

# TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1. Scope

In the following, the company Schwing Türenwerk GmbH is also referred to as the "Seller", and the purchaser or orderer is also referred to as the "Buyer". The validity of the remainder of the content of these Terms and Conditions shall remain unaffected by the ineffectiveness of one or more clauses.

These Terms and Conditions apply only to entrepreneurs or any other equivalent contracting party within the meaning of Section 310(1) of the German Civil Code (BGB), unless differing provisions are expressly contained in the terms and conditions for contracts with consumers.

The Terms and Conditions are decisive with regard to all offers and orders. They generally apply after the implementation of a transaction, even if the Terms and Conditions are not included/enclosed with subsequent agreements or deliveries. Other standard terms and conditions of the Buyer are expressly rejected. They are only valid if they are expressly confirmed by us.

Our terms and conditions also apply if we accept the Buyer's order without reservation, despite being cognisant of terms and conditions of the Buyer which conflict with or deviating from these Terms and Conditions.

## 2. Offers

All offers are subject to change without notice, and are non-binding, unless the offer states otherwise.

## 3. Sales

Orders are not deemed to have been accepted by us until they have been confirmed by us in writing, subject to the possibility of delivery. All agreements made directly or indirectly through our travelling salespersons or representatives require our written confirmation in order to be valid. Upon acceptance and execution of orders placed orally, by telegram or by telephone, the Buyer shall bear the cost and responsibility of any misunderstandings or errors in communication, and of the resulting additional costs. Order confirmations are to be checked thoroughly by the Buyer.

## 4. Prices

All prices are quoted ex works excluding packaging, unless otherwise stated in the order confirmation.

Our prices are subject to change without notice until the fulfilment of a contract by delivery, unless otherwise stated in the order confirmation. In the event of changes to the calculation basis between the time of contract conclusion and delivery, and in particular in the event of increases in the price of raw materials, wages, or changes in the exchange rate, etc., we are entitled to make a price adjustment in accordance with the new conditions. We will inform the Buyer immediately of any such changes in price. In the event of price deviations of more than 10%, the Buyer shall be entitled to withdraw from the contract, within a period of 10 days from the date of notification that the price is changing from that given in the contract, insofar as the lat-

ter has not yet been fulfilled. After this ten-day period, the new prices are deemed to have been approved.

Our prices are made up of the net price plus plus the statutory value added tax. The latter is calculated at the statutory level valid at the time of delivery, and shown separately on the invoice date.

## 5. Packaging

Any packaging will be charged at cost price and will not be taken back, unless this is required by the German regulations on packaging or other statutory provisions.

## 6. Delivery

Unless a fixed delivery date has been expressly agreed and confirmed by us, the delivery dates given are merely approximate and are thus to be regarded as non-binding. Nevertheless, we will endeavour to comply with delivery times specified, to the extent possible. If delivery is delayed, we are entitled to make use of an extension period of up to 3 weeks.

Claims for damages due to delayed delivery are excluded, unless the delay in delivery is due to intent or gross negligence. Our liability for damages is limited to foreseeable damages which might be typically incurred. We shall also be liable according to the statutory provisions if the delay in delivery for which we are responsible involves the culpable violation of essential contractual obligations; in this case, however, the liability for damages is limited to the foreseeable, typically occurring damages.

In cases of force majeure and interruptions to operations for which we are not responsible, such as strikes, lock-outs, fire, raw material shortages and their consequences, both in our own factory as well as at our suppliers', or other unforeseen events, which render compliance with the agreed delivery periods or delivery to be unacceptable or even impossible, we are entitled to a reasonable extension of the agreed delivery deadlines or to completely withdraw from the contract, where the obstacles that exist are not merely temporary. Claims for damages – and in particular compensation for lost profits or lost commission – are expressly excluded in such cases.

## 7. Payment

**Payment shall be made immediately in all cases – unless another arrangement is separately agreed upon in writing on the occasion of each order.**

If, after contract conclusion, it becomes apparent that the Buyer is suffering from poor financial solvency, due to which our claims are at risk, then we are entitled to demand the prior provision of a security, or payment on a delivery-versus-payment basis, and to set the Buyer a reasonable time limit for this purpose; after the expiry of this period, we are entitled to withdraw from the contract. Insofar as the Seller deems it necessary, it may – in the case of adversely modified conditions, or conditions of which it becomes subsequently aware – demand immediate payment or

the provision of a security for all outstanding receivables, including those not yet payable, without the application of any discount, and also for ongoing orders. Where "cash on delivery" is agreed, the Buyer shall be liable for the cost of transport, if the handover of the relevant goods does not occur due to non-payment. In the event of late payments or suspended payments, any discounts or special benefits etc. granted will discontinue; bills of exchange and cheques are considered as payment only after their complete settlement; therefore, any acceptance occurs only subject to reservation. In addition, the bills of exchange must be discountable, otherwise the Seller may demand cash payment against their return, without a discount being applicable.

With regard to consumers, we charge arrears interest of 5% above the base rate once the agreed payment period has been exceeded; we otherwise charge interest – as soon as they become payable in the case of merchants – of 8% above the relevant base rate, unless we demonstrate higher interest costs. Lower interest rates may be applied if the Buyer – as it is expressly permitted to do – provides evidence of lower damages. In the case of bills of exchange and cheques, the Seller accepts no liability for the orderly notification and lodging of protests.

Offsetting against counterclaims is allowed only if they have been legally established, are undisputed or have been expressly acknowledged by us. The assertion by the Buyer of any lien is excluded, unless it is based on the same contractual relationship or unless the counterclaims are recognised, undisputed or legally established.

## 8. Complaints/liability

Obvious complaints must be reported immediately in writing to the Seller, and by no later than within 8 days after the delivery and in any case before further processing or assembly of the goods. Notices of defects coming after this period are excluded in this respect.

The further merchant obligations with regard to inspection and complaint, in accordance with Sections 377, 378 of the German Commercial Code, shall remain unaffected. The obligation for immediate inspection and to report any complaints extends to all deviations and to the entire delivery.

Minor deviations in quantity and unit differences are to be accepted by the Buyer, insofar as they are reasonable and customary in the trade. "Customary in the trade" for contracts with merchants means deviations in quantity of up to 20% and unit differences of up to 10%.

If defective goods have demonstrably been delivered by us, where the quality does not meet that specified by us, supplementary performance will occur in the form of (at the discretion of the Buyer in the case of direct deliveries to consumers, and otherwise at our discretion) the rectification of defects or replacement, in accordance with the statutory provisions. In the context of the sale of consumer goods, if such goods are to be resold, our customer is obliged to forward to us – firstly, and immediately – any request of the end customer for supplementary performance, before any further rights of recourse are asserted.

If we refuse to execute subsequent performance or if subsequent performance within a reasonable period of time is not possible, has not occurred successfully or is not reasonable for the Buyer, then the latter may withdraw from the contract or demand an appropriate reduction of the purchase price.

We are liable according to the statutory provisions if the Buyer asserts claims for damages based on intent or gross negligence, including the intent or gross negligence of our representatives or vicarious agents. If we are not accused of any intentional breach of contract, the liability for damages is limited to damage which is foreseeable and typically occurring. We shall also be liable according to the statutory provisions, insofar as we culpably breach an essential contractual obligation; in this case, however, the liability for damages is limited to the foreseeable, typically occurring damages. Liability due to culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the German Product Liability Act.

The legislation in accordance with Section 445a BGB also remains unaffected.

Unless otherwise stipulated above, liability is excluded.

Returns will not be accepted without prior, written and mutual agreement. Accepted products are stored at the expense and risk of the Buyer.

## 9. Shipping

Shipping is always at the expense and risk of the Buyer, even in the case of carriage-paid agreements. The Buyer must give precise shipping specifications.

If no such specifications are given, then shipping is performed using a convenient method, without any responsibility on the part of the Seller. Fees besides freight shall be borne by the Buyer, as will additional new costs arising after the sale.

## 10. Retention of title

The delivered goods remain our property until full payment of the purchase price and until the clearance of all claims arising from the entire business relationship, irrespective of whether this involves additional costs for packaging, freight, transportation or similar costs.

Goods delivered subject to retention of title are taken back at the respective daily rate at the time they are taken back, but shall in no case be more than the contractual sales price less the actual expenditure incurred by the Seller for transport and packaging costs and the commission paid, etc., as a result of the contract and as a result of the taking back of the goods. To compensate for impairments of value and to compensate for loss of profits, we are also entitled to reduce the repurchase price by a flat rate of 15%. The Buyer is allowed to provide proof that no or only minor damage has arisen.

Before full payment has occurred, the Buyer is not entitled to partly or wholly pledge our goods, processed or not, nor to make dispositions of such goods against our interests.

The Buyer must notify us immediately of the imminent or completed seizure, or of any other impairment of our rights by third parties, and in particular of the existence of blanket assignments. We are to be immediately informed in writing of any seizure or any other hazard to our rights posed by third parties, along with any details we may need under Section 771 ZPO (German Code of Civil Procedure). The Buyer is liable if we suffer a shortfall due to a third party not being able to provide us with the court and extra-judicial costs of an action under Section 771 ZPO.

If the goods are wholly or partly resold before the remainder of the payment is made, then the claims from such further sale or processing of our goods shall be passed to us. In each individual case, we may demand in this respect the establishment of a special written declaration of assignment.

Our retention of title extends also to items arising from of our goods through machining or processing. As a precaution in this respect, the Buyer hereby assigns to the Seller all claims with regard to the goods to which the former is now entitled (or to which it becomes entitled in the future) from sales or from any other legal grounds – and thus also the profits or other proceeds which are bound to the Buyer's right to claim.

The Buyer is only authorised to collect claims as long as it properly fulfils its payment obligations towards the Seller. On request, the Buyer shall inform us about the assigned claims and their debtors and provide us with all information and material required for recovery. If we specifically request it, the Buyer must notify the relevant third-party debtor of the assignment to us.

In the event of the inseparable mixing with third-party suppliers' goods, we shall become the co-owner thereof according to the ratio of the value (final invoice amount including value added tax) of our delivery to the value of the delivery of other goods.

The claims assigned to us pursuant to Paragraphs 4 and 5 correspond to the proportion of our goods to the total mass. On request, the Buyer is obliged to notify us of the address of and proportions contributed by the third-party suppliers.

Further claims, in particular claims for damages instead of performance in accordance with Section 281 of the German Civil Code, shall remain reserved.

In the event of a suspension of payment, any still-present goods supplied by us shall bear liability in any event for our claims, regardless of whether these goods have been paid for or not. Regardless of this, the Buyer is obliged:

- 1.) To insure the goods sufficiently against fire and theft. Claims for such insurance for goods delivered under retention of title are hereby assigned by the Buyer to the Seller.
- 2.) To store the goods separately from the other goods.
- 3.) To bear the costs of any interventions.

4.) To dispose of the goods only in the ordinary course of business, i.e. in particular not to pledge them or to transfer ownership of them, and not as collateral.

We undertake to release the collateral due to us at the request of the Buyer, to the extent that the value of our collateral exceeds the claims secured by them by more than 20%. It is the Seller's responsibility to select the collateral to be released.

#### **11. Place of performance and jurisdiction**

For business transactions with merchants in the sense of the HGB (German Commercial Code), and with legal persons under public law and special assets under public law, the place of performance and place of jurisdiction for all disputes – including for disputes concerning cheques and bills of exchange – is the Seller's headquarters, unless otherwise stated on the order confirmation.

The same place of jurisdiction shall apply to the dunning procedure and for Buyers who have no other domestic jurisdiction. However, the Seller explicitly reserves the right, if necessary in the event of a dispute, to use the domestic or foreign court which generally has jurisdiction for the Buyer.

#### **12. Applicable law**

The legal relationship between Seller and Buyer shall be governed exclusively by German law. The provisions of contract law regarding the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

#### **13. Collection**

Representatives or employees have no authority to collect money, unless they hold special written power of attorney in each case.

All previous agreements lose their validity upon the publication or submission of these Terms and Conditions.

**Reken, 01. Dezember 2018  
Schwering Türenwerk GmbH**