

Schmidt & Bender GmbH & Co. KG

as of 31 October 2011

General Delivery and Payment Terms and Conditions

1. General

a) The subsequent terms and conditions shall be valid for all quotations, deliveries and services as well as every order of the seller. Latest upon the receipt of the goods the partner to the contract is deemed to have accepted the terms and conditions.

b) Deviations from these terms and conditions require a written confirmation by the seller to become effective. Terms and conditions of the contract partner shall not apply, even if the seller did not explicitly voice his objections in an individual case.

In case of ambiguities the provisions of an individual contract shall above all be construed in accordance with the terms and conditions and, apart from this, in accordance with the generally applicable legal regulations.

2. Order Placement and Contents

a) The quotations submitted by the seller shall be free and without obligation.

b) Orders submitted by facsimile, phone or email will be accepted by the seller exclusively at the risk of the purchasing party. To become legally effective all orders must be confirmed by the seller in writing.

c) The rights and obligations arising from an order shall be exclusively established on the basis of the aforementioned order confirmation. Additional oral agreements, representations and post-contractual modifications of the contract will only be valid upon a corresponding written confirmation by the seller. This shall be true, even if one of those agreements is of a decisive importance for the contract partner.

d) Data with respect to size, weight and performance as well as illustrations shall be without obligation, provided they were not agreed explicitly in writing.

e) In the absence of any specific agreement prices are quoted ex works; however excluding packing, freight, postage, insurance and applicable VAT.

3. Delivery Dates and Deadlines

a) Dates and deadlines for deliveries shall only be binding if they have been agreed in writing. Compliance with the quoted dates and deadlines shall be subject to the fact that the purchaser will comply with his contractual obligations, in particular with respect to the payment of any agreed deposits. The delivery period shall start on the day when all necessary documents and import licenses or delivery approvals in particular, are present in the country of the seller.

The seller shall be obligated to procure the required import licenses, delivery approvals or any other permits requested by the authorities, provided no other explicit agreements have been concluded between the contract partners.

b) The seller shall not be in default if he cannot keep the statutory delivery period due to an erroneous or delayed supply by one of his sub-suppliers, provided the seller has selected the sub-supplier using the reasonable diligence employed in normal business transactions.

c) The delivery period will be reasonably extended in case of any unforeseeable disturbance of the supplier's operations that were not caused by the gross negligence or a willful act on his part, or in the event that any other obstacles occur, e.g. interventions by authorities, military conflicts, natural disasters, delays in the supply of energy and raw materials, strikes and lockouts in particular, as well as in case of section 3. b) of the present terms and conditions. The seller shall not be responsible for the aforementioned circumstances, even if they occur after the event of default. They provide the

seller with the right to postpone the delivery or service for the duration of the impediment, including an adequate catching up period, or the right to withdraw from the contract, in whole or in part, due to the contract portion that still remains to be fulfilled. The seller undertakes to inform the buyer immediately about any non-availability and to return without delay any services which may have already been rendered by the buyer.

d) The delivery obligations shall be deemed fulfilled as soon as the goods left the buyer's production or storage facilities.

e) If the seller is in default and has allowed a reasonable period to expire which must be defined by the buyer in writing, the buyer shall have the right to withdraw from the contract, provided the delivery is still pending. Any damage claims made by the buyer beyond that due to non-compliance or default shall be excluded with the exception of buyer claims in acc. with section 6 of the present terms and conditions.

f) At any time the seller shall have the right to make partial deliveries or render partial services following the terms and conditions of the total order.

g) In case of orders where delivery has been agreed on call, a maximum delivery period of 24 months shall be valid for the total quantity ordered.

h) If the seller's delivery or service is delayed upon request by the buyer, he will be invoiced the costs incurred for the storage of the goods as a compensation for the default, beginning one month following the seller's notification of the readiness for shipment, however, at least at a rate of ½ % of the invoiced amount.

4. Shipping and Risk

a) Shipping will be effected at the cost and at the risk of the buyer. The risk shall be transferred to the buyer at the latest when the ordered goods are shipped – even in case the seller makes partial shipments or assumes additional services. If shipment is delayed due to reasons for which the buyer must be made responsible, the risk will be transferred to the buyer on the date the goods are ready for shipment.

If the buyer does not provide any corresponding instructions in writing prior to delivery, the seller shall have the right to select the means for packing and transport as well as the shipping route at his own discretion and to the exclusion of any liability.

b) The seller will not assume any liability if the goods suffer any damage and loss, breakage or deterioration during shipping. An obligation to insure the goods shall not exist for the seller. On request by the buyer and at his own expense the shipment will be insured by the seller against any damage during transport or against other insurable risks.

5. Complaints and Return Shipments

a) Complaints due to incomplete or incorrect deliveries or complaints due to defects detectable during a thorough inspection shall be notified to the seller in writing immediately upon receipt of the goods.

b) Other defects must be notified to the seller in writing immediately upon their detection.

c) If complaints or defects are not immediately reported, the delivery will be deemed accepted. In that case warranty rights may not be applicable.

d) All return shipments will be made for the account and at the risk of the buyer.

6. Warranty

- a) The seller warrants that the products are free from manufacturing and material defects in accordance with the current state of technology. He continues to guarantee the warranted qualities.
- b) The seller shall have the right, upon immediate notification of complaints or claims, to take back the defective products and replace them with products free of defects. Instead, the seller shall also have the right to refund the decrease in value.
Damage claims by the buyer shall be excluded, provided the damage is not caused by the absence of a warranted quality, gross negligence or a willful act of the seller. Any further warranty claims shall be excluded.
- c) The seller will not assume any warranty whatsoever for any damages incurred by inappropriate or improper use, incorrect assembly or commissioning by the buyer or any third party, natural wear and tear, incorrect or careless handling of the products or non-observance of operation or handling instructions stipulated by the seller, provided the buyer cannot disprove a corresponding substantiated assertion saying the defect was caused by one of the aforementioned circumstances.
- d) No liability of the seller will be accepted for any problems arising from the regulations of the industrial property protection concerning the reselling or utilization of the seller's products or the international sale of the seller's goods.
- e) Only the immediate contract partner shall have the right to direct any warranty claims against the seller and these claims shall not be subject to assignment.
- f) Warranty claims must be submitted in writing within the applicable statutory period.

7. Payment Terms

- a) Invoices submitted by the seller will be payable, if not agreed otherwise, within 10 days with a 2% discount or, at the latest, within 30 days net from the date of the invoice.
- b) Payment shall be deemed effected when the seller has the corresponding sum at his disposal. The seller shall not be obliged to accept bills of exchange or checks, however, if the seller accepts bills of exchange or checks, he will only do so on account of performance subject to honoring and under deduction of the applicable collection and discount fees. Renegotiation and prolongation of a bill of exchange will not be considered as performance.
- c) Payments made to commercial agents do not liberate the buyer from his financial obligations.
- d) The seller shall have the right to offset payments made by the buyer against older debts first.
- e) The buyer shall only be entitled to offset, retain or reduce any amounts which are legally justified or undisputed.

8. Retention of Title

- a) Until complete payment of the agreed sales price for the goods supplied by the seller and all receivables arising from the entire commercial relationship with the respective contract partner, the seller will reserve the retention of title on all goods he supplied.
The buyer shall be obliged to cause the requirements to be fulfilled which, according to the applicable legal regulations in the country where the contract partner has his place of business, are required for the retention of title to become effective. If these legal regulations prevent the retention of title, conditions must be created to install a similar hedging instrument.
The contract partner shall be entitled to resell the goods in the scope of his normal business transactions. However, he must not pledge or assign the goods by way of security or subject them to any similar measures. He must inform the seller immediately about the intervention of any third party through pledging, seizure or any similar measure and provide him with a copy of the seizure report in order to enforce their release. The contract partner shall bear any legal and extralegal costs required for the remedying of seizures and the replacement of goods.

b) If the goods are sold to a third party prior to satisfy all claims, the contract partner shall assign to the seller all his claims he may be entitled to all accounts receivable from the resale of the goods to a third party up to an amount of 140 % of the amount originally invoiced by the seller.

A respective declaration of assignment must be issued upon a request by the seller.

c) Where the buyer collects the assigned claim by himself, he will do so only in trust and for the account of the seller; the proceeds of which belong to the seller and must be delivered to him. In case the buyer receives bills of exchange from a third party on account of performance, which the third party is entitled to collect from others, these bills of exchange shall be transferred without further ado to the seller at the time of reception; all bills of exchange traded in by third parties that still remain to be collected, must be cashed in upon the seller's request.

d) If the contract partner acts in a way that may be construed as a breach of contract, particularly in the event of delayed payment, the seller shall have the right to take back the goods subject to retention or, possibly, to demand the transfer of the claims the buyer may hold for the surrendering of goods against any third parties. Taking back the goods does not mean a withdrawal from the contract.

9. Place of Performance and Jurisdiction

a) Place of performance for all current and future claims from the contract and the ongoing business relations shall be Biebertal-Fellingshausen.

b) Place of jurisdiction shall be Gießen, which shall also be valid for any claims resulting from bills of exchange and checks.

c) The seller may choose a different competent place of jurisdiction at his own discretion.

10. Applicable Law

German law shall be applicable for all legal relations between the partners to the contract, with the exclusion of the UN Convention on the International Sale of Goods.