

## Schenck Process Europe GmbH

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### I. Scope and Conclusion of Contract

- These General Terms and Conditions of Delivery and Installation are terms and conditions of the Schenck Process Europe GmbH. Our General Terms and Conditions of Delivery and Installation shall apply in the version current at the time of the respective conclusion of contract for all of our performances and deliveries (such performances include, for instance, installation, commissioning, repairs, maintenance and other services). In addition, our charge rates in the version current at the conclusion of the contract shall apply to services. In case of a discrepancy between the rates and the Terms and Conditions of Delivery and Installation, the Terms and Conditions of Delivery and Installation shall prevail.
- This General Terms and Conditions of Delivery and Installation shall apply exclusively. Terms and conditions of the Customer conflicting with or deviating from these terms shall not be recognized as binding, unless expressly acknowledged by us in writing. This General Terms and Conditions of Delivery and Installation shall further apply if we execute the Purchase Order without reservation while aware of Customer's conflicting or deviating conditions to these General Terms and Conditions.
- Our offers remain, unless otherwise stipulated in a separate agreement, non-binding. In this case, the agreement shall only be deemed to have been concluded by our written order confirmation. Scope of our deliveries and services is conclusively determined by means of our written order confirmation along with its written appendices.
- Contracts are subject to confirmation of coverage by our commercial credit insurance.
- Side agreements and changes shall only come into effect upon our written confirmation. This shall also apply to any waiver of the afore-mentioned provision.
- Documents and information provided and created by us, such as pictures, drawings, weights and measures, are only binding if expressly specified as an element of contract or specific reference was made to them. Unless otherwise agreed, these documents are no guaranteed characteristics but descriptions and identifications of the delivery or performance. Customary deviations, deviations which are required by law or constitute technical improvement, as well as replacement of parts with equivalent parts, shall be permissible as long as usability of the contractual purpose remains unaffected.
- We reserve all ownership and copyrights to samples, cost estimates, drawings, documentation and similar information of tangible or intangible nature - even if in electronic form; they may not be made available to third parties without our express written consent or contrary to a confidentiality agreement established between the parties.
- The requirement of written form within the meaning of these terms and conditions is also met by fax, electronic form or text form, unless otherwise agreed in individual contracts.
- These Terms and Conditions of Delivery and Installation may not be used in relation to consumers.

### II. Prices and Payment

- Unless otherwise agreed, our prices are ex works and include value added tax at the respective statutory rate, packaging and loading. Prices are quoted in EURO.
  - For deliveries and services within the European Union, the Customer is obliged to provide its VAT identification number in due time prior to the contractually agreed delivery date to verify its exemption from VAT. We reserve the right to charge the respective applicable value added tax if the timely and complete notification has not been provided.

For deliveries and services outside the European Union, we are eligible to subsequently charge statutory VAT if Customer does not send us an export certificate within one month of the respective dispatch.
- Cost estimates are only binding if made in text form.
- Unless otherwise agreed, Customer shall make payment as follows:
  - 30% upon placing of the order, 60% upon shipment or confirmation of readiness for shipment and the balance upon transfer of risk.
  - Unless otherwise agreed, down-, partial-, and advanced payment invoices are immediately due for payment with the remaining amount due within 10 days from the invoice date all without any further discount.
- All payments shall be made directly to the account specified in the invoice without any deductions. For the timeliness of payments, the payment date (date on which our bank account has been credited) is decisive. Cheques are only considered as payment once they have been cleared.
- Customer may only offset or withhold payment if the basis and the amount are undisputed or if the counterclaims are legally established or result from a mutual contract.
- Customer's payments shall be due upon receipt of invoice. Customer shall be in delay of payment 30 days upon receipt of invoice.
- Prices stated in our offers shall only apply if the full scope of the services offered has been ordered.
- Terms of payment shall be effective only if they have been observed for previously delivered goods and services. Otherwise, all invoices shall become due immediately.

### III. Performance, Transfer of Risk, Receiving

- Partial deliveries and services are only permissible if they are reasonable for the Customer.
- Incoterms 2020 shall be deemed to have been agreed. Deliveries shall be made CPT: place of delivery Darmstadt, destination: Customer's place of business, unless otherwise agreed in writing. If there are discrepancies in assessment between the Incoterms 2020 and these contractual conditions, these contractual conditions shall take precedence.
- Risk transfers to the Customer once the delivery item has left the premises, including where partial deliveries are made or where we have assumed other services, such as transport costs, or delivery and erection. If formal acceptance procedures are required, these shall determine the transfer of risk. Such acceptance shall be conducted promptly upon the acceptance date, or alternatively following our notification of readiness for acceptance. Customer may not refuse acceptance due to an immaterial defect.
- In case dispatch or acceptance is delayed or fails to occur due to circumstances not attributable to us, then risk transfers to the Customer effective upon notification of readiness for dispatch or acceptance. We commit ourselves to conclude at the expense of the Customer such insurances as the Customer requests.

### IV. Assistance of the customer

- The customer shall support our personnel (e.g. installation, commissioning, repair, maintenance and service personnel) in the performance of our services at its own expense.
- The customer shall ensure necessary arrangements for protection of individuals and goods at the place of performance. The Customer shall provide protective clothing if required.
- The customer shall inform our personnel on any relevant health and safety rules, provided the rules are of concern to our personnel and our performance. The customer shall notify us of any violation of health and safety regulations by our personnel. In case of severe violations, he may, in consultation with us, deny the offenders access to the place of performance.
- Provided the performance is to be rendered abroad for which our personnel requires a residence and/or work permit, the Customer shall, subject to the agreement in the individual case, assist us in applying to the local authorities for, extending or amending the permit required for rendering the performance.

### V. Technical Assistance by Customer

- Customer shall be obliged at its expense to provide technical assistance, especially by:
  - providing necessary, skilled supporting staff in the number required for the service and for the time required; supporting staff shall follow our instructions. We assume no liability for supporting staff. In case a defect or damage is caused by supporting staff owed to instructions rendered by our supervisor, then Section XI. shall apply accordingly.
  - carrying out all preparatory, safety and scaffolding work including the procurement of all required materials.
  - providing all necessary functional devices, tools and lifting gear as well as required commodities and materials.
  - providing heating, lighting, power, compressed air, water, operating power and required operational connections.
  - providing the necessary dry and lockable rooms for keeping tools of our personnel.
  - transporting spare parts to site of performance, protecting the relevant site and material from harmful impact of any kind, and cleaning of relevant site.
  - Providing material and carrying out all other actions necessary to calibrate the delivery item and to implement a contractually agreed test.
- Customer's technical assistance must warrant that service can be resumed promptly upon arrival of our personnel and carried out without any undue delay up until the acceptance by Customer. In case extraordinary plans or instructions by us are required, we shall make them available to Customer in good time.
- If Customer fails to comply with its obligations, we shall be entitled, but not obliged, upon notice to perform the actions incumbent upon Customer in its stead and at its expense.

### VI. Retention of Title

- Title to delivery items shall not transfer to Customer until payment has been made in full. If the validity of the retention of title in the country of destination is linked to special conditions or special formal requirements, Customer shall ensure that these are fulfilled.
- Customer may not pledge, sell or assign as security the subject of delivery prior to the transfer of title. In the event of attachments, and seizures, or other dispositions by third parties, Customer shall point out our proprietary rights and notify us promptly in writing.
- Should Customer be in breach of contract, including, but not limited to, default of payment, we shall be entitled to repossession following a notice of default, and Customer shall be obliged to surrender possession. Neither the enforcement of the retention of title nor the seizure of delivery item by us shall be deemed to constitute a rescission of contract.
- An application for the initiation of insolvency proceedings concerning Customer's assets shall entitle us to rescind the contract and to demand immediate return of the subject of delivery.
- If Customer is domiciled in the Federal Republic of Germany, the following shall apply in addition to the foregoing:
  - Notwithstanding section VI.1., we retain title to the delivery items until all claims against the Customer arising from the running business relationship have been settled.
  - Notwithstanding section VI.2., Customer is entitled to resell or process delivery items subject to retention of title in the ordinary course of business under the following conditions: Customer shall resell the delivery items subject to retention of title if delivery items are not promptly paid for in full by third-party purchaser. The right to resell becomes void if Customer is in default of payment. On concluding the contract, all claims arising from a resale, or other legal grounds, are assigned to us by the Customer. If co-ownership has been established, the assignment shall only include that share of the claim corresponding to our co-ownership.
  - Customer shall remain entitled to collect the claims assigned to us for as long as payment obligations to us are met in accordance with the contract. We may at any time require to be informed of assigned claims and their debtors. As such, Customer shall be obligated to provide all details relevant for debt collection, to surrender all documents required for this purpose and to notify debtors of the assignment.
  - Any processing of goods subject to retention of title by the Customer is invariably carried out on our behalf. If retained goods are mixed, blended, combined or processed with other objects which are not our property, we shall acquire joint ownership of the new object at a ratio of the retained goods' invoice value to the other processed objects at the time of processing. Should our goods be mixed, blended, combined or processed with other movable objects to constitute a uniform object with the other object considered to be the main object, it is deemed agreed that Customer shall transfer title to us on a pro rata basis insofar as the main object is its property. Customer shall exercise custody of ownership or co-ownership on our behalf. To the object created by mixing, blending, combining or processing, the same shall apply as to the goods subject to retention of title.
  - We agree to release the securities to which we are entitled to insofar as their invoiced value not only temporarily exceeds our outstanding (residual) claims by more than 10 %.
  - Where our delivery items are affixed to the ground or have been integrated into a building, such affixing or integration is effected for temporary purposes only.

### VII. Delivery Date

- Meeting the agreed delivery and performance period (hereinafter uniformly referred to as the performance time) is contingent upon all commercial and technical discrepancies having been clarified and the Customer having fulfilled all obligations on his part. Where this is not the case, the performance period shall be extended accordingly. However, this shall not apply where we are held liable for the delay.
- Keeping the performance time is dependent on receiving correct and timely deliveries from our suppliers. We shall notify Customer of any foreseeable delays.
- Performance time is deemed to have been met if notification of readiness for delivery has been given before its expiry. Insofar as acceptance is required, then the date of acceptance shall be decisive, or alternatively our notification of readiness for acceptance.
- Should non-compliance with performance time be due to force majeure, labor disputes, delay in obtaining government permits, travel warnings by the German Foreign Office, or other events beyond our control, the performance term shall be extended accordingly. This shall also apply where we are in late performance of our service. Any foreseeable delay shall be communicated by us.
- If dispatch or acceptance of the delivery item is delayed on grounds for which Customer must bear responsibility, the Customer shall be charged any cost incurred thereby. We reserve the right to assert further damages.
- We reserve the right, after setting and fruitless expiry of a reasonable period for delivery or acceptance, to dispose otherwise of the delivery item, and to supply Customer within a reasonably extended period.

### VIII. Delays in Delivery and Impossibility

- In the event of partial impossibility, Customer may only rescind the contract if it can be proven that partial performance is of no interest to Customer. Where this is not the case, the Customer shall pay the contract price relating to the partial delivery. Otherwise, section XI shall apply. In case impossibility arises during delay of acceptance or due to Customer's fault, the obligation to pay consideration shall remain.

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- If the impossibility is not attributable to either party, we shall be entitled to that part of the remuneration relating to the work performed previously.
- If we are in default and Customer incurs damages as a result, Customer shall be entitled to demand a lump-sum compensation for default. From the moment we have received a written claim, this compensation for delay amounts to 0.5% for each full week of delay, but in total a maximum of 5% of that portion of the total performance which, as a result of the delay, cannot be used on time or in accordance with the contract.
- Customer shall be entitled to rescind the contract in accordance with statutory provisions if - with due regard to the statutory exceptions - a reasonable grace period granted to us during our delay in performance expires to no avail. Upon our written request, Customer is obliged within a reasonable time period to notify us as to whether it will exercise its right to rescind the contract.
- Any further claims arising in connection with default shall be exclusively subject to section X.

## IX. Acceptance

- Works performance rendered by us shall be deemed accepted two weeks following our notification of readiness for acceptance, unless Customer objects in writing to existing material defects within this period.
- Customer shall only be entitled to refuse acceptance if the defect cancels out or significantly reduces the usual and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling Customer to refuse acceptance, such acceptance shall be subject to the reservation that the defects are remedied.
- Any refusal of, or reservations against acceptance are to be made promptly in writing, stating and describing the defect complained about.
- Any use of the delivery item by Customer for production purposes shall be deemed to be acceptance.

## X. Claims for Defects

- Any asserted defect claim requires that Customer has duly complied with its obligations to inspect and notify of defects.
- For defects in material and title, Customer shall have the following claims:
  - At our discretion, we shall deliver a defect-free item or remedy the defect, provided the delivery item was already evidently defective at transfer of risk pursuant to section III.
  - Claims for defects may not arise as a result of factors which are not within our sphere of responsibility, such as: natural wear and tear, unsuitable building ground, harmful environmental conditions unknown to us, chemical, electrochemical or electrical influences, or changes made to the delivery item without our consent.
  - Customer shall grant us the time and opportunity required for supplementary performance. If we are not given this opportunity, we shall not be liable for any consequences arising therefrom. Only in urgent matters of danger to operational safety or to prevent disproportionately large damage, in which case we must be notified immediately, does the Customer have the right to remedy the defect or have it remedied by third parties and to request reimbursement of necessary expenses from us.
  - We shall - provided that the complaint proves to be justified - bear expenses necessary for the supplementary performance, unless where this may lead to a disproportionate burden.
  - Should the Customer have culpably contributed to the cause of defect, in particular due to the Customer's failure to comply with its obligation to prevent and mitigate damage, we are, following our remedial performance, entitled to claim damages corresponding to the Customer's contributory cause.
  - If a reasonable grace period provided to us for supplementary performance expires without result, Customer shall - subject to statutory exceptions - be entitled to rescind the contract. If, however, only an immaterial defect is given, Customer shall solely be entitled to a reduction of contract price. Otherwise, the right to a reduction of contract price shall be excluded.
  - For performances (installation, commissioning, repairs, maintenance, and other services), section XV.7. shall apply instead of section X.2.f.
  - If using the delivery item within the periods set in section XIV. results in infringement of any intellectual property rights or copyright, which is attributable to us, we shall generally procure the right to continued use for Customer or alter the delivery item in such a manner that an infringement of the intellectual property or copyright no longer exists. If this may not be feasible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. Within this time period, we shall indemnify Customer for undisputed or legally established claims of the respective owners of the property rights.
  - Our obligations mentioned in section X.2.h. are - unless otherwise stated in section XI. - exhaustive in case of infringements of intellectual property right and copyright.
  - A claim for supplementary performance due to an infringement of intellectual property rights and copyrights, which is attributable to us, exist only if:
    - Customer informs us without undue delay in writing, stating and describing the alleged infringement of intellectual property rights or copyrights;
    - all measures of defense, including out-of-court settlements, remain reserved to us;
    - the infringement of intellectual property or copyrights is not owed to instructions or specifications provided by Customer;
    - the infringement of intellectual property or copyrights is not caused by the fact that Customer arbitrarily modified the delivery item or used it in a manner not conforming to the terms of contract.
- All other claims for defects (including, but not limited to, compensation for damage not occurring to the delivery item itself) are exclusively subject to section XI.
- In case of sale of used products - unless statutory liability stipulates otherwise - claims for defects shall be excluded.

## XI. Liability

- If the delivery item due to culpably omitted or faulty proposals or advice made by us, either prior to or after concluding the contract, or due to culpably violating other contractual accessory obligations - notably manuals for operating and maintaining the delivery item - cannot be used by the Customer in accordance with the contract, then the provisions of sections X., XI.2., 3. and 4. shall apply while further claims of the Customer are excluded.
- For any damage not sustained on the delivery item itself, we shall only be liable - irrespective of the legal grounds - in case of:
  - intent and gross negligence,
  - culpable injury to life, body, health,
  - defects which we have fraudulently concealed,
  - breach of a guarantee commitment,
  - defects of the delivery item, provided the Product Liability Act requires liability for personal injury or property damage to privately used items.

- For culpable breach of material contractual obligations, we shall also be liable for slight negligence, but limited to reasonably foreseeable damages typical to the contract.
- Any further claims shall be excluded.

## XII. Export Control

- Fulfilling contractual obligations (provision of goods, including software and technology as well as the provision of services) is subject to the proviso that this does not contravene national, European or supranational (UN/WTO) foreign trade rules, such as export control regulations, embargoes, sanctions, customs regulations or similar constraints.
- Customer acknowledges that supplies and/or services may contain hardware and software that are subject to customs and export control laws and regulations of the United States - regardless of their location - and of the country in which such goods are manufactured and/or received.
- Customer therefore warrants to comply with all applicable national, European or supranational (UN/WTO) foreign trade laws, such as export control regulations or re-export control regulations of the United States, in particular when transferring deliveries (including, but not limited to, software, technology and accompanying documentation) or services to third parties.
- Should any required license not be issued, or contractual service not be approved by the competent authorities, we expressly reserve the right to rescind the contract (rescission). Claims for damages of any kind, especially due to delay or non-performance, or other rights by the Customer are excluded in this respect.
- Customer agrees to defend, indemnify and hold us harmless from and against any and all fines, penalties, claims, lawsuits, demands, liabilities, losses, or costs (including attorneys' fees) for any actual or alleged violation of any national, European or supranational (UN/WTO) foreign trade laws resulting from the sale or delivery, including the provision of software and technology, or from the performance of services.

## XIII. Software

- Software products of other suppliers contained within the delivery scope are primarily subject to their general terms and conditions. Should these not be provided for, we will make them available to the Customer upon request.
- Our General Terms and Conditions shall be in supplement to the general terms and conditions of the software provider; sections XIII.3 to XIII.5 shall apply mutatis mutandis. If the general terms and conditions of the software provider are deemed invalid, our General Terms and Conditions shall apply exclusively.
- Customer shall be granted a perpetual, simple, non-exclusive right to use our software products and related documentation. It is not permitted to sub-license the software.
- We are generally not obliged to provide the source code on which the software product is based on.
- Customer may only process our software products to the extent permissible under law. Customer may neither remove nor change the manufacturer's product information, including, but not limited to, notices of copyright, without our prior written consent.

## XIV. Statute of Limitations

- Customer's claims for defects - irrespective of legal grounds - shall become time-barred after 12 months; this also applies to the limitation of recourse claims in the supply chain, provided that the final contract in this supply chain does not constitute a purchase of consumer goods. The statutory suspension of the statute of limitations in the case of recourse claims remains unaffected.
- For defects in a building or delivery items used for a building in accordance with their normal use and which have caused its defectiveness, the statutory periods shall apply.
- For injury to life, body or health, grossly negligent conduct of executive bodies or senior executives, intentional or fraudulent conduct, and claims under the Product Liability Act, statutory limitation provisions shall apply.

## XV. Provision of Services

- When providing services (e.g., installation, commissioning, repairs and other services) the following provisions shall apply in supplement:
- If services cannot be provided by us on grounds for which we are not responsible, Customer shall compensate us for already rendered performance and any incurred time and expense.
  - Where possible, Customer shall be informed of the anticipated service price upon conclusion of the contract, otherwise Customer may set cost limits.
  - If the service cannot be provided at these costs or if we consider it necessary to carry out additional work during the service, consent of the customer must be obtained if the stated costs are exceeded by more than 15%.
  - If a quotation with firm price estimates is sought prior to performance of the service, this must be expressly requested by the customer. Such a cost estimate is - unless otherwise agreed - only binding if it is submitted in text form. Quotations are to be remunerated.
  - Parts replaced in exchange become our property.
  - Should the performance perish or deteriorate prior to acceptance through no fault on our part, Customer shall pay the price minus any savings in expenses.
  - Information on periods of service are based on estimates and are therefore not binding. Customer may only request written agreement of a binding term of service, which must be specified as such, once the scope of work has been precisely determined. The binding term of service shall be deemed to have been met if, prior to its expiry, the goods or services are ready for acceptance by the customer, or, in the case of a contractually agreed test, if it is ready to be carried out.
  - In the case of delay, Customer shall be entitled within the scope of statutory provisions to make a reduction if, taking into account the exceptions provided for under statute, a grace period set for us for subsequent performance with respect to a defect is allowed to expire. The right to a reduction shall also exist in other cases where remedial work has failed. Customer shall only be entitled to rescind the contract if, despite the reduction, the repair is proven to be of no interest to Customer.
  - If, in the case of services outside our premises, the devices or tools provided by us are damaged on the repair/installation site through no fault of our own or if they are lost through no fault of our own, Customer shall be obliged to compensate for such damage. Damages that are due to normal wear and tear shall not be taken into consideration.
  - The service period shall be deemed to have been met if, by the time it expires, the installation work is ready for acceptance by the Customer, or, in case of a contractually agreed trial run, if it is available for testing. Customer shall be obliged to accept the installation/our services upon notification of its completion and after any contractually agreed testing of the installed object has taken place.

## XVI. Collection and disposal of electrical equipment

- Customer shall assume the obligation to dispose of products used for its own commercial purposes and shall release us from the obligation to take back such products and from any related claims by third parties.
- Customer's claim for assumption of the obligation to dispose of and indemnify shall expire one year after the final termination of the use of the equipment.

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3. Should the electrical equipment purchased from us be passed on to commercial third parties, irrespective of the legal grounds, Customer shall ensure that the new user takes over the Customer's obligation as agreed hereunder.
4. If Customer fails to contractually oblige commercially operating third parties to whom he passes on the delivered goods to assume the obligation to dispose of the goods and to transfer this obligation to others, Customer undertakes to take back the electrical equipment at his own expense after termination of use and to dispose of it properly in accordance with statutory regulations.

## **XVII. General Provisions**

1. All taxes, fees and levies in connection with services provided outside the Federal Republic of Germany shall be borne by Customer and are to be reimbursed to us.
2. Personal data are stored in compliance with statutory regulations. For further information please refer to our privacy policy
3. We do not refund any return transport costs of packaging.
4. A processing fee of EUR400.00 per machine type (product) will be charged for verifying and - if possible - preparing a preferential declaration of origin or preference. In the case of spare parts orders with a volume of up to EUR3,000.00, no preferential declaration of origin or preference will be issued. If Customer nevertheless requests the inspection and - if possible - the preparation of a declaration of preference, a processing fee of EUR 180.00 shall be charged for spare parts orders of less than EUR3,000.00 - for spare parts orders of more than EUR 3,000.00 a processing fee between EUR80.00 and EUR180.00 shall be charged depending on the effort involved (number of items).
5. Place of performance and fulfillment for Customer's obligations to us is the location of our registered offices.
6. Should single provisions of these General Terms and Conditions be or become invalid, this shall not affect the remaining provisions.

## **XVIII. Applicable Law and Venue**

1. If Customer's registered offices are located within the Federal Republic of Germany, exclusive venue for all disputes – including disputes regarding deeds and bills of exchange - arising under the contractual relationship shall be at the location of our registered offices, if Customer is a merchant, a legal entity under public law or a special fund under public law. We reserve the right to file an action at the Customer's place of legal jurisdiction.
2. If Customer's registered offices are located outside of the Federal Republic of Germany, disputes shall be settled by arbitration proceedings at the International Chamber of Commerce in Paris in accordance with the ICC Rules of Arbitration. The award shall be final and binding. Participation of our insurer according to options for participation available in proceedings before a court of law shall be provided.
3. The laws of the Federal Republic of Germany shall apply.