

GENERAL TERMS AND CONDITIONS

as of January 2020 – Version 1.0

1. General, scope and deviations

- 1.1 All deliveries and services of SCHWARZ Maschinenbau GmbH, 6850 Lustenau (hereinafter referred to as "Schwarz") are based on the following general terms and conditions, even if not expressly referred to. Any agreements deviating from these only apply if they are made in writing and have been signed by an authorized representative of Schwarz.
- 1.2 The client agrees that if he uses his own general terms and conditions, he in case of any doubt agrees to the general terms and conditions of Schwarz, even if the terms of the client remain unchallenged or fulfilment actions have already been taken.
- 1.3 Counter-confirmations by the client with reference to his business or purchasing conditions are hereby rejected.
- 1.4 These general terms and conditions also apply to all future business between Schwarz and the client, even if they are not expressly agreed in detail.

2. Offers and conclusion of contract

- 2.1 Offers by Schwarz are generally made in writing and are subject to change unless otherwise agreed. We reserve the right to make changes within a reasonable scope.
- 2.2 Any and all orders placed by the client only become binding upon the written order confirmation sent by Schwarz. If, in the opinion of the client, the order confirmation deviates from the order, he must immediately notify Schwarz in writing. Otherwise the order confirmation by Schwarz shall be deemed agreed upon by both parties. Any changes to the order confirmation will only be binding if confirmed in writing by Schwarz.
- 2.3 We reserve the right to rectify any errors subsequently.
- 2.4 Schwarz is entitled at any time to refuse to accept the order - for example after checking the creditworthiness of the client - or to withdraw from the contract.
- 2.5 Schwarz is entitled to withdraw from the contract if its sub-suppliers do not deliver at all or fail to deliver in a proper or timely manner.
- 2.6 Declarations made by employees must be confirmed in writing by Schwarz to be effective.

3. Order placement

- 3.1 The nature and scope of the agreed services shall be as specified by the contract, authority and these general terms of conditions.
- 3.2 Schwarz is obliged to properly perform the contract for the order in compliance with the generally accepted technical standards and the principles of economy and sound financial management.
- 3.3 Schwarz may draw on others who are duly authorised or sub-suppliers to fulfil the contract, and may place orders with them on behalf and for account of the client.
- 3.4 The client is obliged to provide Schwarz with any and all data and materials required for the order in good time and in sufficient quantity and scope.

4. Prices

- 4.1 Unless otherwise stated, prices are in EURO and, unless otherwise agreed in writing, ex-works factory/warehouse at Schwarz in Lustenau, duty unpaid, unloaded and ready for collection by the client.
- 4.2 The prices do not include the costs of packing and freight.
- 4.3 The prices offered are subject to change and apply until further notice.
- 4.4 All prices shall be net prices without deduction and subject to statutory sales tax which must be shown separately.
- 4.5 Incidental costs, such as public taxes, duties, levies, import and export taxes and fees, shall be borne by the client unless otherwise stated or agreed.
- 4.6 Should six months lapse between the conclusion of the contract and the agreed and/or actual date of delivery, the actual prices of Schwarz at that time of delivery or provision will be valid. In case of price escalations of Schwarz's sub-suppliers, the escalation of salaries and transport costs, or any other unexpected cost escalations, Schwarz is entitled to negotiate new prices.

5. Performance, delivery times and delay

- 5.1 Delivery periods begin on the day the order is accepted (order confirmation), but not before the fulfilment of all contractual obligations' incumbent on the client, such as in particular the agreed opening of a letter of credit or the provision of a payment guarantee. This does not affect Schwarz's claim for compensation for expenses caused by delays on the part of the client.
- 5.2 The delivery time shall only begin when all pre-requisites have been satisfied for the execution of the order, in particular all details of the execution have been clarified (among others requested plans, samples etc. have been submitted by the client) and both parties agree upon all terms and conditions of the contract.
- 5.3 Partial deliveries by Schwarz are permitted. Each partial delivery is generally considered an independent business/contract.
- 5.4 With the notification of readiness for dispatch by Schwarz, the delivery period is deemed to have been met.
- 5.5 Schwarz will comply with delivery times/periods as far as possible. Unless they have been expressly and bindingly agreed upon, they are always non-binding and are deemed to be approximate delivery times/periods. Withdrawal from the contract by the client due to delayed delivery is only possible if a reasonable - at least 4 weeks - grace period has been set. The withdrawal by the client is to be made by registered letter. The right of withdrawal relates only to the part of the delivery or service that is in arrears.
- 5.6 In the event of a delay in delivery due to force majeure, liability is not accepted and Schwarz is entitled to postpone the fulfilment of the obligations assumed or to withdraw from the contract in whole or in part at its own discretion.
- 5.7 In such cases, compensation for damages or claims for subsequent delivery are excluded. The client is not entitled to unilaterally withdraw from the placed order.
- 5.8 In the event that Schwarz does not perform on time, the client must grant a reasonable grace period.
- 5.9 Goods not accepted by the client on the agreed deliver time are stored for a period of six weeks at the risk and expense of the client, for which Schwarz charges a storage fee of EUR 200 per calendar day or part thereof. At the same time, Schwarz is entitled to either insist on the performance of the contract or to withdraw from the contract after setting a reasonable grace period.
- 5.10 If Schwarz withdraws from the contract, a contractual penalty in the amount of the specified down payment is also agreed upon. If no down payment has been agreed, the contractual penalty is 30% of the gross sales price. Schwarz expressly retains the right to claim compensation, in particular compensation for non-performance by the client.

6. Payment Terms

- 6.1 Unless otherwise agreed in writing, all invoices from Schwarz are due for payment immediately and without deduction.
- 6.2 Payments must only be made in the currency shown and by bank transfer to the bank account specified in the invoice. Payments are to be made without deduction and on the conditions stated in the invoice.
- 6.3 If the agreed-on terms of payments are not complied with and/or if circumstances occur which put the creditworthiness of the client into question, Schwarz is entitled to declare all claims against the client payable immediately and demand security.
- 6.4 If the client defaults on payment, Schwarz is entitled to charge default interest at the statutory rate.
- 6.5 In the event of default on payment, the client commits to compensate Schwarz with regards to any and all costs of overdue notices and collection expenses (including but not limited to prosecution at court) incurred by Schwarz, in as much as these are necessary for adequate prosecution purposes.
- 6.6 If the client finally ceases to make payments and / or insolvency proceedings are filed against his assets, Schwarz is also entitled to withdraw from the part of the contract that has not yet been fulfilled.
- 6.7 The client is not entitled to withhold payments due to counterclaims or to set off his own claims against the claims against Schwarz.

7. Transfer of risk

- 7.1 The risk passes to the client as soon as the shipment has been handed over to the person/or company carrying out the transport or has left the plant of Schwarz for the purpose of dispatch. If dispatch is delayed or not carried out at the request of the client, the risk passes to the client when the readiness for dispatch is reported to him.
- 7.2 The risk of accidental loss and accidental deterioration of the goods passes to the client when the goods are handed over, in the case of mail order purchases when the goods are handed over to the freight forwarder, the carrier or the person or institution otherwise responsible for carrying out the shipment.
- 7.3 At the request of the client, deliveries are insured in his name and on his account.

8. Retention of title and assignment

- 8.1 The sold goods remain the property of Schwarz until the purchase price and all additional claims by Schwarz, such as interest and costs, have been paid in full. The retention of title also extends to new or different products resulting from processing or combining.
- 8.2 If the goods subject to retention of title are recorded by an official or judicial order or measure, the client must notify Schwarz within 48 hours by fax or e-mail, detailing the creditor, the authority and the case number. If bankruptcy proceedings are imminent, the client must inform Schwarz and support Schwarz in securing or retrieving the goods in question. Schwarz reserves the right to pursue its property right in its own name, regardless of the eventual termination of the purchase contract.
- 8.3 Any processing of the goods subject to retention by the client is always free of charge in the name and on behalf of Schwarz. If the goods subject to retention of title are processed, Schwarz will acquire joint ownership of the new item in relation to the value of the goods delivered by Schwarz. The same applies if the goods subject to retention of title are processed or mixed with other objects that do not belong to Schwarz.
- 8.4 The client already now assigns all claims in the amount of the invoice amount to Schwarz, which arise from a resale to a third party, and shall undertake to make a corresponding note in his accounts or on his invoices. Schwarz hereby accepts the assignment. Schwarz is entitled to collect the claims after they were assigned. Schwarz reserves the right to collect the claims itself as soon as the client no longer meets his payment obligations in an orderly fashion and defaults on payment.
- 8.5 Schwarz is entitled at any time to assign its claims against the client or the goods subject to retention to third parties.
- 8.6 If the client defaults on payment, Schwarz is entitled to reclaim all goods in question. The client has no right of retention or set-off. All costs incurred in the event of redemption are exclusively borne by the client.
- 8.7 To secure its claims and to secure claims from other legal transactions, Schwarz has the right to withhold the products and goods until all outstanding claims from the business relationship have been settled.

9. Force Majeure

- 9.1 Force majeure events entitle Schwarz to delay delivery for the duration of the obstruction and to an appropriate start-up period or to fully or partially withdraw from the contract. The client is not entitled to any claims against us due to such circumstances, particularly claims for damages.
- 9.2 Force majeure events refer to strikes, lock-outs, mobilisation, wars, terror attacks, blockades, export and import bans, raw material and fuel shortages, fire, traffic blocks, disruptions of operations or of transportation as well as other circumstances which materially impair the transaction or make it impossible, irrespective of whether the event occurs on Schwarz's premises, on the premises of the sup-supplier or their subcontractors, of our client or otherwise in their sphere. Force majeure events also refer to non-delivery or an untimely delivery of Schwarz's sub-suppliers, provided Schwarz is not responsible for the cause.

10. Warranty, Compensation and Product liability

- 10.1 The goods/products only comply with the rules and standards that are common in the European Union. The goods/products only carry the CE mark. Schwarz is not responsible for compliance with other standards. Any dimensions, weight or quality information contained in product data sheets, catalogues, brochures are non-binding; only the specifications stated in the order confirmation apply. The client is solely responsible for checking whether a product is suitable for a specific area of application or use.
- 10.2 Any warranty relates exclusively to defects that were already present at the time of hand over or delivery, whereby the client bears the burden of proof. The goods/products must be examined immediately upon delivery and any defects found must also be reported in writing immediately, at the latest within 5 working days after delivery, stating the type and extent of the defect; otherwise the assertion of warranty and compensation claims as well as the contestation of the contract on the basis of a defect or lesion beyond moiety is excluded. Verbal, telephone or not immediately made notice of defects and complaints will not be considered.
- 10.3 Hidden defects must be reported immediately after discovery and within the warranty period. If a notice of defects is not raised or not made in time, the goods are considered approved. The assertion of warranty and compensation claims including consequential damages as well as the right to contest errors due to defects are excluded in these cases.
- 10.4 Apart from those cases in which by law the right to exchange exists, Schwarz reserves the right to fulfil the warranty claim through improvement, exchange or price reduction. Justified complaints therefore do not entitle the client to withhold the purchase price or a part thereof, but oblige Schwarz to remedy the defect within a reasonable period.
- 10.5 If the goods/products are manufactured by Schwarz based on design information, drawings, models, etc. made by the client, the warranty/liability of Schwarz only extends to the fact that the execution was carried out according to the client's instructions. Schwarz has no obligation to inspect, test or warn.

- 10.6 No warranty claims shall exist for defects caused by improper handling or overuse, if legal or operating instructions or installation instructions provided by Schwarz are not followed; if the goods/products were created based on the specifications of the client and the defect is due to these specifications or drawings; in the event of incorrect installation or commissioning by the client or third parties, natural wear and tear, transport damage, improper storage, malfunctioning operating conditions (e.g. inadequate power supply), chemical, electrochemical or electrical influences, failure to carry out necessary maintenance, or poor maintenance.
- 10.7 Schwarz is entitled to carry out or have any examination deemed necessary to be carried out, even if it renders the goods/products or workpieces unusable. In the event that this examination reveals that Schwarz is not responsible for any errors, the client must bear the costs of this examination for a reasonable fee.
- 10.8 Schwarz shall only assume liability for damage in accordance with the mandatory statutory provisions of Austrian law. Schwarz shall only assume liability for damage caused by injuries to life, limb or health if it is based on wilful or negligent actions by Schwarz or its agents. Schwarz shall only assume liability for other damages in the event of intent and gross negligence. Claims for compensation expire 6 months after becoming aware of the damage and the damaging party, at least within 3 years after the transfer of risk. Schwarz shall under no circumstances assume liability for indirect damage, consequential damage or loss of profit, e.g. due to production stoppage or breakdown.
- 10.9 Unless the damage was caused intentionally, the total amount of all claims for damages - from whatever title - is limited to the net order value.
- 10.10 Any recourse claims made against Schwarz by the client or third parties the title of product liability are excluded, unless the entity entitled to recourse proves that the error was caused by Schwarz and was at least grossly negligent.
- 10.11 The client shall bear all costs incurred by remedying of defects, e.g. transport, assembly and disassembly costs as well as travel costs. Upon request by Schwarz, the client must provide any necessary labour free of charge.

11. Limitation of Liability and Indemnity

- 11.1 Outside the scope of the Product Liability Act of the state of Austria, Schwarz's liability is limited to intent or gross negligence.
- 11.2 Any liability caused by minor negligence to the goods/products, financial loss, consequential loss, financial loss, loss of profit and interest and damage resulting from third party claims against the client are excluded.
- 11.3 Our liability is limited to the value of the contract.

12. Withdrawal from the contract

- 12.1 Schwarz is entitled to withdraw from the contract:
 - provided the execution of the delivery or the start or the continuation of the performance is further delayed for reasons the contractual partner is responsible for, or despite a grace period being established.
 - in case the creditworthiness of the client is put into question and the client neither effects an advance payment nor provides appropriate collateral despite a request is made by Schwarz.
- 12.2 The withdrawal may also be declared with regard to an as of yet outstanding part of the delivery and performance for the above reasons.
- 12.3 If insolvency proceedings are initiated with regard to the assets of one of the contractual partners, or if an application for the initiation of insolvency proceedings is rejected due to a lack of assets, the other party is entitled to withdraw from the agreement without setting a grace period.
- 12.4 Irrespective of the claims of Schwarz for damages, any services or partial services of the contract already rendered shall be billed and become payable in case of a withdrawal from the contract. This also applies to any preliminary services already rendered by Schwarz and/or to the extent the delivery and performance was not yet accepted by the client. Schwarz shall, however, also have the right to demand the return of any items already delivered.

13. Data protection, Confidentiality and Intellectual/Industrial property rights

- 13.1 The client consents to the fact that the personal data contained in the purchase contract are saved and processed automatically by Schwarz in fulfilment of the contract. The client accepts to announce changes of his address to Schwarz. If the client violates this, any declaration by Schwarz to the address known to her is deemed to have been received.
- 13.2 The parties shall undertake to keep their knowledge of the business relationship confidential to third parties.
- 13.3 The client is responsible for ensuring that any design information, drawings, models or other specifications passed on for manufacture do not interfere with the property rights of third parties. In the event of any violation of property rights, the client shall indemnify and hold harmless Schwarz against third-party claims.
- 13.4 Software, documents such as plans, sketches and other technical documents, as well as samples, catalogues, brochures, illustrations and the like, remain the intellectual property of Schwarz and are protected by copyright. Any reproduction, distribution, imitation, processing or exploitation and the like that is not expressly granted is prohibited.

14. Mediation clause

- 14.1 For any disputes and/or conflicts arising from or in connection with this contract, or the breach of contract itself, the cancellation or invalidity of the contractual provisions, an attempt at resolving the disputes and/or conflicts amicably shall initially be performed by the parties within the scope of mediation proceedings led by an impartial third party (mediator), listed at the Ministry of Justice (ZivMediatG).
- 14.2 The parties shall enter into an agreement with regard to the process of the proceedings with the mediator within a four-week period starting with the first mention of the conflict (14.1). All deadlines are suspended for the duration of the proceedings, and the parties shall keep any information related hereto strictly confidential.
- 14.3 In case no agreement can be reached through mediation within four weeks, or if the mediation proceedings are completed unsuccessfully, the parties shall handle all disputes related to these proceedings in accordance with the following provisions.

15. Governing law, Place of jurisdiction

- 15.1 As the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract, is the court in Feldkirch, Austria, responsible for the registered office of Schwarz.
- 15.2 Austrian substantive law shall apply with the application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) being excluded by mutual agreement.
- 15.3 Should any individual provisions of the contract or of these General Terms be fully or partially ineffective, the effectiveness of the remaining provisions shall remain unaffected thereof. In case a regulation which is totally or partially ineffective it will be replaced by a regulation which will approximate the economical success of the ineffective regulation the closest.