

## **General Terms and Conditions of Purchase of Schmoll Maschinen GmbH, D-60322 Rödermark/Ober-Roden**

### **1. General points**

- 1.1 Schmoll Maschinen GmbH places an order exclusively in accordance with its general terms and conditions of purchase und possible other agreements. Modifications and supplements must be made in writing. Conditions of sale of the supplier or other diverging agreements are only regarded as accepted, if they are confirmed in writing by Schmoll Maschinen GmbH, as a supplement to these terms and conditions of purchase. These general terms and conditions of purchase also apply if Schmoll Maschinen GmbH accepts a delivery unconditionally with the knowledge of conflicting or diverging terms of the supplier.
- 1.2 References or counter-confirmations of the supplier with reference to his conditions of sale are herewith expressly contradicted on the part of Schmoll Maschinen GmbH.
- 1.3 These general terms and conditions of purchase also apply for all future transactions and contracts with the supplier.

### **2. Order and conclusion of contract**

- 2.1 Contracts for delivery come into effect through the order and acceptance. Contracts for delivery (order and acceptance), their modifications and supplements must be made in writing.
- 2.2 If the supplier does not accept the order within two weeks after receipt, Schmoll Maschinen GmbH is entitled to cancel, free of charge.

### **3. Range of the deliveries**

- 3.1 The details of Schmoll Maschinen GmbH in the order are decisive for the range of the deliveries. Variations from the order must be clearly identified and are only valid if they are expressly approved by Schmoll Maschinen GmbH. A variation of the order for which the supplier is responsible, is regarded as a new tender by which the supplier is bound for 14 days after receipt by Schmoll Maschinen GmbH.
- 3.2 The supplier is obliged to provide the service owed to the full amount. Part services and part deliveries are only admissible after Schmoll Maschinen GmbH has given prior agreement and express consent.

### **4. Prices**

- 4.1 The price shown in the order is binding. In so far as not agreed otherwise in writing, the prices are fixed prices. They include all performances and collateral performances of the supplier (e.g. assembly, installation) as well as all incidental costs which are connected with the order, (e.g. packaging, delivery costs, etc.), unless agreed otherwise.
- 4.2 The price includes the statutory turnover tax. Provided it is not displayed separately in the price list, the price is then regarded as the gross price.

### **5. Period of delivery**

- 5.1 The periods and dates of delivery specified in the order are binding, provided not agreed otherwise in writing.
- 5.2 To safeguard the periods and dates of delivery, the receipt of the goods by Schmoll Maschinen GmbH is decisive. The supplier is responsible for the timely availability of the goods, taking account of the usual time for loading and shipping.
- 5.3 If the supplier should fail to comply with an agreed period or date of delivery, he is obliged to notify Schmoll Maschinen GmbH of the delay for the deliveries or the other date postponement immediately in writing. The notification does not give grounds for a new date of delivery by the supplier.

- 5.4 If the supplier does not provide his services or not within the agreed period of delivery or, if he defaults, the rights of Schmoll Maschinen GmbH – in particular, the right to rescission and compensation – are determined in accordance with the statutory regulations. Here, in addition to the individual contract or retrieval concerned, the right of rescission includes the rescission from the underlying framework contract or retrieval contract. The acceptance of delayed deliveries and services does not exclude the assertion of claims for compensation, due to default.
- 5.5 In the case of short-time work, interruption of business and other instances of a downturn in operations, which hinder Schmoll Maschinen GmbH in the acceptance of the deliveries and services in the sector concerned, without fault on its part, the parties to the contract will agree a suitable replacement date. Schmoll Maschinen GmbH will contact the supplier about this in good time, if possible.
- 5.6 In the case of operating requirements, Schmoll Maschinen GmbH is entitled to amend the time of the delivery by means of a written notification with a period of notice of at least 4 weeks before the agreed delivery date, provided this is reasonable for the supplier.

## **6. Delivery, shipping and passing of risk**

- 6.1 The delivery must be made to the destination specified by Schmoll Maschinen GmbH (shipping address in accordance with the order). The respective destination is also the place of fulfilment (obligation to be performed at the creditor's place of business).
- 6.2 The goods supplied must be delivered properly packaged by the supplier. The packaging must comply with the statutory packaging regulations which are specified in the order.
- 6.3 If, in accordance with the agreement for proper delivery, Quality documents are required, the service owed is only provided when Schmoll Maschinen GmbH has received these Quality documents.
- 6.4 All the documents required for proper entering in the books of the delivered products, in particular, the order number and EDP number, must be stated on all shipping documents and invoices.
- 6.5 The risk of accidental destruction and accidental worsening of the item passes to Schmoll Maschinen GmbH with the handing over at the place of performance. Provided acceptance after inspection is agreed, this is decisive for the passing of the risk. With respect to the handing over and acceptance, it is the same if Schmoll Maschinen GmbH is in default with acceptance.

## **7. Payment**

- 7.1 The payment is made – provided not agreed otherwise – after 30 days less 3 % discount or after 60 days net, after receipt of goods and receipt of the auditable invoice of the supplier. In the case of acceptance of early deliveries, the delivery date and the receipt of the auditable invoice determine the due date of the payment. The implementation of the transfer order by the respective bank will suffice to safeguard the time of the payment.
- 7.2 Schmoll Maschinen GmbH does not owe any due date interest. The default interest rate is 5 percentage points above the base rate of interest. Schmoll Maschinen GmbH is entitled to prove lower damage caused by delay in performance than claimed by the supplier.
- 7.3 In so far as the supplied goods should be incomplete or defective, the customer is entitled to retain the payment owed until proper fulfilment on the part of the supplier, on a pro rata basis in terms of value.
- 7.4 The payments on the part of Schmoll Maschinen GmbH do not mean any acknowledgement of the services by the supplier as service in accordance with the contract.

7.5 Schmoll Maschinen GmbH is entitled to offsetting rights and rights of retention at the statutory amount.

7.6 The supplier has a right to offsetting or retention only due to res judicata or undisputed counterclaims.

## **8. Reservation of title**

8.1 The goods supplied pass into the unrestricted ownership of Schmoll Maschinen GmbH at the latest when they are paid. Even before payment of the purchase price, Schmoll Maschinen GmbH remains entitled to resell the goods in the proper course of business, with assignment of future claims for resulting claims accrued.

8.2 Further reservations of title, such as extended or expanded reservation of title, are prohibited.

8.3 On the basis of the reservation of title, the supplier can only demand the goods from the reservation of title, if he has withdrawn from the contract.

## **9. Examination of a defect and notice of defects**

9.1 The duty to examine is restricted to defects, which become apparent during our Goods Inward check, using external appraisal and, during the random sampling process, undertaken by our Quality Control. Provided acceptance after inspection is agreed, there is no duty to examine.

9.2 Schmoll Maschinen GmbH files a complaint about defects, as soon as they are identified, in accordance with the conditions of the proper course of business. The supplier waives the objection of delayed notice of defects for all defects notified within 8 calendar days, after they have been ascertained.

## **10. Guarantee, liability for defects**

10.1 The supplier must deliver the goods and services free from defects as to quality and title.

10.2 Defective deliveries must be replaced immediately by faultless deliveries and defective services must be repeated, faultlessly. In the case of development or construction defects, Schmoll Maschinen GmbH is entitled to assert the rights provided in Point 10.4 immediately.

10.3 Rectification of the defects of defective deliveries or services requires the consent of Schmoll Maschinen GmbH. The supplier bears the risk during the period in which the object of the delivery or the service is not in the safekeeping of Schmoll Maschinen GmbH.

10.4 If the supplier does not remedy the defect, including during an appropriate period of grace set for him, Schmoll Maschinen GmbH can withdraw from the contract or reduce the payment and in addition, demand compensation each time, in accordance with its choice.

10.5 In urgent cases (in particular, in instances of jeopardising industrial safety or to avert exceptionally high damages), for the remedying of insignificant defects and in the case of default of the supplier with the remedying of a defect, Schmoll Maschinen GmbH is entitled, after prior information of the supplier and expiry of a short period of grace appropriate to the situation, to remedy the defects itself and, for instance damage incurred as a result, at the costs of the supplier or have the defects remedied by a third party, at the costs of the supplier. This also applies if the supplier delivers or performs late and Schmoll Maschinen GmbH has to remedy defects immediately to avoid its own default in delivery.

10.6 If a defect is only identified after assembly at our customer's, in spite of compliance with duty in accordance with Points 9.1 and 9.2, we can demand the transport costs incurred for the purpose of subsequent performance (return of the defective goods by

the customer to us and shipping of faultless goods by us to the customer); this also applies in the case of return transport from abroad and/or a transport abroad.

- 10.7 The period of limitation for our claims from defects as to quality is 24 months from delivery or, in the case of a contract for work and services, from acceptance after inspection. The period of limitation for our claims from defects of title is 3 years from delivery or, in the case of a contract for work and services, from acceptance after inspection, in which the statutory period of limitation for claims for return in rem of third parties (Section 438 Subsection. 1 No.1 BGB [Civil Code]) remains unaffected. Claims from defects of title do not come under the statute of limitations under any circumstance, apart from this, as long as the third party – in particular, due to the lack of limitation – can still assert the right against us. The running of the period of limitation is suspended for the period, which starts with the dispatch of a notice of defects and ends with the fulfilment of the claim based on defects.
- 10.8 If the supplier must deliver or provide services in accordance with the plans, drawings or other special requirements of Schmoll Maschinen GmbH, the conformity of the delivery and performance with the requirements is regarded as expressly warranted. If the delivery or performance should vary from the requirements, Schmoll Maschinen GmbH is immediately entitled to the rights specified in Point 10.4.
- 10.9 A limitation on liability of the supplier for the order value is prohibited.
- 10.10 The statutory rights of Schmoll Maschinen GmbH remain unaffected in other respects.

## **11. Exemption with defects as to quality and title**

The supplier exempts Schmoll Maschinen GmbH from all claims, which third parties file – irrespective of the legal reason – due to a defect as to quality or title or another defect of a product delivered by the supplier, against Schmoll Maschinen GmbH and reimburses the necessary costs for bringing an action in this respect.

## **12. Property rights**

- 12.1 The supplier guarantees that the goods supplied and their use are exempt from third party industrial property rights, in particular, patents or utility models and exempt from third party copyrights. The customer is not obliged to check whether the goods supplied are liable for third party industrial property rights.
- 12.2 The customer is obliged to obtain possible permits for third party industrial property rights which are necessary for use in accordance with the contract of the delivery item, at the costs of the supplier.
- 12.3 The customer reserves title to all the items handed over to the supplier for implementation of the order, in particular, to documents, parts, plans, outlines, models, tools, production equipment and all the existing industrial property rights and copyrights, inclusive the know-how embodied in them.

## **13. Confidentiality**

- 13.1 The supplier is obliged to deal confidentially with all details which are not obvious, commercial and technical, which the supplier becomes aware of as a result of the business relation with Schmoll Maschinen GmbH and does not to pass them on to third parties.
- 13.2 The manufacture for third parties and the exhibiting of products specifically manufactured for Schmoll Maschinen GmbH, in particular, in accordance with its plans, drawings or other requirements, require the prior authorisation of the customer.
- 13.3 In so far as the supplier infringes this confidentiality obligation, Schmoll Maschinen GmbH is entitled to demand the resulting damage incurred from the supplier.

## **14. Subcontractors**

- 14.1 In principle, the supplier must perform the services owed as a result of the order through its company.
- 14.2 The assignment of performances to subcontractors is only admissible with the prior written agreement of Schmoll Maschinen GmbH.

**15. Collateral clauses**

- 15.1 The law of the Federal Republic of Germany to the exclusion of the UN Sales Convention applies for these general terms and conditions of purchase and the legal relations, which follow from the contract of delivery between Schmoll Maschinen GmbH and the supplier.
- 15.2 The registered office of Schmoll Maschinen GmbH shall be the place of jurisdiction, provided compelling statutory provisions do not conflict. Schmoll Maschinen GmbH can also bring a legal action at the competent court for the registered office of the supplier.
- 15.3 Should individual clauses of these general terms and conditions of purchase be wholly or partly invalid, the validity of the other clauses or the remaining parts of such clauses shall not be affected.