

**General Terms and Conditions** dated June 2018 of:

- **Scheuch GmbH**, FN 187927 p, Weierfing 68, 4971 Aurolzmünster;
- **Scheuch Ligno GmbH**, FN 427933 p, Mehrnbach 116, 4941 Mehrnbach;
- **Scheuch Industrial Solutions GmbH**, FN 246989 w, Weierfing 68, 4971 Aurolzmünster;  
(hereinafter individually referred to as “**Scheuch**”).

**1. Scope**

- 1.1 Scheuch's supplies and transactions are based entirely on the following terms and conditions. These Terms and Conditions shall govern all business relations – also in the future and even if not referred to them explicitly- between Scheuch and persons, for whom this business relation belongs to the operation of a company (hereinafter referred to as “**Buyer**”). We will only be bound by deviations and additions if we have expressly confirmed them in writing. Erection work is also governed by the latest version of our General Terms and Conditions for dework or lump sum erection. Any terms and conditions of the Buyer are expressly contradicted hereby; they shall apply only if we expressly agree to them in writing. Oral agreements between Scheuch and the Buyer are replaced by the written contract.
- 1.2 Orders of any kind, especially orders received by Scheuch's representatives or received orally or by telephone, will be accepted exclusively under these General Terms and Conditions.

**2. Proposals and contracts**

- 2.1 Scheuch's proposals, irrespective of their form of submission, are non-binding.
- 2.2 All agreements do not become binding until they have been confirmed in writing. Should there be contradictory documents relating to an agreement, the contractual text drafted by us shall apply. The Buyer undertakes to check the confirmation received from us. If not contradicted within eight days of receiving our confirmation, it will be deemed accepted.
- 2.3 Oral cost estimates have no binding effect. In the absence of any other agreement, proposals and cost estimates are in return for payment and without guarantee of completeness or accuracy.

**3. Data and documents**

- 3.1 The data contained in leaflets, proposals, dimension drawings and price lists, etc. shall not be construed as guaranteed characteristics.
- 3.2 Documents, including but not limited to plans, sketches, technical documents, samples, catalogues, leaflets, illustrations and documentations shall always remain Scheuch's intellectual property. Utilisation, reproduction, distribution, publication and presentation is allowed only with Scheuch's express written approval.

**4. Prices**

- 4.1 All prices are net prices and do not include value added tax, import or export licences, foreign exchange or other official approvals. In the event that the costs have increased by the time of delivery (f.e. due to fiscal charges, duty, freight, raw material, manufacturing or labor wage increase) Scheuch shall have the right to adjust prices accordingly. If Scheuch and Buyer leave prices open when the contract is signed, the list prices valid on the day on which delivery is effectuated will be invoiced.

## **5. Payment**

- 5.1 Payments shall be made in accordance with the payment terms stated in the order confirmation and/or signed contract. Should it not contain dates for payment, half of the price shall be paid upon receipt of the confirmation of order and the rest upon notice of readiness for dispatch.
- 5.2 In the event of default in payment the Buyer shall pay interest on arrears in the amount of 9,2 per cent above the base lending rate of the European Central bank per annum and also reimburse all prosecution costs incurred as a result of the delay.
- 5.3 In the event that Buyer does not comply with the terms of payment provided and/or circumstances become known to Scheuch after signature of the contract, which lead Scheuch to believe that Buyer is less creditworthy than Scheuch originally understood, all outstanding debts shall become immediately due upon notice to Buyer. In this case Scheuch shall – at its sole discretion - also be entitled to execute the remaining deliveries only when payment is made to Scheuch in advance or to withdraw from the contract. Buyer shall reimburse Scheuch for all losses and/or damages resulting therefrom, including but without limitation, Scheuch's costs, overhead, reasonable contract profits, and expenses incurred by Scheuch in conjunction with the sale prior to cancellation. The rights to retrieve the goods supplied, subject to retention of title, shall not be affected thereby.
- 5.4 In the absence of any other agreement, a discount deduction is inadmissible.
- 5.5 In case the Buyer withdraws from a contract with Scheuch, he is nevertheless obliged to pay the agreed price to Scheuch in accordance with § 1168 ABGB. Alternatively, Scheuch is entitled to demand from the buyer a lump-sum compensation of 30 % of the gross selling price. However, Scheuch reserves the assertion of a higher damage against a corresponding proof.

## **6. Retention of title**

- 6.1 Goods supplied by us shall remain Scheuch's property until all outstanding debts for any legal reason whatsoever have been paid, in any case until the subject outstanding debt has been paid.
- 6.2 If Scheuch's goods are processed or combined (integrated or connected) with other objects which do not belong to Scheuch, Scheuch's retention of title shall automatically extend to the new item.
- 6.3 The outstanding debts to third parties arising from reselling of the reserved goods, no matter whether raw, processed or combined, are herewith already assigned to us by the Buyer together with all accessory rights up to the amount of the outstanding debts owed to us including interest and expenses irrespective of whether the reserved goods are sold without having been processed or combined to one or more Buyers.
- 6.4 The Buyer shall note assignment of the outstanding debt in his books. He shall further announce his Buyers to us, allow us to inspect his books and provide us with the information and documents necessary for recovery. He shall announce the assignment as and when requested by us to his Buyer. We shall be entitled at any time to disclose the assignment of the outstanding debt to the Buyer.
- 6.5 As long as he does not fulfil his payment obligations to us, the Buyer is entitled until notice to the contrary to recover the outstanding debts assigned to us from the subsequent disposal; on the other hand he is not allowed to possess such debts as a result of assignment. The Buyer is obliged to use the money which he receives from his Buyer as compensation for the goods we supplied to pay the debt still owing to us.
- 6.6 The Buyer shall inform us without delay of any seizure or other detriment to our title to the reserved goods by third parties.
- 6.7 To the extent the retention of title or the assignment of claims is invalid or unenforceable due to any mandatory foreign law, the respective security right equivalent to the retention of title or assignment of claims shall be deemed agreed.

## **7. Delivery period**

- 7.1 Unless stated otherwise, the delivery period starts on the date of our order confirmation. Scheuch shall only be bound by delivery periods if they are agreed upon in writing. Delivery dates shall be interpreted as estimates and shall not be construed as binding.
- 7.2 In case Buyer has the obligation to provide us with plans, details, approvals, releases, authorizations etc. or Buyer has the obligation to provide us with agreed securities (e.g. downpayments) the delivery period shall not commence until these obligations have been fully met by Buyer.
- 7.3 If we are responsible for a delay in delivery the Buyer can demand performance from us or set us a reasonable period of time for rectification of our entire performance while threatening to withdraw. If the extension of time is not met as a result of our negligence the Buyer can withdraw from the contract in writing with regard to all parts that have not been delivered or that have been notified as being ready for shipping and with regard to such parts that have been delivered or have been notified as ready for shipping but cannot be used by the alternative supplier. We will only be liable for damage caused intentionally or by gross negligence. We have a right to the agreed fee in respect of part deliveries not covered by the withdrawal.
- 7.4 Should the Buyer default in accepting we may either demand performance or withdraw from the contract by setting an extension of time of 14 days. We are entitled to full compensation in either case.
- 7.5 The Buyer shall neither be entitled to reject partial deliveries nor to constantly delay periods of delivery or delivery dates. Should the Buyer declare that he wishes to accept the delivery or parts thereof at a date later than that agreed, the risk to the goods shall transfer to Buyer automatically. Buyer is obliged to fulfil its payment conditions according to the original contract. In either case the Buyer shall be liable for any additional costs incurred, unless some other written arrangement has been made, including storage charges. Scheuch is not obliged to deliver if the Buyer defaults with the payment from other deliveries

## **8. Shipping and transfer of risk**

- 8.1 Our obligation to perform does not include packaging. If we have to perform packaging in exceptional instances this will be done in the normal commercial manner in order to prevent the goods from being damaged in transit to the defined place of destination under normal shipping conditions. Packing materials will be accepted back only by agreement.
- 8.2 Unless otherwise agreed, the goods shall be regarded as having been sold "FCA Auroldmünster, Austria (Incoterms 2010)".
- 8.3 Should the Buyer require a special form of shipping or a special means of transport we will invoice it separately. Delivery vehicles must be able to drive to the unloading point safely and without hindrance. Buyer shall reimburse all additional costs and damages, including any claims of third parties, arising from any breaches of the obligation to make land or premises safe for persons or vehicles. The loading and unloading of the means of transport is in any case a contractual accessory obligation of the Buyer.
- 8.4 In case delivery or works cannot be completed because of reasons not attributable to Scheuch, the risk of loss shall automatically transfer to the Buyer latest 3 months after readiness for dispatch. If Buyer is responsible for collecting the goods, the risk of loss shall automatically transfer to the Buyer latest 14 days after readiness for dispatch.

## **9. Warranty and damages**

- 9.1 The warranty period is 12 months, commencing either on the day of acceptance or on the day the Buyer puts the goods into operation whichever occurs first, in any case the warranty period ends 18 months after delivery date/readiness of dispatch date at the latest. It shall not be assumed that a defect that becomes apparent within six months of the deliv-

ery item or service being handed over existed at the time of hand-over already. The warranty period is not renewed or extended through repair or replacement. The existence of the defect at the time of delivery, the time of discovery of the defect and the punctuality of the complaint shall be proved by the Buyer. The recourse claim according to § 933b ABGB is excluded.

- 9.2 Scheuch has – at its sole discretion - the option of satisfying claims under the warranty by improvement, replacement or a reduction in price. The Buyer expressly waives his right of cancellation of the contract due to any claim under the warranty. The Buyer shall furnish reasonable assistance at no cost to Scheuch for work under the warranty. Should the Buyer fail to meet its payment obligations or should the Buyer fail to make available without delay samples of the material that is the subject of its complaint when requested by us to do so, all claims of Buyer are void.
- 9.3 Any work equipment provided by the Buyer must comply with the statutory regulations. The evidence of acceptance- and inspection obligations must be available for inspection at any time.
- 9.4 The Buyer shall accurately examine our delivery without delay following its arrival, if needed by consulting experts. Any defects must be notified by the Buyer to Scheuch in writing within 7 days following the arrival of the delivery together with a detailed description of the claimed defect. Defects which cannot be detected in such examinations shall be reported without delay after they occur, while processing in any form shall be stopped immediately or else all claims will lapse.
- 9.5 Warranty shall be excluded if the operating conditions, installation and erection instructions or any other directives foreseen by us are not satisfied or the defect is attributable to poor maintenance, repairs or modifications being performed poorly or without our written approval, normal wear and tear, defective operation of system parts not supplied by us, unauthorised commissioning, incorrect details or other specifications submitted by the Buyer. The only characteristics which can be regarded as guaranteed are those we have expressly guaranteed in writing. We will only be bound by our publicly made statements about the item or characteristics of samples and specimens made available by us if we expressly guarantee them in our proposal or in our confirmation of order. We shall not be bound by statements issued by the manufacturer, importer into the European economic area or by a person who describes himself as the manufacturer in any way whatsoever. Liability of all kinds for our erection instructions shall be excluded.
- 9.6 The assertion of claims under the warranty shall not entitle the Buyer to a plea of non-performance nor in particular to withholding any payment. The warranty period will not be extended, impeded or interrupted during the pendency of a warranty claim, and the elimination of any defect shall not extend the warranty period. Any right of recourse within the contractual chain is expressly excluded.
- 9.7 For damages resulting from injury to life, limbs or health, Scheuch is liable in accordance with the statutory provisions. Further to this, claims on Scheuch for damages of any kind are excluded unless in case of intent or gross negligence. They shall be limited to the amount of the order value. As far as legally permissible we shall not be liable for loss of profits, loss of contracts, loss of production, financing expenses or any other indirect or consequential damages.
- 9.8 Plans, works certificates, static analyses, parts lists, bills of quantities, etc. shall be carefully checked without delay by the Buyer upon receiving them. If no objection is lodged within eight days of the receipt of such documents they shall be regarded as approved.
- 9.9 The Buyer also acknowledges that this contract, including any order confirmation and/or contract signed by Buyer, was entered into without reservation and waives all pre-contractual protected obligations by Scheuch unless Scheuch caused Buyer intentional damage or damage as the result of gross negligence. If goods are produced by Scheuch based on design details, drawings or models received from the Buyer, our liability will not include the correctness of the design but only the fact that performance complies with the

details provided by the Buyer.

- 9.10 Claims for damages without prior request for us to eliminate the defect shall be ruled out.
- 9.11 Claims under the warranty and for damages arising from work which members of our staff or agents are ordered to perform by the Buyer in the course of our contractual work and services but which does not form part of our work and services are excluded in their entirety since our employees count as being temporarily hired by the Buyer in this respect.
- 9.12 We will handle parts furnished by the Buyer with care but will not accept liability for defects, damage or corrosion.
- 9.13 Every claim for damages expires after 6 months from knowledge of the Buyer of the damage and the damaging party, but no later than 1 year after delivery.

## **10. Product liability**

The Buyer declares that all the information and warnings concerning the dangerous nature of the goods are known to him, and that Scheuch adequately warned Buyer of the nature of such goods. The Buyer shall warn the other parties to his contracts of the nature of these goods, and shall require any other party reselling the goods to warn the others in the contractual chain of the dangerous nature of the goods. Should the Buyer fail to make such warnings or require such warnings to be made, the Buyer shall indemnify Scheuch for losses and actions arising from any legal regulation whatsoever. The Buyer expressly waives any right of recourse against us if a claim is made on the Buyer on account of a fault of our product or the goods supplied by us. If the fault was caused by several parties, the Buyer undertakes first to claim on the other responsible parties. Claims for replacement of material damage shall be excluded. The Buyer undertakes likewise to agree to this exclusion with the parties to his contracts and to impose this contractual obligation on other parties to contracts with regard to miscellaneous damages. The Buyer undertakes to take out insurance coverage of a type and to an extent customary in fair business dealings so that liabilities to pay damages as a result of a fault of a product can be satisfied therefrom. The Buyer undertakes to claim on this insurance prior to any recourse against us.

## **11. Force majeure**

Any agreed delivery dates or deadlines are subject to the express reservation of events of force majeure. This includes, for example, strikes, lockouts, fires, natural events, transportation disruptions, shortages of raw materials and energy, delivery delays from suppliers, and other unforeseen disruptions to operations at Scheuch or its suppliers. The delays in delivery caused by the aforementioned circumstances release Scheuch from adhering to the confirmed delivery deadline or date. However, it does not entitle the Buyer to withdraw from the contract with Scheuch or to refuse acceptance of the delivery. For all these cases, the Buyer is not entitled to any claims for damages of any kind against Scheuch.

## **12. Setting-off and retention**

The assertion of a right of retention to the benefit of the Buyer is expressly excluded. The Buyer is not entitled to set off.

## **13. Ineffectiveness, additional standards**

- 13.1 If the enforcement or operation of any provision of these General Terms and Conditions is prohibited by law or if any provision of under this General Terms and Conditions is by law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions in conditions of these General Terms and Conditions.
- 13.2 In addition the relevant technical and commercial EU standards or, in the event of there not being any, the corresponding Austrian or DIN Standards shall apply.

#### **14. Miscellaneous**

- 14.1 All contractual relationships shall be exclusively subject to Austrian law excluding all international conflict of laws and rules. The application of the provisions of international private law and of the UN CISG relating to contracts for the international sale of goods are excluded.
- 14.2 We fulfil our contractual obligations at the place of our works or stores or at the point from which we ship our goods. The place of performance for all obligations of the buyer is Auroldmünster in Austria. The place of jurisdiction, unless otherwise agreed between the parties, is Ried im Innkreis. However we are entitled to bring an action at the general place of jurisdiction of the Buyer.
- 14.3 Buyer expressly acknowledges and complies with the Scheuch Guidelines for Compliance and Social Responsibility ([www.scheuch.com/compliance-en](http://www.scheuch.com/compliance-en)).
- 14.4 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.
- 14.5 In case of any dispute between the different versions of these General Terms and Conditions, the German version shall prevail.