

**Terms and conditions of procurement**  
**Schnöring GmbH - Jahnstraße 15 - 58579 Schalksmühle**  
**Revised: 1 June 2007**

The following terms and conditions, clauses 1 - 13, apply to commercial transactions with all customers who are not consumers within the meaning of § 13 BGB (German Civil Code).

**§ 1**

**General – Scope**

- (1) Our terms and conditions of procurement apply exclusively; unless we have expressly agreed to their validity in writing, we do not recognize any supplier terms and conditions that conflict with or differ from our terms and conditions of procurement. Our terms and conditions of procurement also apply in the event that we unconditionally accept a supplier's delivery while aware of supplier terms and conditions that conflict with or differ from our terms and conditions of procurement.
- (2) All agreements made between us and the contractor, hereinafter referred to as the "Supplier" irrespective of the underlying legal relationship, for the purpose of execution of this contract must be set out at least in writing.
- (3) Our terms and conditions of procurement apply only to enterprises within the meaning of § 13 BGB (German Civil Code).

**§ 2**

**Inspection and acceptance of orders, effects of acceptance, offer documents**

- (1) The Supplier is obliged to accept our order within a period of 2 weeks, preferably by means of a note of acceptance on the copy of the order, otherwise by stating the price, rebate, discount and other details concerning the order as set out in § 3 (3) below. By accepting the order, the Supplier acknowledges that they have reviewed the available documentation provided and, where applicable understand the nature of execution and scope of service.

- (2) We reserve the rights of ownership and copyrights to illustrations, drawings, calculations, samples, models, brands, presentations and other documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for production on the basis of our order; after completion of the order, they must be returned to us of the Supplier's own accord. They must be kept secret from third parties; in this respect, the supplementary provisions of § 9 (4) also apply.
- (3) We assume no liability for obvious mistakes, clerical errors and calculation errors in the documents, drawings and plans submitted by us. The Supplier is obliged to inform us of such errors so that our order can be corrected and renewed. This also applies to missing documents or drawings.
- (4) Within the scope of the relevant field of application, the Supplier must observe the following provisions:
  - (a) Our performance description and/or functional specification, if available
  - (b) German Electrical and Electronic Equipment Act
  - (c) German Equipment and Product Safety Act
  - (d) German Building Products Act
  - (e) VDE provisions
  - (f) TÜV provisions
  - (g) DIN provisions

In the event of any contradictions within these documents, the performance description/functional specification takes precedence in all cases. In case of doubt, the Supplier is obliged to clarify contradictions before execution and to resolve any questions of doubt.

### § 3

#### Prices – Invoices – Terms and conditions of payment – Prohibition of assignment

- (1) The price stated in the order is binding. Unless otherwise agreed in writing, the price includes delivery “free domicile”, “including packaging”.
- (2) Unless otherwise agreed, at least in writing, statutory value added tax is not included in the price.
- (3) For each order, separate invoices must be sent to us in duplicate in paper form. They must not be enclosed with the goods consignment. We can only process invoices if they state the order number and the order date shown in our order; the Supplier is responsible for all consequences resulting from failure to comply with this obligation if no proof is provided that the Supplier is not responsible for them. Invoices that do not take this into account do not constitute a claim for payment and will be returned for correction.
- (4) Discount periods are calculated from date of the invoice, at the earliest however from receipt of the goods.
- (5) Payments are made by us as follows: 14 days 3% discount, 30 days 2% discount or 60 days net. Or as agreed individually with you.
- (6) We are entitled to set-off and retention rights to the extent permitted by law.
- (7) Claims to us made by the Supplier may be assigned to third parties only with our consent. Exceptions to this provision are assignments within the framework of customary forms of extension of retention of title or within the framework of factoring contracts.

### § 4

#### Delivery time

- (1) The delivery time stated in the order is binding. The goods must have arrived at the place of receipt specified by us within the delivery period or on the delivery date.
- (2) If circumstances arise or become apparent to the Supplier which prevent adherence to the **agreed** delivery time, the Supplier is obliged to inform us immediately in writing.
- (3) In the event of a delay in delivery, we are entitled to assert our legal rights. In particular, we are entitled to claim damages in place of performance under the statutory conditions. In the event that we claim for damages, the Supplier has the right to prove that they are not responsible for the infringement of obligations.
- (4) In the event of delay in delivery, we have the right, after dunning and without prejudice to our statutory rights (see paragraph (3) above), to demand a contractual penalty of 0.5% of the net order value per commenced week due to the delayed performance, to a maximum of 5% of the net order value, and/or to demand delivery and/or to withdraw from the contract. Any forfeited and paid contractual penalty will be offset against any claim for damages.
- (5) We are not obliged to accept delivery before the delivery date.

### § 5

#### Transfer of risk – Documents

- (1) Unless otherwise agreed in writing, delivery is free domicile. Until receipt of the goods by us, the risk of accidental loss or accidental deterioration is borne by the Supplier.
- (2) The Supplier is obliged to exactly indicate our order number, type and quality of goods and their quantities

on all shipping documents and delivery notes; in the event of failure to do so, we are not responsible for delays in processing.

## **§ 6**

### **Packaging, insurance, acceptance of goods**

- (1) Our shipping instructions and general forwarding instructions must be strictly observed in all cases; the Supplier is liable for all damage to us resulting from failure to do so.
- (2) If the Supplier charges separately for packaging materials, this must be reimbursed in full on their return. Unless regulated by the law governing packaging, and without prejudice to our right of return, the Supplier may request the return of packaging only on the basis of a specific agreement.
- (3) The Supplier bears the costs of transport insurance. We as a customer are exempted from forwarding, logistics and warehousing insurance.
- (4) Goods are accepted only during our normal business hours.

## **§ 7**

### **Statute of limitations, duties of inspection, liability for defects and other performance contrary to contract**

- (1) If a factory departure certificate is requested in the order, the Supplier must inspect the delivered goods for compliance with the contractual characteristics prior to delivery and record the condition of the delivered goods in a factory departure certificate. Our incoming goods inspection is limited to checking the identity of the goods, the delivery quantity and the presence of transport damage and obvious defects. Additional inspections of delivered goods take place only within the framework of our quality management system as quality checks carried out during production. On account of this approach, the Supplier waives the right to complain of inadequate or delayed incoming goods inspection in accordance with § 377 HGB (German Commercial Code).

A complaint is considered timely if it is received by the Supplier within a period of 10 working days calculated from receipt of the goods or, in the case of defects that are not obvious, from their discovery.

- (2) In the event of defects and/or other performance contrary to contract by the Supplier, we are entitled to make full use of the statutory remedies available to us.
- (3) In exceptional cases in which there are exigent circumstances or in cases of particular urgency which, after consideration of the interests of both parties, do not allow the setting of a deadline for subsequent performance, we are entitled, after prior notification of the Supplier, to carry out subsequent performance ourselves at the expense of the Supplier.
- (4) Where our products are building products within the meaning of § 438 (1) (2) BGB (German Civil Code), and where we make reference to this in the order, our deliveries to our customers are subject to the mandatory 5-year warranty. In this case, the warranty for the product delivered by the Supplier or for the order carried out by the Supplier ends 63 months after delivery to or acceptance by us, unless the law provides for a longer period of limitation or for a suspension of expiry. If we do not make reference to the product as a building product in the order, the statutory limitation rules apply.

## **§ 8**

### **Product liability, indemnity, liability insurance cover**

- (1) The Supplier bears full responsibility for the product delivered in accordance with the German Equipment and Product Safety Act (GPSG). If measures pursuant to the GPSG are required or ordered by an authority, the Supplier must indemnify us against costs and expenses if and to the extent that the cause lies in the Supplier's product or the Supplier is responsible for it.
- (2) If the Supplier is responsible for product damage, the Supplier is obliged

to indemnify us against any claims for damages by third parties upon first request and to the extent that the cause lies within the Supplier's sphere of control and organization and the Supplier would be directly liable in the external relationship. Any further claims on our part, in particular claims in the context of joint and several compensation, remain unaffected by this clause.

- (3) Within the scope of the Supplier's liability for damages within the meaning of paragraphs (1) and (2), the Supplier is also obliged to reimburse any expenses arising from or in connection with any recall action carried out by us or ordered by the authorities. We will – where possible and reasonable – inform the Supplier of the substance and scope of the recall measures initiated and provide an opportunity to respond. Other statutory claims remain unaffected.
- (4) The Supplier undertakes to maintain product liability insurance with adequate cover for personal injury/damage to property; in the event that we are entitled to further claims for damages, these remain unaffected.

### **§ 9 Property rights**

- (1) Subject to paragraph (5), the Supplier guarantees that no industrial property rights of third parties within the Member States of the EEA are infringed in connection with the delivery made by the Supplier.
- (2) If claims are asserted against us or our customers by a third party for this reason, the Supplier is obliged to indemnify us against these claims upon first written request; we are not entitled – without the consent of the Supplier – to make any agreements with the third party, in particular to conclude a settlement.
- (3) The Supplier's obligation to indemnify applies to all necessary expenditures incurred by us due to or in connection with the

claim by the third party.

- (4) The limitation period is ten years, calculated from conclusion of contract.
- (5) The above paragraphs (1) to (4) do not apply if the Supplier has manufactured the goods delivered in accordance with drawings, models or other equivalent descriptions or instructions provided by us and does not know or, in connection with the products manufactured by the Supplier, cannot know that property rights are infringed as a result.

### **§ 10 Retention of title, provision, tools, confidentiality**

- (1) Where we provide materials or semi-finished products to the Supplier, we reserve the right of ownership. As such, they must be stored separately and may only be used for our orders. The Supplier is liable for any reduction in value or loss, even if the Supplier is not at fault. The Supplier undertakes processing or alteration on our behalf. If our goods subject to retention are processed with other items that are not our property, we acquire co-ownership of the new item in the ratio of the value of our property (purchase price plus VAT) to the other property processed at the time of processing.
- (2) If the property provided by us is mixed inseparably with other items that are not our property, we acquire co-ownership of the new item in the ratio of the value of the goods subject to retention (purchase price plus VAT) to the other property mixed at the time of mixing. If the mixing is such that the Supplier's property is to be regarded as the main item, the Supplier must assign proportional co-ownership to us; the Supplier holds sole ownership or co-ownership in safe custody on our behalf.
- (3) Tools and production facilities provided by us to the Supplier remain our property. The Supplier

is obliged to use such tools and production facilities exclusively for the manufacture of the goods ordered by us. The Supplier is obliged to insure the tools and production facilities to which we retain ownership, at their replacement value and at the expense of the Supplier, against damage caused by fire, water and theft. At the same time, the Supplier hereby assigns all claims for compensation arising under this insurance to us; we hereby accept the assignment. The Supplier is obliged to carry out any maintenance and inspection work and all servicing and repair work required for our tools in good time and at the expense of the Supplier. The Supplier must immediately notify us of any faults or incidents; in the event of culpable failure to do so, claims for damages remain unaffected.

(4) Tools and/or production facilities that we pay for separately become our property. In place of transfer of the tools and/or production facilities, the Supplier holds them in safe custody on our behalf on the basis of a loan agreement, which begins at the time when the tools and/or production facilities were accepted or deemed to have been accepted. We are entitled to terminate this loan agreement with a notice period of four weeks; the right to extraordinary termination without notice for good cause remains unaffected. In the event of termination, the tool or production facilities must be returned to us at the end of the notice period; the Supplier waives any right of retention in this respect.

(5) The Supplier is obliged to keep all illustrations, drawings, calculations and other documents and information received by the Supplier strictly confidential. They may be disclosed to third parties only with our express consent. The obligation to maintain confidentiality remains in place after completion of this contract; it expires when and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents made available to the Supplier has become generally known.

## **§ 11**

### **Work in our factory**

- (1) Persons entering our factory areas for the purpose of fulfillment of a delivery contract are subject to the provisions of our company regulations.
- (2) We assume liability for any accidents or damage only in the event of intent or gross negligence on the part of our executive staff.

## **§ 12**

### **Place of jurisdiction, place of performance, choice of law**

- (1) Where the Supplier is defined as a merchant, place of jurisdiction is the court with jurisdiction *ratione loci* and *ratione materiae* for Schalksmühle; we are however also entitled to take action against the Supplier at the Supplier's general place of jurisdiction.
- (2) Unless otherwise stated in the order, place of performance is Schalksmühle.
- (3) If the Supplier is domiciled abroad, the business relationship is subject to German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

## **§ 13 Data protection**

The development of the business relationship is supported by a data processing system, and accordingly, the customer's data (address, delivery products, delivery quantities, prices, payments, cancellations, etc.) are recorded in an automated file and stored until the end of the business relationship. The customer is hereby informed of the storage of this data. Legal basis: §§ 27 et seq., 33 BDSG (German Federal Data Protection Act).