

## Terms and Conditions

### 1. General

- 1.1 Exclusively the sale conditions detailed below apply to all our current and future supplies, including advisory and other services, provided that the customer trader is a legal entity by public law, or a special estate as defined by public law. Conditions set out by the customer, conditions of purchase in particular, are overruled by this document.
- 1.2 Agreements which alter these conditions need written confirmation as to their effectiveness. Adherence to the requirement for written form can only be dispensed with on written explanation from us.
- 1.3 Our offers are subject to confirmation. A contract first comes about through our confirmation of the order, or by delivery of the ordered goods. We do not assume guarantees or execution risk for deliveries due from us. All our commitments come under the proviso of orderly self delivery.
- 1.4 Customer rights arising from a contract arranged with us can only be allowed if we have agreed to it in writing beforehand.

### 2. Prices, Payments, Security

- 2.1 Our prices are given in Euros, based on factory prices. The relevant legal value-added taxes are applied.
- 2.2 Should there be a significant change to cost factors, in particular to the cost of wages, materials, transportation charges, tolls or taxes we can change the contract prices appropriately, according to the impact of the change in the cost factor. Should the delivery not take place at the agreed time or outside of the agreed time frame for reasons arising from the customer's side, and more than four months have elapsed since the contract was formed, we are entitled to charge our applicable valid full list price.
- 2.3 Payments are due based on the date of the invoice. For late payments, we are entitled to charge 8% interest over the applicable basic rate of interest from the date on which the payment falls due, without necessarily going into arrears.
- 2.4 If payment is delayed, or payment of our outstanding bills is put at risk by collapse of creditworthiness of the customer, we can call all our outstanding bills due, irrespective of the timeframe given to possible changes, and/or demand collateral. We are further entitled to carry out outstanding deliveries only after against prepayment or placing of collateral. If the customer refuses prepayments or securities, we can withdraw from the contract and require compensation. Beyond that, we can, without withdrawing from the contract, prohibit the processing and sale of the goods supplied by us – also, insofar as they are already processed, cancel the collection authorisation in accordance with figure 5,7 and require return of the goods at the expense of the customer, without the customer withholding any rights, or becoming entitled to any similar rights. We will turn any goods taken back to account by free sale and the proceeds less incurred costs will be credited to that customers account.
- 2.5 In the event of any delay in customer payment, should our claims still not be met in full, even after our specified grace period has elapsed, we are entitled as well as all our other rights, to charge 20% of the order total instead of the bill, as estimated compensation. The burden of justification for a higher compensation is on us. The customer is permitted to provide proof of no or a substantially smaller compensation than the estimate is due.
- 2.6 The customer is only entitled to a right of lien and power to offset, so far as the counterclaims are undisputed or legally determined.
- 2.7 We will accept foreign currency and cheques only as payment and only after written agreement. The customer will be liable for all discount charges and all other costs associated with the acceptance of currency and / or cheques.

### 3. Delivery time

- 3.1 Dates and times of delivery agreed upon in the contract are to be regarded as approximate, and apply only after punctual clarification of the details of the contract and punctual fulfilment of all undertakings of the customer
- 3.2 If we should be prevented from carrying out our obligations punctually for reasons out of our control, the delivery time will be extended by the length of the duration of the delay, as well as an appropriate starting time. Incidents of force majeure, in particular, strikes and lock-outs as well as deliveries made by our deliverers that are not in good form or under our responsibility count as events outside our control. In such cases we can, with regard to the part of the contract yet to be fulfilled, withdraw from the contract completely or in part. In these cases the customer is, under legal requirements, entitled to withdraw from the contract after a reasonable grace period arranged in writing, has elapsed without effect, if it is decided that the reduction of the goods delivered due to the delay is unreasonable.
- 3.3 Should we be delayed, the customer can after a reasonable grace period set out by him in writing has elapsed without effect, withdraw from the contract.

### 4. Delivery, dispatch, passing of risk

- 4.1 We are entitled to partial deliveries as well as to a reasonable extent, over or under delivery as dictated by production.
- 4.2 Once notification that goods are ready for dispatch at the agreed time has been received, the customer should collect them immediately. Otherwise, we are entitled to store the goods at our own discretion at the cost and risk of the customer, and count them as delivered to the factory or warehouse. Should dispatch not be possible due to traffic, or any other set of circumstances beyond our control, or if we store goods at the wish of the customer, the same applies.
- 4.3 The dispatch of the commodity takes place on invoice of the customer. The dispatch method, courier, haulier, transport and protective agents as well as the packing of the product are left to our choice. We do not guarantee the cheapest or fastest mode of shipment. We will arrange transport insurance only on the express wish and at the expense of the customer.
- 4.4 From the point at which the goods are handed over to the courier or haulier, in any case at the latest at departure from the factory or warehouse, the customer assumes all responsibility. Should the customer not collect a product once notified that it is ready for dispatch the responsibility is the customer's from the moment of notification.
- 4.5 A collection of the goods can take place only after express written agreement and only by the transport provider. The collection must be carried out immediately after the message that goods are ready has been received. The customer carries all collection costs. If a collection should not through any fault of ours not be carried out in full or in time, we are entitled to send the goods or to store them at the cost and risk of the customer. In such a case the goods will, after they have been sent or stored, be counted as delivered according to contract, in every respect.
- 4.6 Incoterms 2000 are applied to the interpretation of the commercial clauses.

### 5. Reservation of title

- 5.1 The delivered goods remain our property (reserved goods) until all current and future claims have been settled, in particular the respective account claims that are applicable to us in the frame work of the business relationship with the customer on any legal basis. If we are liable for the financing or refinancing of the purchase price in respect of a customer or third party, or if such liabilities arise, (which may arise in general due to the acceptance of a bill, the guarantee of payment or our acceptance of any other direct or indirect liability)



## SCHAFF & MEURER

Spezienschmiermittel • Lohnfertigung

- the property will only become the customer's when we are free of all liabilities towards customers or third parties.
- 5.2 The processing and manufacture of reserved goods takes place for us as manufacturers as defined by § 950 BGB, without any obligations arising. The processed and manufactured goods count as reserved goods as defined by clause 5.1. If the reserved goods are manufactured assembled and mixed with other goods by the customer, we retain co-ownership of the new product in accordance with the invoice value of the reserved goods compared with invoice value of the other goods used. Should our property be made defunct through the processing assembly or mixing, the customer will hand over the property rights to the new article or item that are now in his possession, in relation to the invoice value of the reserve goods. Our rights of co-ownership count as reserved goods as defined by clause 5.1.
- 5.3 The customer undertakes to store the reserved goods for us free of charge and with the care of a responsible businessman and to insure at invoice value against damage due to fire, water and theft, at his expense. If requested, which could occur at any time, the customer must organise special storage and labelling of the reserved goods. The customer is obliged to provide us at all times with information on the condition of reserved goods under his care, where they are being stored and, as the case may be, their processing or manufacturing situation. We are entitled to inspect the reserved goods at any time.
- 5.4 The customer may resell the reserved goods only in the course of normal business under normal business conditions and provided that there is no delay with payments or any other contractual obligations, provided the customer agrees on the retention of property rights with the purchaser, and as the amount receivable for the reselling as set out in clauses 5.5 and 5.6 reverts to us. The customer is not entitled to make any other arrangements for the reserved goods. The use of reserved goods for the fulfilment and delivery of manufacturing orders counts as reselling.
- 5.5 The amounts owing to the customer through resale of the goods will be surrendered to us; this applies to the payment of the amounts owing from resale paid into a current account in sufficient amount to settle the account balance. The surrendered amounts serve as security in the same way as the reserved goods.
- 5.6 If the customer should sell reserved goods together with other goods, then the claims arising from that resale, and indeed, the respective account claims in relation to the invoice value of the reserved goods compared with the invoice value of the other goods, will be transferred to us. In event of resale of goods on which we have part property rights in accordance with clause 5.2, a share of the claim corresponding to our share of the property will be surrendered to us.
- 5.7 The customer is entitled to charge for claims arising from the resale or account claims. That is, we withdraw the right to collect in the cases named in figure 2.4. At our demand the customer is obliged immediately to inform its purchasers of the surrender to us and to provide us with all the Information and documents necessary to the collection.
- 5.8 The customer is not otherwise entitled to the surrender of the amounts owing. This is valid also for any factoring business; these are not allowed to the customer for reasons relating to the authorisation of collection. We are however ready to undertake factoring businesses in individual cases if this business amounts finally to equivalent flows from the customer, and provided that the satisfaction of our claims is not put at risk.
- 5.9 In the cases specified in clause 2.4, we are also entitled to prohibit the processing and manufacture as well as the resale of reserved goods. In these cases, as well as in the event of non-compliance by the customer with obligation under clause 5,4, we can also require the return of the reserved goods at the expense of the customer under exclusion of a right of lien. The customer hereby authorises us to enter into its premises for the



## **SCHAFF & MEURER**

Spezierschmiermittel • Lohnfertigung

purpose of retrieving the reserved goods. Retrieval of the goods does not qualify as invalidating the contract.

- 5.10 The customer is obliged to inform us immediately of any seizure or any other impairment of the reserved goods. If court or out-of-court costs arise from the defence against such seizures, or other impairments, which we do not get refunded by third parties because they do not have sufficient funds there for, the customer is responsible to us for any resulting loss.
- 5.11 If the value of the existing collateral exceeds the total of the secured claims by more than 10% in total, we are obliged, upon the requests of the customer, to release collateral of our choice.

### **6. Warranty**

- 6.1 Warranty claims do not apply to the supply of used goods. Warranty claims resulting from the supply of unsatisfactory new goods are determined according to the clauses 6.2 to 6.8.
- 6.2 Short deliveries of product are to be immediately advised to us in writing. If the product is retrieved by the customer in accordance with number 4,5 or if the goods are counted as collected, the complaint of such lack is excluded, as it could have been determined during collection. In addition, complaint of any shortage of goods which could have been established after careful checking is excluded once two weeks has elapsed since the goods arrived on the designated site.
- 6.3 The customer is obliged to store the complained of goods in an orderly way and give us the opportunity to inspect them. Processing, manufacturing or sale of the complained of goods is to be stopped immediately, or not undertaken. Furthermore the customer must, at our request at any time, to put the complained of goods, or - at our choice - samples of them, at our disposal. Should the obligations of this clause not be honoured, all warranty claims will fail.
- 6.4 Warranty claims can only be made valid, if and insofar as incorrect goods represent more than 5% of the total delivery amount. Deficiency in a part of the delivery cannot lead to a complaint against the whole delivery.
- 6.5 Insofar as we are responsible for any deficiency in the goods we are entitled to remedy the lack (amendment) or delivery of a fault-free product (replacement) - at our option. There is no right of amendment or replacement. We only cover delivery cost to the specified fulfilment destination.
- 6.6 The customer can withdraw from the contract or demand a reduction of the purchase price in respect of faulty goods, after the elapse of a reasonable grace period specified in writing without result, provided an amendment and/or a replacement fails. The customer has the same rights also without setting any deadlines, if an amendment or replacement by us has been refused validly and in good faith. No further rights arise in respect of deficiencies - in particular contractual or extra-contractual compensation claims - in accordance with the terms specified in clause 7.
- 6.7 Warranty claims become time-barred 1 year after delivery of the commodity, at the latest 13 months after our notification that the goods are ready for dispatch.
- 6.8 The customer has the legal right of warranty, without restrictions if we have fraudulently concealed the shortfall

### **7. Liability**

- 7.1 We are liable for direct damage, lost profit, savings not achieved, indirect and/or consequential damages as well as expenditures, which our customers or third parties incur in connection with the preparation, execution or completion of a contract, subject to the following regulations and then only if our legal representatives or senior employees



## **SCHAFF & MEURER**

Spezierschmiermittel • Lohnfertigung

have caused the damages or costs by a deliberate or grossly negligent failure; in cases of gross negligence in simple fulfilment activities we are liable only to the extent of the foreseeable (typically occurring) damages and/or costs. Excluded is our contractual, extra-contractual and other liabilities irrespective of the legal grounds for the claim (in particular also due to the failure to carry out contractual or legal obligations and damages due to unauthorised treatment), to the extent as our legal representatives and leading employees carry no liability or can be accused only of simple.

- 7.2 The preceding limitations of liability do not apply (i) for personal injuries, (ii) for any possible manufacturer liability as well as (iii) with culpable breach of substantial duties from the contractual obligation, through which the achievement of the contract purpose is put at risk; in the case in iii) however, our liability is limited to the restitution of foreseeable damages.

### **8. Place of delivery, court of jurisdiction, applicable law, severability clause**

- 8.1 Place of delivery is Essen, for the customer's payment obligations the bank details given in our invoices.
- 8.2 Court of jurisdiction for all court processes, as well as for exchange, cheques and other document processes is our registered office. We can also institute proceedings against customers in their court location.
- 8.3 For all legal relationships between us and our customers the applicable law of the Federal Republic of Germany is valid exclusively as for the legal relationships of all domestic parties.
- 8.4 In the case of invalidity of one of the provisions of this contract the others remain valid and binding. The invalid contract provision is to be replaced by a rule which comes as close as possible to the economic objective of the provision deemed ineffective.

Date of issue: February 2010