

## TERMS OF SALE AND DELIVERY

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of **SCHUF Chemieventile Vertriebs GmbH & Co. KG** respectively **SchuF- Armaturen und Apparatebau GmbH**, An der Guldenmühle 8-10, 65817 Eppstein, Germany, Tel. +49 6198 571-100, Fax: +49 6198-571-200 (hereinafter „Vendor“).

### 1. Application

- 1.1 All deliveries, services and offers of the Vendor are exclusively based on these Terms of Sale and Delivery. They are part of all agreements concluded between the Vendor and its contractual partners (hereinafter also referred to as the “Clients”) regarding the deliveries and services offered by it. They also apply to all future services, deliveries or offers to the Client even if they are not agreed upon separately again.
- 1.2 Terms and conditions of the Client or of third parties do not apply even if the Vendor does not object to their application in each individual case. If the Vendor refers to a letter which contains or refers to terms and conditions of the Client or of a third party, this does not imply any acceptance of the application of such terms and conditions.

### 2. Offer and Conclusion of an Agreement

- 2.1 All offers of the Vendor are subject to change and not binding, unless expressly identified as binding or containing a specific term for acceptance. The Vendor can accept orders or contracts within 14 days after receipt.
- 2.2 Only the purchase agreement concluded in writing, including these Terms of Sale and Delivery shall be significant for the legal relationship between the Vendor and the Client. The purchase agreement fully reflects any and all understandings between the contractual parties regarding the subject matter of the agreement. Oral commitments made by the Vendor prior to the conclusion of this agreement are not legally binding and oral agreements between the contractual parties are replaced by the written agreement unless they expressly continue to be valid and binding due to their respective nature.
- 2.3 Amendments and changes to the concluded agreements, including these Terms of Sale and Delivery need to be made in writing in order to be valid. With the exception of managing directors and prokura holders (*Prokuristen*), the Vendor’s employees are not allowed to make oral agreements differing hereof. In order to observe the written form requirement, the transmission via fax is sufficient. A transmission via e-mail does not fulfill the written form requirement.
- 2.4 Vendor’s delivery or service details (e.g. weights, dimensions, consumption levels, stress levels, tolerances and technical data) including drawings thereof (e.g. technical drawings and illustrations) are only approximate, unless their usability for contractual purposes requires an exact match. They shall not be considered guaranteed features (*garantierte Beschaffenheitsmerkmale*) but descriptions of the goods and services. Standard commercial deviations or deviations resulting from regulatory changes or technical improvement, as well as the replacement of components by similar parts, shall be permissible to the extent that they do not affect usability for the intended purpose.
- 2.5 The Vendor reserves the ownership and copyright regarding all offers and quotations it made as well as any drawings, images, calculations, literature, catalogues, models, tools and other documents and means provided to the Client. The Client may not make these items or their content available to third parties, disclose them, use them itself or via third parties or duplicate them without the express approval of the Vendor. Upon the Vendor’s request, the Client has to return all these items to the Vendor and destroy any copies if it does no longer need them within the proper course of business or if negotiations do not lead to the conclusion of an agreement.

### 3. Prices and Payment

- 3.1 The prices apply to the scope of service and delivery stated in the order confirmation. Additional or special services or deliveries are invoiced separately. The prices are generally stated in Euro ex works plus applicable value-added tax, in case of export delivery plus customs and other public duties, unless another currency or other terms have been agreed upon.
- 3.2 To the extent the agreed prices are based on the Vendor’s list prices and the delivery shall be made more than four months after the agreement is concluded, the Vendor’s list prices at the time of delivery shall apply (applying the same percentage rebates or fix rebates as agreed).

- 3.3 Invoice amounts shall be paid within 30 days at the latest without any deduction, unless otherwise agreed in writing. The date of receipt by the Vendor is decisive for the date of payment.
- 3.4 If the Client does not pay within the payment period as set forth in sec. 3.3, it shall be in default as of the following day, without a reminder notice. Interest at the rate set forth in Sec. 288 para 2 of the German Civil Code shall be applied on any outstanding amounts from the date of maturity. Claims for higher interest or further damages in case of default remain unaffected.
- 3.5 The offsetting with counterclaims of the Client or the withholding of payments due to such claims is only permissible, if such counterclaims are uncontested or have been validly determined by a final judgment.
- 3.6 The Vendor has the right to carry out any outstanding deliveries or render outstanding services only against advance payment or securities if, after the conclusion of the agreement, it becomes aware of circumstances, which may significantly reduce the Client's financial standing and which may jeopardize the Client's payment of the Vendor's outstanding receivables from the respective contractual relationship (including from other individual orders to which the same framework agreement applies).

#### **4. Cancellation of Orders**

If the Client wishes to cancel an order in part or in total after conclusion of the agreement, it shall promptly notify the Vendor thereof in writing, specifying which parts of the order shall be cancelled. The (partial) cancellation shall only be effective, if and to the extent the Vendor accepts it by written cancellation confirmation. Unless the Vendor does not prove higher cancellation costs in individual cases, the Client shall pay a fixed cancellation fee that shall be calculated as follows, depending on the date of receipt by the Vendor of the written cancellation request:

- a. 10% of the cancelled order amount if date of receipt after sending the order confirmation,
- b. 30% of the cancelled order amount if date of receipt after sending the technical drawings for approval,
- c. 40% of the cancelled order amount if date of receipt after the technical drawings have been approved,
- d. 50% of the cancelled order amount if date of receipt after substantial amounts of materials for the production of the cancelled parts have been received by the Vendor,
- e. at least 60% and up to 100%, depending on the production status, of the cancelled order amount if date of receipt after production of the cancelled parts has started.

The respective highest percentage, the conditions of which pursuant to lit. a through e are satisfied, applies, irrespective of whether the preceding levels have already been triggered.

#### **5. Delivery and Time of Delivery, Force Majeure, Partial Deliveries**

- 5.1. Deliveries take place, at the Vendor's discretion, ex works or ex stock at the expense of the Client.
- 5.2. Delivery periods and dates given by the Vendor are non-binding estimates only, unless a fixed period or fixed date is explicitly guaranteed. To the extent the agreement provides for shipment, any delivery periods and dates given relate to the date on which the goods are handed over to the shipper, carrier or other third party commissioned for carrying out the shipment.
- 5.3 Without prejudice to its rights for any default by the Client, the Vendor may request from the Client an extension of the delivery and performance periods or an adjournment of the delivery and performance dates by any period, during which the Client does not observe its contractual obligations towards the Vendor. Due to the high specialization of the Vendor's goods, it is typically necessary that the Client reviews and approves technical drawings. Should the Client not review such drawings within the reasonable deadlines set by the Vendor, the agreed delivery dates shall automatically be adjourned by the corresponding number of days.
- 5.4. The Vendor is not liable if the delivery becomes impossible and it is not liable for any delays in delivery if these are caused by force majeure or other events which could not be foreseen at the time of the conclusion of the agreement (e.g., any kind of disruption of operations, difficulties in the procurement of material or energy, delays in transportation, strikes, legal lockouts, a lack of workers, energy or raw materials, difficulties in the procurement of the necessary official permits, administrative actions (such as embargos) or outstanding, wrong or delayed deliveries by suppliers), and for which the Vendor is not responsible. If these events make it significantly difficult or impossible for the Vendor to deliver the goods or render the services and if the obstacle is not just temporary, the Vendor has the right to rescind from the agreement.
- 5.5 If the obstacles are only temporary, the periods for delivery or performance are extended or the dates for delivery or performance are postponed by the duration of the obstacle plus an appropriate start-up time. The

Vendor will inform the Client promptly about the reason of the delayed delivery and will indicate the foreseen new delivery date. In this case the transmission via e-mail satisfies the written form requirement, notwithstanding section 2.3 above.

- 5.6 The Vendor is entitled to make partial deliveries and accordingly to issue invoices for delivered items, unless this would be reasonably unacceptable for the Client. If a partial delivery has been made, the delivered part has already been built in and only accessories or documentation is missing, the Client may withhold a reasonable fraction (not to exceed 5%) of the invoice amount for this partial delivery.
- 5.7 Should the Vendor be in default with a delivery or the performance of services, or should a delivery or performance of services become impossible, irrespective of the cause, the Vendor's liability for damages shall be limited as set forth in section 9 of these Terms of Sale and Delivery.

## **6. Place of Performance, Shipment, Transfer of Risk, Acceptance**

- 6.1 The place of performance for all obligations arising from the contractual relationship is 65817 Eppstein (Germany), unless otherwise specified.
- 6.2 The choice of the shipping route, the mode of shipment and the packaging are subject to the Vendor's dutiful discretion according to the agreed terms of delivery.
- 6.3 The risk is transferred to the Client at the latest when handing over the delivery item (the beginning of the loading process is decisive) to the shipper, the forwarder or any other third party commissioned for carrying out the shipment. This also applies in the case of partial deliveries, if a carriage-free delivery has been agreed upon or if the Vendor assumed other services (e.g. shipment). If the shipment or the handing over is delayed due to circumstances, for which the Client is responsible, the risk is transferred to the Client on the day on which the delivery item is ready for shipment and on which the Vendor informed the Client accordingly.
- 6.4 The Client bears the storage costs after the transfer of risk.
- 6.5 The Vendor insures the shipment against theft, breakage, transport damage, fire loss, water damage or other insurable risks only upon the Client's express request and at the Client's expense.
- 6.6 To the extent the purchased goods have to pass formal acceptance, they are deemed accepted if:
  - a. the delivery and, if the Vendor has agreed to install the goods, the installation has been completed,
  - b. the Vendor has notified the Client thereof and has requested that the Client formally accepts the goods, such notice referring to the deemed acceptance rules pursuant to this section 6.6,
  - c. ten working days have passed since the delivery or installation of the purchased goods or the Client has started using the purchased goods and in this case five working days have passed since the delivery or installation, and
  - d. the Client has not granted acceptance of the purchased goods within this time frame for a reason other than a defect reported to the Vendor, which makes the use of the purchased goods impossible or compromises it significantly.

## **7. Warranty, Defects**

- 7.1 The warranty period is one year from the date of delivery or, if the Client has to accept the goods, from the date of acceptance. Normal wear and tear is excluded from the warranty.
- 7.2 The delivered items have to be carefully inspected promptly after their delivery to the Client or to the third party designated by the Client. They are deemed approved if the Vendor did not receive a written notice of defects within 7 working days after delivery of the delivery items for obvious defects or other defects which would have been detected during an immediate, careful inspection, or otherwise within 7 working days after the discovery of the defect or after such earlier date on which the defect would have been discovered by the Client during normal use of the delivery items without a detailed inspection. Upon the Vendor's request, the rejected delivery item has to be sent back to the Vendor carriage free. In case of a justified notice of defects, the Vendor will reimburse the Client for the cost of the return shipment, limited to the least expensive shipping method; this does not apply to the extent additional costs are incurred due to the fact that the delivery item is located at a location other than the location of its contractual use.
- 7.3 In case a delivered good is defective, the Vendor has the obligation and the right to either repair the defect or deliver a replacement; the decision between the two alternatives is to be made by the Vendor at its sole discretion within a reasonable period of time. In case curing the defect has finally failed, i.e. because the repair or replacement is impossible, unreasonable (which requires at least two attempts to repair or replace)

or refused by the Vendor, the Client has the right to rescind the defective partial delivery or to reduce the purchase price to a reasonable extent. The Vendor can only warrant the correct mechanical function of its valves, if the Client has fully informed the Vendor, at the latest at the time of the order placement, of all operating conditions and all characteristics of the medium.

- 7.4 If a defect is due to the Vendor's fault and after the repair or replacement has failed, the Client can request compensation for damages according to the requirements specified in section 9.
- 7.5 In case of a defect of a part manufactured by a third party that cannot be cured by the Vendor due to legal or factual reasons, the Vendor shall at its discretion either assert its warranty claims against the manufacturer(s) and supplier(s) for the account of the Client or assign such warranty claims to the Client. The Client may only bring warranty claims for such defects against the Vendor in accordance with these Terms of Sale and Delivery and provided all other prerequisites are met, and after enforcing the aforementioned claims against the manufacturer and supplier through the courts was unsuccessful or if enforcement is futile, e.g. due to insolvency. While the court claim against the manufacturer or supplier is pending, the statute of limitations of the Client's warranty claims against the Vendor is stalled.
- 7.6 No warranty claims exist, if the Client has modified the delivered items itself or through third parties without the Vendor's consent and this modification makes it impossible or unreasonably difficult to cure the defect. In any event, the Client has to bear the additional cost of curing the defect to the extent they are caused by the modification.
- 7.7 Should in an individual case be agreed that used goods be delivered, such delivery shall exclude any and all warranty claims.

## **8. Intellectual Property Rights**

- 8.1 In accordance with this paragraph, the Vendor is responsible for the delivery item being free from third party intellectual property rights or copyrights. Each contractual party shall inform the other contractual party promptly in writing if claims are asserted against them due to the alleged infringement of such rights.
- 8.2 If the delivery item infringes upon a third party intellectual property right or copyright, the Vendor shall change or replace the delivery item – at its own discretion and expense – in such a way that the third party rights are no longer infringed upon but the delivery item still fulfills the contractually agreed functions or it shall obtain the right of use for the Client by concluding a license agreement. If the Vendor is unable to do so within a reasonable period of time, the Client has the right to withdraw from the agreement or reduce the purchase price appropriately. Any possible claims for the Client's compensation for damages are subject to the limitations of these Terms of Sale and Delivery.
- 8.3 If the rights are infringed upon because of the products of other manufacturers delivered by the Vendor, the Vendor shall at its discretion either assert its claims against the manufacturer and supplier for the account of the Client or assign these claims to the Client. In accordance with this rule, no claims may be brought against the Vendor, unless the legal enforcement of the claims mentioned above against the manufacturer and the supplier was unsuccessful or if enforcement is futile, e.g. due to insolvency.

## **9. Liability for Damages**

- 9.1 The Vendor's liability for damages for whatever legal reasons, in particular due to impossibility, default, incomplete or wrong delivery, breach of contract, breach of obligations during the contractual negotiations and unlawful acts, shall be limited according to this section 9.
- 9.2 The Vendor shall not be liable in the case of simple negligence of its corporate bodies, authorized representatives, employees or other agents, unless liability results from a breach of material contractual obligations. Only the following obligations are considered material: (i) to meet delivery periods and dates, but only to the extent they have been expressly guaranteed by the Vendor, (ii) to deliver the delivery items free of material defects and (iii) the obligations to advise, protect and care to the extent these obligations are essential to enable the Client to use the delivery items according to the contract at all, to protect limb and life of the Client's employees or protect its property from significant damages.
- 9.3 To the extent the Vendor is liable for damages under section 9.2, this liability shall be limited to damages which the Vendor anticipated at the time of conclusion of the agreement as a possible consequence of a breach of contract or which it should have anticipated had it used customary care. Indirect damages and consequential damages which are the result of defects of the delivery item are furthermore only eligible for compensation if these damages are typically to be expected when using the delivery item according to its contractual purpose. Any damages resulting from contractual penalty or liquidated damages provisions of any kind, to which the Client is bound vis-à-vis third parties, shall only be deemed to be anticipated or

typically expected, if they were disclosed to the Vendor in writing prior to the conclusion of the agreement, detailing the concrete conditions triggering such clauses, the amount and the calculation method.

- 9.4 In the case of liability for simple negligence (i.e. in case of a breach of material contractual obligations), the Vendor's liability for property damages damage and subsequent financial damages is limited to one million Euros for each individual claim (according to the current limit of liability of its product liability insurance or third-party liability insurance).
- 9.5 The exemptions from liability and limitations stated above apply to the same extent in favor of the Vendor's corporate bodies, authorized representatives, employees and other agents.
- 9.6 To the extent the Vendor gives technical information or advice and if this information or advice is not part of the scope of services owed by the Vendor and agreed upon in the agreement, such information or advice is provided free of charge and under exclusion of any liability on the Vendor's part.
- 9.7 If a delivery date expressly guaranteed by the Vendor is not met or if the Vendor is otherwise in delivery default and this results in damages to the Client, the Client shall be entitled to a liquidated damage payment. Such payment shall amount to 0.5 % per full week of delay, up to a maximum of 5 % of the value of that portion of the order that cannot be used by the Client in accordance with the contract purpose due to the delay. This shall constitute the sole and exclusive remedy for the Vendor's liability for damages caused by a failure to meet delivery dates and for delivery default, excluding cases of gross negligence or willful default.
- 9.8 If the Vendor in an individual contract and in deviance from section 9.7 agrees to a contractual penalty or liquidated damages clause for missing delivery dates, such clause shall be the exclusive remedy for any damage claims against the Vendor for missing delivery dates or for delivery default, excluding cases of gross negligence or willful default.
- 9.9 The limitations of liability pursuant to sections 9.1 to 9.8 above do not apply to the Vendor's liability for injury of life, body or health or under the German Product Liability Act (*Produkthaftungsgesetz*).
- 9.10 Overall, the Vendor's liability for damages under an order, for whatever legal reasons (i.e., including contractual penalties and liquidated damages) shall be limited to a maximum of 20 % of the order value. This does not apply to the Vendor's liability based on gross negligence or willful misconduct or for injury of life, body or health or under the German Product Liability Act (*Produkthaftungsgesetz*).

## **10. Retention of Title**

- 10.1 The Vendor reserves the ownership title of any goods supplied by it until their full payment. In this case, all deliveries are considered as one connected delivery transaction. In the case of a running account, the reserved ownership is considered as security for a balance claim.
- 10.2 If the Client combines the goods with other items to form one integrative object and if this object is to be considered as the main object, the Client shall assign a pro-rata co-ownership to the Vendor as far as the main object belongs to it. If the Client re-sells the delivered items as intended, it hereby already assigns the claims against its customers, including all ancillary rights arising from this sale, to the Vendor until all its accounts receivable have been settled completely.
- 10.3 If the Vendor is of the opinion that the realization of its claims is at risk, the Client shall notify the third party buyers of the assignment upon the Vendor's request and shall transmit to the Vendor the necessary information and documents for asserting its rights. The Client shall inform the Vendor promptly about any access of third parties to the reserved goods and assigned claims.
- 10.4 The Vendor shall release the securities held for its benefit if they exceed the secured claims by more than 20 % in total.

## **11. Final provisions**

- 11.1 The venue for any disputes arising from the business relationship between the Vendor and the Client is at the Vendor's discretion Frankfurt am Main (Germany) or the place of the Client's business seat. However, for legal court actions against the Vendor, Frankfurt am Main (Germany) shall be the exclusive venue. Mandatory legal provisions regarding exclusive venues remain unaffected by this provision.
- 11.2 The relationships between the Vendor and the Client are exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.
- 11.3 To the extent the agreement or these Terms of Sale and Delivery contain any gaps, those valid provisions are considered as agreed upon for closing these gaps, which the contractual parties would have agreed

upon according to the economic purpose of the agreement and the purpose of these Terms of Sale and Delivery, if they had known such gaps.

**Note:**

The Client acknowledges that, in connection with the contractual relationship, the Vendor retains data according to article 28 of the German Data Protection Act (*Bundesdatenschutzgesetz or BDSG*) for the purpose of data processing and that it reserves the right to transmit this data to third parties (e.g. insurances) if this is necessary for executing the agreement.