



Standard Terms and Conditions of Sale of Schoeller Werk GmbH & Co. KG

Art. 1 Applicability / offers

- (1) These standard business conditions apply to all – including future – contracts with entrepreneurs or legal persons or special funds under public law concerning supplies and other services, including such contracts in which the vendor undertakes to bring about a particular result (*Werkvertrag*) and contracts concerning the supply of non-fungible goods. Terms and conditions of purchase of the buyer shall not be accepted even if we omit expressly to oppose same again upon receipt.
- (2) Our offers are non-binding. Oral agreements and assurances of our employees in connection with the conclusion of a contract shall become binding only when confirmed by us in writing.
- (3) In case of doubt, commercial terms shall be construed according to Incoterms as revised from time to time.

Art. 2 Prices

- (1) Save as otherwise agreed, the prices and conditions stated in the price list valid at the time of the contract's conclusion shall apply.
- (2) If charges or other external costs contained in the agreed price are revised more than four weeks after the contract is concluded, or if such expenses arise for the first time, we shall be entitled to revise the price accordingly.

Art. 3 Payment and offset

- (1) Unless otherwise agreed or stated in our invoices, the purchase price shall be payable without discount immediately after delivery and in such a way that we are able to dispose of the amount on the due date. Transaction costs shall be borne by the buyer. The buyer can exercise a right of retention or authority to offset claims only insofar as the underlying counter-claims are uncontested or non-appealable.
- (2) If the due date is exceeded or in case of default, we shall charge interest in the amount of 9 percentage points above the base rate unless higher interest rates are agreed. The assertion of a further loss caused by default shall be reserved.
- (3) The buyer shall be in default no later than 10 days after the due date of our claim without a reminder being required.
- (4) If it becomes clear after conclusion of the contract that our payment claim is in jeopardy because of the buyer's inability to pay, or if the buyer falls into arrears with payment of a material amount, or if other

circumstances arise that indicate a substantial impairment of the buyer's ability to pay after conclusion of the contract, we shall be entitled to exercise the rights arising from Art. 321 BGB (Civil Code). In such an event we shall also be entitled to call in all accounts receivable not yet due arising from the current business relationship with the buyer.

(5) An agreed discount shall always refer only to the invoice value and be subject to the condition that all due liabilities of the buyer are settled in full at the time the discount is applied. Save as otherwise agreed, discount periods start from the invoice date.

Art. 4 Performance of deliveries, delivery periods and dates

(1) Our delivery obligation shall be conditional on the correct and timely availability of supplies to us unless we are responsible for the incorrect or late availability.

(2) Information concerning delivery times shall be approximate. Delivery periods shall start on the date of our order confirmation and apply only subject to the timely clarification of all particulars relating to the order and the timely performance of all obligations of the buyer, including without limitation the production of all official certificates, presentation of documentary credits and guarantees, or making of downpayments.

(3) Compliance with delivery periods and dates shall be governed by the time of shipping from the works or warehouse. They shall be deemed properly observed upon notification of readiness for shipment if the goods cannot be shipped timely without fault on our part.

(4) In case of delay in delivery, the buyer can set us a reasonable period of grace and upon the fruitless expiry of such period withdraw from the contract insofar as same has not yet been performed. Compensation claims shall be governed in such cases by Art. 11 of the present terms and conditions.

Art. 5 Retention of title

(1) We shall reserve title to all supplied goods (reserved goods) until all claims have been settled, including in particular but without limitation the outstanding balances to which we are entitled in the context of the business relationship (retention of title until outstanding accounts have been paid). This shall also apply to claims arising in future and conditional claims, typically arising from acceptor's bills, and even if payments are made in respect of specifically designated receivables. This retention of title until outstanding accounts have been paid shall finally expire upon the settlement of all receivables that are outstanding and subject to this retention at the time of payment.

(2) Processing of the reserved goods shall be done for us as the manufacturer within the meaning of Art. 950 BGB without imposing on us any obligation. The processed goods shall be deemed reserved within the meaning of Clause 1. If the buyer processes, combines or mixes the reserved goods with other goods, we

shall be entitled to co-ownership of the new thing in proportion to the invoice value of the reserved goods measured against the invoice value of the other goods used. In case our title ceases to exist as a consequence of combining or mixing, the buyer now transfers to us its title to the new stock or thing corresponding to the invoice value of the reserved goods, and shall keep such stock or thing in safe custody for us free of charge. Our rights of co-ownership shall be deemed to be reserved goods within the meaning of Clause 1.

(3) The buyer is allowed to sell the reserved goods only in the customary course of business, subject to its normal business conditions and as long as it is not in default, and provided that the receivables from the resale pass to us according to Clauses 4 to 6. The buyer is not entitled otherwise to dispose of the reserved goods.

(4) The receivables arising from the resale of the reserved goods (including value-added tax) shall be assigned to us now together with all collateral acquired by the buyer in respect of the receivables. Such collateral shall serve the purpose of security to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the receivables arising from the resale shall be assigned to us in proportion to the invoice value of the reserved goods measured against the invoice value of the other goods sold. In case of the resale of goods in which we hold rights of co-ownership pursuant to Clause 2, a portion of the receivables corresponding to our share of ownership shall be assigned to us.

(5) The buyer is entitled to collect receivables arising from the resale. This authorisation to collect shall lapse if revoked by us, but in any case no later than upon default in payment, the dishonouring of a bill, or the filing of an application to initiate insolvency proceedings. We shall exercise our right of revocation only if it becomes clear after conclusion of the contract that our payment claim arising from this or other contracts with the buyer is in jeopardy because of the buyer's inability to pay. Upon our request the buyer shall be obliged immediately to notify its customers of the assignment to us, and to give us the documents required for collection purposes.

(6) The buyer must notify us without undue delay of any attachments or other adverse actions by third parties. The buyer shall bear all costs necessary to set aside the attachment or for the return transportation of the reserved goods insofar as such costs are not reimbursed by third parties.

(7) If the buyer falls into arrears with payment or does not honour a bill upon maturity, we shall be entitled to retake possession of the reserved goods and for this purpose to enter the buyer's premises if necessary. The same shall apply if it becomes clear after conclusion of the contract that our payment claim arising from this or other contracts with the buyer is in jeopardy because of the buyer's inability to pay. Retaking possession shall not constitute withdrawal from the contract. Provisions of the Insolvency Act shall remain unaffected.

(8) If, in case of deliveries abroad, certain actions have to be taken and/or declarations made by the buyer in the importing country for the retention of title as described above or our other rights specified in the preceding clauses to be valid, the buyer must notify us accordingly in writing without undue delay and take such actions and/or make such declarations at its own expense without undue delay. If the law of the importing country does not recognise a right of retention, the buyer shall be obliged to procure for us at its own expense without

undue delay other suitable security for the supplied contractual products or other collateral at its reasonably exercised discretion (Art. 315 BGB).

(9) We are obliged at the buyer's request to release collateral to which we are entitled insofar as the realisable value of our collateral exceeds the secured receivables, including ancillary claims, interest, costs or similar, by more than 10%; we shall be responsible for selecting which collateral to release.

Art. 6 Qualities, dimensions and weights

(1) Qualities and dimensions shall be determined according to the DIN/EN standards and/or material specifications (*Werkstoffblätter*) valid at the time the contract is concluded or, in their absence, according to trade practice. References made to standards, material specifications or works test certificates, and statements concerning qualities, dimensions, weights and usefulness shall not constitute assurances or guarantees, nor shall declarations of conformity, manufacturer's declarations or corresponding marks, such as CE and GS.

(2) Evidence of weight shall be provided if applicable by presentation of the weighing slip. We can also determine weights theoretically without weighing by reference to the length or surface area of the product; we can establish the dimensions by applying recognised statistical methods. We are further entitled to increase the theoretical weight by a customary supplement (commercial weight) in order to offset rolling and thickness tolerances. Quantities, numbers of bundles or similar stated in the shipping advice are non-binding for goods charged by weight. If individual weighing is not the customary practice, the total weight of the consignment shall apply in each case. Differences from the arithmetic individual weights shall be distributed proportionally among such weights. The determined weight shall be rounded up to a whole kg.

Art. 7 Acceptances

(1) If formal acceptance is agreed, it can take place only at the supplying works or our warehouse without undue delay after notification of readiness for acceptance. The buyer shall bear the personnel expenses relating to acceptance and shall be charged for the material expenses as per our price list or the price list of the supplying works.

(2) If, without fault on our part, acceptance does not take place, or does not take place timely or completely, we shall be entitled to ship the goods without acceptance or to store the goods at the expense and risk of the buyer and to charge same.

Art. 8 Shipping, transfer of risk, packaging, partial delivery

(1) We shall determine the shipping route and method, as well as the forwarder and carrier.

(2) Goods declared ready for shipping as per the contract must be called for without undue delay, otherwise we shall be entitled after issuing a warning to ship same at the cost and risk of the buyer or, at our discretion, to store same and charge for same immediately.

(3) If, without fault on our part, transport by the intended route or to the intended place is impossible within the intended period, we shall be entitled to supply by another route or to another place; the additional costs incurred shall be borne by the buyer. The buyer is to be given the opportunity to express an opinion beforehand.

(4) Upon handover of the goods to a forwarder or carrier, but no later than upon leaving the warehouse or supplying works, the risk, including the risk of the goods being seized, shall pass to the buyer in case of all transactions, even in case of delivery carriage paid and free buyer's address. We shall provide insurance only at the direction and expense of the buyer. The duty to unload and the cost of unloading shall rest with the buyer.

(5) The goods are to be delivered in an unpacked condition and without protection against rust. If customary practice, we shall deliver the goods in a packed condition. We shall provide packaging and means of protection and/or transportation aids according to our experience and at the expense of the buyer. We shall not accept the buyer's costs for return transportation or its own disposal of the packaging.

(6) We shall be entitled to make partial deliveries to a reasonable extent. Customary surplus and short deliveries of the agreed quantity are admissible.

Art. 9 Blanket orders / successive deliveries

(1) In case of agreements that envisage successive deliveries, we are to be given requests for delivery and type allocations for approximately equal monthly quantities, otherwise we shall be entitled to make up consignments at our reasonably exercised discretion.

(2) If the aggregated individual requests exceed the contractual quantity, we shall be entitled but not obliged to deliver the surplus quantity. We can charge for the surplus quantity as per the prices valid at the time of the request or delivery.

Art. 10 Liability for material defects

(1) Material defects in the goods are to be reported in writing without undue delay, no later than seven days after delivery. Defects that cannot be detected within this period even in case of the most rigorous inspection are to be reported in writing without undue delay upon discovery, no later than before expiry of the agreed or statutory limitation period, and any processing is to be suspended immediately.

(2) We are to be given the opportunity to examine a reported defect in situ. If the buyer or third parties make unauthorised changes or undertake improper repairs, no claims in respect of defects in same or of consequences arising therefrom shall exist.

(3) If the supplied goods are defective, the buyer shall possess the statutory rights subject to the following provisos:

- (a) We shall initially be entitled either to eliminate the defect or at our discretion to supply the buyer with goods free from defects (subsequent performance). For this purpose the buyer is to allow us the time and opportunity required for subsequent performance. Our right to refuse subsequent performance subject to the statutory provisions shall remain unaffected.
- (b) The necessary expenses for the purpose of subsequent performance, in particular the transport, labour and material costs and road charges, shall be borne by us if a defect actually exists. If the request of the buyer to eliminate a defect is found to be unjustified, we can demand that the buyer reimburse the costs arising from such request. The subsequent performance shall not encompass either the removal of the defective item or its re-installation if the buyer was already aware of the defect when installing same or if the item was not installed as intended. This shall apply likewise if the buyer, through gross negligence, did not identify the defect before installation, unless we fraudulently concealed the defect or furnished a guarantee.
- (c) We shall be entitled to make the subsequent performance conditional upon the buyer paying the agreed price for the supplied goods. The buyer shall be entitled, however, to hold back a reasonable portion of the price.
- (d) If subsequent performance fails, the buyer shall be entitled either to rescind the individual purchase order or at its discretion to demand a reduction of the agreed purchase price. In case of an immaterial defect, however, a right of rescission shall not exist.
- (e) Claims of the buyer for compensation and/or reimbursement of futile expenses shall exist only as provided in Art. 11.

Art. 11 General liability limitations and limitation of action

(1) Subject to the provision of Clause 2, we shall be liable for compensation – in case of contractual, non-contractual and/or other compensation claims, whatever the legal grounds, in particular because of defects, default and impossibility, culpa in contrahendo and tort – only in case of intent and/or gross negligence, including intent and/or gross negligence of our representatives or vicarious agents.

(2) We shall further be liable in case of simple negligence, including simple negligence of our representatives and vicarious agents, for losses arising from the infringement of a material contractual obligation; in other words, of an obligation whose discharge is a sine qua non for proper performance of the contract and upon which the buyer can therefore reasonably rely (material obligation). Insofar as we are not accused of an intentional breach of obligation, however, the liability for compensation shall be limited to the foreseeable, typically arising loss.

(3) Claims in respect of losses arising from mortal or physical injury or health impairment and claims of the buyer pursuant to the Product Liability Act and other compulsory statutory liability regulations shall remain unaffected by the liability exclusions and limitations governed by Clauses 1 and 2. The forenamed liability exclusions and limitations shall also not apply insofar as we have fraudulently concealed a defect or insofar as we are liable on the basis of accepting a guarantee or the procurement risk.

(4) Clause 1 to 3 shall also apply if the buyer does not assert a claim for compensation instead of performance, but instead demands reimbursement of futile expenses.

(5) Insofar as our liability for compensation is excluded or limited, such exclusion or limitation shall apply likewise in respect of any personal liability for compensation of our employees, workers, servants, representatives and vicarious agents based on the same cause in law.

(6) Claims of the buyer arising from material and legal defects are subject to a limitation period of one year from the delivery date. Insofar as formal acceptance is agreed, the limitation period starts upon acceptance. Compulsory regulations concerning the limitation of action shall remain unaffected. The forenamed abridged limitation period shall not apply for claims arising from mortal or physical injury or health impairment, for claims based on intent and/or gross negligence, or for claims based on the acceptance of a guarantee or the procurement risk. The longer limitation periods pursuant to Art. 438 (1) No. 1 BGB (real rights of a third party), Art. 438 (1) No. 2 and Art. 634a (1) No. 2 BGB (buildings, building materials and building components), Art. 438 (3) and Art. 634a (3) BGB (fraud) shall also remain unaffected. The limitation periods arising from the forenamed provisions governing claims based on material and legal defects shall apply mutatis mutandis for competing contractual and non-contractual compensation claims of the buyer based on a defect in the contractual goods. If, however, in an individual case the application of the statutory limitation provisions gives rise to an earlier limitation of the competing claims, the statutory limitation periods shall apply for the competing claims. The statutory limitation periods pursuant to the product Liability Act shall remain unaffected in any event. Insofar as the limitation period for claims against us is reduced, such reduction shall apply mutatis mutandis for any claims of the buyer against our employees, workers, servants, representatives and vicarious agents based on the same cause in law.



Art. 12 Force majeure

(1) In cases of force majeure, the affected party shall be released from the obligation to supply or accept the goods for the duration of the event and to the extent warranted by its scope.

(2) Force majeure is any event outside the control of the affected party that prevents or hinders same from performing its obligations, in particular strikes and lawful lockouts, fire damage, flooding, operating disruptions that are not the fault of the party, and official decrees.

(3) The affected party is to notify the other party of the onset and cessation of force majeure without undue delay and make every effort within the scope of its capabilities to eliminate the force majeure and to restrict its consequences as far as possible.

(4) Upon the occurrence of force majeure, the parties are to confer on how to proceed and determine by mutual consent whether the contractual products not supplied during the event should be supplied after its cessation. Regardless of the determination, each party shall be entitled to rescind all affected purchase orders if the force majeure persists for more than [six (6) weeks] after the agreed delivery date.

Art. 13 Place of performance, venue and applicable law

(1) The place of performance for our deliveries is the supplying works in case of delivery ex works, and our warehouse in case of all other deliveries.

(2) Alongside these provisions, the non-uniform law of Germany, in particular BGB/HGB (Commercial Code), shall apply to all legal relations between us and the buyer. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

(3) If the purchaser is a merchant (*Kaufmann*) as defined by German law or a legal person or special fund under public law, the venue for all disputes arising directly or indirectly from the contractual relationship shall be Cologne or, at our discretion, the place where the buyer has its registered office.

(4) If a provision of these standard terms and conditions of sale or a provision within the framework of other agreements is or becomes invalid, the validity of all the other provisions or agreements shall remain unaffected.

Name and particulars of the company:

Schoeller Werk GmbH & Co. KG

Im Kirschseiffen, 53940 Hellenthal (Eifel)

Managing directors: Frank Poschen, Dr. Oliver Selter

Registered with Düren Local Court under No.: HRA 1902

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