



Schulte & Schmidt
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GTC

General Terms and Conditions of Sale of Schulte & Schmidt GmbH & Co Leichtmetallgießerei KG

§ 1 Scope – General

(1) Our terms and conditions of sale shall apply exclusively. We refuse to accept any terms and conditions of the customer which contradict or diverge from our terms and conditions of sale, unless we have expressly approved their validity in writing. Our terms and conditions of sale shall also be deemed to apply even if we carry out the customer's order in awareness of terms and conditions of the customer which contradict or diverge from our terms and conditions of sale. Our terms and conditions shall apply to all transactions with the customer, including all future transactions.

(2) All agreements made between us and the customer for the purposes of the fulfilment of this contract are laid down in writing in this contract.

(3) Our terms and conditions of sale shall only apply to merchants as defined by § 310 (1) BGB (German Civil Code).

§ 2 Offer – Orders - Confidentiality

(1) If the customer's order is deemed to be an offer within the meaning of § 145 BGB, it shall be binding and we shall be entitled to accept the offer within 3 weeks by the sending of an order confirmation or by the sending of the goods which have been ordered.

(2) We shall retain all proprietary rights and copyrights to all illustrations, drawings, calculations and other documents. This shall also apply to all other written documents specified as "confidential". The customer shall not disclose them to any third parties without prior express permission from us in writing. The customer agrees to treat as confidential all documents which they receive. The duty to maintain confidentiality also extends to the time after the execution of this contract and shall only expire if and to the extent that the production knowledge contained in the supplied documents becomes public knowledge.

§ 3 Prices – Terms of Payment

(1) Unless stipulated otherwise in our order confirmation, our prices are "ex works", excluding packaging. This shall be invoiced separately.

(2) Our prices do not include statutory value added tax. It shall be included as a separate item on the invoice at the statutory rate applicable on the day the invoice is issued.

(3) Unless agreed otherwise, the list prices valid at the time of delivery shall apply.

(4) The deduction of any discounts requires separate specific written agreement.

(5) Unless stipulated otherwise in our order confirmation, the purchase price shall be due for payment net (without deductions) within 30 days after the date on the invoice. Any delay in payment shall be subject to the applicable statutory regulations. In particular, we shall be entitled to demand payment of interest of 8% above the applicable base rate on any payments in arrears. Payment by bills of exchange or cheques may only be made subject to separate special agreement.

(6) The customer shall not be entitled to any rights of set-off unless their counter-claims have become legally effective, are uncontested or have been accepted by us. Furthermore, the customer shall not be entitled to any rights of retention unless their counter-claim is based on the same contractual relationship.

(7) Cost estimates and quotations which are more extensive in scope shall only be prepared at no additional charge if this is expressly agreed. Unless expressly agreed otherwise, the costs of workpiece-specific models and production equipment (e.g. casting moulds) shall always be paid for in advance.

§ 4 Time of Delivery - Delivery

(1) Unless stipulated otherwise in the order confirmation, it is agreed that delivery is "ex works". The risk shall transfer to the customer when the goods leave our works. If despatch is delayed at the behest or fault of the customer, the risk shall pass to the customer when the goods are ready for despatch.

Commencement of the time for delivery given by us shall be subject to clarification of all details pertaining to execution. Compliance with our delivery obligations shall also be subject to the customer duly fulfilling their contractual duties in a timely manner. The defence of lack of performance of the contract shall remain reserved. For the scope of delivery, our written order confirmation is binding. We shall be entitled to make modifications for reasons of technical improvement or to meet statutory requirements, so long as they can be reasonably expected from the customer.

(2) Partial deliveries shall be permissible, so long as they do not conflict with any identifiable interests of the customer.

(3) Where the customer is in default with regard to acceptance of delivery or culpably infringes any other obligations to cooperate, we shall be entitled to demand compensation for any damages, including additional costs, incurred by us as a result. This is without prejudice to the right to assert any other claims.

(4) If the conditions set out in Section (3) are at hand, the risk of accidental loss or accidental deterioration of the delivery shall pass to the customer at the point in time at which the customer fell into default of acceptance or default of the debtor.

(5) In the case of call-off purchase agreements without agreed terms and acceptance deadlines, we shall be entitled to demand a binding stipulation in this regard within three months at the latest after order confirmation. If the customer fails to meet this demand by a reasonable deadline, we shall be entitled to withdraw from the contract and to demand compensation for damages.

(6) If the customer wishes us to carry out any required tests, the type and scope of the tests must be agreed by the time the contract is concluded at the latest. Otherwise the customer shall pay for the costs involved.

(7) If delivery is required on the basis of a sample produced by us, the customer shall be required to examine and approve the sample at our works immediately after notification that the sample has been completed. If approval is not given by a reasonable deadline for reasons which are in the responsibility of the customer, we shall be entitled, at the expense and risk of the customer, to either send the sample or put it into storage. The sample shall thereby be deemed to have been approved.

(8) Our liability in respect of delay in delivery is restricted to intent and gross negligence. We shall only accept liability for consequential damages if they are foreseeable and are typical for the type of contract. In any case of slight and moderate negligence we shall only accept liability to a value of a maximum of 5% of the total scope of delivery.

§ 5 Packaging – Transportation

(1) In accordance with packaging regulations, we shall not take back any transportation packaging and any other items of packaging, with the exception of pallets. The customer has a duty to dispose of packaging at their own expense. Returnable packaging remains our property. The customer is duty-bound to take proper care of such packaging and return it to us properly at their own expense and risk.

(2) On request by the customer, we can arrange for the delivery to be covered by insurance. All costs incurred in this case shall be borne by the customer.

§ 6 Dimensions - Weights - Quantities

(1) Compliance with dimensions is subject to DIN and EN standards. In all other respects, the dimensions and weights contained in our offers/quotations and order confirmations are correct to the best of our knowledge and belief. However, they do not constitute a guarantee regarding any qualities. Minor deviations, especially casting-related excess or short weights, shall not provide the customer with any entitlement for complaint or notification of defects, unless expressly agreed otherwise and the customer cannot be reasonably expected to accept the deviation.

(2) An undersupply or oversupply of up to 10% relative to the actual order quantity shall be

permissible for serial production runs because of the special characteristics of the metal casting process.

§ 7 Liability for Defects

(1) Customer claims in respect of defects shall be subject to the condition that the customer has duly and correctly fulfilled their duties under § 377 HGB (German Commercial Code) to carry out examinations and provide notification of defects. The required examination shall be carried out within two working days after receipt of delivery at the customer's premises. Complaints about defects shall only be accepted as having been made in due time if they are submitted to us within two working days after discovery of the defect. We shall be given the opportunity to check the defect which is the subject of the complaint on the spot.

(2) Unless agreed otherwise, only insignificant deviations from a quality which do not impair usability shall be deemed not to be defects.

(3) In the event of a defective object of delivery, the customer shall be entitled to choose between remedial performance in the form of correction of the defect or in the form of the delivery of a new product which is free from defects. We provide a guarantee for the period of one year that the object of delivery shall be free from defects. Unless expressly agreed otherwise, if we supply a replacement delivery within the limitation period in response to a complaint made by the customer about a defect, this shall not constitute acknowledgement of the alleged defect if the customer did not provide notification of the defect in due time and the defect is not proven or uncontested. This shall also apply to remedial performance within the limitation period. Unless expressly agreed otherwise, all specifications or product descriptions shall constitute specifications of performance only and shall not be deemed to constitute either guarantees of any qualities or the provision of a guarantee.

(4) In the event of correction of defects, we shall be duty-bound to bear all costs incurred for the purposes of correction of the defects, in particular transportation costs, travel expenses, work expenses and material costs, unless these are incurred because the object of delivery was moved to a location which differs from the place of fulfilment. If the customer makes an unjustified complaint about a defect for reasons which are not in our responsibility, we shall be entitled to demand compensation for any consequential expense incurred by us.

(5) The customer shall grant us the opportunity to render remedial performance by a reasonable deadline before they assert any further going claims. Where remedial performance fails in spite of at least two unsuccessful attempts, the customer shall be entitled to a reduction in the price or to withdraw from the contract; the choice shall be at the customer's discretion.

(6) We shall be liable for claims for damages from the customer, in accordance with statutory regulations, if based on intent or gross negligence, including intent or gross negligence on the part of our agents or persons performing an obligation for us. Liability for damages shall be limited to foreseeable, typically occurring damages, unless it is demonstrated that we have intentionally violated the contract. In any case of slight and moderate negligence we shall only accept liability for consequential damages to a value of a maximum of 5% of the total scope of delivery.

(7) The customer shall not be entitled to any rights of recourse in relation to the purchase of consumer goods, in so far as they pertain to agreements between the customer and their purchasers, which extend beyond the statutory rights of the customer to claims regarding defects. The customer shall notify us immediately of any claims regarding defects made by their purchasers, so that we can be in a position to decide, at our choice, to fulfil the claims of the purchaser rather than those of the customer.

(8) If we culpably violate a material contractual obligation, we shall be liable in accordance with statutory regulations; in this case, however, liability for damages shall be limited to foreseeable, typically occurring damages.

(9) If the customer is entitled to compensation for damages in lieu of performance, our liability shall also be limited to compensation for foreseeable, typically occurring damages, and this shall apply in relation to Section (3) as well.

(10) This shall not affect liability in relation to culpable injury to life, body and health; this also applies to mandatory liability in accordance with the German Product Liability Act.

(11) In the absence of any provisions to the contrary in the above, all liability shall be excluded.

(12) In the event of the infringement of any third party protected rights for which we are responsible, we shall be entitled, at our choice, to either acquire at our expense the user rights required for the agreed or required use and transfer them to the customer, or to modify the

supplied goods in such a way that the protected rights are not infringed, or to replace the supplied goods, if in each case this does not impair the agreed and required use of the supplied goods. If this is not possible, the customer shall be entitled to their statutory rights.

(13) The limitation period for claims for defects is 12 months, calculated from the date of the transfer of risk. This shall not affect the longer statutory periods applicable to the delivery of goods which are used in a building in accordance with their normal use. This shall not affect the limitation period in the case of recourse in respect of delivery in accordance with §§ 478, 479 BGB; it shall be five years, calculated from the date of despatch of the defective object.

§ 8 Total Liability

(1) No further liability for compensation for damages over and above the provisions of § 6 shall be accepted – regardless of the legal nature of the claim. This applies in particular to claims for compensation for damages due to fault in the conclusion of the contract, due to any other failures to comply with duties or due to claims in tort for compensation for damages to property in accordance with § 823 BGB.

(2) Where our liability for compensation for damages is excluded or limited, this shall also apply to the personal liability for compensation for damages of our officers, employees, agents and persons performing an obligation for us.

§ 9 Reservation of Title

(1) We shall retain ownership of the supplied objects until all payments due on the agreed current account (business relationship) with the customer have been paid in full. This reservation of title is in respect of the accepted balance. We shall be entitled to take back the delivery if the customer is in breach of the contract, in particular if the customer is in default of payment. If we take back the delivery, this shall not be deemed to constitute withdrawal from the contract, unless we expressly state this to be the case in writing. If we seize the supplied object in execution, this shall in all cases constitute withdrawal from the contract. We shall be entitled to dispose of the delivery after taking it back and offset the proceeds from disposal against the liabilities of the customer – after deduction of reasonable disposal expenses.

(2) The customer is duty-bound to handle the object of delivery with care ; in particular the customer is duty-bound to ensure that the object of delivery is sufficiently covered by insurance for its as-new value, at the customer's own expense, against damages due to fire, water and theft. Where maintenance and inspection work is required, the customer shall ensure that it is carried out at their own expense in due time.

(3) The customer shall be required to inform us immediately in writing of any attachments or other interference by third parties, to enable us to take legal proceedings in accordance with § 771 ZPO (Code of Civil Procedure). If the third party is not in a position to recompense us for the judicial and extra-judicial costs of legal proceedings in accordance with § 771 ZPO, the customer shall be liable for the costs incurred by us.

(4) The customer shall be entitled to resell the object of delivery as part of their ordinary course of business. However, the customer agrees herewith to assign to us all claims for payment to the level of the final invoice sum (including VAT) for our claim for payment, which become due to the customer from their purchaser or third party due to the resale of the goods, and that shall mean regardless of whether the object of delivery was sold before or after any work undertaken to work the goods into a new form. The customer shall remain authorised to collect the claim for payment even after assignment. This shall not affect our authority to collect the claim for payment ourselves. However, we undertake not to exercise our authority to collect the claims for payment, so long as the customer meets their payment obligations from the proceeds collected, does not fall into default in payment and, in particular, no petition for bankruptcy, composition or insolvency proceedings is filed or payments suspended. If, however, this should be the case, we shall be entitled to demand that the customer disclose to us the assigned claims for payment and the names of the debtors, that they provide us with all the information required to collect the claims, hand over all documents required for the purpose and inform the debtors (third parties) about the assignment.

(5) Any work undertaken by the customer on the object of delivery to transform it or work it into a new form shall be undertaken for us. Where the delivery is worked into a new form together with other objects which are not our property, we shall acquire co-ownership of the new object, our share of ownership being commensurate with the value of the delivery (final invoice sum,

including VAT) relative to the other worked objects at the time of working into a new form. In addition, the provisions set out for the conditional objects of delivery shall also apply to the object resulting from working into a new form.

(6) Where the delivery is inseparably commingled with other objects which are not owned by us, we shall acquire co-ownership of the new object, our share of ownership being commensurate with the value of the delivery (final invoice sum, including VAT) relative to the other commingled objects at the time of commingling. Where these are commingled in such a manner that the customer's object is deemed to be the main object, it is herewith agreed that the customer shall assign us the proportionate share of ownership. The sole ownership or co-ownership so derived shall therefore be held in custody for us by the customer.

(7) As security against our claims for payment against the customer, the customer shall also assign to us claims they acquire in respect of a third party due to the connection of the object of delivery with real property.

(8) On request from the customer, we undertake to release securities to which we are entitled, in so far as the realisable value of our securities exceeds the claims for payment requiring security by more than 10%; the choice of securities to be released shall be at our discretion.

§ 10 Models – Casting parts

(1) Where the customer provides us with workpiece-specific models or production equipment, this shall be sent to us at no charge to us.

(2) The customer shall guarantee to us that the use of the models and equipment and any drawings and documents is not prohibited by any protected rights. The customer agrees to release us from any claims from third parties. The customer shall waive any claims to license rights in relation to models and production equipment sent to us or produced or procured on the customer's behalf, so long as these are used by us in accordance with the contract.

(3) However, we shall be entitled to demand that the customer collect such equipment at any time. If the customer fails to meet this demand within three months, we shall be entitled to send them back to the customer at the customer's expense. The costs of maintenance and any desired modifications shall be borne by the customer.

(4) The customer shall be liable for guaranteeing that the equipment is correctly designed in technical terms and is constructed to be suitable for the intended purpose. We reserve the right to make casting-related modifications. Unless expressly agreed otherwise, we shall have no obligation to check that the equipment corresponds to supplied drawings or samples.

(5) Where the customer requests us to produce or procure workpiece-specific models or production equipment, this shall be done at the expense of the customer. Unless expressly agreed otherwise, we shall retain ownership of such equipment and shall keep it for a period of three years at the most after the completion of the final delivery. In this connection we shall only be required to exercise the care we normally exercise in respect of our own affairs. Insurance shall only be arranged if requested and paid for by the customer. We shall retain ownership of all drawings, design proposals or other documents supplied to the customer; they may not be passed on to any third parties without our express permission.

(6) Casting parts in a dimensionally accurate and ready-to-cast state and in sufficient quantities, i.e. in a quantity which reasonably exceeds the number of castings ordered, shall be delivered to us at no charge to us.

§ 11 Place of Jurisdiction – Place of Fulfilment – Severability

(1) Where the customer is a merchant, our registered place of business shall be the place of jurisdiction. However, we shall also be entitled to pursue legal proceedings against the customer at the customer's domestic place of jurisdiction.

(2) Unless stipulated otherwise in the order confirmation, our registered place of business shall be the place of fulfilment.

(3) The contract language is German. The laws of Germany shall apply in addition to these provisions. The provisions of the U.N. Law on the Sale of Goods shall not apply.

(4) The invalidity of any provision in these terms and conditions shall not affect the validity of any other provisions. The parties to the contract shall make every effort to replace the invalid provision with a provision which comes as close as possible to the intentions of the invalid provision and at the same time takes appropriate account of the mutual interests of the parties.