

General Terms and Conditions of Purchase Schenck Process Europe GmbH

August 1, 2016



§ 1 General - Scope

1. Our Terms and Conditions of Purchase shall apply exclusively for the legal relationship between Schenck Process Europe GmbH and the Supplier, unless a deviation was agreed for the single order. We shall not acknowledge any conflicting or deviating terms and conditions of Supplier unless we have expressly agreed in writing to their application. Our Terms and Conditions of Purchase shall apply even if we have accepted delivery by Supplier without reservation in the knowledge of Supplier terms and conditions which conflict with or deviate from our Terms and Conditions of Purchase.
2. Any correspondence shall be conducted exclusively with the Purchasing Department placing the order. Arrangements with other departments shall require the express formal confirmation of the Purchasing Department placing the order to become binding.
3. Our Terms and Conditions of Purchase shall only apply in relation to enterprises.
4. Our Terms and Conditions of Purchase shall cover all future commercial transactions with the Supplier.
5. A Legally binding explanation shall be in writing.

§ 2 Orders - Order Documentation

1. The order has to be confirmed immediately. For this purpose a copy of the order has to be signed with company's mark and returned. Given orders are as accepted valid, when the supplier does not oppose within 7 working days after receipt of order. Is the order confirmation deviating from the order, then is explicitly to be advising to the deviation (e. g. special mark) and to contact us immediately by telephone. Modifications of supplier in our order are only effective, if those are written confirmed.
2. We shall retain ownership and copyright to the illustrations, drawings, calculations and other documents; they may not be made available to third parties without our express written consent. They shall be used exclusively for production on the basis of our Order, and they shall be automatically returned to us after the Order has been processed or upon our request. They must be kept confidential in relation to third parties; to such extent, the provision of § 9 (3) shall apply in supplement.

§ 3 Prices - Terms of Payment

1. The price stated in our Order is the maximum price and binding. All expenditures in relation to the delivery and service rendered by the Supplier shall be included in the price, including but not limited to packing, technical documentation, instructions for use.
2. Applicable customs, tax, levy and costs for import triggered by the Order shall be borne by the Supplier.
3. Unless otherwise agreed, all prices stated shall be exclusive of any applicable VAT.
4. We can only process invoices if they indicate – in accordance with the requirements in our Order – the order number stated there; Supplier shall be responsible for all consequences of the failure to comply with this duty, provided he cannot prove that he is not responsible for such noncompliance.
5. Unless otherwise provided for in writing, we shall pay the purchase price with a 3 % discount within 14 days of the receipt of delivery and invoice, with a 2 % discount within 21 days of the receipt of delivery and invoice or without deductions within 30 days of the receipt of delivery and invoice. Unless otherwise agreed, a advanced payment shall not be made. At the time our bank received the transfer order this shall be the moment of payment.
6. We shall be entitled to rights of set-off and retention to the extent provided by law. If the delivery or service is defective or incomplete we shall be entitled, in addition to our other rights, to retain payments in an adequate value for outstanding debt out of the business relation until proper fulfilment, unless the debt is undisputed or legally binding.

§ 4 Delivery

1. The delivery period stated in the Order is binding.
2. Deliveries are "DAP" (Incoterms 2010) to the location designated in the Purchase Order, unless determined otherwise between the Supplier and us.

3. The delivery shall performed in a demand actuated packing. The return of the packing should be agreed separately
4. The delivery shall include technical documentation and instructions of use complementary if the delivery compromises machines and/or parts of machines. The technical documentation shall comply with the EC Directive for Machines (2006/42/EC). We acquire a complementary legal right of use for the technical documentation. The obligation of delivery for Software shall be fulfilled if the complete documentation was passed to us.
5. Supplier is obliged to exactly indicate our order number on all transport papers and delivery notes. Should he fail to do so, we shall not be responsible for delays in processing them.
6. Supplier is obliged to notify us without undue delay in writing if circumstances occur or become evident to him from which it follows that the stipulated delivery time cannot be met. The agreed delivery time shall not be extended by such information.
7. In the event of a default of delivery, we shall be entitled to the legal claims. In particular, after an appropriate default notice and the lapse of a reasonable term for remedy, we shall be entitled to demand compensation instead of specific performance and rescission. If we demand compensation, Supplier shall be entitled to prove that he is not responsible for the breach of his obligation.
8. If the delivery is beyond the delivery period the Supplier shall pay liquidated damages to us. The liquidated damage due by the Supplier for a delay shall be 0,5% per day, but not exceeding 5% of the Order price. We shall be entitled to claim for liquidated damages until final payment even though we did not reserve the right to claim for liquidated damages. Our right to claim for additional damage arising out of or on connection with the delay remain unaffected.
9. Early or partial deliveries may only be made upon our prior written consent.

§ 5 Transfer of Risk

1. Transfer of risk shall pass at the place designated in the Purchase Order, unless otherwise agreed.
2. As far as an acceptance is agreed, the acceptance shall be essential for the transfer of risk. The start of operation or use shall not replace our declaration of acceptance.

§ 6 Inspection for Defects - Defect Liability

1. An inspection of incoming goods will be conducted as regards to visible defects and deviations from the agreed upon identity and quantity only. Such defects will be notified to the Supplier without undue delay. The Supplier will not insist on any inspections beyond the aforementioned degree and hereby agrees to waive the defense of a delayed notification of defects (*Einwand der verspäteten Mängelrüge*). The Purchaser however reserves the right to perform more detailed incoming inspections at his sole discretion. In case of any detected defects, the Purchaser shall be entitled to return the complete batch of delivery to the Supplier.
2. We shall be entitled to the full statutory claims because of defects with following provisions:
 - a. in any event, we shall be entitled to demand, at our option, that the defect be remedied or a new item be delivered.
 - b. if a removal of a defect will not be corrected within an appropriate period of time by the Supplier, we shall be entitled, at our option, to choose between the right of rescission or to reduce the payment and the right to compensation.
 - c. we are entitled to remedy the defect ourselves, if possible to inform the Supplier previously and the expiration of period of time which is appropriate to the situation, at Supplier's expense in the event of imminent danger (especially a threat to operational safety or to avert exceptional damages) and the Supplier is in delay with correction of a defect.
 - d. The statute of limitations shall be 36 months, calculated from the passing of risk. This should not apply if longer terms are provided by law.
 - e. Our payment shall not be deemed to be the acknowledgement of the delivery as being in compliance with the terms of contract or free of defect.
 - f. Our authorization of Supplier's technical documents and/or calculations shall not affect his liability for defects.

§ 7 Product Liability and Protection under Public- and Product Liability Insurance

1. Supplier shall indemnify us against any product liability, provided he must bear responsibility for the error triggering the liability.
2. Supplier is obliged to maintain a public- and a product liability insurance during the duration of the contract, meaning until the expiration of the defects liability period. Upon our demand the Supplier is obliged to verify the aforementioned insurances with the equivalent insurance certificate. The scope and the extent of the insurance coverage does not affect the contractual and the legal liability of the Supplier.

§ 8 Proprietary Rights

1. Supplier warrants that no rights of third parties will be infringed in the context of his deliveries.
2. If claims are raised against us by a third party for this reason, Supplier shall be obliged to indemnify us upon first demand against such claims; this applies not, if the Supplier is not liable for the infringement of proprietary rights. We shall not be entitled to enter into any agreements whatsoever with the third party without Supplier's consent; this shall include, but is not limited to, a settlement.
3. Supplier's indemnification obligation shall apply for all necessary expenses we incur under or in connection with the claim by a third party.
4. The statute of limitation shall be three years, calculated from the date of the conclusion of contract.

§ 9 Retention of Title - Our Tools - Confidentiality

1. Materials and parts provided by us remain our property. These may only be used as directed by us. The materials are processed and parts assembled for us. It is agreed that in relation of the value of the parts provided by us to the value of the entire product we become a co-owner of the products manufactured with our materials and parts which will be kept safe for us by the supplier.
2. We shall reserve title to the tools and/or models belonging to us. Supplier is obliged to use the tools and/or models belonging to us exclusively for manufacturing the products we have ordered.
3. Supplier is obliged to maintain strict confidentiality concerning all illustrations, drawings, calculations and other documents and information he receives. They may only be disclosed to third parties upon our express authorization. This confidentiality obligation shall apply even after the settlement of this Contract. It shall expire if and to the extent the manufacturing know-how contained in the illustrations, drawings, calculations and other documents has entered the public domain.

§ 10 Jeopardized Performance

Should Supplier's economic situation deteriorate during the term of the Order in such manner that the performance of the Contract is seriously jeopardized, until preliminary insolvency proceedings or insolvency proceedings are opened, we shall be entitled to rescind the non-performed portion of the Contract. We are entitled to a total rescission, provided a partial performance is of no interest for us.

§ 11 Foreign Trade Law and Supplier Specifications

1. Supplier shall provide the following information in offers and confirmations of order complimentary: Information on whether the subject of delivery requires export approval, and the relevant index number under German export law; information on a possible classification of his product under the foreign trade law (eg. US-CCL (Commercial Control List)); information on whether the ordered goods are subject to export approval under the valid EC Dual Use Regulations and the relevant index number; statistical product number; country of origin of the goods. In the event that we are not issued the required export license, we expressly reserve the right to rescind the Contract.
2. Supplier is obliged to declare the material contained in his products (including the denomination of the corresponding CAS Registry Number and weight proportion in the

homogeneous basic material), provided that these materials are mentioned in one of the following statutory provisions:

- Prohibited chemicals Directive "Chemikalienverbotsordnung"
 - End-of-life-vehicles Directive "Altfahrzeugverordnung"
 - Electric and Electronic Appliance Law "Elektro- und Elektronikgerätegesetz"
 - Chemicals-Ozon layer directive "Chemikalien-Ozonschichtverbotsverordnung"
 - Ceramic Fibre Directive (February 2005: In preparation)
3. Supplier is obliged to confirm the origin(/provenience) of the goods inter alia by supplier's declarations or by declaration of origin or by EUR1- certification. Supplier/Manufacturer is obliged to indicate in the supplier's declaration the characteristic of origin of his goods according to the regulations about origin valid in the country of destination that we will communicate him.
 4. Our payment according § 3 is subject of the receipt of all above mentioned information.

§ 12 Technical Documentation

1. The delivery of the technical documentation and all required records is part of the delivery of goods, unless otherwise agreed.
2. The delivery of the technical documentation shall, unless otherwise agreed, be effected in the form of paper and in common file format (eg. Doc, pdf).
3. The directions for use shall be drawn according to DIN ISO 62079.

§ 13 Software and Rights of Use

1. Software shall be provided to us on the data media customary in the industry in machine-readable code plus user documentation.
2. Software individually developed for us shall also be provided to us in the source code with manufacturer documentation. Copies of the source code and the manufacturer documentation shall be provided to us upon acceptance and must be in accordance with the program level upon the completion of the test phase.
3. Successful measures carried out on the software under the liability for defects shall be included by Supplier in the source code and manufacturer documentation without undue delay. A copy of each updated version shall be provided to us without undue delay.
4. We shall acquire an irrevocably a perpetual and territorially unrestricted right of use for all software developed for us or parts thereof, including each known type of use and the right to reprocess, change, enhance it and grant simple rights of use to third parties, provided that a restriction does not result from the following paragraphs. The concession of the right of use is satisfied with the agreed price.
5. If the acquisition of a right of use pursuant to the foregoing paragraph is prevented by third-party rights to third-party programs or other third-party performance results included in the services, the scope of our right of use shall be agreed in accordance with the extent of our right of use in the Contract.
6. Supplier remains authorized to continue to use related standard programs, program modules, tools and know-how contributed by him in producing the performance results, and also for third-party contracts. A complete or partial reproduction, processing or other use of the performance results and solutions produced for us is not permitted.
7. Supplier shall only be entitled to publish performance results of any kind produced for us – even partially – upon our written consent.

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§ 14 Spare Parts

1. The Supplier is obliged that spare parts for products delivered to us are available for a time period of minimum 10 years after delivery.
2. The Supplier is obliged to inform us about a decision without delay if the Supplier intends to cancel the production of the spare parts for the delivered products. This decision must take place at least 3 months before the cancellation.

§ 15 Data Protection

1. Personal data shall be processed by Supplier in compliance with the statutory regulations.
2. Personal data shall be stored by us in compliance with the statutory regulations.

§ 16 Job Safety and Environmental Protection and Compliance with statutory provisions

1. Our Health and Safety and Environmental Guidelines shall be respected in their entirety, when performance will be provided at our production site. They can be accessed on the internet under www.schenckprocess.com.
2. Furthermore, the Supplier guarantee that it's performance and delivery shall comply with applicable laws, bylaws and other regulations according to the current versions.

§ 17 Place of jurisdiction - Place of Performance – Applicable law

1. For all current or future interest out of the business transactions the exclusive place of jurisdiction, as far as the Supplier is merchant, legal entity under public laws or a federal special fund under public law, shall be the location of the entity using this conditions. We reserve the right to enter claims at the court having statutory jurisdiction over Supplier.
2. Unless stated otherwise in the Order, the place of performance shall be the place stated in the Order and, alternatively, the location of our registered offices.
3. The laws of the Federal Republic of Germany shall apply with the exception of all of the provisions governing the conflict of laws and the UN Convention for the International Sale of Goods (CISG).

§ 18 Miscellaneous

1. Should individual provisions of these Terms and Conditions of Purchase or of the contract concluded between us and Supplier be or become fully or partially invalid, the other terms shall remain unaffected thereby.
2. We are exempted from the duty to deduct tax under Sec. 48 b (1) Income Tax Act only if Supplier presents a valid exemption certificate of the appropriate tax office issued in his name. The submission of a copy of the exemption certificate shall be sufficient, provided that the exemption certificate has not been issued order-related.