies first after redemption of the changes or checks as performed. Discount and charges are borne by the purchaser. Independent of the duration of changes taken or granted extensions, our demands become immediately due if the purchaser does not abide by the payment conditions or circumstances become known that place his credit worthiness in doubt. In such a case we are further entitled to only carry out deliveries against payment in advance or by way of surety bond or to withdraw after appropriate respite from the contract and/or to require compensation.
3. Payments to our representative with a liberating effect may only take place if he is invested with an adequate power to collect and the power to collect is confirmed to the purchaser by us in writing.
4. In the face of our conditions the purchaser can only set off with indisputable or established, legally-valid counterclaims.

VI. Terms of Delivery and Liability Regulations, Obligation of Acceptance, Returns

1. The delivery time begins as soon as all details of performance, especially the technical questions, are clarified and both parties agree about all conditions of the affair. The delivery date is adhered to, if the article of sale had left our factory prior to its expiration, or readiness for shipment was communicated to the purchaser. Adherence to the delivery date presupposes the fulfillment of the contractual obligations of the purchaser, especially the agreed-upon payment conditions.
2. Delivery time information takes place according to our best knowledge, is approximately binding, and can diverge from the actual delivery.
3. If our delivery takes place neither by the due date nor within an additional period established from us to the purchaser for specified reasons, the purchaser is entitled to withdraw in respect to the appointed delivery.

4. For claims for damages because of belated fulfillment or nonfulfillment instead of performance the following applies: If in the attempt to deliver we are, in terms of which only our simple negligence meets, the claim of the purchaser to compensation of damages due to delay, proven by him, is limited to the amount 0,5 % for every full week of delay up to a total amount of 5 % of the value of the bill affected from the delay of the order. If the purchaser can demand compensation for damages instead of performance, we adhere to the purchase of a private consumer (§ 13 BGB) with an injury from the primary obligations of the contract - these obligations are those that, if violated, put the actual purpose of the contract at risk, and the fulfillment of complied with - including in the event of ordinary negligence for damage compensation, however any claims for compensation are limited to the foreseeable damage at the time of contract conclusion.
5. Higher power or circumstances for which we are not responsible (e.g. interruption of operations or strike) and the resulting hindrance of performance of the contract in regard to the deadline entitle us to reasonably postpone the fulfillment of assumed obligations or, if performance thereby becomes impossible for us, to withdraw entirely or in part from the contract. The same applies if materials were required by us from our suppliers for the completion of the order, and the materials ordered out from us, for reasons for which we are not responsible, were not received in time. A condition of the withdrawal is that we inform the purchaser immediately of the unavailability and refund eventual return services of the purchaser immediately. Claims of damages in any form are precluded.
6. Teillieferungen sowie Mehr- oder Minderlieferungen sind grundsätzlich zulässig, es sei denn, dass dies vom Kunden ausdrücklich als nicht zulässig im Auftrag schriftlich niedergeschrieben worden ist.
6. Partial deliveries as well as excess or short deliveries are principally allowable, unless this is expressly written down in the order by the customer as not allowable.
7. Partial deliveries as well as surplus or reduced deliveries are permissible in principle, unless this is expressly noted by the customer as not permissible in the order in text form (§ 126 b BGB).
8. Blanket and make-and-hold orders must be called within 8 months, whereby the delivery time may not exceed three months. With noncompliance of these terms by the purchaser the right pertains to us to either cancel the order and demand compensation because of noncompliance or to bring and calculate the back-ordered goods for shipment.
9. Returns of goods or the cancellation of orders require our written agreement. For all returns of goods - they take place principally at the risk of the sender - we deduct from the conferred credit memo min. 20 % of the net value of the goods for handling charges. Special designs and goods that are no longer contained in our delivery program will not be taken back.

VII. Notices of Defects, Claims of Defects, Liability Regulations

1. Without prejudice those with a mutual commercial transaction composing continuing examination obligations and obligations to give notice of defects (§ 377 HGB), the purchaser has to examine the delivered goods for visible defects and to notify us in writing of complaints because of such visible defects - that applies also for incomplete or incorrect deliveries - within 5 working days of receiving the goods and with such defects that first become visible at a later time, within 5 working days of recognition by the purchaser in text form (§ 126 b BGB); otherwise the goods are considered, in view of the visible defect, as approved and the purchaser can insofar exercise no further rights against us. That does not apply with a direct purchase by a private consumer.
2. With entitled notices of defects we are obligated to the cost-free amendment of the delivered goods and/or, according to our choice, to the replacement delivery. With purchases by a private consumer, unless direct or by subcontractor in the delivery chain, the consumer and/or the subcontractor is entitled to the right to choose. If the amendment or replacement delivery fails in spite of two attempts or we refuse this unwarrantedly or we delay this unreasonably, the purchaser is entitled to reduction of the payment, or if there is not a construction capacity article of the warranty for defects, according to his choice, to demand cancellation of the contract.
3. For claims of damages subject to the regulation in VII the following applies: With purchase by a private consumer, unless direct or by subcontractor in the delivery chain, we are liable for an injury from the primary obligations of the contract, also with simple negligence, to compensation for damages instead of performance, however eventual claims to the compensation are limited to foreseeable damages at the time of the conclusion of contract, as long as the defect is not secretly fraudulent or a guarantee for the properties and conditions of the thing have been assumed. Subject to the provision in Clause VIII the following applies to claims for damages: In the event of breaches of essential contractual duties even due to ordinary negligence we assume liability for damages instead of performance, however, the possible claims for compensation are limited to the damages that are foreseeable at the time of the conclusion of the Agreement, unless we have maliciously concealed the defect or we have issued a guarantee regarding the quality of the object.
4. Defective claims do not exist if the error is to be returned due to an injury from operation, maintenance and installation specifications, improper or inappropriate use, erroneous or careless handling by the purchaser, or natural wear, as well as interventions carried out by the purchaser or third parties to the article of sale. The same applies if SCHELL products are incorrectly assembled, are carelessly handled or handled beyond the scope of usual, or disfunctions lead back to inappropriate equipment, replacement of parts, chemical, electrochemical, or electrical effects. Claims of defects also do not exist if our installation instructions and other technical documentation, which were made accessible to the customer at the time of delivery, were not always precisely followed in whichever way the instructions and recommendations contained within had specified.

5. Only in urgent cases of danger of operational safety, of which we are to be immediately informed, or if we are advised in delay of the removal of the defects, the purchaser has the right to personally remove or to allow a third party to do so and to request from us appropriate compensation for the costs borne by him.

VIII. Other Liability (Limits and Exceptions)

1. Aside from the preceding regulated delay and defect claims we meet the obligation, unless a damage is based on an ordinary or grossly negligent breach of duty on our part or on an intentional or grossly negligent breach of duty by our legal representative all fulfilment subsidiaries, or it concerns damages from an injury to the life, the body, the health, that is based on a negligent breach of duty on our side or on the part of our legal representative or fulfilment subsidiary, or it concerns damages that usually and typically are excluded by a liability insurance of us for appropriate insurable conditions. That applies especially for claims of damages from debts before or with contract conclusion, injury from collateral duty and claims from illegal acts.
2. Claims according to the product liability law and from it remain unaffected by a guarantee.

IX. Proprietary Rights

Deliveries take place according to the design or special designations of the purchaser, who carries responsibility for the successes and that the proprietary rights of third parties are not injured.

X. Retention of Title

1. We reserve the right of possession of the article of sale (reserved goods), until all of our demands on the purchaser from the business agreement have been settled, excluding the conditions arising in the future, also from simultaneously or later concluded contracts. With running invoices the reserved possession and all rights as collateral for our entire balance condition apply together with interest and costs. With garnishments or other third party interventions the purchaser has to notify us immediately.
2. The purchaser is entitled to process and resell the article of sale in the orderly business routine. This power ends if the purchaser comes into delay of payment, further, with the surrender of payment by the purchaser, or if the opening of composition or insolvency procedure of his assets is requested. He is obligated to resell the conditional item only under retention of title and thereby to ensure that the demands from the resale in accordance with 5 and 6 pass over to us. As far as resale applies, the use of the reserved goods for fulfillment of factory and factory consignment contracts also applies. He is not entitled to other provisions regarding the reserved goods, especially for pledging or security. A transfer of the demands from the passing on of our reserved goods is illegal, unless it deals with a transfer in the way of legitimate factoring of which we are notified and with which the value of the receipts of the factoring exceeds our secured demands. With the credit note of the factoring receipts our demand becomes immediately due.
3. Through processing and handling of the reserved goods the purchaser does not acquire the title to the new item in accordance with § 950 BGB. The handling or reshuffle is made for us, without obligating us. The processed and handled goods count as reserved goods.
4. With handling, consolidation and amalgamation of the reserved goods with other goods we reserve the co-ownership of the new item to the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership expires through consolidation, amalgamation, or handling, the purchaser immediately confers to us the entitlement of ownership and expectancy rights of the new asset or of the item in the amount of the invoice value of the reserved goods. In cases of the conversion of the amount of the invoice value of the reserved goods to the invoice value of other used goods, they are held in safekeeping for us. Our rights of co-ownership apply to the reserved goods.
5. The demands of the purchaser from the resale of the reserved goods are to be immediately surrendered to us. They serve in the same amount of security as the reserved goods.
6. If the reserved goods together with other goods are resold by the purchaser, the demand from the resale in the amount of the invoice value of the reserved goods to the other goods is surrendered to us. With the resale of goods, to which we have co-ownership rights in accordance with 4, our co-ownership interest in the proportionate part of the demand is due to us.
7. At our request the purchaser is obligated to give us an exact statement of his demands with name and address of the purchaser, to give the assignment of his known purchaser, and to confer to us all necessary information for assertion of the ceded demands. The purchaser reauthorises us, as long as he is in delay of payment or his pecuniary circumstances worsen, to contact the purchaser from the transfer and to collect the demands ourselves. We can require an examination of the condition of the ceded demands by our representatives by means of the purchaser's accounting. The purchaser has to pass a statement over to us regarding the reserved goods still in existence.
8. If this the value of the existing collateral exceeds the secured demands altogether by more than 15 %, we are obligated to the requests of the purchaser as far as the release of collateral according to our choice. As value of the collateral applies with simple and downstream-processed retention of ownership, to which the purchaser refers the goods with us, and with the prolonged retention of ownership of the invoice value, to which the purchaser resells our goods.
9. With changes, checks etc., the payment applies first according to secured redemption by the purchaser as contributed. We only take checks in payment of

a debt. Payments that take place against relinquishment of a change issued by us first count as performed when the check and/or change recourse is precluded to us. Irrespective of our further security rights the acknowledged collateral remains with us until this time is reached.

10. Because of the retention of ownership we can reclaim the article of sale if we are withdrawn from the contract. For withdrawal we are entitled without regard to the further requirements of § 323 BGB from the time in which the purchaser finds himself with the payment to us entirely or partially in debtor's delay, it requires no further setting of deadlines in particular for the exercise of a withdrawal on our part. The same applies with the surrender of payment of the purchaser or if beyond his assets the opening of a composition or insolvency procedure is requested. All arising costs resulting from repossession of the delivery item are borne by the purchaser. We are entitled to freely utilise the revoked delivery item.

XI. Place of Fulfillment, Legal Domicile, Applicable Right

1. The place of fulfillment is the place of our delivery facility.
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.
3. For all deliveries and performances, German law applies with the exception of the UN-Convention on Contracts for the Sale of International Goods. The contract language is German. If the contracting parties should avail themselves to another language, the German wording has precedence.

XII. Export Agreement

It is considered agreed-upon that the related goods from SCHELL remain exclusively in the European Union. An export from the territory of the European Union requires the expressed agreement from SCHELL. In each case of resale by the purchaser, he is responsible for the adherence in the territory of the European Union, or in respective export countries, to the applicable safety measures for water and/or gas equipment.

XIII. Traceability

If the Purchaser forwards the goods supplied by SCHELL to third-parties it shall be obliged to maintain corresponding records in order that, for the duration of the applicable retention periods for business documentation as stipulated by commercial law provisions (HGB) and by tax law (AO), the Purchaser can immediately provide information on the location of the goods. The Purchaser shall impose the corresponding obligations if its own customers forward the goods onwards and if the goods forwarded by the Purchaser do not remain with it (end customer) as intended.

If, for example, in the event of a recall campaign triggered by SCHELL, the Purchaser is culpably unable to provide information on the further whereabouts of the supplied goods, the Purchaser shall be under the obligation to compensate SCHELL or to indemnify SCHELL in relation to such damage to third parties for any damages caused thereby and or consequential damages to persons or property for which SCHELL is liable in relation to third parties.

XIV. Export control clause

1. Fulfilment of the contract relating to those delivery parts which are recorded by state export regulations, shall be subject to there being no obstructions due to German, US-American or other applicable national, EU or international regulations of foreign trade law, nor any embargos or other sanctions that oppose it. The Purchaser shall commit to SCHELL, in the event of the resale, export or shipment abroad of the goods supplied by SCHELL, that all relevant and applicable local and international regulations – specifically also for money laundering prevention – shall be observed and that any requisite approvals shall be obtained. The Purchaser shall acknowledge that it is its sole responsibility to comply with these laws and regulations. The Purchaser must prove this to SCHELL in the event of the existence of a legitimate interest and in justified suspected cases regarding an infringement of the above obligations through a corresponding provision of information and in particular the provision of information regarding the data of the Purchaser's customer to whom the goods supplied by SCHELL have been resold, at the requisite scope to ensure the traceability of compliance with the preceding obligations of the Purchaser.
2. The Purchaser shall commit to produce all the information and documentation that is required for the export or shipment. The Purchaser shall immediately on request transfer to SCHELL all information about final recipients end-use and intended purpose of the goods to be delivered by SCHELL as well as any related export control restrictions. Delays due to export checks or approval procedures shall override deadlines or delivery times.
3. SCHELL shall be entitled to cancel the contract, in full or in part, without notice if the cancellation on the part of SCHELL is required due to compliance with national or international legal regulations.
4. In the event of a cancellation pursuant to Clause 3, the assertion of compensation claims or other claims by the Purchaser due to the cancellation shall be excluded unless these claims are based on intent or gross negligence on the part of SCHELL.
5. 1. In the event of an infringement of legal export-control obligations by the Purchaser, it shall immediately exempt SCHELL in full from all claims which au-

thorities and/or other third parties assert against SCHELL and it shall reimburse all damages which authorities and/or third parties assert against SCHELL. This shall not apply if the Purchaser is not responsible for the infringements. This does not constitute a reversal of the burden of proof.

6. Should approvals not be granted or if other delivery restrictions exist, then the corresponding offer from SCHELL shall become invalid and a contract relating to this matter or these goods shall not be concluded. Any compensation claim associated with the rejection or delay of approval issuances or other export restrictions shall be excluded, unless this is based on intent or gross negligence on the part of SCHELL.

XV. Safeguarding Clause

If regulations of these conditions and/or the further agreements should be or become ineffective, then the validity of the contract remains unaffected in all other respects. The contracting parties are obligated to replace the ineffective condition by a regulation of equal economic achievement, if possible.

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