

# GENERAL TERMS AND CONDITIONS

SW-Service GmbH & Co. KG

**Business address:**

Mindener Straße 208  
49152 Bad Essen

**Postal address:**

Lerchenweg 43  
32361 Preußisch Oldendorf

## I. SCOPE

We conclude contracts exclusively on the basis of our following terms and conditions. Deviations from these conditions are only effective if we confirm them in writing. Terms and conditions of the customer which we do not accept in writing shall not be binding on us, even if we do not expressly object to them. These terms and conditions shall also apply to future orders, even if their validity is not expressly agreed again. The written form within the meaning of these terms and conditions shall be complied with by e-mails and fax letters.

## II. OFFERS

Our offers are subject to confirmation. Orders placed with us shall only become binding in terms of type and scope upon our order confirmation. Amendments and supplements must be made in writing. 2.

2. the documents belonging to our offers, such as illustrations and drawings, indications of weights, colors and dimensions, samples and information in brochures are only approximately authoritative, unless we expressly designate them as binding. We reserve the property rights and copyrights to all offer and other documents handed over to the customer. These documents may not be passed on, reproduced or made accessible to third parties without our consent. 3.

3. support services (e.g. installation, training or consulting) shall be charged separately according to time and effort.

## III. PRICES AND TERMS OF PAYMENT

Unless otherwise stated in our order confirmation, the prices shall apply ex works excluding packaging and plus the statutory value added tax applicable on the date of invoicing. Changes in material prices and wages occurring four months after conclusion of the contract shall entitle us to make corresponding price adjustments. The deduction of cash discount requires a special written agreement.

Unless otherwise stated in our order confirmation, the purchase price shall be due for payment without deduction within 30 days. In the event of default in payment, the statutory provisions shall apply. 3.

If it becomes apparent after the conclusion of the contract that our claim for payment is jeopardized by the customer's inability to pay (e.g. in the event of non-compliance with payment terms), we may refuse our performance and set the customer a deadline for payment concurrently against delivery or provision of security. In case of unsuccessful expiry of the deadline, all outstanding claims shall become due and we shall be entitled to withdraw from the contract and to claim damages. The setting of a deadline is dispensable if the customer finally refuses payment or if his inability to perform is obvious. 4.

Cheques and bills of exchange shall only be accepted on account of performance. Costs associated with this shall be borne by the customer. Offsetting with counterclaims or the assertion of rights of retention shall only be permissible insofar as the customer's claims are undisputed or have been legally established.

#### **IV. MOLDS AND TOOLS**

Molds and tools manufactured by us or on our behalf with which we manufacture for the customer shall remain our property, even if the customer has paid for them in full or in part. However, such molds and tools shall be used exclusively for the orders of this customer as long as he meets his payment and acceptance obligations. Our obligation to retain them expires two years after the last delivery from the mold or tool.

#### **V. DELIVERY TIME**

1. the start of the delivery period stated in our order confirmation or otherwise agreed with the customer shall be subject to the clarification of all technical issues, the timely and proper fulfillment of the customer's obligations (e.g. agreed down payment, handover of required documents, timely and sufficient provision of materials). If these prerequisites are not fulfilled in time, the deadline shall be extended by the duration of the delay. We reserve the right to plead non-performance of the contract. Partial deliveries are permissible to a reasonable extent for the customer and deviations from the order quantities of up to +/-10%. The delivery period shall be deemed to have been complied with upon notification of readiness for dispatch. 2.

2. if we are prevented from fulfilling our obligations due to unforeseen extraordinary circumstances which we cannot avert despite reasonable care (e.g. operational disruptions, strike, lockout, official interventions, delays in the delivery of essential raw materials and building materials), the delivery period shall be extended by the duration of the hindrance, provided that the delivery or service is not rendered impossible, irrespective of whether these circumstances occur in our plant or in the plant of one of our upstream suppliers. If the delivery or service becomes impossible as a result, we shall be released from our delivery obligation. If the delivery time is extended by more than two months, the customer shall be entitled to withdraw from the contract. The assertion of claims for damages is excluded. 3.

We shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to 0.5% for each full week of delay, and in total to a maximum of 5% of the value of that part of the delivery which has not been made within a reasonable period of grace granted to us. In any case, our liability for damages shall be limited to the foreseeable, typically occurring damage. 4.

If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us, including additional expenses. The risk of accidental loss or accidental deterioration of the purchased goods shall pass to the customer at the moment the customer is in default of acceptance or debtor's delay. 5.

If shipment or delivery is delayed at the customer's request, we may charge storage costs of 0.5% of the net invoice amount for each month or part thereof, starting two weeks after notification of readiness for shipment, up to a maximum of 5%. We reserve the right to make further claims.

#### **VI. LIABILITY FOR DEFECTS**

(1) We shall be notified immediately in writing and in a comprehensible form of any defects detected, stating the information useful for identifying the defect.

2. in the event of justified notices of defect, we shall have the right to rectify the defect or supply a replacement within a reasonable period of at least 14 days at our discretion. If the subsequent performance fails, the customer shall be entitled to demand rescission or reduction at his discretion.

We shall be liable in accordance with the statutory provisions insofar as the customer asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents, or on the breach of material contractual obligations. Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.

#### **VII. LIMITATIONS OF LIABILITY**

(1) Any further liability for damages than provided for in Section VI shall be excluded, irrespective of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tortious claims for compensation for property damage pursuant to § 823 BGB. Insofar as we are liable for consequential damages (only in the case of intent, gross negligence and breach of essential contractual obligations), liability shall be limited to foreseeable, typically occurring damages.

The limitation period for claims for defects is 12 months, calculated from the transfer of risk. The limitation period in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected. The shortening of the limitation period shall not apply if we can be accused of gross negligence or in the case of bodily injury or damage to health attributable to us or in the case of loss of life of the customer or his vicarious agents. 3.

Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

4. the statutory provisions shall apply to the customer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated in these general terms and conditions. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier's recourse pursuant to § 478 BGB). Claims arising from supplier recourse shall be excluded if the defective goods have been further processed by the customer or another entrepreneur, e.g. by incorporation into another product."

## **VIII. RETENTION OF TITLE**

(1) The delivered goods shall remain our property until full payment of the agreed price including all claims arising from the business relationship and future claims as well as until bills of exchange and checks have been honored. If there is a current account relationship between the customer and us, the retention of title shall secure the balance claim.

If the customer pays by check and we issue him a refinancing bill of exchange for this purpose, the retention of title shall only expire when we can no longer be claimed from the bill of exchange. 3.

3. the customer shall be permitted to resell the goods in the ordinary course of business. The customer hereby assigns to us his claims arising from the resale of the goods subject to retention of title, in particular the claim for payment against his customers. We accept this assignment. The customer is obliged to notify his debtors of the assignment at our request. Claims and names of the customer's debtors are to be communicated to us.

4. the customer is entitled to collect claims from the resale. In the event of default in payment or if we become aware of circumstances which, according to commercial judgement, are suitable to reduce the creditworthiness of the customer, we shall be entitled to revoke the right of collection.

5. treatment and processing of the reserved goods shall be carried out for us as manufacturer within the meaning of § 950 BGB. If the reserved goods are processed or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the net invoice value of the reserved goods to the net invoice value of the other goods used at the time of processing or mixing. 6.

6. the transfer of ownership by way of security of goods owned by us is not permitted. In the event of access by third parties to the goods subject to retention of title, in particular seizure, the customer shall draw attention to our ownership of the goods and notify us immediately by sending a copy of the seizure protocol.

(7) We shall be entitled to withdraw from the contract in the event of breach of contract by the customer and to demand return of the goods delivered by us. Any claims for damages shall remain unaffected. In the event of the customer's inability to perform, we may revoke the right to sell or process the goods.

8. if the realizable value of the securities granted exceeds our claims by more than 20 %, we shall be obliged to retransfer or release securities at our discretion at the customer's request.

## **IX. PROPERTY RIGHTS**

1. if we have to produce or deliver according to drawings, models, samples or using parts provided by the customer, the customer shall be responsible for ensuring that the property rights of third parties are not infringed thereby. If necessary, the customer shall indemnify us against claims of third parties and compensate us for any damages. If we are prohibited from production or delivery by a third party with reference to the third party's property rights, we may stop work without prior examination of the legal situation and demand reimbursement of expenses and damages from the customer. Drawings and samples provided to us by the customer which have not led to an order will be returned to the customer at the customer's request and at the customer's expense. We shall be entitled to destroy these documents if the customer does not request their return within three months of the submission of the quotation.

(2) The customer acknowledges the industrial property rights to which we are entitled in respect of the goods supplied and, where applicable, drawings and documents handed over by us, and will observe these and defend them against third parties in consultation with us.

## **X. FINAL PROVISIONS**

1. place of performance for all obligations arising from the contractual relationship is the registered office of our company.
2. the place of jurisdiction for all disputes arising from the contractual relationship is, if the customer is a merchant, a legal entity under public law or a special fund under public law, the registered office of the company or the court responsible for the location of the branch carrying out the delivery. However, we are free to call upon the court responsible for the customer's registered office. German law shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 3.

Should one of the above conditions be legally ineffective or be declared legally ineffective, the validity of the remaining conditions shall remain unaffected. The invalid or declared invalid condition shall be replaced by the statutory provision.

## **XI. CREDIT CHECK**

Our company regularly checks your creditworthiness when concluding contracts and in certain cases where there is a legitimate interest. For this purpose, we work with Creditreform Herford & Minden Dorff GmbH & Co. KG, Krellstraße 68, 32584 Löhne, from whom we receive the data required for this purpose. For this purpose, we transmit your name and contact details to Creditreform. For more information on data processing at Creditreform, please visit [Data Protection | Creditreform Herford](#).

## **XII. OTHER PROVISIONS**

1. information about the collection of personal data can be found under data protection - SCHWARZ WERKZEUGBAU ([schwarz-werkzeugbau.de](http://schwarz-werkzeugbau.de)).

**Status Date:** 07/2021