

**1. SCOPE OF APPLICATION**

- 1.1 The following terms and conditions shall apply to all contracts which relate to deliveries and services of SCHÜTZ GmbH & Co. KGaA, unless stipulated otherwise by individual agreement. They can be accessed at any time at [www.schuetz.net/agb](http://www.schuetz.net/agb).
- 1.2 Agreements made prior to or at the time of conclusion of contract which deviate from these provisions shall be made in writing. Conflicting or supplementary Terms and Conditions of Purchase of the customer shall not be accepted. This shall also apply in the event that we execute a delivery or service without reservation though knowing about Terms and Conditions of Purchase.

**2. CONCLUSION OF CONTRACT · DELIVERY**

- 2.1 Our offers are non-binding.
- 2.2 Information about quantities, measures and weights, images and descriptions in catalogues and other documents is non-binding, as well as information concerning suitability and use of our deliveries and services. It does not exempt the customer from compliance with applicable legal provisions and regulatory requirements nor from carrying out its own tests as far as necessary. Guarantees or the assumption of a procurement risk shall be made in writing in order to become effective.
- 2.3 Permits from public authorities and other approvals, which are necessary for an order to be executed, have to be obtained by the customer.
- 2.4 A contract is concluded only upon our written confirmation of the order, at the latest, however, with acceptance of the deliveries and services by the customer. This also applies to individual contracts (call-off orders) within a framework contract. Verbal agreements shall be subject to written confirmation in order to be effective.
- 2.5 Deliveries are subject to Incoterms (2010), unless stipulated otherwise EX WORKS at the place of delivery named in the confirmation of order.
- 2.6 We are entitled to make early or partial deliveries and services, provided that they are not unreasonable for the customer.
- 2.7 Bindingly agreed delivery lead times commence with the day of confirmation of order, however, not before all details of the order have been clarified and not before timely fulfilment of the customer's contractual duties. They are deemed to be met with the notification that delivery is ready for shipment.
- 2.8 Delivery dates shall be reasonably extended in case of force majeure or other circumstances for which we are not liable, especially natural disasters, shortage of raw materials or energy, disruption of operations, measures taken by public authorities as well as incorrect or untimely self-delivery. We shall be released from our obligation to deliver if a delivery becomes unreasonable or impossible due to these circumstances.
- 2.9 Without prejudice to any rights, the customer shall accept deliveries and services even if they are defective.

**3. PRICES · PAYMENT · SET-OFF · ASSIGNMENT · RETENTION**

- 3.1 Our prices valid at the time of conclusion of contract shall apply, in Euro, plus, if applicable, value added tax (VAT) at the respective statutory rate.
- 3.2 Payments by the customer have to be made exclusively to the account indicated on the invoice and shall be deemed effected only when we can unreservedly dispose of the full amount. Payments are credited against the eldest invoice due, namely for costs, interest and principal performance.
- 3.3 The purchase price has to be paid immediately without deduction, at the latest 30 days after invoicing.
- 3.4 If we, after conclusion of contract, become aware of the risk of the customer not being able to pay or if the customer comes into arrears with its payment obligations, we are entitled to set new payment terms for open deliveries and services and to request collaterals. We are entitled to claim interests on arrears and maturity interests to the extent provided by law.
- 3.5 The customer shall only be entitled to set off provided that his counter-claim has become established by final enforceable judgment or is uncontested. The customer shall only be entitled to a right of retention if based on claims from the same contractual relationship which are uncontested or established by final enforceable judgment.
- 3.6 Claims arising from our deliveries and services shall not be assigned without our prior written authorisation.

**4. RETENTION OF TITLE**

- 4.1 We retain title to the goods delivered by us until all claims resulting from the business relationship with the customer have been settled in full ("reserved goods").
- 4.2 Our retention of title also includes goods which have been manufactured by way of processing. If our reserved goods are processed, combined or mixed with goods of third parties, we shall be entitled to proportionate co-ownership corresponding to the relation of the invoice value of our goods and the third parties' goods.
- 4.3 The customer shall have the revocable right to sell reserved goods in the due course of business. In such a case, the customer already now agrees to assign to us all of its claims and ancillary rights towards its customer resulting from the resale, and in the case of resale after processing, combining or mixing with third party's goods in the amount of the partial amount corresponding to our co-ownership. We accept this assignment and are entitled to disclose it if the customer is in arrears. In this event, the customer is obliged to immediately disclose details of the buyer of the goods and his claims and if requested by us, inform him about the assignment.
- 4.4 The customer undertakes to treat our reserved goods with proper care, to protect them by means of necessary and appropriate safety measures, to insure them, to mark them as our property and to store them so that that they can be separated from other goods at any time. The customer already now assigns to us all claims against his insurer in case of damage, insofar as they relate to our property. We accept this assignment. Pledging and transfer by way of security, renting or other transfer or modification of our reserved goods are not permitted. We have to be immediately notified in writing of pledging or other interferences by third parties.
- 4.5 If the customer is obliged to advance payment towards its own customer, if the customer is based outside Germany or resells the reserved goods outside Germany, he has to safeguard our retention of title up to full payment of the goods or offer an alternative, equal means of security.
- 4.6 If the estimated value of the securities from retention of title and assigned claims exceeds 150% of the value of the claims secured, we are, on the customer's demand, obliged to either waive our retention of title or release securities at our choice.

**5. CLAIMS FOR DEFECTS OF QUALITY**

- 5.1 Claims by the customer for defects of quality are governed by the law, modified as follows:
- 5.2 Claims for defects by the customer require that obvious defects have been notified to us in writing no later than 5 working days after receipt of the goods and hidden defects no later than 5 working days from discovery, including an exact description of the defects.
- 5.3 On our request the customer has to send the rejected goods for inspection to our place of business in Selters/Westerwald or to another place specified by us.
- 5.4 In case of a timely notified defect of quality, we will, at our choice, either repair the defect or replace the goods by goods free of defects ("supplementary performance"). Supplementary performance takes place at the place of the initial delivery. Costs for disassembling, pick up or assembling are not borne by us within supplementary performance.
- 5.5 If supplementary performance fails or is unreasonable for us due to economically inadequate conditions or inadequate deadlines, the customer may withdraw from contract or reduce reasonably the price. Supplementary performance is deemed failed only after a minimum of at least two unsuccessful attempts.
- 5.6 The customer has no warranty rights in case of insignificant defects, such as minor deviations in material, dimension, colour or quantity delivered, natural wear and tear, or damages attributed to specifications, drawings or other templates by the customer, or defects caused by faulty handling, alterations or repairs of the goods by the customer or third parties.
- 5.7 Claims for supplementary performance become time-barred after one year from delivery, unless in case of fraudulent concealment of a defect, an agreement on a quality guarantee, wilful intent or if the goods are a building or goods which have been used for a building according to their ordinary use and have caused its defectiveness.
- 5.8 Claims for damages and expenses are exclusively governed by section 7. Other claims for defects of quality or claims different from those are excluded, irrespective of the statutory rights for recourse within consumer contracts for purchase of goods.

**6. CLAIMS FOR DEFECTS OF TITLE**

- 6.1 We provide our deliveries in the country of the place of delivery free from third party property rights.
- 6.2 If a third party in the country of the place of delivery raises claims against the customer, which are justified and not time-barred, because of violation of its property rights by use of deliveries under the contract, we will either, at our choice and expense, obtain a right of use for the deliveries concerned, modify the deliveries so that a property right is no longer violated or replace the deliveries by deliveries free of third party property rights.
- 6.3 Should this not be possible under reasonable terms and conditions, the customer shall be entitled to the statutory rights of withdrawal from contract or reduction of the contract price, with all further claims being excluded.
- 6.4 The aforementioned obligations only exist if and insofar as the customer has informed us immediately in writing about the claims alleged and if all defence measures and settlement negotiations remain reserved to us. Claims of the customer are excluded if the customer is responsible for the violation of property rights, especially due to particular specifications by the customer, due to an unforeseeable application, due to changes to the goods delivered or due to the use with products which have not been delivered by us. If the customer ceases the use of the delivery for reason of mitigation of damage or other important reasons, he is obliged to inform the third party that this cessation of use is not an admission of violation of property rights.
- 6.5 Claims for defects of title become time-barred after one year from delivery, unless the law compulsory provides for longer deadlines.

**7. LIABILITY FOR DAMAGES AND EXPENSES**

- 7.1 We are only liable for gross negligence and intent as well as breach of an essential contractual obligation, whose fulfilment only enables to perform the contract and on which the customer may regularly rely ("major obligation").
- 7.2 In case of slightly negligent breach of a major obligation, our liability shall be limited to the typical damages foreseeable at conclusion of contract. In case of slightly negligent breach of contractual secondary obligations, which are no major obligations, our liability shall be excluded.
- 7.3 In case of initial impossibility we are only liable if we knew the hindrance to performance, it remained unknown to us due to gross negligence or if a major obligation has been breached due to the initial impossibility.
- 7.4 The customer can only have recourse against us if the claims of its customer do not exceed what is owed under the compulsory statutory rules. If our customer has limited his liability towards its customer, any exceeding liability from our side is excluded.
- 7.5 Where our liability is limited or excluded, the liability of employees, representatives and any other agents shall be limited or excluded as well.
- 7.6 Claims for damages under product liability law, damages to life, limb or health, fraudulent concealment of defects and assumption of a guarantee or a procurement risk shall remain unaffected. This shall not imply a change to the burden of proof to the detriment of the customer.
- 7.7 Customer's claims for damages for which liability is limited under these provisions shall become time-barred after one year beginning from the start of the statutory limitation period. This does not apply to claims arising from tort, under product liability law as well as for claims due to faulty buildings or goods which were used for a building in accordance with their normal use and caused its defectiveness.

**8. BUSINESS AND TECHNICAL INFORMATION · CONFIDENTIALITY**

- 8.1 Tools, moulds, models, samples, materials, parts, plans, drafts, drawings, data storage mediums, process descriptions, calculations, conditions, economic terms, prices as well as any other documentation or information ("Business and Technical Information") which we provide to the customer for or in the course of implementation of delivery or service remain our sole property. Property rights embodied therein belong exclusively to us. The customer is neither entitled to file applications for industrial property rights nor to claim any right of prior use. Granting of licences or other rights of use has not been agreed.
- 8.2 Our Business and Technical Information which we provide to the customer or which he became aware of otherwise, must not be disclosed, passed onto third parties, duplicated, reproduced, analysed or used for any other purpose than the one agreed, without our prior written consent. This does not apply to information of which the customer is able to provide written proof that
  - a) it was publicly known when it has been provided or has become known afterwards without a violation of confidentiality by the customer,
  - b) it has already been known to the customer when it has been provided or
  - c) it has been passed onto the customer by a third party without breaching any confidentiality obligation.
- 8.3 Employees of the customer that necessarily come into contact with our Business and Technical Information due to their area of responsibility shall be separately bound by an obligation to secrecy before disclosure or passing on of information. This equally applies to third parties and their employees.
- 8.4 The customer undertakes to treat our Business and Technical Information with proper care, mark it as our property, protect it by means of necessary and appropriate safety measures, to insure it, and to store it so that it can be separated from other information at any time.
- 8.5 The customer undertakes to immediately cease the use of our Business and Technical Information, including any possible duplications, reproductions or analysis if a delivery or service will not be executed or if the contractual cooperation has been terminated. Our Business and Technical Information shall immediately and completely be returned, including any possible duplications, reproductions or analyses, or, if return is impossible because of the information's nature, be irretrievably destroyed. The supplier has to confirm us its complete return or destruction in writing. There is no right of retention.
- 8.6 The confidentiality obligation shall exist for 10 years from termination of contractual cooperation.

**9. APPLICABLE LAW · PLACE OF PERFORMANCE · JURISDICTION · LANGUAGE · SEVERABILITY CLAUSE**

- 9.1 German law shall apply exclusively, with the exception of its provisions on conflict of law and the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention).
- 9.2 Place of performance is at our place of business in Selters/Westerwald as long as we do not specify another place of performance in the order confirmation.
- 9.3 Exclusive jurisdiction for all legal disputes relating to these terms and conditions and the commercial relationship is Koblenz. We are entitled to bring any such dispute before any other legally competent court.
- 9.4 The contractual language is English.
- 9.5 If one or more clauses of these terms and conditions are void or non-enforceable, nothing in this shall prejudice the validity and enforceability of the remaining clauses. We are entitled to replace an ineffective clause by an effective one, which comes close to the visibly aspired economic success. The same applies in case of gap of these terms and conditions or other provisions of the contract.