

I. Validity/Offers

1. These general sales conditions apply to all – including future – contracts and other services. Conditions of the buyer are not binding even if we do not expressly object to them after they were submitted to us.
2. Our offers are non-binding. Other agreements, in particular verbal side agreements, commitments, guarantees or other assurances made by our sales staff only become binding when they are put in writing.
3. The current version of INCOTERMS is used to determine trade terms such as "EXW", "FOB" and "CIF."

II. Prices

1. Unless otherwise agreed upon, our prices are calculated ex works and exclude packaging (plus VAT in each case).
2. We calculate the cost of packaging at cost and, in accordance with statutory provisions, we will take back our packaging if it is returned to us by the buyer for free.

III. Payment and billing

1. Our invoices are due without deduction upon delivery or when the service has been supplied. Any deviating agreements are only applicable if we confirmed them in writing beforehand.
2. Any counter claims that we dispute and that have not been adjudicated do not authorise the buyer from withholding payment or to any form of offsetting.
3. When exceeding the term of payment, but no later than when the buyer is in arrears, we are authorised to charge interest at the respective bank rate for overdrafts, but at least interest of 8% above the base rate. We reserve the right to claim any further default-induced loss.
4. If it becomes apparent after conclusion of the contract that the claim to payment is at risk because of the buyer's lack of adequate financial capacity, we are authorised to request the return of the goods after an appropriate grace period, and to demand that the goods we supplied may not be sold or processed. Taking back the goods is not considered a withdrawal from the contract. These provisions of the insolvency regulation remain unaffected by the aforementioned provisions.

IV. Delivery times

1. Delivery deadlines are deemed to be adhered with when the delivery item has left our company before they expired.
2. Our delivery obligation is subject to correct and timely delivery to ourselves unless we are at fault for the incorrect or delayed delivery to ourselves.
3. Delivery deadlines will be extended by a reasonable amount of time if they are the result of labour disputes, in particular strikes and lockouts, as well as in the case of the occurrence of unforeseen obstacles which lie beyond our power insofar as such obstacles verifiably had a significant impact on the production or delivery of the delivery item. This also applies if these circumstances occur at our upstream supplier. We will notify the buyer immediately of such circumstances. These provisions apply to delivery deadlines accordingly. Should such circumstances make the performance of the contract unreasonable for one of the parties, then they have the right to withdraw from the contract.

V. Right of ownership

1. All supplied items remain our property (reserved goods) until the settlement of all our claims arising out of the business relationships, regardless of the legal reason, including future or conditional claims.
2. Processing of the reserved goods shall be done on behalf of us as manufacturer within the meaning of Art. 950 BGB, without implying any obligations on our part. The processed goods shall be considered as reserved goods pursuant to clause V/1. If the buyer processes, combines and mixes the reserved goods with other goods, we shall be entitled to co-ownership in the new goods in the relationship of the invoice value of the goods subject to the reservation compared to the invoice value of the other goods that were used. If our ownership expires as a result of combining or mixing, the buyer shall transfer his legally entitled rights of ownership for the new goods or the new items to us in proportion to the invoice value of our reserved goods, and to keep said articles safe for us without charge. The joint ownership rights resulting hereinafter shall be deemed as reserved goods pursuant to clause V/1.
3. Any potential future claims on the part of the buyer resulting from the resale of reserved goods are hereby assigned to us. They shall serve as security to the same extent as the reserved goods. If the buyer sells the reserved goods with other products not sold by us, the receivables from the resale shall be assigned to us in the same amount as the resale value of the respectively sold reserved goods.
4. The buyer must immediately notify us of any attachment of property or other adverse actions on the part of third parties.

VI. a) Execution of deliveries of supplied goods

1. With the transfer of the goods to a forwarding agent or a freight carrier, at the latest when the goods leave the warehouse, or, in the case of third-party deals, the location of the supplying plant, the risk in all transactions, including free of charge deliveries and free to the door deliveries, shall pass on to buyer. The buyer shall bear the responsibilities and costs of unloading. We shall only provide insurance cover upon the buyer's instructions and at their expense.
2. We are entitled to make partial deliveries within a reasonable scope. Over and under deliveries of products made to order of up to 10 per cent of the agreed quantity are permissible.
3. In the case of call orders, we are entitled to manufacture the entire order quantity in one batch or have it manufactured as such. Any potential change requests cannot be considered after the order has been placed unless otherwise expressly agreed upon. Unless otherwise specified, call-off dates and quantities may only be adhered to within the scope of our delivery or production capabilities. If the goods are not called off as per the provisions of the contract, we are entitled to consider them as delivered following an appropriate grace period.

VI. b) Use and properties of our products

1. We assume no liability for product properties that go beyond the descriptions and the instructions for use of our order confirmations, delivery notes and invoices, unless we did not expressly declare them to be part of this contract in writing. The user must also take note of the information that can be found on our homepage www.schmitzsiegen.de under "Important information".

VII. a) Participation of the client in services performed by personnel we have dispatched

1. The client, at their own expense, must assist our service personnel during assembly and provide them with complete industrial safety at the same level that the client provides to their own personnel. The client has to ensure that the required measures, in accordance with the applicable legal requirements have been taken to protect persons and property. The client also has to notify our service personnel of existing safety and accident prevention regulations. The client has to notify us if our service personnel violates these safety regulations. In the case of major violations, the client can, upon consultation with us, prevent our service personnel from accessing the assembly site. Any potentially required means of communication have to be provided free of charge or can be invoiced based on expenditures. The client, at their own expense, has to provide technical assistance. In particular they have to ensure that assembly can start right after our service personnel arrives and can be performed without delay until the acceptance by the client. If special plans or instructions are required from our side, we will make them available to the client free of charge in a timely manner.
2. If the client does not meet their obligations, then we are authorised, but not obligated, to perform the aforementioned tasks in the client's stead and invoice them accordingly. Otherwise, our legal rights and claims remain unaffected.

VII. b) Acceptance of services performed by personnel we have dispatched

1. The client is obligated to accept the work once it has been indicated to them that it has been completed or if a contractually stipulated test has taken place. The client may not refuse acceptance in case of defects that are not substantial.
2. If the work is not accepted immediately following its conclusion, and if we are not to blame for the delay, then the acceptance is deemed to be successful.

VII. b) Warranty for services performed by personnel we have dispatched

1. The warranty for faulty workmanship within the framework of service contracts is 6 months. That period begins when the work has been accepted. When the warranty period expires, the warranty claims of the client lapse. The client has to immediately, but no later than within one week, notify the contractor of any defects. There is no warranty claim if the client does not notify the contractor in time.
2. We are authorised to fix any defects at our own expense. If we are liable for damage to devices and plants of the client, we are authorised to fix these damages at our own expense.
3. The client is obligated to provide us with sufficient time and opportunity for repairs. If the client fails to do so, all warranty claims expire, including the claim for damages or reimbursement of expenses unless the immediate self-help on the part of the client is absolutely required to prevent disproportionately large damages. In this case, the client has to immediately coordinate with us via phone, telex or fax.

VIII. b) Liability for services performed by personnel we have dispatched

1. Unless otherwise stipulated below, all liability shall be excluded regardless of the reason. We shall not be liable for damages that did not occur at the assembled object itself. In particular, we shall not be liable for any lost profits or other financial losses.
2. This exclusion of liability shall not apply to gross negligence or wilful misconduct. It also shall not apply to any faults fraudulently concealed or whose absence was guaranteed as well as in the event of culpable injury to life, limb and health.
3. If we negligently breach any material contractual obligation, our liability shall be limited to foreseeable loss.
4. If the client performs assembly and maintenance tasks with their own personnel, or third party personnel on the client's behalf, we shall assume no liability for the execution and quality of the work of that personnel. Our service personnel is not authorised to make or receive declarations of intent for and against us.

VIII. b) Liability for defects of supplied goods

1. The properties of the goods, in particular with regard to their quality, grade and dimensions, are determined by what has been agreed to, or, in absence of such an agreement, by the norms in force at the time of the conclusion of the contract. Information in drawings and illustrations as well as statements in advertising materials are not binding and do not represent guarantees unless they have been designated as such expressly in writing. The same applies to declarations of conformity and corresponding marks like CE and GS. The buyer shall bear any risks associated with the suitability and usage of the goods.
2. As to the buyer's obligation to examine the goods and to notify us of any defects, the provisions of the HGB (German Commercial Code) apply subject to the following condition:
 - The buyer is obligated to examine the properties of the goods that are relevant for their respective use right after the goods are delivered and to immediately notify us of any defects in writing. If the goods are to be installed or attached, then the relevant properties for the installation or attachment are also considered to be internal properties of the goods. The obligation to examine also applies if a test certificate or other material certificate was part of the delivery. Defects that could not be detected immediately upon delivery, even following a thorough examination, have to be communicated in writing immediately after their detection.
 - If, in case of an installation or attachment of the goods, the buyer does not conduct an examination (not even sampling) of the relevant properties of the goods for the intended purpose prior to the installation or attachment (e.g. function tests or a trial installation), then this will be deemed a particularly serious lack of due diligence (gross negligence). In this case, the buyer's defect rights with regard to these properties would only be considered if the defect in question had been fraudulently concealed or if we have assumed a warranty for the properties of the item.
3. If, during or after the examination, the buyer detects defects, then they are obligated to make the rejected goods or samples of them available to us for the purpose of examining the complaint and to permit us to test the rejected goods within a reasonable amount of time. Otherwise, the buyer cannot claim that the goods were defective.
4. If the goods are defective, the buyer has defect rights in accordance with the legal provisions of the BGB (German Civil Code) – with the reservation that we have the choice between repair and a new delivery, and that small (insignificant) defects only authorise the buyer to reduce the purchase price (reduction).
5. If the buyer has installed the goods to another item or attached them to another item in accordance with their nature and purpose, then the buyer can demand reimbursement for the required cost of the removal of the defective goods and the installation or attachment of the repaired or newly delivered non-defective goods (dismantling and assembly costs) only subject to the following conditions.
 - Only those dismantling and assembly costs are required that immediately affect the dismantling of the defective goods and the installation or the attachment of identical goods, that were generated on the basis of regular market conditions and for which the buyer provided us with evidence in writing by at least providing the corresponding receipts.
 - Defect-related consequential costs suffered by the buyer that go beyond the above, such as lost profits, costs incurred through downtimes or additional costs for replacements are not considered direct dismantling and assembly costs and must therefore not be reimbursed in accordance with § 439 paragraph 3 BGB. The same applies to sorting costs and the additional expenses that were incurred because the sold and supplied goods are now at a different location than the one that was agreed to.
6. If, in individual cases, the claimed expenses of the buyer for a supplementary performance, in particular in relation to the purchase price of the non-defective goods and taking into account the significance of the lack of conformity, is disproportionate, then we are authorised to refuse the reimbursement of these expenses. In particular, expenses are in particular deemed to be disproportionate if the claimed expenses, especially the dismantling and assembly costs exceed 150% of the invoiced value of the goods or 200% of the reduced value of the goods as a result of the defects.
7. In accordance with clause VIII, additional claims are excluded. In particular, this applies to claims for compensation:
 - damages that did not occur on the goods themselves (consequential damages)
 - costs for self-repair of the defects without the legal requirements for such a repair having been met and
 - dismantling and assembly costs if the goods we supplied no longer existed in their original material characteristics at the point of the installation or attachment or if a new product had been made out of the supplied goods prior to installation.
8. An unjustified request to remedy a defect entitles us to reimbursement if the buyer could have realised upon close examination that there was no material defect.

IX. General limitations of liability and statute of limitations of supplied goods

1. We shall only be liable for violation of contractual and non-contractual obligations, in particular for impossibility, delay, incorrect contract finalisation or illegal actions – also on behalf of our management personnel and other vicarious agents – in cases of wilful intent and gross negligence, limited to the damages which are foreseeable when the contract is concluded and are typical for the contract.
2. The limitations from VIII. 1 shall not apply to culpable violation of essential contractual duties, insofar as the achievement of the purpose of the contract is endangered, in cases of mandatory liability according to the Product Liability Act, in the event of an injury to life, limb or health, and also not if and insofar as we maliciously concealed defects of the product or guaranteed the absence of such defects. Rules governing the burden of proof shall remain unaffected.
3. Unless otherwise agreed, contractual claims brought forward against us by the buyer in connection with the delivery of the goods will expire one year after the delivery of the goods. This deadline shall also apply to those goods which are used for a building in line with their customary method of use and whose defective condition we caused. Our liability resulting from a violation of duty caused by gross negligence or wilful misconduct shall remain unaffected. In cases of defective supplementary performance, the statute of limitations does not begin anew.

X. Copyrights

1. We shall reserve property rights and copyrights in respect of cost estimates, draft, drawings and other documents; they may not be made accessible to third parties without our consent. Drawings and other documents associated with quotations shall be returned to us upon request.

XI. Place of performance, jurisdiction and applicable law

1. The place of performance for our deliveries, a supplementary performance as well as for payments from the buyer is our plant. The place of jurisdiction for merchants is the seat of our head office. We may also sue the buyer at their place of jurisdiction.
2. All legal relationships between us and the buyer shall be governed by the laws of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11 April 1980.

XII. Miscellaneous

1. If one or more of the provisions above shall be invalid, this shall not affect the validity of the other provisions