

Standard Terms and Conditions of Sale and Delivery

§ 1 General Provisions; Scope of Application

- (1) The Standard Terms and Conditions of Sale and Delivery stated below shall apply equally to HERZING + SCHROTH GmbH u. Co. KG and SCHROTH Antriebselemente GmbH as the Supplier.
- (2) The Standard Terms and Conditions of Sale and Delivery stated below shall apply exclusively. Terms and Conditions of the Purchaser deviating from or contrary to the present Standard Terms and Conditions of Sale and Delivery shall not apply.
- (3) The present Standard Terms and Conditions of Sale and Delivery shall also apply to all future business transactions of the Supplier with the Purchaser.

§ 2 Offer; Supporting Documents

- (1) All offers of the Supplier shall be without obligation, also as regards the prices and the delivery time.
- (2) Collateral agreements, commitments, warranties and other assurances of the Supplier and its vicarious agents respectively shall only become binding upon the written confirmation of the Supplier.
- (3) The Supplier reserves title and copyrights to cost estimates, drawings and other supporting documents. The construction drawings of the Supplier may not be made available to third parties without its express written permission.

§ 3 Design Details

In the case of orders for products whose design and composition details are prescribed by the Purchaser, the Purchaser itself shall be liable for the design or composition not encroaching upon third party patent rights. In the event of a claim, the Purchaser shall indemnify the Supplier against all third party claims regarding this.

§ 4 Technical Alterations

The Supplier reserves the right to carry out technical alterations.

§ 5 Long-Term Contracts and Call-Off Purchase Agreements; Price Adjustment

- (1) Contracts for an indefinite period may be terminated by either Party to the Contract by giving six months' notice. The notice of termination must be made in writing.
- (2) Unless fixed prices were expressly agreed, the Supplier reserves the right to make appropriate price adjustments due to altered wage, material, energy and other costs for deliveries made three months or later after the conclusion of the Contract. This provision shall also apply to long-term contracts and call-off purchase agreements with a term of more than twelve months. Inasmuch, agreed price deductions for long-term contracts shall not have the character of fixed prices.
- (3) The agreed prices shall be based on agreed target quantities. If the Purchaser takes delivery of less than the agreed target quantities in the order period, the Supplier is entitled to increase the unit price appropriately.
- (4) In the case of call-off delivery contracts, unless agreed otherwise, specific quantities must be notified to the Supplier by a call forward notice at least five months before the date of delivery.
- (5) Delivery periods shall only be set in train when all details of the order have been clarified by the Purchaser and all other preconditions to be fulfilled by the Purchaser have been satisfied. A corresponding regulation shall apply to dates of delivery. In particular, this shall apply to any packaging material and/or means of transport to be provided by the Purchaser or other parts to be provided by the Purchaser. The delivery period/date of delivery shall be observed if the delivery item has left the works of the Supplier or the Supplier has notified the carrier of its readiness for delivery up to the time of its expiry.
- (6) Unforeseen and inevitable occurrences during the manufacture for which the Supplier is not responsible and other hindrances as provided under § 16 shall entitle the Supplier to extend the delivery period by the duration of the hindrance. The Supplier must notify the Purchaser of the start and the end of such circumstances as soon as possible.
- (7) Additional costs that are caused by the Purchaser through a delayed call forward notice or subsequent changes to the call forward notice in terms of time or quantity shall be borne by the Purchaser and notified separately and invoiced by the Supplier.

§ 6 Confidentiality

- (1) Each Party to the Contract shall use all supporting documents (including samples, specimens, models, patterns and data) and information that it obtains from the business relationship only for the jointly pursued purposes and keep these secret from third parties with the same care as in the case of its corresponding own supporting documents and knowledge if the other party to the Contract has marked or labelled these as confidential or has an obvious interest in their confidentiality.

- (2) This obligation shall begin as from the time of obtaining the supporting documents or the information for the first time and shall end 36 months after the end of the business relationship.
- (3) This obligation shall not apply to supporting documents and information that are common knowledge or were already known to the Party to the Contract on their receipt, without it being obliged to observe confidentiality or that are communicated afterwards by a third party entitled to pass on these or that are developed by the party to the Contract in receipt of them without exploiting supporting documents or information of the other Party to the Contract which must be treated as confidential.

§ 7 Samples / Specimens / Designs and Workshop Facilities

- (1) Unless agreed otherwise, the costs for samples/specimens/designs and workshop facilities (tools, moulds, templates, stencils, edit formats etc.) of shall be invoiced separately from the goods to be delivered.
- (2) The Supplier shall bear the costs for the maintenance, exchange of wear and tear parts and proper safekeeping as well as the risk of damage or destruction of the workshop facilities.
- (3) If the Purchaser suspends or terminates the collaboration during the time of making the samples/specimens/designs or workshop facilities, it shall bear all costs incurred up to this time.
- (4) The workshop facilities shall remain the possession of the Supplier, even if the Purchaser has already paid for these, at least up to the time of the implementation of the contract for delivery. Afterwards, the Purchaser is entitled to reclaim the workshop facilities if an arrangement regarding the time of the return was reached by mutual agreement and the Purchaser has satisfied its contractual obligations in full.
- (5) The Supplier shall keep the workshop facilities in safe custody without remuneration for a period of three years after the last series delivery to the Purchaser. Afterwards, the Supplier shall call on the Purchaser in writing to comment on the continued use. The duty of the Supplier of safekeeping shall end if the Purchaser does not respond within six months or no new order is placed.

§ 8 Liability for Defects

- (1) Claims of the Purchaser based on defects shall take for granted that the Purchaser has complied in due form with its obligations to examine goods and give notice of a defect immediately on receipt as owed under Section 377 of the German Commercial Code [*Handelsgesetzbuch* (HGB)].
- (2) If a defect occurs, for which the Supplier is responsible, the Purchaser must set the Supplier an appropriate time limit to remedy the defect. The Supplier may at its choice remedy the defect or carry out the delivery of an item free of defects. In the event of a remedy of the defect, the Supplier is obliged to bear all expenses necessary for the purpose of remedying the defect, in particular transport, infrastructure, labour and material costs, provided these are not increased by the subject matter of the Contract being introduced to a place other than the place of performance.
- (3) If the Supplier's third attempt to remedy the defect is unsuccessful for reasons for which the Supplier is responsible, the Purchaser is entitled to demand an appropriate deduction of the contractually agreed purchase price (reduction) or remedy the defect itself or have this remedied by a third party at the expense and the risk of the Supplier. If this remedy of the defect by the Purchaser or a third party is successful, all claims of the Purchaser shall be settled upon the reimbursement of the necessary costs incurred by it. The Purchaser is not entitled to a right to rescind the Contract.
- (4) The Supplier is liable under the statutory regulations if the Purchaser asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence by the representatives or vicarious agents of the Supplier. Unless an intentional breach of Contract is imputed to the Supplier, the liability for damages shall be limited to foreseeable damage or loss typically occurring.
- (5) This shall not affect the liability of the Supplier for intentional or negligent injury to life, limb or health; this shall also apply in relation to the mandatory liability under the German Product Liability Act [*Produkthaftungsgesetz*].
- (6) Unless regulated above otherwise, further liability of the Supplier shall be excluded.
- (7) The limitation period for claims based on a defect is twelve months, calculated as from the time of the passing of the risk.

§ 9 Prices; Payment Conditions; Default in Payment

- (1) Unless agreed in writing otherwise, the prices of the Supplier in the currency of EUROS ex Works, excluding packaging and consignment warehouse and plus VAT in the amount applicable at any given time shall apply. Costs for packaging and the consignment warehouse shall be agreed separately and invoiced separately.
- (2) Payments by the Purchaser must be made exclusively to one of the accounts stated in the invoices of the Supplier. The deduction of a discount shall require a separate written agreement.
- (3) Unless agreed otherwise, payments must be made within 21 days after delivery/performance. In the event of non-compliance with this payment deadline, the Purchaser shall be in default without the requirement of a delinquency notice. For the duration of the default, the Supplier is entitled to demand default interest in the amount of 8 percentage points above the respective basic interest rate of the European Central Bank. The Supplier reserves the right to assert additional default damages.

- (4) Tool costs for test parts/prototypes shall be invoiced separately from the value of the goods. They must be paid as follows: 30% upon placing the order, 40% upon release of the construction, and 30% upon completion.
- (5) Tool costs for mass-produced parts shall be invoiced separately from the value of the goods. They must be paid as follows: 30% upon placing the order, 30% upon design release of the tools, 30% upon delivery of the Initial Samples, 10% upon release of the Initial Samples, however no later than eight weeks after the delivery of the Initial Samples.

§ 10 Set-Off, Right of Retention

The Purchaser may only set off against the claims of the Supplier if its counterclaims have been confirmed by final court decision or are undisputed. Rights of retention may only be asserted with regard to such adverse titles that derive from the same contractual relationship.

§ 11 Retention of Title

- (1) The goods delivered (reserved goods) shall remain the property of the Supplier until such time as all claims to which it is entitled against the Purchaser under the business relationship are satisfied. If the value of all security rights to which the Seller is entitled exceeds the value of all secured claims by more than 20%, at the request of the Purchaser the Supplier shall release a corresponding part of the security rights.
- (2) The Purchaser is obliged to treat the reserved goods carefully. In particular, it is obliged to insure these sufficiently to the replacement value against damage or loss through fire, water and theft at its own expense. If maintenance and inspection work is required, the Purchaser shall carry out this in good time at its own expense.
- (3) The treatment or transformation of the reserved goods shall always be carried out for the Supplier. In the event of processing or mixing, the Supplier shall obtain the co-ownership of the new thing in proportion of the value of the thing of the Supplier to the other processed goods at the time of the processing.
- (4) The Purchaser shall keep the (co)-ownership of the supplier in safe custody free of charge.
- (5) During the existence of the retention of title, the Purchaser shall be prohibited from assigning the reserved goods by way of pledge or transferring these by way of security and only permitted to resell to resellers in the usual course of business and only on condition that the reseller obtains payment from its customer or makes the reservation that the ownership shall only pass to the Purchaser if the Purchaser has fulfilled its payment obligation.
- (6) In the event of pledges, attachments, seizures or other statutory instruments or encroachments by third parties, the Purchaser must notify the Supplier in writing without undue delay so that the Supplier may bring a legal action in accordance with Section 771 German Code of Civil Procedure [Zivilprozeßordnung (ZPO)]. If the third party is not in a position to reimburse the Supplier for the court and out-of-court costs of a legal action in accordance with Section 771 ZPO, the Purchaser is liable for the loss incurred by the Supplier.
- (7) The Purchaser shall assign the debt claims arising from a resale or for another legal reason (insurance, tortious act) regarding the reserved goods in full as security to the Supplier. The Supplier shall authorize the Purchaser irrevocably to collect the debt claims assigned to it for the Supplier in its own name.
- (8) At the request of the Supplier, the Purchaser shall disclose the assignment, furnish the required information and hand out the related supporting documents.

§13 Passing of the Risk

- (1) The risk shall pass (even in the event of freight-paid delivery) to the Purchaser as follows:
 - (a) In the case of deliveries without installation or assembly, as long as these have been shipped or collected. At the request and the expense of the Purchaser, the Supplier shall insure the deliveries against the usual transport risks.
 - (b) In the case of deliveries with installation or assembly, on the day of taking into operation by the Purchaser or, if agreed, after a trial run has been carried out.
- (2) If the shipment, the delivery, the beginning, the carrying out of the installation or assembly, the taking into operation by the Purchaser or the trial run is delayed for reasons for which the Purchaser is responsible or the Purchaser defaults in acceptance for other reasons, the risk shall pass to the Purchaser.

§14 Subcontracts and Work to be provided by the Purchaser itself

- (1) If the Supplier carries out work for contract or work to be provided by the Purchaser itself, the material made available or provided by the Purchaser shall be treated or handled carefully. The Supplier is only obliged to check this if this material has expressly been agreed.
- (2) The parts to be provided by the Purchaser must be delivered as provided in the call forward orders of the Supplier (quantity and date). Costs incurred due to non-compliance with the agreed quantities or dates must be reimbursed to the Supplier.
- (3) Should parts be unusable due to defective material, the Purchaser shall reimburse the Supplier for the corresponding processing costs.

- (4) Should parts be unusable due to defective processing by the Supplier, the Supplier shall carry out the same work on a new item to be sent in at the expense of the Supplier without an additional charge.

§15 Joint Liability

- (1) Further liability of the Supplier for damages than as provided in § 8 shall - regardless of the legal nature of the claims asserted - be excluded. This shall apply in particular to claims for damages resulting from *culpa in contrahendo*, due to other breaches of duty or due to claims in tort for material damages under Section 823 of the German Civil Code [*Bürgerliches Gesetzbuch* (BGB)].
- (2) The limitation under paragraph (1) shall also apply if the Purchaser, instead of a claim for damages, demands reimbursement for futile costs instead of the performance.
- (3) If liability for damages to the Supplier is excluded or restricted, this shall also apply with regard to the personal liability for damages of the salaried employees, employees, staff members, representatives and vicarious agents of the Supplier.

§ 16 Force Majeure

- (1) Force majeure, labour disputes, riots, official measures, absent or lacking supplies by subcontractors and other unforeseeable, inevitable and serious occurrences shall exempt the Parties to the Contract for the duration of the disturbance and to the extent of their effect from their duties to perform.
- (2) This shall also apply if these occurrences arise at a time in which the Party to the Contract concerned is in default. The Parties to the Contract are obliged as far as reasonably possible to furnish the required information without undue delay and adapt its obligations in good faith to the changed circumstances.

§ 17 Place of Performance; Place of Jurisdiction; Applicable Law

- (1) The place of performance for the delivery shall be the place of receipt provided by the Supplier.
- (2) The place of jurisdiction for both Parties to the Contract shall be Offenbach am Main or at the choice of the Purchaser the principal place of business of the Supplier.
- (3) The law of the Federal Republic of Germany shall apply.
- (4) The applicability of the uniform UN sales law is expressly excluded.
- (5) In the case of disputes the binding version of these "Standard Terms and Conditions of Sale and Delivery" is the German version.