

## General terms and conditions of purchase

### Valid for all Scheuch companies

Updated July 2018

#### 1. Scope of application

All current and future requests and orders are made exclusively on the basis of and subject to the validity of the terms and conditions of purchase that follow. In the event that the Supplier accepts our order, any conditions of delivery included on the order confirmation from the Supplier that contradict our terms and conditions of purchase shall not be valid. In the case of an ongoing business relationship, any later orders shall be deemed to have been placed under our terms and conditions, regardless of whether or not there are any special instructions.

#### 2. Quote, order and order acceptance

**a)** Quotes provided by the Supplier are always free of charge on our part.

**b)** Our purchase orders shall apply for our purchases. Orders shall be deemed as binding when they have been submitted in writing (by post, email or fax) and signed by an authorized signatory. An order placed verbally in person or over the phone shall only be accepted if our order number is quoted and we shall only deem it to be binding once we have subsequently sent out written confirmation in the form of a purchase order.

**c)** Acceptance of the order must be confirmed to us in the form of a signed copy of our purchase order, which is to be provided within a timeframe deemed suitable considering the scope of the order, but which shall be no later than within 14 days of the order being placed for all orders regardless of their scope. If an order confirmation or written rejection has not been received within this timeframe, we shall deem the order to have been accepted in full by the Supplier and it shall be considered to be binding.

**d)** Any deviations from our order shall only be deemed to be valid once we have explicitly agreed to them in writing. Any deviating conditions of delivery put forward by the Supplier shall require our prior written consent in order to be valid.

#### 3. Order and manufacturing documentation

**a)** Drawings, specifications, samples and other documentation provided with our order must always be checked to ensure that they are correct and in line with the order.

**b)** In the event that the Supplier is in breach of the duty stipulated under point 3. a), the Supplier shall be responsible for any loss or damage that has already been incurred as well as having to bear the costs and any associated expenses.

#### 4. Privacy and intellectual property rights

**a)** The Supplier hereby agrees to treat any information that becomes known to them in relation to the delivery as strictly confidential and they shall only use the said information for the purposes of this delivery. All information relating to the documentation provided with the order is and shall remain exclusively our intellectual property. It may only be used for the agreed purpose and must not be passed on to third parties. If we have provided our written consent for the engagement of a sub-contractor, the sub-contractor must also be bound by this non-disclosure clause.

**b)** The non-disclosure clause applies to all provided drawings, specifications, figures, calculations, technical data, reference quantities, prices, information about products and product developments, information about current and future research and development projects, all company data relating to the other contracting party, samples, and any other documentation provided in relation to the order.

**c)** The non-disclosure clause does not apply to the Supplier in the case of information that is already public knowledge, that was already lawfully known to them at the point of being handed over, that was lawfully provided or handed over to the recipient by a third party without any non-disclosure agreements applying, or that has to be disclosed to a public authority to comply with an official request.

**d)** By submitting a quote, the Supplier agrees that technical quote documentation and so on may be passed on to third parties for technical inspection, on the understanding that it will not be disclosed or passed on further, without any claims being made against us.

**e)** Regardless of the non-disclosure clause applying to documentation provided by us in relation to the order, the Supplier must permanently delete or destroy the original documents and any copies made once the order has been fulfilled. In the event that this is not possible owing to the nature of the order, the Supplier must store all documentation in a safe place and ensure that it cannot be accessed by unauthorized third parties.

The non-disclosure clause shall continue to apply for five years after the business relationship has ended or for five years after a quote has been submitted independently of a business relationship.

**f)** The Supplier shall be held liable for all damages caused as a result of non-compliance with these obligations.

#### 4. Delivery periods

- a)** Agreed delivery periods and dates shall be regarded as fixed and binding. The Supplier shall only have complied with their duty to make the delivery within the agreed delivery period or by the agreed delivery date if the goods or service have/has arrived/been provided at the place of fulfilment (according to point 6. a) within or by the agreed time.
- b)** If circumstances arise or are identified that legitimately mean that it is not possible to meet the agreed delivery periods or dates, the Supplier must inform us immediately and provide proof of the situation.
- c)** If the delivery is delayed, we shall be entitled either to withdraw from the contract without having to grant an extension or to continue to request the delivery. All other rights granted to us by law shall remain unaffected by this.
- d)** In the event of withdrawal from the contract owing to a delay to the delivery on the part of the Supplier, we shall be entitled to enforce a replacement performance or replacement order. The Supplier shall bear any additional costs and cover any loss or damage resulting from the delay.
- e)** In the case of services being provided by the contracting party in conjunction with framework contracts, we shall be entitled to refuse to accept goods and/or to send back delivered goods right away in the event that delivery periods and/or delivery dates for partial performance are not met, without having to grant an extension. If a partial delivery is delayed under the framework contract, we shall be entitled to withdraw from the entire framework contract.  
We shall, however, also be entitled to accept goods that are delivered late.
- f)** If a delivery is delayed, the Supplier shall have to pay a contractual penalty amounting to 1 % of the net order value for every week entered into up to a maximum amount of 10 % of the net order value. The contractual penalty shall be applied regardless of any further claims for damages.

#### 5. Force majeure:

- a)** War, unrest, restrictions on exports and/or trade resulting from a change in political circumstances, strikes, lockouts, business interruptions, business restrictions and other similar events which make it impossible or unreasonable for the contracting parties to fulfil the contract shall be deemed to be force majeure and release the contractual parties from their duties under the contract.
- b)** The contracting parties must inform each other of such situations and adapt their obligations in good faith in line with the changes to the circumstances.
- c)** If such events last for longer than one month, we shall be entitled to withdraw from the contract with immediate effect.

#### 6. Delivery

- a)** The place of fulfilment for deliveries is the delivery address provided on our purchase orders.
- b)** Unless explicitly agreed otherwise in writing, deliveries shall be made DDP (delivered duty paid in accordance with the currently valid version of the Incoterms) to Weierfing 68, Auroldmünster, 4971, Austria.
- c)** If it has been explicitly agreed in writing that we shall bear the shipping costs, the Supplier must use the mode of transportation specified by us. If we have not specified a mode of transportation, the Supplier must choose the mode of transportation and delivery that is most favourable for us.
- d)** The Supplier must inform us three days before a delivery if a delivery of goods will require special unloading capacities (for example if a full lorry load is being delivered or if a heavy-lift cargo shipment is going to arrive).
- e)** The Supplier shall always be responsible for any risk of damage to the goods during transportation, unless an agreement to the contrary has been made on the purchase order.
- f)** The bill of lading and delivery note must be included with all goods deliveries. In the case of goods from other EU countries that have to be cleared through customs, the invoice in triplicate and, if necessary, a declaration of origin on the invoice or a movement certificate shall also be required. Our order number must appear on all shipping documents. Any costs incurred by us as a result of missing or incorrectly completed shipping and customs paperwork shall be charged to the Supplier.
- g)** A duty of delivery shall only be deemed to have been fulfilled once the delivery has been made in full, including in the event of partial deliveries, and once all requested or required documents, plans and so on have been handed over to us. Regardless of whether the Supplier is the manufacturer or the dealer, they shall be obliged to perform sufficient checks on the goods to be delivered before they are dispatched to ensure that the quality and quantity of a delivery is correct, involving experts if required. The Supplier cannot rely on the fact that we have not registered any complaints. The Supplier shall send us works certificates, quality control reports, certificates of origin and other proof of quality assurance requested by us when we ask them to do so, but no later than the invoice date.
- h)** Confirmation of receipt shall only serve as confirmation that the delivery has arrived but not that the Supplier has fulfilled their duties properly under the contract.
- i)** Partial deliveries shall only be allowable if agreed in writing.

## 7. Provision of spare parts

The Supplier hereby agrees to supply spare parts for the goods, products and so on delivered to us for a period of at least ten years after delivery.

## 8. Transfer of risk

Risk is not transferred to us until the point of proper acceptance at the place of fulfilment.

## 9. Price and packaging

- a)** Unless agreed otherwise, the prices indicated on the purchase order shall be deemed to be fixed prices. Costs shall be transferred in line with the agreed Incoterms. Prices shall be deemed to be net prices exclusive of VAT.
- b)** The packaging selected by the Supplier must always protect the goods against damage, loss and theft during transportation. The Supplier must select standard packaging that is flawless and appropriate.
- c)** When packaging material is returned, the invoiced value must be credited in full. The Supplier shall cover the costs of the return when they receive the returned packaging material. Costs for the disposal of the packaging and any other fees, costs or taxes shall be borne by the Supplier unless an agreement to the contrary has been made.

## 10. Transfer and acceptance

- a)** Our obligation to inspect the goods and register complaints does not ever start until we actually start using the goods. This shall even apply in the event that the goods become our property before that point or in the event that the goods are passed on to a third party (in particular a freight carrier or forwarder).
- b)** The scope of the inspection of the goods shall be limited to:
  - 1. Ensuring that the type of goods ordered matches the type of goods delivered
  - 2. Checking for outwardly visible signs of damage caused during transportation
- c)** Deliveries may only be deemed to be accepted once we have given our written confirmation.
- d)** The following shall apply to partial deliveries:
  - 1. If we can break a delivery down into partial deliveries, the transfer takes place separately for each partial delivery.
  - 2. If we cannot break the delivery down into partial deliveries, the day on which the final partial delivery is made shall be deemed to be the day of the transfer. In the case of goods being installed by us, the relevant day shall be the day of acceptance on the part of our customer.

## 11. Warranty and compensation

- a)** The Supplier hereby guarantees that the delivery shall be free from defects in material and title. The absence of guaranteed properties shall also be deemed to be a defect. Guaranteed properties shall involve in particular the Supplier providing us with sufficient information relating to activation and operation, above all by providing corresponding written documentation and ensuring that parts are marked to indicate their usage, allowable electrical ratings, temperature and pressure load, when delivering systems, machines, devices and/or parts thereof.
- b)** Unless explicitly agreed otherwise, the warranty period shall be 24 months from commissioning or acceptance on the part of the end customer for movable items, but shall never exceed 48 months from the point of us making the delivery. The warranty period for immovable items shall be 60 months. This period shall also apply in the case of use during multiple-shift operation.
- c)** Throughout the entire warranty period, it shall be assumed that the defect was already present at the moment of transfer.
- d)** If defects are identified, we shall be entitled to specify the way in which the warranty is applied (repair, replacement, reduction in price or change).
- e)** In the case of unascertained goods, if defects are identified through random samples, there shall be an entitlement to warranty claims and claims for damages on the entire delivery.
- f)** The replacement of the goods shall then also be entirely free of charge to us if we have already passed on the goods to third parties and they have been installed on their premises. The Supplier shall reimburse the costs of removal and installation.
- g)** We shall be entitled to specify whether the Supplier should perform their duty under the warranty at the place of fulfilment or at the place at which the goods, products and so on are being used.
- h)** If we would like a defect to be rectified or something that is missing to be added, the Supplier must implement this without delay. In cases where delay is not an option (in particular in the case of interruption to assembly and system downtime), we shall be entitled to demand for defects to be rectified immediately (24 hours). Otherwise, the shortest period, a maximum of five working days, is to be set as the timeframe for the rectification work.

If the rectification work is delayed or refused or in cases where delay is not an option, we can rectify the defect ourselves or have the defect rectified by a third party, with the costs to be borne by the Supplier in both cases.
- i)** If goods or their parts have been rectified or replaced, the warranty period shall start again on the date on which the repair or replacement is performed with success.

- j) These provisions shall not exempt the Supplier from any other warranty obligations.
- k) The Supplier hereby agrees to provide compensation for any direct or consequential loss or damages resulting from defects. Regardless of their legal warranty obligations, the Supplier shall pay us compensation equating to the loss or damage actually suffered as well as covering any loss of earnings. Our loss or damage shall also include all costs incurred by us in or out of court in our efforts to assess the loss or damage (e.g. when obtaining expert opinions), prevent damages and make claims for damages.
- Exclusion of our claims for damages on the part of the Supplier in the event of slight negligence shall be impermissible and invalid.
- l) If claims for damages are made by a third party, such as our customer, owing to a defective or delayed delivery, the Supplier shall indemnify and hold us harmless against all damages.
- m) The duty of the Supplier in respect of the warranty and compensation shall not be reduced by us handling, processing or selling on the goods.

#### **12. Duty to seek information:**

The Supplier shall be responsible for clarifying all details relating to the order and planned work. They shall be responsible for gathering all documentation required for the work at the relevant premises. Any errors resulting from a failure to comply with these duties shall be the responsibility of the Supplier.

#### **13. Product liability:**

- a) The Federal Law Gazette 99/1998, as amended, shall apply in full.
- b) The Supplier hereby guarantees that they and their legal successor will monitor products. They shall inform us immediately if a product is found to have any dangerous properties after having been handed over and/or commissioned.
- c) In the event that a claim is made against us by a third party (such as our customer), the Supplier shall indemnify and hold us harmless. The Supplier must ensure that they have sufficient cover for any compensation obligations by taking out insurance or by implementing other suitable measures.

#### **14. Payment conditions and assignment**

- a) Unless agreed otherwise, we shall make payments once the goods have been received in full and without defects and once we have been invoiced correctly as agreed. All payments shall be made net within 90 days. A discount of 3 % shall be applied for payments within 30 days and a discount of 2 % shall be applied for payments within 60 days.
- b) Payments may only be requested for partial deliveries if we have explicitly agreed to this beforehand.
- c) The periods for making payments and applying discounts shall not be deemed to have started in the event of time delays resulting from incorrect and incomplete invoices.
- d) We shall cover the costs of transferring funds applied by our bank but the Supplier shall bear all further costs.
- e) Payments shall only be made to the Supplier as our direct contracting party.
- f) Our payment shall be considered to have been made promptly:
1. When the transfer is made on the day the payment is due.
  2. On the day on which the relevant documents are dispatched in the case of cheques and/or bills of exchange.
- g) The assignment of claims to third parties shall require our prior written consent.

#### **15. Sub-contractors, offsetting and duty of advance performance**

- a) Our prior written consent shall be required for the engagement of sub-contractors.
- b) Should we have any counterclaims, we shall be entitled to withhold or offset appropriate payments. The Supplier shall not be entitled to offset any receivables on our part with receivables on their own part, regardless of the title and context.
- c) The Supplier shall always be required to perform the service beforehand. The Supplier may not plead uncertainty and shall not be entitled to retain the goods.

#### **16. Liability for infringements of property rights**

- a) The Supplier shall be responsible for ensuring that no patents or other property rights of third parties are infringed by their delivery and the use thereof by us.
- b) The Supplier shall indemnify and hold us harmless against all claims made by third parties in relation to infringements of patent and property rights.

#### **17. Safekeeping, property:**

- a) We retain ownership of any materials provided. These must be stored separately and may only be used for our order. The Supplier shall be liable for any reduction in value or loss, regardless of fault.
- b) Items which are manufactured using the materials provided by us shall be co-owned with respect to the materials provided.
- c) It is the duty of the Supplier to keep the newly manufactured items safe. The costs of storing the newly manufactured items are included in the agreed purchase price.

#### 18. Quality assurance and compliance

**a)** The Supplier hereby agrees to operate a quality assurance system. They shall allow us to look at the quality records on a regular basis and provide us with these upon request. The main focus here from our point of view shall be the documentation and analysis of faults and the causes thereof as well as the definition of preventative measures for improvement.

**b)** If the Supplier does not operate a quality assurance system, they shall be obliged to inform us of this of their own accord before signing the contract. In this case, we shall be entitled to enforce the minimum requirements for internal quality assurance on the part of the Supplier.

**c)** The Supplier hereby explicitly acknowledges the compliance guidelines (FairPlay) located on our website [www.scheuch.com/compliance-en](http://www.scheuch.com/compliance-en). They hereby agree to provide their products and services in compliance with the business ethics (defined standards for business conduct) outlined within these guidelines. We are also hereby explicitly granted permission to check their compliance with the FairPlay guidelines, for example when performing supplier audits.

#### 19. Protection of personal data

The processing of personal data takes place in accordance with the relevant legal provisions. The relevant privacy policy is available at [www.scheuch.com/privacy](http://www.scheuch.com/privacy) at any time.

#### 20. Place of jurisdiction and applicable law

**a)** It is hereby agreed that the place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the competent court located at 4910 in Ried im Innkreis in Austria.

We shall, however, also be entitled to bring action against the Supplier at their general place of jurisdiction.

**b)** The parties may agree to refer a dispute to the court of arbitration.

**c)** Austrian law shall apply exclusively to the exclusion of the

1. United Nations Convention on Contracts for the International Sale of Goods
2. Federal Law of 15th June 1978 on International Private Law (IPRG)
3. International, EU, renvoi and conflict of law provisions (in particular Regulation No 593/2008 of the European Parliament and of the Council of 17th June 2008, Rome I Regulation), as amended.

#### 21. Effectiveness

**a)** In the event that individual provisions within these terms and conditions of purchase are found to be invalid in whole or in part, the validity of all of the remaining provisions shall remain unaffected.

**b)** If these general terms and conditions of purchase are also provided in a language other than German, the German version shall be used for interpretation in cases of doubt.

Versions of the terms and conditions of purchase in languages other than German are non-binding and provided to the Supplier solely for information purposes.