

# General terms and conditions of delivery and installation

## Schenck Process Europe GmbH

November 3, 2016



### I. Scope and Conclusion of Contract

1. This General Terms and Conditions of Delivery and Installation are Conditions of the Schenck Process Europe GmbH. Our General Terms and Conditions of Delivery and Installation shall apply in the most recent version on the date of the respective conclusion of contract for all of our performance and delivery (e.g. installation service, commissioning, repair, maintenance as well as other performances). The rates of our service charges as applicable from time to time shall apply in addition to the General Terms and Conditions in the most recent version on the date of the conclusion of contract surcharges shall be upraised for service performed out of regular working hours. Travelling and waiting time shall be deemed as working time.
2. This General Terms and Conditions of Delivery and Installation shall apply exclusively, subject to contractual agreements. No other provisions shall become an element of the content of the contract even if not expressly contradicted by us. This General Terms and Conditions of Delivery and Installation shall apply even though if we execute the Purchase Order unconditionally and with knowledge of opposing or deviating conditions to this General Terms and Conditions of Delivery and Installation.
3. Our General Terms and Conditions of Delivery and Installation and our rates of service charges, each in the most recent version on the date of conclusion of contract, also apply for future business with the Customer.
4. Our offers are non-binding. No contract shall have been made until our written confirmation of order has been given. The scope of our performance shall be set down exclusively by our written confirmation of order, including the written appendices thereto.
5. Unless otherwise agreed, our order acceptance and order confirmation shall be under the condition of a coverage of a commercial credit insurance.
6. Side agreements and changes shall only come into effect upon our written confirmation. This shall also apply to the waiver of the aforementioned provision.
7. Our fulfillment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that the required licenses are issued to us.
8. The documents and information delivered and made by us such as pictures, drawings, weights and measures are only binding if we have expressly specified them as an element of contract or make specific reference to them. Unless otherwise agreed, these documents are no guaranteed characteristics but descriptions and identifications of the delivery or performance. Customary deviations and deviations which will be initiated by law or subject to technical improvements, as well as the replacement of parts with equivalent parts, shall be permitted as long as the usability of the contractual agreed purpose is not affected.
9. We reserve all ownership and copyrights to samples, cost estimates, drawings, documentation and similar information of a tangible or intangible nature - even if in electronic form; they may not be made available to third parties without our express written consent.
10. Written form may be replaced by fax, but cannot be replaced by the qualified electronic form pursuant to Sec. 126a German Civil Code or the text form pursuant to Sec. 126b German Civil Code. Any valid legally binding declaration and notifications shall be given in writing to be
11. These General Terms are not intended for use in relation to consumers as defined in Sec. 13 German Civil Code.

### II. Prices and Payment

1. Our prices shall apply ex Works exclusive of packaging, loading and additional VAT in the statutory amount. The prices are quoted in EURO.
  - a. In the case of delivery within the European Union, Customer must provide us in good time prior to the contractually agreed delivery date with his VAT identification number as proof of his exemption from VAT. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.
  - b. In the case of delivery outside of the European Union we are entitled to charge VAT in the statutory amount after delivery if Customer does not send us a proof of exportation within one month after shipment.
2. Cost estimates are only valid if made in writing.
3. Unless otherwise agreed, Customer shall make payment as follows:  
30% order date, 60% shipment or confirmation of readiness for shipment and the balance upon transfer of risk.  
Unless otherwise agreed are repayments, down payments and advanced payments immediately due upon invoice and payment of balance has to be received within 10 days after invoice date without discount.
4. The timelessness of payment is defined as the date that the specified monies are paid into our account. Cheques shall be deemed as payment from the date of encashment on.
5. Customer may only set -off or withhold payment with counterclaims whose legal basis or amount are not disputed or are final and absolute.
6. Customer's payments shall be due upon receipt of our invoice. Customer shall be in delay of payment 30 days after the receipt of invoice without the necessity of any reminder.
7. The prices of an offer shall only apply for orders for the full scope of the offered performance.
8. Payment due dates are only valid, if due dates for former deliveries have been fulfilled. If one or more due dates are not watched, all open invoices are due at once.

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

1. We reserve the right to reasonable partial deliveries and performances. The aforementioned reasonableness for the customer shall be especially given when partial delivery and performance is for the contractual purpose suitable, the fulfilment of the remaining delivery/performance is ensured and no substantial additional expenditures or additional costs will arise (unless we declare to take over these costs).
2. Incoterms 2010 shall be deemed to have been agreed. Deliveries shall be EXW, and unless otherwise agreed in writing.
3. Only in the case of work performance the risk shall transfer to Customer upon the acceptance of such work performance. If Customer takes over the transport of the item from the place of manufacture to the site of its use, Customer shall bear the burden of risk for the duration of the transport.
4. The foregoing provisions on the passing of risk shall also apply if partial deliveries are made or other services are to be performed by us.
5. Should delivery or acceptance be delayed or not take place as a result of circumstances which are not attributable to us, risk shall pass to Customer as of the day of the notice of the readiness for shipment or acceptance. We agree to take out the insurance as requested by Customer at his expense.
6. Notwithstanding his rights under section X. hereof, Customer may not refuse the receipt of delivery in the event of insignificant defects or deviations in volume.

### IV. Assistance of the customer

1. The customer shall assist our personnel (installation-, service-, and/or commissioning personnel) during conduct of our performance (installation service, service and commissioning) on his own cost.
2. The customer shall ensure necessary arrangements for protection of individuals and goods at the place of performance. The customer shall provide protective clothing, if necessary.

3. The customer shall inform our personnel about any applicable health and safety rules, provided the rules are from importance for our personnel and our performance. The customer shall inform us about any breach of our personnel against the health and safety rules. In case of any material breach the customer may reject us access to location where our performance should be delivered.
4. Provided the performance should be delivered abroad, the customer shall support us with local authorities in obtaining, prolonging or adjusting of residence and/or work permits which are necessary for our performance, if required.
5. The customer shall provide heating, light, energy, compressed air, water, forces as well as all reasonable connections.

### V. Technical Assistance by Customer

1. The Customer shall be obliged at his expense to provide technical assistance, especially by:
  - a. Providing the necessary, suitable additional workers at the number required for the repairs and for the time required; the additional workers shall follow our instructions. We shall assume no liability for the additional workers. If a defect or damage is caused by the additional workers because of instructions given by the repairs supervisor, the clause in Section XI. shall apply accordingly.
  - b. Executing any building, bedding and scaffolding work including the acquirement of the necessary building materials.
  - c. Providing the necessary devices and heavy-duty tools as well as the required commodities and materials.
  - d. Providing necessary dry and lockable rooms for keeping the tools of the repair personnel.
  - e. Transport of spare parts at place of performance, protecting the repair site and materials from harmful influences of any kind, cleaning of repair site.
  - f. Providing the materials and execution of any actions necessary for the adjustment of the repair item and for carrying out a test provided for in the contract.
2. The technical assistance of the Customer must warrant that the repair can be started immediately after the arrival of the repair personnel and carried out without delay until acceptance by the Customer. If special plans or our instructions are required, we shall make them available to the Customer in good time.
3. If the Customer does not fulfil his obligations, we shall be entitled after fixing a time limit, yet not obliged, to execute the actions incumbent

### VI. Reservation of Title

1. Ownership to the subject of delivery shall not pass to Customer until payment has been made in full. If the validity of this reservation of title is subject to certain conditions or special formal requirements in the country of destination, Customer shall ensure that they are fulfilled.
2. Customer may not pledge, sell or assign as security the subject of delivery prior to the passage of title. In the event of attachments and seizures or other dispositions by third parties, Customer must inform the third party of our title and notify us without undue delay.
3. In the event of actions on the part of Customer 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 reservation of title nor the pledge of the subject of delivery by us shall be deemed to be a rescission of contract.
4. 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.
5. If Customer is domiciled in the Federal Republic of Germany, the following shall apply in addition to the foregoing:
  - a. In deviation from section VI.1 hereof, we reserve ownership to the subject of delivery until all of our claims against Customer within our current business relationship have been satisfied.
  - b. In deviation from section VI.2 hereof, Customer is entitled within the scope of his normal business transactions to resell the subject of delivery for which we reserve ownership under the following conditions: He must resell the subject of delivery under reservation of ownership if the subject of delivery is not immediately paid in full by the third-party customer. There shall be no entitlement to a resale if Customer is in default of payment. Customer hereby assigns the claims arising under the resale or under any other legal grounds to us to secure our claims. In the event that the reserved goods are processed and co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to our co-ownership.
  - c. Customer shall remain entitled to collect the claims assigned to us after their assignment for as long as he complies with his payment obligations to us in accordance with the terms of this contract. We may demand at any time that Customer discloses the assigned claims and the debtors thereof, provides us with all information necessary for collecting such claims, delivers to us the documents pertaining thereto and informs the debtor of the assignment.
  - d. Any processing of the reserved goods by Customer shall always be on our behalf. If the reserved goods are blended, bonded or processed with items to which we do not own title, we shall acquire co-ownership in the ratio of the invoiced value of the reserved goods to the other processed items at the time of processing. If our goods are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that Customer shall transfer proportionate co-ownership to us, provided that he is the owner of the main item. Customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as in the case of reserved goods.
  - e. We agree to release the security to which we are entitled to the extent that its invoiced value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 10 %.
  - f. Provided that the subject of our deliveries are affixed to the land or have been integrated into a building, such affixing or integration shall only take place for temporary purposes.

### VII. Delivery Date

1. Compliance with the agreed delivery and performance date (hereinafter referred to as "delivery date") requires that all commercial and technical issues between Customer and us have been settled and that Customer has performed all of his obligations. If this is not the case, the delivery period shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.
2. Compliance with the delivery date shall be subject to the condition that deliveries to us are correct and on time. We shall notify Customer of any foreseeable delays.
3. The delivery period has been honoured if notice of the readiness for shipment has been given. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.

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4. If non-compliance is attributable to acts of God, labour disputes, delays in procuring failure to procure government licences or other events outside our scope of influence, the delivery period shall be reasonably extended. This shall also apply if we are in default of rendering our performance. We shall inform Customer as soon as possible of the beginning and end of any such event.
5. If the shipment or acceptance of the subject of delivery is delayed on grounds for which Customer must bear responsibility, the costs incurred by the delay shall be charged to him. We reserve the right to assert further damage compensation claims.
6. We reserve the right to dispose of the subject of delivery if Customer has allowed a reasonable period for delivery or acceptance set by us to expire, and to supply Customer in a reasonably extended period.

### VIII. Delays in Delivery, Impossibility

1. In the event of partial impossibility Customer may only rescind the contract if it can be proven that partial performance is of no interest for Customer. If this is not the case, Customer must pay the prices according to the terms of contract attributable to the partial delivery. Otherwise, section XI shall apply. If impossibility occurs while Customer is in default of acceptance or because of Customer's fault, he shall remain obliged to pay consideration.
2. If the responsibility for impossibility is not to be borne by either party, we shall have a claim to the portion of the remuneration attributable to the work performed by us.
3. If we are in default and Customer incurs damages because of this, he shall be entitled to demand flat -rate default compensation. This default compensation shall be 0.5 per cent for each full week as of the date the claim has been received by us in writing, but for not more than a maximum of 5 per cent of the value of that portion of the total delivery which cannot be used on time or in accordance with the terms of contract as a result of the delay.
4. Within the scope of the statutory provisions, Customer is entitled to rescind the contract if, taking into account the exceptions under statute, a reasonable period of grace for the rendering of our performance set for us by him during our default has been allowed to expire. Upon our first request in writing, customer shall provide information if he will terminate the contract in a reasonable period of time.
5. Any further claims because of a default in delivery shall be governed exclusively by section X.

### IX. Acceptance

1. Our work performance products shall be deemed to have been accepted 2 weeks after our notice of readiness for acceptance unless Customer issues a written notice of major defects within this period.
2. Customer is only entitled to refuse acceptance if the defect cancels out or significantly reduces the normal and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling Customer to refuse acceptance, acceptance shall be made under the reservation that the defects are remedied.
3. Refusals of acceptance, objections to acceptance or reservations against acceptance must be made without undue delay in writing and accompanied by the designation and description of the reported defect.
4. The use of the subject of delivery by Customer for production purposes shall be deemed to be acceptance.

### X. Claims because of Defects

1. Claims on the part of Customer because of defects shall require that he has duly complied with the obligations of inspection and notification owed under Sec. 377 German Commercial Code.
2. For defects in materials and title, Customer shall have the following claims:
  - a. In our discretion we shall deliver a defect -free item or remedy the defect, provided the subject of delivery is proven to have already been defective upon the passing of risk pursuant to section III of these General Terms and Conditions.
  - b. No claims for defects shall be created by causes which are not attributable to any fault on our part, such as: Normal wear and tear, unsuitable subsoil, hazardous ambient conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the subject of delivery made without our consent.
  - c. Customer must provide us with the required time and opportunity for subsequent performance. If we are not provided with this opportunity, we shall not be liable for any consequences resulting from such failure. Customer shall only have the right to remedy the defect himself or through a third party and demand compensation from us for his necessary expenses in emergencies where plant safety is endangered or to avoid unreasonably greater damage, whereby we must be informed immediately.
  - d. In the event of remedial work we shall bear all of the costs required for the purpose of remedying the defect, particularly transport and travel costs and the costs of labour and materials, provided these costs are not increased because the subject of delivery was moved to a site other than the place of performance. Even by an authorised claim are to repay travel costs to our Personnel from ex works (place of fulfilment) to place of installation.
  - e. In the event that Customer culpably contributes to the cause of the defects, including, but not limited to, his failure to comply with the duty to avoid or reduce damage, we shall have a damage compensation claim after the subsequent performance which corresponds to Customer's contribution to the cause of the defect.
  - f. Customer shall have at his option a right to rescind the contract if – taking into account the exceptions under statute - a period of grace set for us for subsequent performance with respect to a defect is allowed to expire. If the defect is only insignificant, Customer may only demand a reasonable reduction of the contract price. Otherwise, the right to a reduction of the contract price shall be excluded.
  - g. For installation, repair and other services, section XV.5.. shall apply instead of section X.2.f.
  - h. If the use of the subject of delivery within the periods set down in sections XIV results in the infringement of intellectual property rights or copyrights, which is attributable to us, we shall generally procure the right to continued use for Customer or alter the subject of delivery in such manner that an infringement of the intellectual property or copyright no longer exists. If this is not possible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. We shall indemnify Customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.
    - i. Subject to section XI., our obligations described in section X.2.h. are final and conclusive for the case of infringements of intellectual property and copyrights.
    - j. The claim to subsequent performance for infringements of intellectual property rights and copyrights, which is attributable to us, shall only exist if
      - Customer informs us without undue delay in writing with the designation and description of the alleged infringements of intellectual property rights or copyrights;
      - we are reserved the right to undertake all defensive measures, including out-of-court arrangements;
      - the infringement of intellectual property or copyrights is not based on instructions or specifications provided by of Customer;

- the infringement of intellectual property or copyrights was not caused by the fact that Customer arbitrarily modified the subject of delivery or used it in a manner not conforming to the terms of contract.
3. All other claims for defects under warranty (including, but not limited to, compensation for damages not occurring to the subject of delivery itself) are governed exclusively by section XI..
4. In the case of the sale of used products, all claims because of defects shall be excluded unless mandatory liability is set forth under law.

### XI. Liability

1. We are only liable, even in the event of damage because of the breach of duties during contract negotiations and irrespective of the legal grounds for liability (including, but not limited to, compensation for damage caused other than to the subject of delivery itself) in the case of:
  - intent;
  - culpable breach of major contractual obligations;
  - gross negligence on the part of corporate bodies or executive officers;
  - culpable bodily injury, death and damage to health;
  - defects we have fraudulently concealed;
  - breach of the guarantee of quality or durability; unless otherwise agreed upon in individual cases,
  - personal injury and property damage to personal items, provided that liability exists under the Product Liability Act for personal used items.
2. In the event of the breach of major contractual obligations we shall also be liable for gross negligence on the part of non-executive employees or for slight negligence on the part of corporate bodies and executive officers. In the event of slight negligence, our liability is limited to reasonably foreseeable damage typical to the given type of contract.
3. Our liability for the destruction of data is limited to the costs which would be required for their reconstruction if the data had been properly saved by Customer.
4. Compensation for mere financial loss is limited by the general principles of good faith and reasonableness, such as in the case of a disproportionate discrepancy between the value of the contract and the amount of loss.
5. Any further liability under any legal grounds whatsoever, including, but not limited to, compensation for damages not caused to the subject of delivery itself, shall be excluded.
6. We shall not be liable for the consequences of defects for which no claims for defects are provided for under section X.2.b.

### XII. Insurance Claims

To the extent we have direct claims as a joint policyholder against Customer's insurer with respect to the subject of delivery, Customer hereby gives his consent to the assertion of such claims.

### XIII. Software

1. The general terms and conditions of software providers for their software products contained in our deliveries shall have priority over these General Terms and Conditions. Should such terms and conditions not be available, we shall have them sent to Customer upon request.
2. Our General Terms and Conditions shall be in supplement to the general terms and conditions of other providers; sections XIII.3 to XIII.5 shall apply mutatis mutandis. In the event that the general terms and conditions of other providers are invalid, our General Terms and Conditions shall apply.
3. Customer shall receive a perpetual, simple, non-exclusive right of use to our software products. The grant of sublicences is not permitted.
4. We are generally not obliged to provide the source code on which the software product is based.
5. 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. Prescriptive Periods

1. Customer's claims because of defects shall be barred 12 months.
2. Customer's claims because of defects to buildings or for work whose success consists in the rendering of planning or monitoring services for buildings, shall be barred 5 years as of the passing of risk.
3. With the exception of section XIV.4, all other claims by Customer, regardless of the legal basis of claim, shall be barred 12 months as of the passing of risk.
4. For personal injury, grossly negligent acts and omissions by corporate bodies and executive officers, intentional or fraudulent acts and omissions, the breach of major contractual obligations or of guarantees and for claims under the Product Liability Act, the statutory provisions shall apply.
5. The commencement of the prescriptive period shall be governed by the statutory regulations.

### XV. Installation, Repairs and Other Services

For installation, repairs and other services, the following provisions shall apply in supplement:

1. If our performance cannot be carried out by us on grounds for which we are not responsible, Customer shall compensate us for already rendered performance and any incurred time and expense.
2. Replaced parts shall become our property.
3. Should the performance perish or deteriorate prior to acceptance through no fault on our part, Customer shall pay us the price minus any savings in expenses.
4. Repair deadlines are only binding if confirmed by us in writing.
5. In the case of installation, repair and other services, Customer shall be entitled within the scope of the statutory provisions to make a reduction if, taking into account the exceptions provided for under statute, a period of grace 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 for Customer.

### XVI. General Provisions

1. All taxes, fees and levies in connection with the performance outside of the Federal Republic of Germany shall be borne by Customer and are to be reimbursed to us as the case may be.
2. Personal data shall be stored by us in compliance with the statutory regulations.
3. We shall not reimburse any costs for the return transport of packaging.
4. Customer shall be responsible to procure all of the licences and/or import/export papers for using the products at his own expense
5. Customer acknowledges that the sold goods may include hardware and software, which are subject to the customs and export control laws and regulations of the United States. Customer acknowledges that it is his sole responsibility to comply with and abide by those laws and regulations. The customer shall abstain from re-exporting any of the goods supplied by us to any persons/companies or countries which are subject to an

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embargo imposed by the European Union, the United States or the United Nations and shall apply suitable measures to prevent such deliveries.

6. Place of performance for Customer's obligations in relation to us is the location of our registered offices.
7. Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the remaining provisions.

## **XVII. Applicable Law, 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 the location of our registered offices, if the customer is merchant, legal person of administrative law or administrative- law special fund. We reserve the right to file an action at the court having jurisdiction over Customer under law.
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 absolute, and is to be made, with the grounds stated, by three arbitrators. It shall be possible for our insurance company to participate in accordance with the opportunities for participation available in proceedings before a court of law. We reserve the right to enter an action before a court of law having jurisdiction. This agreement will not prevent any Party to arrange legal accelerated proceeding especially preliminary injunction and arrest proceedings.
3. The laws of the Federal Republic of Germany shall apply.