

General terms regarding sales, deliveries and payments of SWG Schraubenwerk Gaisbach GmbH

1. General terms/Purview

1.1 Regarding the scope of deliveries or services to be performed by SWG, the declarations, to be signed by both parties, as well as the following Terms and Conditions, apply.

1.2 Conditions of the contractual partner, which are contrary to or diverge from the SWG-Sales Conditions, are not accepted by SWG, unless SWG expressly agreed to their applicability in writing. SWG-Sales Conditions are still applicable in the event that SWG knowingly and without reservation carries out deliveries which are contrary to or are conditions of the contractual partner and are diverging from the SWG-Sales Conditions.

1.3 The General Sales Conditions also apply to all future contracts agreed to with contractual partners.

2. Offer

2.1 SWG offers are without obligations and are not binding. Express acceptances and orders require the written confirmation of SWG to become valid.

2.2 Pictures, drawings, calculations and other documents will remain in the express ownership of SWG and are covered by proprietary rights by SWG. The express and written agreement by SWG is required before said documents are handed over to a Third Party.

3. Prices and Payment Conditions

3.1 SWG prices are „ex-factory“, exclusive of packaging, plus the applicable statutory V.A.T.

3.2 Regulation regarding small-volume orders:

For orders below EUR 125.00 a small-volume-charge in the amount of EUR 12.50 will be added.

For orders below EUR 255.00 a small-volume-charge in the amount of EUR 8.00 will be added.

For orders above EUR 255.00 no small-volume-charge will be added.

3.3 Our invoices are due for payment within 10 days of invoice date to facilitate a 2% discount, or 14 days following invoice date without discount.

3.4 Regarding the invoicing, the day of delivery, or, rather, the day of arrival at the warehouse, is decisive for the contractual partner. The invoice amount is due for payment within 14 days following the invoice date. The statutory regulations regarding the implications in the event of default of payment apply.

3.5 The contractual partner can only compensate with claims which are uncontested or have been legally declared valid. The contractual partner is only authorised to enforce his lien on goods as long as his adverse claim is based on the same contractual agreement.

3.6 Should the agreed delivery time be later than one month following the closure of the contractual agreement, SWG has the right to invoice according to the price list valid on the day of the actual delivery. Should the prices of necessary raw materials be raised by 5% or more since placement of order, SWG has the right to pass on said increases onto the contractual partner.

3.7 SWG is entitled to offset all claims which SWG has against the contractual partner against all claims which the contractual partner has against SWG resulting from deliveries or on any other grounds.

4. Payment arrears

The Buyer shall be deemed to be in payment arrears upon receipt of the first reminder or, without any reminder, within 30 days of payment due and receipt of an invoice in accordance with § 286, par 3 of the German Civil Code. In case of arrears, we shall be entitled to late payment interest according to § 288 Civil Code, while nonetheless reserving the right to prove late payment damages going beyond this

5. Manufacturing and Delivery Time

5.1 Appointed dates as well as time limits are not binding for SWG, unless otherwise expressly agreed to in writing. Prerequisite for the start of the delivery times given by SWG requires the clarification of all technical questions as well as the timely and duly compliance of the contractual partner's duties.

5.2 Should the contractual partner be in default of acceptance or should he culpably violate contractually agreed co-operative duties, the jeopardy of an accidental loss or an accidental worsening of the purchasing object will become liability of the contractual partner at the same moment he defaulted the acceptance/debt. In this case, SWG has the right to demand payment for damages caused.

5.3 SWG has the right to make partial deliveries as long as this is reasonable to the contractual partner.

5.4 SWG has the right to deliver as well as invoice up to +/- 10% above or below the ordered amounts.

5.5 Should SWG culpably delay deliveries, the contractual partner can demand a compensation for each completed week of delay of delivery, being 1% per week, but no more than 10% of the price for the part of delivery which has been delayed – as long as he can be convincingly prove that he has occurred damages stemming from said delay of delivery.

5.6 Claim of compensation of the contractual partner due to delayed delivery as well as claims for compensation due instead of services above and beyond claims already mentioned in above paragraph, are excluded at all events, even after passing of the time limits set by SWG regarding delivery. This does not apply if, in the event of deliberate intention, wilful negligence or injury of life, body or health express liability applies.

5.7 The contractual partner can only withdraw from the contract within the frame of the statutory terms, if SWG is liable for the delays of delivery. An amendment of burden of proof to the disadvantage of the contractual partner is not connected to the before-mentioned regulations.

5.8 The reliable delivery of goods ordered will be carried out by haulage carriers selected by SWG. In the event of a dispute regarding a non-delivery, the contractual parties are in agreement that the contractual partner is obliged to prove said non-delivery.

5.9 Should a delivery be „ex factory“ according to the agreement, the contractual partner has the duty to instruct a haulage carrier. Depending on agreement, SWG will inform the contractual partner or haulage carrier regarding the readiness of goods for collection.

6. Passing of Risk

6.1 The shipment will principally take place at the contractual partner's risk, even in the event a charge-free delivery has been agreed or if the delivery is being made by vehicles belonging to SWG. The risk will be transferred upon the contractual partner as soon as the goods have been handed over to the person responsible / haulage carrier. This also applies if the transport is being undertaken by vicarious agents or sub-contractors in the name of SWG.

7. Right to repudiate; compensation for use

7.1 SWG has the right to repudiate a contract of sale if

(1) the contractual partner fails to settle a due claim, or to settle it in full, within a reasonable period of time allowed by SWG or falls into arrears with settlement of all or part of a claim or allows a bill or cheque to be protested and fails to effect payment, or payment in full, of the amount in question within a reasonable period of time allowed by SWG; or

(2) despite the issue of a warning/setting of a deadline, the contractual partner fails to comply with any material provisions of the contractual agreement, and in particular those set forth in Section 10 of these General Terms and Conditions; or

(3) a material deterioration occurs in the financial circumstances of the contractual partner, in particular if attachment or other enforcement measures are initiated against him; or

(4) a petition for the opening of insolvency proceedings is filed against the contractual partner or if a reservation of title pursuant to Section 10 exists and the item of sale has not yet been delivered into the custody of the customer.

8. Defects of Quality

SWG is responsible for defects of quality as follows:

8.1 SWG has the right to choose to make amends, deliver new goods or re-supply free-of-charge for those services, which show a defect of quality which was already in existence at the moment in time when the risk had passed onto the contractual partner.

8.2 Claims for defects of quality become barred by the statute of limitations after 12 months, counted from the date of passing of risk.

8.3 The statutory regulations regarding interruption of the statute of limitations, suspension of the statute of limitations and new beginning of time limits are not affected.

8.4 Should SWG fail to make the necessary amends, the contractual partner has the right to withdraw from the contract or can reduce the payment.

8.5 The contractual partner does not have the right to refuse acceptance of a delivery due to irrelevant defects.

8.6 Warranty claims do not exist regarding: irrelevant defects/derogation of the agreed quality, irrelevant impairment of usability, natural wear and tear or damages which occurred after passing of risk following faulty or negligent usage, excess usage or due to particular external influences, which are not preconditions of the contract.

8.7 Claims of the contractual partner due to necessary expenditures regarding the purpose of subsequent performance, in particularly costs for transport, labour and material, are excluded, as far as the expenditures are increased due to the object of delivery having afterwards been brought to another place instead of the place of business of the contractual partner.

8.8 Claims for recourse of the contractual partner against SWG according to Section 478 BGB (German Civil Code) only exist insofar, as the contractual partner and his customer have not made any agreements above and beyond the statutory claims of defect. Furthermore, regarding the extension of the claim for recourse of the contractual partner against SWG according to Section 478 II BGB (German Civil Code), the aforementioned paragraph applies.

8.9 Regarding claims for compensation, paragraph 7 below applies. More extensive claims or claims by the contractual partner against SWG and their vicarious agents due to defect of quality not regulated there are excluded.

8.10 Liability due to wilful injury of life, of body or of health are not affected, this also applies to express liability according to the Law on liability for defective products.

8.11 The prerequisite of warranty claims of the contractual partner is that he (the contractual partner) has fulfilled his duty of investigative as well as claim responsibilities according to Section 377 HGB (German Uniform Commercial Code).

8.12 Insofar as SWG is taking back the goods without legally or contractually being obliged to do so, a 20% portion of the net value of the products will be charged as re-storage/handling fee.

9. Joint Liability

9.1 Claims and rights for indemnity of the contractual partner, in particular regarding injuries of duties stemming from the contractual obligations as well as unauthorised acts are excluded.

9.2 Aforementioned does not apply insofar an express liability exists in the event of deliberate intention, wilful negligence and injury of life, of body or of health or due to violation of essential contractual duties. However, the claim for indemnity regarding the violation of essential contractual duties is limited to the foreseeable contractual indemnity, unless deliberate intention or wilful negligence applies or a liability exists regarding injury of life, of body or of health. An amendment of burden of proof to the disadvantage of the contractual partner is not connected to the before-mentioned regulations.

9.3 The limitation according to paragraph 1 also applies, as far as the contractual partner demands compensation for useless expenditures instead of demanding his right to claim compensation for damages instead of services.

10. Impossibility

Insofar as unforeseeable events, such as strikes, lockouts, stoppages etc., are seriously changing the economic effect or the contents of the contractual obligation or influence the operation of SWG considerably, the contract will be amended with regards to keeping good faith.

11. Security through retention of title and other collateral

11.1 SWG retains title to the item of sale („secured goods“) until the receipt of payment in full. The retention of title also encompasses all claims of SWG which already existed against the contractual partner at the time of conclusion of the present contract. It also encompasses all claims arising from ensuing business transactions, in particular for the supply of spare parts and/or after-sales service (extended retention of title). SWG reserves the right to retain ownership of the goods until receipt of all payments according to the delivery contract. In the event of actions or conduct contrary to the contractual agreement by the contractual partner, SWG reserves the right to take back the goods. The goods being taken back by SWG constitutes a withdrawal from the contract. Following the taking-back of the goods, SWG has the right to realize said goods, to bring the value thereof into account against the monies still owed by the contractual partner, minus appropriate expenses occurred for said realization. The provisions of Section 6 of these Terms and Conditions shall additionally apply.

11.2 The contractual partner has the duty to treat the goods carefully, in particularly he has the duty to sufficiently insure the goods, value as new, against damages of water, fire and theft. In the event of maintenance and inspection work needing to be done, the contractual partner has to have these done at his own expense.

11.3 The delivered goods may not, except with the consent of SWG, be given in pledge or assigned by way of security. In the case of interference with the secured goods by any third party, the contractual partner shall draw attention to the title of SWG, notify SWG accordingly without delay and provide all assistance as may be necessary for protecting SWG's rights. In the event of the Third Party not being able to repay the legal as well as extrajudicial cost of legal action according to Section 771 ZPO, the contractual partner is liable for the defaults occurred by SWG.

11.4 The processing or transformation of goods supplied by SWG and still subject to SWG's title shall in all cases be deemed done on SWG's behalf, though without any obligation for SWG. If SWG's title is extinguished through the combination of its item with other items, it is hereby already agreed that SWG shall have a share in the title to the new item created which is proportionate to SWG's share of the value (invoice value).

11.5 The contractual partner has the right to process and resell the secured goods in the ordinary course of his business.

11.6 The contractual partner hereby already assigns as security to SWG all claims to which he is entitled, including claims to credit balances arising from current account agreements, and which arise from the sale, processing or combination of the goods delivered by us. This shall likewise apply to claims of the contractual partner arising on any other grounds (insurance, tort, etc.) relating to the secured goods. The assignment shall be limited in amount to the delivery value of the goods supplied by SWG according to our invoices. At the same time, the contractual partner hereby assigns to SWG, without any additional special declarations to this effect being necessary, a share of all the rights of security to which he is entitled against his own customers equivalent in value to the value of the claims and rights assigned to SWG under the extended retention of title. If and insofar as this is not possible, the contractual partner shall enable SWG to participate grant by internal arrangement between them. Where a customer of SWG's contractual partner has effectively excluded the assignment of claims against himself, the contractual partner and SWG shall ensure by internal arrangement between them that SWG is placed in the same position as if the aforesaid claims, of any kind whatsoever, which it was intended should be assigned to SWG in advance had in fact been effectively assigned to SWG. SWG is authorised by the contractual partner to assert the claims in his own name for the account of SWG as soon as the contractual partner is no longer authorised pursuant to the provision below to collect the claims in his own name. SWG hereby revocably authorises the contractual partner to collect the claims assigned to SWG for his own account in his own name. As soon as the contractual partner fails to fulfil an obligation towards SWG, the contractual partner shall, on SWG's request, disclose the assignment and furnish SWG with the necessary information and documents. SWG is also entitled to inform the contractual partner's debtors of the assignment directly and call on them to make payment to SWG. The same shall also apply to any rights of security which have passed or been assigned to SWG.

11.7 In the case of any breach of contract by the contractual partner – in particular any delay in payment – SWG shall have the right to assert the title retained by it and immediately demand surrender of the secured goods and acquire direct possession of it either by itself or through third parties or, if need be, to demand assignment of the contractual partner's claims to surrender against third parties. The assertion of title shall not be deemed tantamount to repudiation of the contract.

11.8 If the value of the security existing in SWG's favour exceeds the total value of SWG's claims by more than 10 %, SWG shall, on the contractual partner's request, have a duty to release security in corresponding amount, the security to be released being of SWG's choice.

12. Place of Jurisdiction and Governing Law

12.1 In the event the contractual partner being a competent business man, all disputes arising directly or indirectly from the contractual agreement, the sole place of jurisdiction is the District County Court of Heilbronn. SWG also has the right to take up legal action at the location of the contractual partner's place of office.

12.2 The law of the Federal Republic of Germany exclusively applies; the applicability of the UN-Sales Law and the convention of the United Nations concerning contracts for the International Sale of Goods (CISG) are excluded.

13. Supplementary Clause

In the event that some of the paragraphs within this contract become invalid, the remaining paragraphs of this contract will stay valid and binding. However, this does not apply, if the adherence to this contract would represent an unreasonable hardship for either of the parties.