

Terms and Conditions Gilbert & Schmalriede GmbH & Co. KG

I. Validity of conditions

1. The deliveries, services and offers of the Supplier shall be exclusively carried out in accordance with these business conditions. These apply for all future business relationships even if they are not explicitly agreed to once more at a later date. These conditions are regarded as accepted at the latest with the acceptance of the goods or service. Counter-confirmations by the Purchaser and references to its Terms and Conditions of purchase are hereby contradicted.

2. Deviations from these Terms and Conditions are only effective if confirmed in writing by the Supplier.

II. Offer, scope of supply

1. The documents forming part of the offer such as illustrations, drawings, weight and dimension specifications are only approximate indications unless designated as binding. The Supplier reserves all proprietary rights of ownership and copyright for cost estimates, drawings and other documents; they may not be made available to third parties. The Supplier is obliged to make plans marked confidential by the customer available to third parties only with their consent.

2. The Supplier's written confirmation of order shall govern the actual scope of supply or, in the case of an offer of the Supplier which is only valid for a certain time period which is accepted in time, the offer shall govern the actual scope of supply. Changes and subsidiary agreements must be confirmed in writing by the Supplier.

III. Price and payment

1. Prices are valid "ex works" in the absence of specific agreements, including loading at the plant, but excluding packaging costs. Value added tax to the respective legal amount is added to the quoted prices.

2. Payment is to be made within 10 days with 2% discount or 30 days net after the date of the invoice. Assembly and repair costs as well as seminar fees are payable net immediately.

For orders with an order value of net 20,000.00 EUR, the following payment conditions apply:

- (1) 1/3 initial payment after receipt of order confirmation
- (2) 1/3 after delivery and receipt of invoice
- (3) The remaining amount 30 days after the date of the invoice

If the Purchaser defaults in payment, we are entitled, from the date of default onward, to charge interest at the amount of the interest rate calculated by commercial banks for overdraft plus the legally applicable VAT. Interest must be set at a lower rate if the Purchaser provides evidence of a lower charge.

3. We reserve the right to accept bills of exchange. Discount charges, tax on bills of exchange and late interest are to be paid immediately. Collection and discount charges are borne by the Purchaser.

4. The Purchaser is not entitled to offset, retention or reduction even if defects or counterclaims are made, unless the counterclaims have been established by law or are undisputed.

IV. Delivery period

1. The period of delivery begins with the dispatch of the order confirmation, but not earlier than the supply of all documents, approvals, releases and the receipt of an agreed advanced payment.

2. The delivery period shall be deemed met when, by its expiration, the delivered goods have left the factory or when the Purchaser has been notified that the goods are ready to be picked up.

3. The delivery period is extended appropriately in cases of measures taken in connection with industrial disputes, especially strikes and lockouts as well as the occurrence of unforeseen obstacles which are outside the sphere of influence of the Supplier, insofar as such obstacles demonstrably have a significant influence on the completion of the item to be supplied. This also applies when such circumstances are faced by sub-suppliers. The circumstances referred to above are also not the responsibility of the Supplier if they occur during an already existing delay. The beginning and end of such obstacles are in serious cases to be notified to the Purchaser as soon as possible.

4. If the shipping of goods is delayed at the Purchaser's request, they shall be liable for any costs arising from storage with the Supplier by at least however 1% of the invoice amount for each month, beginning one month after the goods are ready for shipping. However the Supplier is entitled, after setting a reasonable deadline that is not met, to dispose of the item in another manner and to supply the Purchaser while adhering to an adequately prolonged delivery period.

V. Force majeure and/or other unforeseeable, unusual, undeserved circumstances

Compliance with the delivery time is conditional upon the Purchaser's fulfilling of their contractual obligations. In the case of force majeure and/or other unforeseeable, unusual and undeserved circumstances, e.g. hurricane, fire, explosion, interruption of operations, strike, lockout, war, rioting, governmental interventions, difficulties with electricity, gas, water supply etc., the delivery time shall be extended in reasonable scope if we are prevented from fulfilling our obligation. If delivery or service is rendered impossible or unreasonable under the circumstances mentioned above, the Supplier shall be released from their delivery obligations. If we are unable to provide our services due to the circumstances mentioned above, or in a late manner, the client must reimburse all of the costs incurred through the provision of our employees/ assemblers on location (e.g. wages including incidental wage costs, costs for waiting times, costs for appropriate accommodation, as well as the additional costs incurred for this). The absorption of costs by the client also applies in the case that the employees/assemblers have to depart prematurely and then return due to the particular circumstances.

VI. Transfer and acceptance of risk

1. The risk shall be transferred at the latest when the delivered parts are dispatched to the Purchaser and shall also apply if partial deliveries take place or the Supplier has undertaken other services, e.g. the forwarding charges or transport and installation. At the Purchaser's request and expense, the delivery by the Supplier shall be insured against theft, breakage, transportation, fire and water damage as well as other insurable risks.

2. If the shipping is delayed due to circumstances that the Purchaser is responsible for, then the risk is transferred to the Purchaser from the day on which the goods are ready to dispatch, however, the Supplier is obliged, at the request and expense of the Purchaser, to effect insurance that the purchaser requests.

3. Delivered items must be received by the Purchaser even if they exhibit minor defects, without prejudice to their rights under section VII of these conditions.

4. Partial deliveries are permissible.

VII. Reservation of property rights

1. Until all receivables are paid (including all claims from the current account) which are due to the Supplier from the Purchaser for any legal reason now or in the future, the Supplier may be guaranteed the following securities which they shall release at their own discretion as soon as the value of the security is permanently more than 20% above the value of the receivables.

2. The item remains the property of the Supplier. As the manufacturer, the Supplier shall be responsible for processing and altering the goods, though not liable for them. If the (co-) ownership of the Supplier expires due to adjunction, it is agreed that the (co-) ownership of the Purchaser on the common object shall be transferred to the Supplier depending on the corresponding percentage value of the invoice. The Purchaser shall act as custodian for the Supplier's (co-) ownership free of charge. Goods of which the Supplier has (co-) ownership shall be referred to as conditional goods hereinafter.

3. The Purchaser is entitled to process and auction the conditional goods in proper business transactions as long as they are not in default of payment. Pledging or collateral assignments are not permissible. Any receivables arising out of the resale or any other legal ground relating to the conditional goods shall be assigned by the Purchaser to the Supplier to its full extent for security purposes. The Supplier irrevocably authorises the Purchaser to collect, on their behalf, the receivables assigned to the Supplier. This authorisation can only be revoked if the Purchaser does not fulfil his contractual payment obligations.

4. If third parties are given access to the conditional goods, the Purchaser shall indicate that they are the property of the Supplier and inform the Supplier of this immediately.

5. If the Purchaser is in breach of contract – particularly for default of payment – the Supplier is entitled to withdraw the conditional goods or, if applicable, to demand the assignment of the claims for return of the goods held by the Purchaser against third parties. The withdrawal and seizure of the conditional goods by the Supplier shall not be regarded as a cancellation of the contract.

VIII. Liability for defects in the delivery

The Supplier is liable for defects in the delivery, which also includes the lack of expressly warranted qualities, to the exclusion of further claims and irrespective of section IX.4 as follows:

1. All parts that within 6 months (within 3 months in case of multiple-shift operation) since commissioning, as a result of a condition existing before the transfer of risk, particularly owing to faulty construction, poor component materials or defective execution, prove to be unsuitable or are considerably impaired in their usability are to be repaired or redelivered free of charge as reasonably seen fit at the Supplier's choice. Upon discovery of such defects, they should be notified to the Supplier immediately in writing. Replaced parts shall become property of the Supplier. If shipping, assembly or commissioning is delayed by no fault of the Supplier, the liability shall expire at the latest 12 months after the transfer of risk. In case of essential third party products, the Supplier's liability shall be restricted to the assignment of the liability claims to which the Supplier is entitled against the Supplier of the third party products.

2. The Purchaser's right to make claims arising from defects shall expire in all cases within 6 months from the point of timely notification, at the earliest however with the expiry of the warranty period.

3. No guarantee can be assumed for damages arising from the following: unsuitable third parties, natural wear, incorrect or negligent handling, unsuitable resources, replacement materials, faulty construction work, unsuitable foundation, chemical, electrochemical or electrical influences, insofar as these cannot be attributed to the fault of the Supplier.

4. In order for the supplier to undertake the repairs or replacements which appear to be necessary at their discretion, the Purchaser shall notify the Supplier and allow the required time and opportunity, otherwise the Supplier is released from liability for defect. Only in urgent cases where there is a risk to operational safety and to avoid disproportionately large damages, of which the Supplier needs to be informed immediately, or when the Supplier is in delay with the rectification of the defect, the Purchaser shall be entitled to rectify the defect themselves or have it rectified by a third party and claim reimbursement of the necessary costs from the Supplier.

5. The Supplier shall bear the direct costs arising from the repair or replacement delivery – provided that the complaint proves to be justified – that is to say the cost of the replacement part including shipping.

6. The warranty period for the replacement part and repair will be 3 months, but no less than the original warranty period offered for the delivered item. The liability period for defects for the delivery item is extended by the duration caused by the operational interruption due to the rectification.

7. In the case of improper use on the part of the Purchaser or a third party without prior consent of the Supplier, where modifications or commissioning work is undertaken, there is no liability for any consequences which arise from this.

8. Further claims on the part of the Purchaser, particularly a claim to compensation of damages which did not occur to the item itself are excluded. This exclusion of liability shall not apply in case of intent or gross negligence on the part of the owner or managing employees or in cases where, according to product liability law, in case of defects in the delivery item, liability exists for personal injury or material damage to privately used objects. It shall also not apply in case of absence of characteristics that are expressly assured, when the warranty was given with the intent of protecting the Purchaser against damages not resulting from the delivered item itself.

IX. Liability for secondary obligations

Where the item supplied cannot be used by the Purchaser according to the contractual terms because of negligent or incorrect execution prior to or after the conclusion of the contract or other contractual secondary obligations – in particular with regard to operational instructions and maintenance of the delivered item – the regulations in section VII and IX shall apply accordingly with the exclusion of any further claims on the part of the Purchaser.

X. Purchasers' right to withdrawal

1. The Purchaser is entitled to withdraw from the contract if the complete service becomes impossible for the Supplier before the transfer of risk. The same shall apply in case of the Supplier's inability to provide the service. The Purchaser may also withdraw from the contract if in case of an order of similar goods or a part of the delivery becomes impossible and the Purchaser is not interested in partial delivery. If this is not the case, the Purchaser may reduce payment correspondingly.

2. If there is a default in performance within the meaning of section IV of the supply conditions and the purchaser grants the Supplier, if the Supplier is in default, a reasonable subsequent period of time, and if we fail to provide the service within this subsequent period of time, the Purchaser is consequently entitled to withdraw from the contract.

3. If impossibility arises during the default of acceptance or due to the purchaser being at fault, the Purchaser shall be obliged to effect payment.

4. Furthermore, the Purchaser shall have a right of withdrawal if the Supplier allows a reasonably extended deadline for the repair or replacement delivery concerning a defect they were responsible for in terms of the supply conditions to pass to no effect through their own fault. The Purchaser's right to withdrawal also exists in the case of the Supplier's impossibility or inability to repair or deliver.

5. All further claims on the part of the Purchaser, in particular in terms of calculation, termination or reduction as well as compensation for damages of any kind, including such damage which did not occur to the delivered item itself, are excluded. This exclusion of liability shall not apply in case of intent or gross negligence on the part of the owner or managing employees and in cases where, according to product liability law, in case of defects in the delivery item, liability exists for personal injury or material damage to privately used items. It shall also not apply in the event of absence of characteristics which have been expressly guaranteed, if the purpose of such a guarantee was to protect the Purchaser against damages which did not occur to the delivery item itself.

XI. Supplier's right to withdraw

In the case of unforeseen circumstances within the meaning of section IV, insofar as they considerably change the economic meaning of the content of the service or considerably affect the Supplier's operations and in the case of an impossibility of performance that subsequently becomes evident, the contract shall be amended accordingly; if this is not economically justifiable, the Supplier shall have the right to withdraw from the contract or the parts of the contract affected. The Purchaser shall not be entitled to compensation for such a withdrawal. If the Supplier wishes to make use of the right to withdraw, he must inform the Purchaser of this without delay after becoming aware of the consequences of the event, even if a prolongation of the delivery period was initially agreed with the Purchaser.

XII. Applicable law, place of performance and jurisdiction, partial nullity

1. These business conditions and the complete legal relationship between Supplier and Purchaser are governed by the law of the Federal Republic of Germany. The uniform law on the international sale of goods shall not apply.

2. If the Purchaser is a full merchant, a legal entity under public law or a special fund under public law, the place of performance for the supply and payment is the location of the supply plant. In this case, the court of jurisdiction is Delmenhorst or the general court of jurisdiction of the purchaser at the choice of the Supplier.

3. Should a provision of these general conditions or a provision under any other agreements be or become legally ineffective, the remaining provisions or agreements shall remain unaffected.