



General Conditions of Sale of Gebr. Schröder GmbH

Section 1 General Remarks

1. Our General Conditions of Sale shall apply to all present and future deliveries and services, including consultancy services, which we provide to companies, legal entities constituted under public law or separate public estates (*öffentlich-rechtliches Sondervermögen*). They shall apply to all subsequent transactions with Customers even if no additional reference is made to them in individual cases.
2. We shall not accept our Customers' conditions insofar as they are contrary to or deviate from our own General Conditions of Sale. Our General Conditions of Sale shall therefore apply even if we unreservedly make deliveries to Customers in the knowledge that our Customer's conditions are contrary to or deviate from our own General Conditions of Sale.
3. We shall provide our Customers with written notification of future amendments to our General Conditions of Sale to which the amended version shall be attached. The amended version shall apply to all subsequent transactions if the Customer does not challenge its validity within six weeks after it has received notification of the amendments.
4. The Customer may only assign its claims against us to third parties with our prior express consent. The provisions of Section 354a of the German Commercial Code (*HGB - Handelsgesetzbuch*) shall remain unaffected.
- 5. The Customer is advised that we shall store and electronically process its data. The data shall be processed in conformity with the German Federal Data Protection Act (*Bundesdatenschutzgesetz*). The data collected by us shall only be used for the performance of orders and for Customer care.**
6. If individual provisions of our General Conditions of Sale or parts thereof are ineffective this shall not affect the effectiveness of our remaining Conditions of Sale. In such a case an existing provision customary in the trade shall be substituted for the ineffective provision; if there is no permissible customary trade provision then the corresponding statutory provision shall apply.

Section 2 Offers and the Conclusion of Contracts

1. Our proposals in catalogues, on the Internet and in sales documents are subject to alteration, i.e. they should only be understood as an invitation to make an offer. In the absence of a contrary agreement, the contract shall not be concluded until the confirmation of an order or delivery.
2. If we expressly agree to the revocation of a binding issued order the Customer shall pay to us 10% of the total value of the order - even if we do not expressly repeat this requirement at the time of the revocation - unless the Customer is entitled to withdraw from the contract without our consent or can prove that the loss and/or damage sustained by us in consequence of the revocation is lower.
3. The reference numbers stated by us must be used in correspondence in order to facilitate communication and avoid misunderstandings. In particular the Customer shall state our order confirmation number in all documents. The Customer shall be responsible for all the



consequences of its non-compliance with these obligations (delays, wrongly addressed and/or returned items etc.).

4. Orders issued by the Customer shall be interpreted in accordance with Sections 133, 157 German Civil Code (*Bürgerliches Gesetzbuch – BGB*). If an unequivocal interpretation is not possible, the discretion to perform an obligation in one of several ways in the sense of Section 262 BGB shall exist in cases of doubt. We may in this case deliver any goods which conform to those requirements of the order which have been unequivocally ascertained through its interpretation.

5. We reserve our copyright and ownership in all images, drawings, computations and other documents. You may not make these available to third parties unless we have expressly agreed in advance that they may be forwarded to third parties.

Section 3 Prices and Payment Terms

1. Save where different contractual terms are individually negotiated, our prices shall correspond to our price lists valid at the time of the acceptance of the order which will be made available upon request.

2. The prices shall be ex-factory prices plus sales tax and additional costs such as packaging and insurance. They shall be stated in euros and shall be fully paid to one of our accounts i.e. without the debit of additional bank charges. The place of payment shall be Kiel, Germany.

3. If it is subsequently established that one of our invoices contains an obvious error or that incorrect prices or additional charges have been inadvertently made which are not based on erroneous calculations, we may subsequently demand the payment of the difference owed to us. If such an error should result in a difference owing to the Customer then the Customer may likewise demand the repayment of the difference.

4. If the period between the conclusion of the contract and the intended complete delivery or parts thereof is more than four months and if after the conclusion of the contract the cost of the supplied object increases by more than 5%, particularly if this is due to our sub-suppliers increasing their prices, we may reasonably increase (i.e. by an amount corresponding to the increase in our purchase costs) the price of those parts of the entire supply for which delivery is required after a period of four months. If we claim a price increase of more than 5% of the value of the entire delivery, the Customer may withdraw from the contract within two weeks after its receipt of our notification of the changed price.

5. In the absence of a contrary agreement our claim for payment shall fall due upon delivery (on a pro-rata basis in the case of partial delivery). After the due date for payment and the Customer's receipt of our invoice we may charge interest at the rate of 5% per annum on outstanding sums under Section 353 HGB.

6. If payment is made within 10 days after the due date and the Customer's receipt of the invoice, the Customer may deduct a discount of 2%. Payment must be made within 30 days of the due date and the receipt of the invoice. After ten days the payment must be made without any deduction; in particular discounts or transaction costs may not be deducted. If payment is made by bank transfer then the date on which the due sum is unconditionally credited to our account shall count as the date of receipt. If we accept cheques and bills of exchange, we do so only on account of payment. The payment obligation is only fulfilled once these are cashed in. The acceptance of bills of exchange shall require an additional separate agreement. The Customer shall be liable for discounts,



stamp duty and other exchange costs which shall be paid immediately after they are levied.

7. In the case of payment default we may demand penalty interest at the rate of 8% per annum above the base rate. If can prove that we have sustained additional loss and/or damage because of the default we may also claim for this.

8. The Customer shall only acquire a right of set-off or a right to withhold payment if its counterclaim has been finally established without the right of appeal or if it is undisputed or acknowledged by us.

Section 4 Delivery Period

1. The delivery dates confirmed by us are non-binding unless they are expressly stated to be binding.

2. Our obligation to deliver is subject to our own receipt of complete, correct and prompt deliveries where the entire items or components thereof are obtained by us from a sub-supplier. This provision shall not apply if we are responsible for any delay or non-delivery.

3. The observance of the delivery dates shall be subject to the client's prompt fulfilment of its own contractual obligations. The delivery period shall commence after the clarification of all the details of the execution of the order and the receipt of all the documents and any other particulars which the Customer must provide for the execution of the order and, if so agreed, after the receipt of the corresponding payment. The delivery period shall have been observed if the goods leave our factory at the agreed time or if the Customer is notified that the goods are ready for dispatch but cannot be promptly dispatched through no fault of our own.

4. The delivery period shall be reasonably extended in the case of unforeseeable measures within the framework of industrial disputes and in the case of unforeseeable obstacles beyond our control which substantially affect the manufacture or delivery of the goods.

5. Even where a calendar date for our performance has been fixed or may be fixed by reference to a previous event we shall not be in default until we have received a written warning. If we are in default with the delivery, the Customer must allow us a reasonable period of grace. This must be at least two weeks.

Section 5 Delivery

1. Delivery shall be from our factory in Kiel (the place of performance) unless the order confirmation states otherwise. The risk of loss or damage passes to the Customer upon the transfer of the goods to the freight forwarder, carrier or another person, even where such a person is employed by us. If dispatch is delayed because of circumstances for which we are not responsible, the risk shall already have been transferred to the Customer upon the issue of our notification of readiness to dispatch.

2. The Customer shall be obliged to accept partial deliveries in reasonable volumes. The Customer shall also be in default of its acceptance obligation if we merely propose the delivery to it in writing and other criteria for the default of its acceptance obligation are satisfied[HD1].



3. We may refuse delivery if it becomes evident after the conclusion of the contract that our entitlement to counter-performance is jeopardised because doubts exist with regard to the Customer's creditworthiness. Doubts with regard to the Customer's creditworthiness shall in particular exist in the following circumstances: applications for the opening and/or the opening of insolvency proceedings; composition proceedings; general and specific enforcement proceedings; protests with regard to cheques or bills of exchange, cheques not covered by funds; false information given by the Customer about its creditworthiness or unfavourable reports by lawful credit agencies. Our right to refuse performance shall lapse if counter-performance or security for counter-performance is provided. We may specify a reasonable period during which the Customer may at its discretion stage its payment or its provision of security for payment in accordance with the time of delivery. We may withdraw from the contract if this period expires without the Customer having done so.

Section 6

Condition of the Goods

1. Statements with regard to our goods are purely statements as to their condition unless they are expressly described as guarantees.
2. Impairments which result from natural wear and tear, erroneous or negligent handling or excessive use shall not constitute defects.
3. The Customer shall be solely responsible for the observance of legal, official and professional rules in its use of our goods.

Section 7

Liability for Defects

1. The Customer may only claim for defects if it has correctly complied with its duties of investigation and complaint under Section 377 HGB. A complaint about defects must be made in writing. A complaint with regard to an apparent defect must be made no later than five working days after the receipt of the goods. A complaint about latent defects must be made within five working days after their discovery.
2. If we are responsible for a defect in the goods, we may at our discretion provide subsequent performance through the elimination of the defect or through a replacement delivery. In the case of subsequent performance the Customer shall be liable for the additional costs incurred as a result of the delivered goods being taken to a location other than the location in which they were situated at the time of the discovery of the defect.
3. Defects in partial deliveries shall only entitle the Customer to withdraw from the entire contract if the remaining partial deliveries are demonstrably of no interest to it.
4. Claims in respect of defects which are not directed towards obtaining compensation shall become time-barred one year after delivery. This rule shall not apply in the case of an intentional breach of contract or in the case of a breach of warranty or in any of the cases specified by Sections 438 (1) No. 2, 634a (1) no. 2 BGB.
5. Insofar as we are necessarily liable within the framework of the trader's right of recourse (*Unternehmerrückgriff*), the provisions prescribed by Sections 478, 479 BGB shall take precedence.
6. Claims for defects which are directed towards obtaining compensation shall be governed by the provisions of Section 8 below.

Section 8



Limitation of Claims for Compensation

1. Claims for compensation against ourselves or our servants or agents shall be excluded if they concern mere negligent breaches of insignificant contractual obligations. Liability for mere negligent breaches of significant contractual obligations shall be limited to contractually typical and foreseeable loss and damage.
2. Compensation claims against us or our servants or agents for mere negligent breaches of obligations shall be time-barred after the expiry of one year. This rule shall not apply to compensation claims for defects in the cases specified by Sections 438 (1) no. 2 and 634a (1) no. 2 BGB.
3. The above exclusions and limitations of liability shall not apply to a breach of warranty or to cases of death, bodily injury or loss of health.
4. Insofar as we or our servants or agents are necessarily liable under the German Product Liability Act (*Produkthaftungsgesetz*) for damage to property or persons caused by product defects the provisions of the German Product Liability Act shall take precedence. The above rule shall also apply in the case of an internal apportionment of liability under Section 5 (2) of the German Product Liability Act.

Section 9 Retention of Title

1. The delivered goods shall remain in our ownership until the full payment of the purchase price demanded by us and the satisfaction of all our other claims against the Customer. The retention of title (*Eigentumsvorbehalt*) shall therefore exist as security for outstanding balances where our individual payment claims are included within a running account with an agreed cumulative balance.
2. The Customer shall assign to us its claim for payment and all the additional rights arising from the resale of the goods subject to our retention of title as security for all the claims which we possess against the Customer at the time of the resale.
3. The Customer is authorised to assign its claims derived from a resale within the framework of a genuine factoring transaction provided that it notifies us in advance of such an assignment and provided that the factoring proceeds are at least equal to the value of the goods subject to our retention of title. The Customer shall assign to us its payment claims and its other claims against the factor which are derived from the sale of its payment claims which were previously assigned to us as security for our own payment claims; the Customer's payment claims against the factor shall likewise secure our own claims. We hereby accept any assignments granted in the above terms.
4. If the realisable value of the claims assigned to us as security exceeds our own claims against the Customer by more than 10% we shall release the security held by us in excess of this figure at the Customer's request.
5. The Customer shall be empowered to collect the assigned claims for payment on our behalf. However, this power shall be revoked if the Customer falls into arrears with the payments owed to ourselves. In this case we shall be empowered in the name of the Customer to advise its purchaser of the assignment. The Customer shall provide us with the necessary information for the enforcement of our claims against its purchaser; it shall in particular name the purchaser and provide us with all the required certificates and documents.



6. The Customer may only resell our goods subject to our retention of title within the framework of its usual business transactions and subject to the condition that the right to the purchase price derived from the resale be transferred to us under Section 9 no. 2. This power shall be revoked if the Customer falls into arrears with the payments owed to us. The Customer may not otherwise dispose of the goods subject to our retention of title; in particular it may not pledge them or transfer them as security.

7. The Customer shall adequately insure the goods subject to our retention of title against loss and damage resulting from fire, theft, water or similar risks and shall provide us with evidence of the insurance policy on demand. The Customer hereby assigns to us any rights to compensation – where necessary on a pro-rata basis – which it may acquire against insurance companies or any other person which is liable to compensate it. We must also be advised of any interference with the goods subject to our reservation of title such as third party interventions.

8. If the power of resale ceases to exist, the Customer shall at our request provide us with information on its inventory of goods subject to our retention of title and on the goods owned by us under Section 9 no. 2 above or co-owned by us under Section 9 no. 3.

9. Furthermore, we may freely sell the goods released to us which are subject to our retention of title for the purpose of satisfying our claims as soon as we have withdrawn from the contract.

10. The parties hereby agree that a comparable security permissible under the relevant national law (e.g. retention of title in Great Britain) shall be granted if the delivery is a cross-border delivery and a German reservation of title in the above form is not recognised by the relevant foreign law. If further action by the parties is required (registration, certificates) the Customer shall at our request cooperate in the provision of the security.

Section 10

Written Form, Place of Jurisdiction and Applicable Law

1. All agreements between Gebr. Schröder GmbH and the Customer, particularly supplementary agreements and contractual amendments, shall be agreed in writing.

2. If the Customer is a business, a legal person constituted under public law, or a separate public estate, the exclusive place of jurisdiction for both parties for all disputes arising from or in connection with the legal relationship, including deed procedures and counter claims, shall be Kiel, Germany. However, we may at our discretion also sue the Customer in any other jurisdiction where it may be sued.

3. German law shall exclusively apply to our entire legal relationship with the Customer. The contractual relationship between the parties shall be subject to the UN Convention on Contracts for the International Sale of Goods (CISG) insofar as it falls within the scope of Article 1 CISG. If the CISG does not prescribe a relevant provision then substantive German law shall supplement the CISG to the exclusion of private international law.