

SPH Conditions Version as of: 01/01/2015

**SCHRÖDER**

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## Conditions of business

### 1 Scope of Application

1. The conditions shall apply solely between merchants.
2. All deliveries and services of the seller shall be subject to the following **conditions**. General Terms and Conditions of the purchaser shall not be recognised by the seller, unless the seller has agreed to their validity in writing. This also applies if the seller unconditionally performs the services in the knowledge of contrary or deviating conditions to the present **conditions**.

### 2 Place of performance, delivery and acceptance

1. The place of performance for all aspects of the delivery agreement shall be the place of the commercial business of the seller.
2. The goods shall be delivered from a domestic factory. These shipping costs shall be borne by the purchaser. The purchaser can determine the carrier. The goods shall be sent uninsured. A delivery notice may be agreed.
3. Packing costs for special packaging shall be borne by the purchaser.
4. Sorted partial shipments and in the case of combinations partial shipments ready for sale must take place promptly and must be notified in advance. Unsorted shipments shall only be permitted with the consent of the purchaser.
5. If acceptance is not made in time due to the fault of the purchaser, the seller shall be entitled, at his discretion, after a grace period of 12 calendar days has been set to either submit an invoice for the goods with payment due immediately (statement of accounts in arrears) or withdraw from the contract or claim for damages.

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### **3 Place of venue**

The place of Jurisdiction is exclusively Wuppertal.

### **4 Subject matter of the contract**

1. The goods shall be delivered on specific dates (workday or a specific calendar week). All sales shall only be concluded for certain quantities, articles, levels of quality and fixed prices. Both parties shall be bound by this. Commission business will not be concluded.
2. Block orders are permitted and must be limited when the contract is concluded. The acceptance period shall not exceed 12 months.

### **5 Interruption of Delivery**

1. In the event of force majeure, labour disputes a party is not responsible for, and other operational disruptions that are beyond a party's control and have lasted or are expected to last longer than a week, the delivery or acceptance period shall readily be extended by the duration of the obstruction, but not exceeding 5 weeks. The extension shall only be granted if the other party is immediately made aware of the reason for the obstruction, as soon as it is clear that the delivery or acceptance deadline can not be met.
2. If the delivery or acceptance in the cases referred to in clause 1 does not take place within the extended delivery or acceptance period the other party may withdraw from the contract, after the expiry of a grace period of 12 calendar days to be set.
3. Claims for damages shall be excluded in the cases referred to in clause 1 if the relevant party has sufficiently fulfilled their obligation in accordance with clause 1.

### **6 Subsequent deadline for delivery**

1. After expiry of the delivery period, a grace period of 12 calendar days shall start without any declaration being required. After this period, the purchaser may rescind the contract by giving notice in writing.
2. The grace period for goods in stock that are ready for dispatch, and NOS goods - "Never-out-of-stock" - is 5 working days. The purchaser must be informed immediately in the event of non-delivery. Furthermore, the provisions of clause 1 shall apply.
3. Before the end of the subsequent delivery deadline claims of the purchaser for late delivery shall be excluded, if section 8 clauses 2 and 3 do not apply.

### **7 Notice of defect**

1. Notices for obvious defects shall be sent to the seller no later than 12 calendar days after receipt of the goods. The purchaser must report hidden defects to the purchaser without delay upon discovery.
2. Any claim for defects shall be excluded after the supplied goods have been cut or processed in any other way.
3. Little, technically unavoidable deviations in quality, colour, width, weight, finish or design may

not be rejected. This also applies for standard deviations, unless the seller has declared in writing that the delivered goods must match the sample.

4. In case of justified complaints relating to obvious defects, the purchaser has the right to request at the seller's discretion repair of the goods or delivery of replacement goods within 12 calendar days after receipt of the returned goods. In this case, the seller shall pay the freight costs. If subsequent performance fails, the purchaser shall only be entitled to reduce the purchase price or withdraw from the contract, unless section 8 clauses 2 and 3 apply.
5. In the case of a hidden defect, the purchaser only has the right to reduce the purchase price or withdraw from the contract, unless section 8 clauses 2 and 3 apply.
6. If the notice of defect is not made in a timely manner, the goods shall be deemed to be approved.

## **8 Compensation for damages**

1. Claims for damages made by the purchaser shall be excluded unless otherwise agreed in these conditions.
2. The exclusion in clause 1 shall not apply to liability in accordance with the German Product Liability Act, in case of intent, gross negligence on the part of the owners, legal representatives and officers, fraud, failure to comply with a provided guarantee, in the event of culpable injury to life, body or health or in the event of a material breach of contract by fault; material contractual duties are obligations, the performance of which shapes the contract and on which the purchaser may rely. A claim for compensation of damages due to a breach of material contractual obligations shall be limited to foreseeable damage typical for a contract of this kind, unless another case referred to in clause 1 applies.
3. A change to the burden of proof to the detriment of the purchaser is not connected with the above regulations.

## **9 Payment**

1. The invoice shall be issued on the date of delivery or the date of provision of the goods. Postponement of the due date (valuation) is fundamentally excluded.
2. Invoices are payable:
  1. within 14 days of invoicing and dispatch of goods with 2 % express discount payment
  2. from 15 to 30 days after invoicing and dispatch of goods net.From the 31st day the purchaser shall be in default in accordance with section 286 para. 2 No. 1 of the German Civil Code (BGB).
3. If a bill of exchange is accepted by the seller in lieu of cash, cheques or wire transfer then a surcharge of 1% of the total will be charged with the acceptance of the bill of exchange after the net target has expired as of the 31st day from the date of invoice and shipment of goods.
4. Changes to this procedure shall be announced three months in advance.
5. Payments will be used to pay the oldest debt due plus the accrued interest on arrears.
6. The timeliness of payments is determined by the date the payment is credited to the account of the seller.

## **10 Payment after the due date**

1. For payments made after the due date interest of 9 percentage points above the base rate shall be charged in accordance with section 247 BGB (German Civil Code). Otherwise section 288 BGB shall apply.
2. The seller is not obligated to make any further deliveries on the basis of the ongoing delivery contracts before complete payment of invoice amounts due including interest is made. The right to claim for damages caused by the delay is reserved.
3. In the event of substantial deterioration in the financial circumstances, such as imminent insolvency or default of payment, the seller can refuse his contractually agreed services regarding all supply contracts that are based on the same legal relationship agreed services or withdraw from this delivery agreement after a grace period of 12 calendar days. In addition section 321 BGB and section 119 of the Insolvency Act shall remain unaffected.

## **11 Off-setting and retention of payments**

Off-setting and retention of invoice amounts due shall only be permitted with undisputed or legally established claims, insofar as they do not refer to claims for damages that are not closely related to a claim from the purchaser for contractual performance without any defects.

## **12 Retention of title**

1. The goods shall remain the property of the seller until full payment of all receivables for the delivery of goods arising from the business relationship, including ancillary claims, damages as well as payment of cheques and bills of exchange. The right of retention of title shall remain even if individual claims by the seller are included in a current invoice and the balance is drawn and recognised.
2. If the goods supplied under retention of title are combined by the purchaser into a new movable, mixed or processed asset, this shall be done for the seller, without him being liable as a result. By combining, mixing or processing the goods, the purchaser does not acquire ownership of the new item in accordance with sections 947 ff. BGB. By combining, mixing or processing items that do not belong to the seller, the seller acquires ownership of the new item in proportion to the value of his goods under retention of title in relation to the total value.
3. If a centralised authority is invoked in the business between the seller and purchaser, which assumes the risk guarantee, the seller shall transfer ownership on dispatch of the goods to the central authority subject to the condition of payment of the purchase price by the central authority. The purchaser will only be released from their payment obligation upon payment by the central authority.
4. The purchaser is entitled to resell or further process the goods only under consideration of the following conditions:
  - a) The purchaser may sell or process the goods under retention of title in the ordinary course of business, provided that his financial situation does not subsequently significantly deteriorate.
  - b) The purchaser hereby assigns any claim with all ancillary rights arising from the resale of the goods under retention of title - including any balance claims - to the seller. The seller accepts this assignment.

- c) If the goods were combined, mixed or processed and the seller has acquired joint ownership by the amount of the invoiced value, then he shall be entitled to the purchase price in proportion to the value of his rights to the goods.
- d) If the purchaser sells the claim within the framework of factoring, the purchaser will assign the claim against the factor replacing the original claim to the seller and will pass on its sales proceeds proportionately to the seller for the value of the rights of the seller of the goods. The purchaser is obliged to disclose the assignment to the factor if it is more than 10 days past its due date with an invoice or if his financial situation deteriorates significantly. The seller accepts this assignment.
- e) The purchaser is authorised, provided it meets its payment obligations to recover the assigned receivables. The right to recover these claims shall expire in case of default of payment by the purchaser or significant deterioration of the assets of the purchaser. In this case the seller is authorised by the purchaser to inform the customers of the assignment and recover the receivables. To assert the assigned claims, the purchaser shall provide the necessary information and permit verification of the information. In particular, he shall provide the seller with a detailed listing of all outstanding claims with the names and addresses of customers, amount of each claim, invoice date, etc.
5. If the value of the existing security provided for the seller exceeds the total amount of the seller's claims by more than 10%, then the seller shall be obligated at the purchaser's request, to release securities at his discretion.
  6. Pledging or transferring ownership of the goods by way of security or the assigned claims is inadmissible. The seller should inform the creditor immediately of any seizures naming the creditor of the seizure.
  7. If the seller, in the exercise of its retention of title requests the delivery item back, this shall not automatically be deemed a withdrawal from the contract. The seller is free to sell the returned goods subject to the retention of title by private sale.
  8. The purchaser shall store the goods under retention of title for the seller free of charge. He shall insure them against standard risks, such as e.g. fire, theft and water within the usual scope. The purchaser hereby assigns his claims to the seller for damages that he would be entitled to from the above risks with respect to insurance companies or other obligated parties at the invoiced amount of the goods. The seller accepts the assignment.
  9. All claims and rights arising from the retention of title of all special forms defined in these conditions shall remain until there is a complete release from contingent liabilities (check-bill of exchange) that the seller has incurred in the interest of the purchaser. The purchaser is in the case of sentence 1 as a matter of principle allowed to carry out factoring for his accounts receivables. However, he must inform the seller before incurring contingent liabilities.

### **13 Applicable Law**

The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 is excluded.