

## **General Terms and Conditions of Business of Schüring Fenster- und Türtechnologie GmbH (Supplier) for the Sale of Goods and Services**

**Version: 01.2015**

### **I Offers, contract terms**

1. With the exception of the provisions set forth in Art. II.4. (limitation on offsetting), Art. V.1. Sentence 1 (ordinary reservation of title), and Arts. VII.1. and VII.2. (Supplier's liability), which also apply towards consumers (as defined in § 13 BGB [German Civil Code]), these General Terms and Conditions apply to all contracts - including all future contracts - concluded with entrepreneurs, legal entities organized under public law and separate asset funds organized under public law for the supply of goods and services. Acceptance of the order will not result in deviating terms and conditions of purchase of the customer being incorporated into the contract either wholly or in part; such terms and conditions are hereby wholly rejected in full.
2. Offers of the supplier are without engagement. Oral agreements, ancillary agreements, undertakings, warranties and other representations made by personnel of the supplier will only become binding on being confirmed in writing by the supplier. Communications by telefax or email also count as the written form.
3. Documents pertaining to an offer of the supplier such as illustrations, drawings and indications of weights and dimensions shall only be deemed approximate unless they are expressly declared to be binding. The supplier reserves title and copyright to cost estimates, drawings and other documents; these may not be made accessible to any third party except to the extent necessary for performing and accepting the offer. Except to the extent necessary for performing and accepting the order, the supplier may not, without the customer's consent, allow third parties access to plans designated by the customer as confidential.
4. In case of dispute, the Incoterms in the latest version in force at any time shall be authoritative for the construal of commercial clauses.

### **II Price and payment**

1. In the absence of any other particular agreement in this regard, prices are quoted ex works, including loading at the plant, but exclusive of packing and shipment. In the case of deliveries with a goods/invoice value exceeding €500.00, delivery is effected free of charge to the customer's place of destination within Germany, France, Benelux, Austria and Spain, packing and shipment included. In the case of destinations in European Union Member States other than those named above, delivery of goods with a value of €750.00 or more is effected free of charge to the customer's place of destination, packing and shipment included. Prices are subject to the addition of value added tax at the statutory rate in force at any time. The shipping and packing costs include costs for shipment as a standard package. Additional costs for exceptional sizes, exceptional lengths and exceptional weights as well as for shipment by freight forwarder or express delivery will be additionally billed to the customer. A special toll mark-up of currently 0.3% of the goods value is levied on all deliveries of goods.
2. The minimum order value is €150.00; low-quantity surcharges are on-billed with a lump-sum charge of €25.00.
3. Invoices are due and payable in cash without any deduction within 30 days from the date of invoice. Payout losses resulting from the costs and fees for payment transactions must be borne by the customer.
4. The customer may only offset his own counterclaims against the supplier's claims insofar as the said counterclaims (in particular claims for defects) derive from the same contractual relationship as the supplier's claims, are undisputed or have been finally and conclusively established at law.
5. Wrong orders will only be taken back on the strength of a special express written agreement and in all cases without recognition of any legal duty to do so. In all cases where wrong orders are taken back, a handling fee equivalent to 5% of the value of the goods, or in an amount of at least €25.00, will be charged. Freight costs arising in connection with wrong orders or in connection with any other unjustified claims must be borne by the customer.

### **III Delivery time**

1. The supplier's obligation to supply is, except in cases where incorrect or late supply to the supplier is due to the supplier's own fault, conditional on the supplier itself being supplied by its own sub-suppliers as contractually agreed, and in particular in a correct and timely manner.
2. Delivery periods begin on issue of the order confirmation, though not before any documents, permits or approvals to be obtained by the customer have been received or any payment on account agreed with the customer has been paid.
3. A delivery deadline shall be deemed met if by the time of its expiry the delivery item has left the supplier's plant or the supplier has notified the customer of readiness for dispatch.
4. The delivery period shall be reasonably extended in cases of force majeure, including e.g. activities in connection with labour disputes, in particular strikes and lockouts, as well as the occurrence of unforeseen impediments which are beyond the control of the supplier provided such impediments can be shown to have a significant effect on completion or delivery of the delivery item. This shall also apply if any of the supplier's own sub-suppliers are affected by the circumstances of the aforesaid kind. Nor may the supplier be deemed responsible for such circumstances even if they occur while the supplier is already in delay. The supplier shall inform the customer of the start and end of such impediments at the earliest possible time.
5. If the customer suffers loss or damage as the result of a delay caused by ordinary negligence on the part of the supplier, the customer shall only be entitled to compensation for the delay in a lump-sum amount unless the customer can furnish proof of having suffered loss or damage in a higher amount. The lump-sum compensation shall amount for each full week of delay to 0.1% of the value of that part of the total delivery which was unable to be used or to be used in good time, though altogether not more than 5% of the said value.
6. Goods which are ready for dispatch as per the contract or have been notified as being ready for dispatch must be collected without delay; otherwise, the supplier has the right, after issuing a reminder, either to ship the goods for the cost and risk of the customer or, at the supplier's own discretion, to place them in storage and to invoice them immediately.

### **IV Passing of risk; acceptance**

1. In the case of mail-order transactions, the risk of accidental loss of the ordered goods normally passes to the customer on the supplier notifying the customer of readiness for dispatch, or at the latest on dispatch of the delivery items by the supplier; this also applies in the case of part-deliveries or in cases where the supplier has agreed to perform other services or to assume certain costs, e.g. the costs of shipment or delivery and installation. The supplier will insure the delivery against the risks of theft, breakage, transport, fire or water damage and other insurable risks only on the customer's express written request and at the customer's expense.
2. The supplier may make part-deliveries in reasonable scope.

### **V Reservation of title**

1. The supplier reserves title to deliveries ("reserved goods") until receipt of the purchase price in full. Title to all delivered items shall only pass to the customer when all claims arising from the business relationship have been settled by the customer.
2. Further processing of the reserved goods shall be deemed done on behalf of the supplier as manufacturer within the definition of § 950 BGB, though without this giving rise to any obligations on the part of the supplier. The processed goods shall also be deemed reserved

goods within the meaning of the foregoing Art. V. 1. In the case of processing, combination or mixing of the reserved goods with other goods by the customer, the supplier shall have a co-title share in the new item in the same proportion as that between the invoice value of the reserved goods and the invoice value of the other goods involved. If the supplier's property ceases to exist as a result of combination or mixing, the customer hereby already assigns a share of his ownership rights to the new inventory or the new item to the supplier in a scope equivalent to the invoice value of the reserved goods and shall preserve them free of charge for the supplier.

3. In the case of attachment or seizure or any other such disposition by a third party, the customer must notify the supplier accordingly without delay. The customer must bear all the costs necessarily incurred for terminating the intervention, sorting out the reserved goods or returning the reserved goods, insofar as these costs are not borne by third parties.

4. The customer may resell the reserved goods only in the normal course of business and on his customary terms and provided he is not in arrears and also on condition that the claims arising from resale are assigned to the supplier in accordance with Art. V. 5 and 6 below. The customer may not dispose otherwise of the reserved goods.

5. The claims arising from resale of the reserved goods are, together with all security obtained by the customer for the claim, hereby already assigned to the supplier. They serve as security in the same scope as the reserved goods. If the reserved goods are sold by the customer together with other goods not sold by the supplier, the claim arising from resale is assigned to the supplier in the same proportion as that between the invoice value of the reserved goods and the invoice value of the other goods sold. In case of the sale of goods in which the supplier has a co-title share, a portion corresponding to the co-title share is deemed assigned to the supplier.

6. The customer is entitled to collect the claims arising from resale. This entitlement shall cease on being revoked by the supplier or as soon as the customer falls into arrears with payment, fails to honour a bill or is the subject of an application for the opening of insolvency proceedings. The supplier will only make use of its right to revoke if, after the conclusion of a contract, it becomes apparent that its claim to payment under this or any other contract with the customer is at risk due to the latter's inability to pay. If so requested by the supplier, the customer has a duty to inform his own customers immediately of the assignment to the supplier and to furnish the latter with the documents needed for collection.

7. If the invoice value of the existing securities exceeds the secured claims, including the ancillary claims (interest, costs, etc.) by altogether more than 50%, the supplier has a duty, on the customer's request, to release a corresponding portion of the securities, the choice being made by the supplier.

8. If the customer falls into arrears with payment, the supplier has the right to repossess the reserved goods, including, if need be, the right to enter the customer's business premises for this purpose, and to sell the reserved goods for the best possible price, crediting the proceeds of the sale towards the purchase price. The same shall also apply if, after conclusion of the contract, it becomes apparent that the supplier's claim to payment arising from this or any other contract with the customer is at risk due to the latter's inability to pay. Repossession shall not be deemed tantamount to repudiation of the contract. The foregoing shall be without prejudice to the provisions of the Insolvency Regulations

#### **VI Liability for defects in delivery**

1. Defects in the goods must be notified in writing without delay, and on no account more than seven days after receipt. Physical defects which even with the most careful inspection cannot be discovered during this period must be notified in writing immediately after discovery and on no account later than expiry of the agreed or statutory limitation period, whereby processing must be discontinued immediately. In the case of justified complaints, the supplier may, at its own choice, fulfil the claim to remedy either by performing repair or supplying a defect-free replacement. Only when repair or replacement has failed may the customer avail himself, at his own choice, of the other statutory rights available in the case of claims for defects.

2. If the customer does not promptly give the supplier the opportunity to satisfy itself of the physical defect and if, in particular, he fails to make the goods concerned or samples thereof available immediately, all rights on account of the defect will be rendered void.

3. The supplier has a duty to bear the costs arising in connection with remedy only if, in the particular case, they are reasonable, especially in proportion to the purchase price of the delivery item concerned, and on no account exceed 150% of the purchase price. The supplier shall only have a duty to bear further costs, e.g. in connection with fitting or dismantling of the defective item, only in accordance with the provisions of Art. VII of these Terms and Conditions.

#### **VII Supplier's liability**

1. In the case of any breach of contractual and non-contractual duties, and in particular in the case of impossibility, delay, pre-contractual fault and tort, the supplier may only be held liable – also for its senior executive personnel and other vicarious agents and employees – on grounds of wilful intent and gross negligence, whereby in the case of gross negligence the supplier's liability shall be further limited to the amount of loss or damage typical for the type of contract concerned and foreseeable at the time of conclusion of the contract.

2. These limitations shall not apply in the case of culpable violation of material contractual duties. Material contractual duties are the duty to deliver punctually and to ensure that the goods are free of all defects which impair their functioning or fitness for service to a more than insignificant degree as well as duties of advice, protection and care with the aim of protecting the customer or his personnel from damage of a significant nature. Nor do the restrictions apply in cases of mandatory liability under the German Product Liability Act ["Produkthaftungsgesetz"], in the case of damage or injury to life, limb or health, or if and insofar as the supplier has fraudulently concealed defects or guaranteed the absence of such defects. This shall have no effect on the rules governing the burden of proof.

3. Except as may be agreed otherwise, contractual claims accruing to the customer against the supplier on grounds of or in connection with delivery of the goods, shall lapse one year after delivery of the goods. This period shall also apply in the case of goods which have been used in their customary manner as part of a building structure and have caused the building to be defective, except where the said use was agreed in writing. This shall have no effect on liability for wilful and grossly negligent breaches of duty or for culpable injury or damage to life, limb or health, or on the limitation period for statutory rights of recourse.

#### **VIII Final provisions**

1. The place of performance for the supply of goods and services of the supplier is the supplier's registered place of business.

2. The legal venue is Bonn.

3. It is agreed that German law as enshrined in the German Commercial Code ("HGB") and the German Civil Code ("BGB") shall apply; application of the UN Convention on Contracts for the International Sale of Goods is barred.

4. Should any of these provisions be or become invalid, this shall have no effect on the validity of any of the other provisions. Any invalid clause shall be replaced by a formulation which is legally effective and which most nearly corresponds in terms of economic outcome to that intended by the invalid clause.