

General Terms and Conditions of Sale and Delivery of Schock Metallwerk GmbH, Siemensstraße 1-3, D-73660 Urbach

I. Scope of Application:

1. The following Terms and Conditions apply solely to entrepreneurs, legal entities under public law and public law special funds.
2. The following Terms and Conditions apply to any and all business transactions with the orderer, buyer or other customers (hereinafter known collectively as "Customer"), even if they are not specifically mentioned at the time of the conclusion of later contracts.
3. The following Terms and Conditions apply solely and exclusively. Their application is supplemented solely by statutory provisions unless we have expressly confirmed in writing the application of contrary or deviating terms and conditions of purchase. Our Terms and Conditions apply solely and exclusively even if we have performed our services without reservation in the knowledge of contrary terms and conditions of purchasing.

II. Offer/Conclusion of Contract/Offer Documents:

1. We will submit binding offers solely and exclusively in writing and will designate them expressly as binding. Any and all other messages, statements or comments we may make serve solely as preparation of the conclusion of a contract.
2. Any and all documents such as patterns, pictures, drawings and information about weight and dimensions we have provided are only approximate unless expressly designated as binding.
3. The contract is concluded either by its signing by both parties or by the acceptance of a binding offer or by the acceptance of an order. We will accept the Customer's order either by submitting a written order confirmation or by delivering the ordered merchandise. Our binding offers can be accepted solely by returning the signed declaration of acceptance within eight days. In the event of a later return, a contract will be concluded solely by our written order confirmation or by delivery.
4. We reserve title of ownership and copyrights to any and all cost estimates, drawings and other documents. They may not be made accessible to third parties. In the event of breach of the above obligation, we have the right to request lumpsum damages in the amount of 5% of the possible contract or delivery total; this provision is without prejudice to our right to assert more extensive damage or loss. The Customer is entitled to bring evidence that any loss or damage is substantially lower or is nonexistent.
5. If and when the Customer has designated plans or documents he has provided as confidential, they may be made accessible to third parties solely with his consent.

III. Scope of the Delivery:

1. The components of the delivery and the cardinal contractual obligations are determined by the written performance specifications in the contract text, in our offer or in our order confirmation.
2. We reserve the right to make design or shape modifications which are a consequence of improvements in technology or of requirements enacted by lawmakers during the delivery period, provided that the nature of the merchandise is not significantly changed and the Customer can be reasonably expected to accept the modifications.
3. The delivery of a surplus or shortfall of as much as 10% with respect to the agreed quantity shall be accepted by the Customer as an unavoidable consequence of the production. Billing will always be for the quantity actually delivered.
4. We do not assume any guarantees or risks of procurement unless this has been expressly agreed in writing.

IV. Delivery Period:

1. The delivery period commences upon the conclusion of the contract. It does not, however, commence before the submission of any documents, permits or releases which the Customer may be required to obtain.
2. The delivery shall be deemed in compliance with the delivery period if and when notice of readiness for shipping has been sent or the merchandise has left the works before its expiration.
3. Periods and deadlines for delivery are binding solely if and when they have been expressly agreed in writing. Unless otherwise agreed, deadlines which we have confirmed are approximate dates of dispatch.

V. Default of Delivery/Partial Deliveries:

1. We are not accountable for defaults in delivery and performance which are caused by force majeure. Its occurrence entitles us to postpone the delivery by the duration of the hindrance plus a reasonable lead-in time or to cancel, in whole or in part, that part of the order which has not been fulfilled.
2. Subsequent difficulties in procuring materials, failure by our suppliers to deliver correctly or in good time, operational disruptions, strike, lock-out, official activities related to currency, trade or other sectors, etc., irrespective of whether they impact us or our own suppliers, shall be deemed equivalent to instances of force majeure. The above provision does not apply in the event that we have assumed a procurement risk or that the circumstances are a consequence of fault in the acceptance or supply on our part or on the part of our legal representatives or our vicarious agents.
3. We will be accountable for the above circumstances solely to the described extent even if they occur at a time when we are already in default of delivery.
4. We will notify the Customer of the commencement and end of any such hindrances as soon as possible. In the event of our cancellation of the contract, we are obligated to reimburse without delay any and all payments which have been effected in fulfilment of that part of the contract impacted by the cancellation.
5. We are entitled to make partial deliveries and carry out partial performance, provided that the use of the merchandise is not adversely affected in any way.

VI. Prices and Terms of Payment:

1. Unless otherwise agreed, our prices are shown "ex works", excluding packaging, shipping and insurance costs, which will be billed separately. Prices are shown "plus applicable VAT".
2. Special packaging will be covered in a separate agreement.
3. We reserve the right to change our prices if and when a period in excess of four months has lapsed between the conclusion of the contract and the agreed delivery date.
4. If and when wages, material costs or the purchase prices on the market change before completion of the merchandise, we are entitled to raise the prices by a reasonable amount corresponding to the increases in cost. We will upon request provide verification of the conclusion of collective negotiated agreements or material price increases to the Customer.
5. Unless otherwise expressly agreed, a corresponding price adjustment can also be made for subsequent or release orders. If and when price discounts dependent on purchased quantities have been granted, we are entitled to charge the difference in the event that the agreed volume is not reached.
6. Unless otherwise agreed, our invoices are due and payable immediately; payment shall be made to our payment account without any deductions and free of any charges to us within 30 days of the invoice date.
7. Cheques and bills of exchange will not be deemed payment until they have been redeemed. The acceptance of bills of exchange is subject at all times to a prior written agreement. If and when bills of exchange are accepted, the discount and redemption fees of the bank will be charged in addition. Such fees shall be paid in cash immediately.
8. The Customer may offset counterclaims solely if they have been acknowledged, are undisputed or have been finally determined by a court of law. The Customer is entitled to a right of retention provided that it is based on the same contractual relationship.

VII. Transfer of Risk:

1. The risk transfers to the Customer at the latest upon dispatch of the consignment, even if and when partial deliveries are made or we have assumed other performance obligations.
2. If dispatch is delayed as a consequence of circumstances for which the Customer is accountable, the risk transfers to him on the day the consignment is ready for shipment. If the Customer picks up the consignments, the risk transfers upon notification of readiness for collection.
3. Export orders are carried out free German border, FOB German seaport or FOB Stuttgart airport at the expense and risk of the orderer.

VIII. Retention of Title

1. We deliver the merchandise subject to retention of title (reserved goods).
2. We retain title to the reserved goods until payment of any and all of our claims, including future claims, from the business relationship with the Customer has been effected in full (extended retention of title).
3. The right of cancellation pursuant to Section 449 (2) BGB (German Civil Code) will not be limited by fulfilment of isolated deliveries, remaining in effect in full for such deliveries as well, for the duration of the extended retention of title.
4. If and when, in the interest of the Customer, we accept contingent liabilities (e.g. in the case of so-called "cheque/bill of exchange procedure"), title does not transfer to the Customer until we have also been indemnified from said liabilities.
5. The Customer is entitled to resell the reserved goods in the ordinary course of his business.
6. If and when the reserved goods are combined with another item in such a manner that they become an essential component of this item, the Customer transfers here and now title to the new item in the ratio of the values of the items combined with one another, assuming custody of the item to this extent on our behalf.
7. If and when the reserved goods are handed over to another party, the Customer here and now assigns to us the resulting claims, including any and all subsidiary rights, regardless of whether the handover is effected with or without subsequent processing or finishing, whether alone or in combination with other items. The claims are assigned in the amount of the share of the value of the reserved goods in the total claim.
8. The Customer bears the risk for the reserved goods and is obligated to safeguard them carefully and to insure them adequately for loss (theft, fire, etc.). He assigns here and now any claims against the insurance arising from loss or damage in the form of a first-priority partial amount equivalent to the purchase price of the reserved goods. The above provision also applies in the event that the insurance does not cover the total loss or damage in full so that we are not forced in this case to accept partial compensation.
9. The pledging or assignment by way of security of the reserved goods is prohibited. The Customer shall notify us by the fastest possible means of any seizures by third parties, especially attachments, etc.
10. As long as we have a claim, we are entitled to request from the Customer at any time information as to what reserved goods are still in his possession and where they are located. We are entitled to view the reserved goods at any time. In the event of a breach of contract by the Customer, he hereby irrevocably authorises us here and now to enter his premises, to retake possession of the reserved goods and, following a prior warning, to utilise the reserved goods as best possible by selling them directly and to apply the proceeds to the outstanding loss due to non-fulfilment, less any incurred costs.
11. If and when the value of the existing security exceeds the secured claims by a total of more than 10%, we will, upon the Customer's request, release the security of our choice.

IX. Loss of Creditworthiness, Default of Payment, Termination of Contract:

1. Our claims will immediately become due and payable in their entirety if and when the Customer fails to comply with the terms and conditions of payment or we become aware of circumstances indicating that our claim to consideration is at risk due to the Customer's lack of solvency. We are also entitled to perform any outstanding deliveries solely against prepayment or to request the provision of security.
2. The Customer is in default of payment if our claim has not been settled within 30 days of receipt of our invoice and its becoming payable.
3. In the event of the Customer's default of payment, we are entitled, without further verification, to charge interest in the amount of the current bank rates for overdraft credit, but no less than 8% above the basic interest rate. The above provision is without prejudice to our assertion of more extensive loss or damage due to the default.
4. If and when the contracts are terminated owing to default of payment or other circumstances for which the Customer is accountable, we are entitled, without further verification, to request 15% of the total value of the order as lumpsum damages. The above provision is without prejudice to proof of a greater loss. The Customer is entitled to bring evidence that any loss or damage is substantially lower or is non-existent.

X. Warranty:

1. Any and all warranty claims are subject to a limitation period of 12 months after delivery.
2. In the case of a commercial transaction, the Customer is subject to the inspection and complaint obligations pursuant to Section 377 HGB (German Commercial Code).
3. Entrepreneurs who are not merchants shall submit complaint of obvious defects within 14 days of the receipt of the merchandise. The complaint period for defects which are not obvious at the point in time of the delivery begins upon discovery of the defect. If the complaint is not submitted in good time, no warranty claims exist. The Customer bears the onus of proof that the complaint of defects was submitted in good time following discovery of the defect.
4. Unless otherwise agreed, the Customer shall initially grant us a minimum of two opportunities for subsequent performance within a reasonable period whenever a defect is discovered.

5. We will, at the Customer's discretion, perform subsequent improvement or deliver new parts or perform new services (subsequent performance) for any and all parts or services which show a material defect within the limitation period – without consideration of the operating time – provided that the cause existed at the point in time of the transfer of risk.

6. The type of subsequent performance selected by the Customer will not be binding if and when its costs exceed the costs for another type of subsequent performance by 25% and the Customer can reasonably be expected to accept another type of subsequent performance, taking into account the value of the item in defect-free condition and the significance of the defect, without having to accept major disadvantages.

7. In the event of the failure of the subsequent performance, or if and when we refuse to carry it out or reject it as unreasonable, the Customer may – irrespective of any possible damage compensation claims pursuant to Clause XI – cancel the contract or reduce the consideration.

8. The Customer may not request reimbursement for fruitless expenditures.

9. When submitting a complaint of defects, the Customer may retain payments in a scope which is in a reasonable ratio to the material defects which have occurred. The above provision applies solely if there can be no doubts about the legitimacy of the complaint of defects. In the event of an unjustified complaint of defects, we are entitled to request from the Customer reimbursement of the expenses we have incurred.

10. Warranty claims do not exist for only minor deviation from the agreed characteristics; for only minor impairment of the usability; for natural wear and tear; for damage caused after the transfer of risk by incorrect or careless handling, excessive use, improper operating materials; for damage resulting from unusual external conditions which were not foreseen in the contract.

11. If the Customer or third parties undertake improper modifications or repair work, there are no warranty claims for either these or the resulting consequences.

12. The Customer has a right of recourse against us in the case of consumables only to the extent that the Customer has not concluded any agreements with his customers in excess of the statutory warranty claims.

13. The Customer does not have any claims for reimbursement of expenses required for the subsequent performance, in particular, but not limited to, transport, infrastructure, labour and material costs, if and when they are incurred because the merchandise had been later transferred to a different location. The above provision does not apply if and when the transfer was in accordance with the intended use.

XI. Miscellaneous Damage Compensation Claims:

1. These Terms and Conditions are without prejudice to damage compensation claims pursuant to the German Product Liability Act.
2. Our liability in the event of injury to life, body or health is based on statutory provisions.
3. We are liable for other loss or damage
 - a) without limitation in accordance with statutory regulations if and when we, our legal representatives or our management employees are in breach of cardinal contractual obligations owing to malicious intent or gross negligence;
 - b) with limitation to the typical loss or damage foreseeable at the time of the conclusion of the contract if and when
 - aa) we, our legal representatives or our management employees are in breach of cardinal contractual obligations owing to slight negligence, or our vicarious agents are in breach of such obligations owing to malicious intent or gross negligence;
 - bb) we, our legal representatives or our vicarious agents are in breach of other contractual obligations owing to wilful intent or gross negligence.
 - c) Claims pursuant to Item 3 b, provided that they are not a consequence of wilful intent or fraud, are subject to a limitation period of one year after the commencement of the statutory limitation period, but of no more than three years after their occurrence.
 - d) The regulation of Item 3 b and 3 c also applies in favour of our legal representatives and vicarious agents, if and when claims are asserted directly against such persons.

XII. Proper Law, Place of Performance and Venue:

1. Proper law of these Terms and Conditions of Business and of any and all legal relationships between the parties is that of the Federal Republic of Germany. The application of the UN CISG is excluded.
2. Unless otherwise agreed, place of performance for any and all obligations is our registered office in Urbach.
3. If and when the Customer is a full merchant, a legal entity under public law or a publiclaw special fund, it is hereby agreed that the courts with local jurisdiction for our registered office in Urbach will be the venue for any and all disputes, especially, but not limited to, suits against the Customer.
4. The above provision applies to any and all other customers if and when they are not subject to general jurisdiction in Germany or they move their place of residence or usual domicile to a location outside the jurisdiction of Germany after the conclusion of the contract. This agreement of venue also applies in the event that the Customer's place of residence or usual domicile is unknown at the point in time the suit is filed.