

# Terms and Conditions of Purchase, Schwing GmbH St. Stefan / Jn

## 1. Application of the Terms and Conditions of Purchase

- 1.1. The following terms and conditions of purchase apply to all legal relationships between Schwing GmbH, FN 89408 h, Friedrich-Wilhelm-Schwing-Straße 1, A-9431 St. Stefan im Lavanttal, Austria (henceforth called the "ORDERER") and its SUPPLIERS, provided that the SUPPLIER is a contractor. Diverging provisions, in particular conditions of sale, delivery and payment of the SUPPLIER, are expressly excluded or only applicable if they are expressly confirmed in writing by the ORDERER.
- 1.2. These conditions of purchase are binding for all present and future business transactions with the SUPPLIER, even if no express reference is made to them.
- 1.3. Any framework contracts concluded between the Parties shall have priority. In the absence of more specific regulations, they are supplemented by these conditions of purchase. Contract amendments, riders or oral ancillary agreements shall only apply if they have been expressly confirmed in writing by the ORDERER.
- 1.4. The ORDERER reserves the (unilateral) right to amend the conditions of purchase on a case by case basis. Amendments require the written form and shall only apply to the individual business transaction.

## 2. Conclusion of the contract

- 2.1. Unless otherwise specified by the ORDERER, the offer of the SUPPLIER shall be binding for at least 14 days. The drafting of offers submitted to the ORDERER shall be free of charge, regardless of the necessary preparation work involved.
- 2.2. Only written orders with signatures or with validity statements are valid. Only the content of the order counts. The SUPPLIER shall confirm the order in writing within 14 days counting from the order date. Upon expiry of this period, the ORDERER has the right to revoke its orders. Claims of the SUPPLIER based on a valid revocation are excluded.
- 2.3. The ORDERER is also entitled to demand changes to the delivery item after conclusion of the contract, provided that the changes are reasonable for the SUPPLIER.
- 2.4. An agreed designation of the goods (ORDERER's trademark/item no./batch number/manufacturer's logo, etc.) is compulsory and must be affixed in suitable form on the goods to be delivered and documented.
- 2.5. Issued orders may not be passed on to subcontractors, neither wholly nor in part, without permission.

## 3. Prices, payment

- 3.1. Unless otherwise agreed, agreed prices are fixed prices and include all services necessary for proper fulfillment of the contract, in particular costs for packaging, transport to the designated place of receipt and/or use, insurance and postage fees, costs for customs formalities and duty, and in case of doubt, the applicable VAT in each case. If no prices are stated in the order, the prices demanded by the SUPPLIER shall be submitted in advance to the ORDERER for approval.
- 3.2. The invoice, with all associated documentation and VAT statement, shall be sent after delivery.
- 3.3. Unless otherwise agreed, after receipt of the goods and the invoice the ORDERER shall pay with a 3% discount within 14 days, with a 2% discount within 30 days, or net (no discount) within 60 days. The ORDERER shall not make advanced payments.
- 3.4. In the event of acceptance of early deliveries, the due date shall be governed by the originally agreed-upon delivery date or after receipt of the invoice, whichever of the two times is later.
- 3.5. In the event of incomplete or faulty delivery, the ORDERER has the right to withhold payment, either wholly or proportionately to the value, until the time of proper performance. The SUPPLIER is not entitled to rights of retention and set-off against claims of the ORDERER.

## 4. Place of fulfillment/transfer of risk/packaging/insurance

- 4.1. The place of fulfillment is the place named by the ORDERER (in particular in the order) or the ORDERER's place of business.
- 4.2. Unless agreed otherwise, the SUPPLIER shall assume the costs and the risks of transport until handover behind the first lockable door at the ORDERER's place of business, A-9431 Sankt Stefan, Friedrich-Wilhelm-Schwing-Straße 1, Austria, or at the agreed-upon place of delivery (delivery according to DAP, Incoterms in the version valid on the date of the conclusion of the contract).
- 4.3. The risk of loss or damage is transferred to the ORDERER upon handover of the goods. The SUPPLIER shall package the goods to be delivered exclusively in "green" packaging material in such a way as to prevent damage during transport. The SUPPLIER is responsible for any damage prior to acceptance by the ORDERER that arises due to improper packaging.
- 4.4. The SUPPLIER shall insure the delivery, at its own expense, against loss and damage during transport (transport insurance) and shall show the ORDERER proof of insurance upon demand by the latter.

## 5. Delivery dates and periods

- 5.1. The agreed-upon delivery dates and periods are binding. Receipt of the goods by the ORDERER counts for compliance.
- 5.2. The SUPPLIER has a duty to inform the ORDERER promptly in writing should circumstances arise or become known to the SUPPLIER that could result in inability to comply with agreed-upon delivery dates.
- 5.3. Should the SUPPLIER fail to comply with delivery dates and deadlines for reasons that are within its risk sphere, the ORDERER has the right to withdraw from the contract and/or to demand compensation for damages, without any further notice of default and extension of the deadline.
- 5.4. Indivisible whole services have been agreed upon. Deliveries in installments are only permissible if expressly agreed in writing.
- 5.5. A retention of title has not been agreed.

## 6. Performance disruptions

- 6.1. Serious events such as force majeure (including pandemics) that are beyond the control of the respective contracting parties and that have unforeseeable consequences for performance shall release the contracting parties from their main duties for the duration of the disruption and the scope of its effect, provided that the contracting party concerned is prevented, either wholly or to a large extent, from fulfilling its contractual duties through no fault of its own. Supply problems and other performance disruptions with respect to procurement experienced by the SUPPLIER shall only count as force majeure if the SUPPLIER's immediate subcontractor is itself hindered in the performance of its obligation by an event according to sentence 1 and if no other subcontractor is capable of providing the goods or services. A performance disruption does not exist if another subcontractor can be procured, even with considerable effort and at higher costs. The SUPPLIER shall therefore bear the extensive procurement risk.
- 6.2. The occurrence of an event according to section 6.1 does not entail an automatic cancellation of the contract. The contracting parties are obligated to inform each other promptly of a performance disruption and to adapt their duties to the altered circumstances in good faith. If an alternative delivery in terms of time, quality or quantity is unreasonable for the ORDERER, the ORDERER may withdraw from the contract.
- 6.3. The SUPPLIER shall assume responsibility for contractual penalties and damage resulting from delay incurred by the ORDERER, which are the consequence of an event according to section 6.1 and within the SUPPLIER's sphere of obligation, but which cannot be refused on these grounds.
- 6.4. In the event that a refusal of service claim according to section 6.1 is asserted against the ORDERER by its buyer, the ORDERER is also entitled to refuse the further performance of the contract with respect

to the SUPPLIER or – in the event that the obstacle to acceptance is not resolved in the foreseeable future – to withdraw from the contract. The SUPPLIER is not entitled to assert claims for compensation in such a case.

## 7. Warranty/guarantee

- 7.1. Exclusions of liability and limitations of liability of the SUPPLIER, in particular with respect to warranty or damage compensation, shall not be accepted. Section 377 UGB [Austrian Corporate Code] (notice of defects) shall not apply.
- 7.2. The SUPPLIER guarantees that all deliveries/performances are in compliance with the latest state of the art, the relevant national, European and international legal provisions and the regulations and directives of authorities, trade associations and professional associations. The SUPPLIER furthermore guarantees the environmental compatibility of the delivered products and packaging materials. If the delivered products are not in conformity with the guarantee, the SUPPLIER shall be liable for all resulting damages, including consequential damages. The ORDERER has the right to demand that the SUPPLIER submit certificates of composition regarding the delivery items, at no charge.
- 7.3. a) The warranty period is three years following confirmation of the defect by the ORDERER, but no longer than 5 years after risk transfer or, in the case of performance of works services by the SUPPLIER, counting from the time of acceptance.  
b) When the delivery items are incorporated in the ORDERER's products unaltered, the warranty period begins on the date on which the products are put into service by the final recipient. However, it ends no later than five years after the goods are delivered to the ORDERER or, in the case of works services, five years after acceptance of the service by THE ORDERER.  
c) Any rights of recourse of the ORDERER against the SUPPLIER in the event that a consumer asserts warranty claims against its contractual partner for taking back the goods or for reducing the purchase price shall remain unaffected thereby, shall remain unaffected thereby.
- 7.4. Should material defects arise in deliveries during the warranty period, the ORDERER has the right to define the type of guarantee (improvement, replacement, price reduction or change). Claims of the ORDERER for damages or compensation for futile expenditures shall remain unaffected thereby. The SUPPLIER shall assume all necessary expenses for supplementary performances, replacement deliveries or repairs (expenses for personnel/materials/transport/mandatory recall, etc.).
- 7.5. If the warranty claim is not fulfilled by the Supplier by the set deadlines, the warranty shall be deemed failed and the ORDERER is entitled to remedy the defects itself or have it done by third parties at the SUPPLIER's expense and risk, without the SUPPLIER's liability for material defects being otherwise affected.

## 8. Product liability, compensation

- 8.1. The SUPPLIER is obligated to compensate the ORDERER for such damages (including consequential damages and other indirect damages) that the ORDERER incurs as a result of a defect in the delivery item. Exclusions of liability and limitations of liability shall not be accepted. If claims relating to defects of the goods delivered by the SUPPLIER are asserted against the ORDERER under the terms of national or international product liability regulations, the SUPPLIER is obligated to absolve the ORDERER from all claims that are attributable to a defect of the delivered parts. In addition to damage compensation to third parties, the SUPPLIER's duty of compensation also includes the expenses for legal defense, recall expenses, testing expenses, installation and dismantling expenses, as well as the administrative and miscellaneous expenses incurred by the ORDERER for claims settlement.
- 8.2. The SUPPLIER is obligated to take out, at its expense, product liability insurance that also covers the recall risk – if and to the extent that such risk is coverable – and to furnish proof of such insurance at the ORDERER's request. The product liability insurance protection shall cover the entire area of Europe, USA and Canada at a minimum and, unless otherwise agreed, shall comply with the respective maximum liability limits of product liability law.

## 9. Nondisclosure/models/tools/data protection

- 9.1. The SUPPLIER is obligated to handle the conclusion of the contract confidentially. All business-related and technical details and operating processes, which become known to the SUPPLIER via the business relationship with the ORDERER, shall be kept confidential as business secrets, provided that they have not become general knowledge. The SUPPLIER shall contractually impose the same duty of nondisclosure, which also remains in effect after the contract has ended, on its employees, subcontractors, or other agents.
- 9.2. The ORDERER shall retain ownership of objects, in particular ones such as tools, molds, devices, models, dies, templates, patterns and other production means placed at the SUPPLIER's disposal by the ORDERER. If the aforementioned objects are manufactured for the ORDERER, the latter become the property of the ORDERER at the time of creation or production, the SUPPLIER acting as agent in possession. The same applies to formulas, drawings, analysis methods, and to disclosed procedures. The objects, documents and procedures designated above may only be passed on or otherwise made available to other parties with the ORDERER's prior written approval. Disclosure of the intended use and the recipient is a prerequisite for the approval.
- 9.3. The SUPPLIER is obligated to use the tools owned by the ORDERER solely for the production of the goods requested by the ORDERER, and to insure these tools, at its own expense, against fire damage, water damage and theft. The SUPPLIER shall perform any necessary maintenance and inspection work on the tools at its own expense.
- 9.4. The SUPPLIER is aware that the ORDERER has the right to process the SUPPLIER's person-related data in the scope of business transactions for the purpose of contract processing or fulfillment. The data processing shall take place exclusively in keeping with legal provisions, in particular the General Data Protection Regulation (GDPR), the Data Protection Act (*Datenschutzgesetz*, DSG) and the Telecommunications Act (*Telekommunikationsgesetz*, TKG). Please also see the data protection statement accessible at [www.schwing.at](http://www.schwing.at). Upon request (written or by email to [schwing-austria@schwing.at](mailto:schwing-austria@schwing.at)), this statement can be sent to the SUPPLIER at any time, also in written form or by email. The SUPPLIER is also obligated to comply with the data protection terms and to document that it has done so upon the ORDERER's request.

## 10. Property rights

- 10.1. The SUPPLIER is liable for damages arising from the infringement of third-party intellectual property rights and/or applications for such rights in the context of contractual use of the delivery items.
- 10.2. Should third parties assert claims for infringement of intellectual property rights against the ORDERER or its buyers, the SUPPLIER shall absolve the ORDERER or its buyers from all claims arising from the use of such intellectual property rights upon demand. The SUPPLIER's duty to indemnify applies to all expenses that the ORDERER or its buyers may incur from or in conjunction with the assertion of third-party claims. In particular, these include the costs of legal defense and rights management as well as all costs of a necessary replacement purchase.
- 10.3. The SUPPLIER does not have a duty to indemnify if the delivery items were produced according to formulas, drawings, models or other similar descriptions or information of the ORDERER provided by the latter without knowledge of third-party intellectual property rights. This does not apply in the case of grossly negligent ignorance on the part of the SUPPLIER. In cases where the SUPPLIER is not liable according to section 10.3, the ORDERER shall absolve the SUPPLIER from third party claims.
- 10.4. The SUPPLIER shall provide information, in writing, on the use of published intellectual property rights, its own unpublished intellectual property rights or intellectual property rights licensed by a third party, or applications for such rights prior to the conclusion of contract negotiations. The SUPPLIER may not assert any further claim for compensation due to the fact that using the parts delivered implies using its own or third-party intellectual property rights or applications for such rights.
- 10.5. The limitation period for the claims against the SUPPLIER mentioned in section 10. is 10 years, counting from the conclusion of the contract.

## 11. Safety provisions

- 11.1. The SUPPLIER must comply with the recognized rules applicable to engineering and technology, the safety regulations and the agreed technical data or limit values corresponding to or going beyond the state of the art. In particular, DIN, EN, ISO, LMBG [Act on Foodstuffs and Goods in Daily Use], VDE, IEC, EMVG [Electromagnetic Compatibility of Equipment Act], EC directives (e.g., EC Machinery Directive) and the other relevant sets of regulations shall also be observed.
- 11.2. The SUPPLIER shall undertake an obligation to use only materials that comply with the respective applicable statutory safety conditions and provisions, in particular for restricted, toxic and hazardous substances. The same applies for environmental protection provisions and regulations in connection with electricity and electromagnetic fields. The obligation encompasses all regulations that are applicable for Europe, the USA and Canada, including the producing country, and also the regulations of the importing countries reported to the SUPPLIER, if they diverge from these.
- 11.3. The ORDERER may report its intent to supply a new foreign market with the contractual object to the SUPPLIER. The Parties shall familiarize themselves with locally applicable stricter quality and/or manufacturing standards. If the SUPPLIER does not declare within a one-month period whether it has familiarized itself with and is able to satisfy the locally relevant quality and/or manufacturing standards, the ORDERER shall assume that the SUPPLIER is familiar with and fulfills the locally applicable quality and/or manufacturing standards.
- 11.4. If the SUPPLIER's products do not fulfill the requirements set forth in sections 11.1. to 11.3., the ORDERER has the right to withdraw from the contract. Any other existing claims of the ORDERER for damages shall remain unaffected thereby.
- 11.5. Intended alterations of the delivery item must be reported to the ORDERER. They require the ORDERER's prior written authorization.

## 12. Quality and documentation

- 12.1. Included at no additional charge in the goods to be delivered are sets of product-specific and/or technical documentation, the declaration of conformity and any other records and certificates needed for the ordered goods or use thereof, together with necessary marking of parts (ORDERER's trademark/item no./batch number/manufacturer's logo, etc.) and/or their packaging.
- 12.2. The SUPPLIER shall assume the costs for the declaration of conformity. The declaration of conformity, together with all sets of documents and records, shall be promptly submitted, in the German language, to the ORDERER upon the latter's request.
- 12.3. The first sample test shall be performed according to the ORDERER's "first sample test protocol".
- 12.4. Notwithstanding the above, the SUPPLIER shall check the quality of the delivery items on a continuous basis. The SUPPLIER shall promptly inform the ORDERER regarding possible improvements. This applies in particular to safety-relevant components. The SUPPLIER is obligated to verify that the design can be produced and to perform a plausibility check. The SUPPLIER shall promptly inform the ORDERER of noticeable faults in the specifications and foreseeable complications.
- 12.5. a) If minimum and/or maximum values of parameters are stated in the order, the stated maximum values may not be exceeded in any area of the workpiece or product, nor may there be a shortfall of the stated minimum values in any case or anywhere.  
b) This must be insured and documented using suitable test and measuring methods.  
c) The ORDERER may request written notification of the results of this check at any time and at no additional charge.
- 12.6. In the case that the type and scope of the testing as well as the testing means have not been agreed by the SUPPLIER and the ORDERER, the ORDERER is willing, within the scope of its knowledge, experience and possibilities, to discuss the tests with the SUPPLIER upon the latter's request and to determine the necessary level of testing technology in each case. Regardless the above, the test shall at least conform to the state of the art and to any other contractual rules or sets of rules in regard to type and scope.
- 12.7. The SUPPLIER shall subject safety-relevant parts to a test, which must be documented. In doing so, the SUPPLIER shall keep special records as to when, in what manner and by whom the delivery items were tested. The same applies to the test results. The components to be tested are in particular safety-related parts, which are designated as such in the product-specific or technical documentation or of which the safety relevance is obvious. The test documentation shall be kept on file for 10 years and submitted to the ORDERER free of charge upon the latter's request. THE SUPPLIER shall impose similar obligations to the extent legally possible on its upstream suppliers through a written contract.
- 12.8. Should authorities that are responsible for production safety, production identification, waste gas provisions or the like demand access to the ORDERER's production process and test documentation for purposes of subsequently re-examining specific requirements, the SUPPLIER shall consent to grant the ORDERER the same rights in its works and therefore to offer any reasonable assistance.

## 13. Auditing

- 13.1. The ORDERER has the right to conduct an audit of the SUPPLIER itself or to have it conducted by an expert of its choice. This includes a check and a subsequent evaluation of the SUPPLIER's operation and quality assurance system. The ORDERER shall use the findings obtained as a basis for the further awarding of contracts and for the internal ranking (rating) of the operation.
- 13.2. a) The ORDERER is entitled to make announced inspections of the SUPPLIER's ongoing business operation for the purposes of monitoring the quality assurance measures.  
b) If there have been quality problems in the past, the ORDERER is also entitled to make unannounced inspections for the purposes of monitoring the quality assurance measures. The ORDERER does not have this right if the last objection regarding the quality assurance measures was made more than a year ago or if no faults could be found after two unannounced inspections.  
c) The ORDERER, provided that it can demonstrate a legitimate interest, has a right to view the SUPPLIER's documentation. Such a legitimate interest exists in particular if by doing so it is possible to obtain findings that permit the need and the scope of a recall to be assessed.

## 14. General provisions

- 14.1. If the SUPPLIER stops its performance, if a bankruptcy proceeding regarding its assets or a legal or out-of-court settlement, liquidation or restructuring proceeding is applied for or initiated, or if there are other reasons for justifiably assuming that the SUPPLIER is or soon will be no longer able to fulfill its duties, the ORDERER has the right to withdraw from the unfulfilled part of the contract.
- 14.2. The infeasibility of individual clauses shall not otherwise affect the validity of the conditions of purchase. The contractual partners shall replace invalid provisions with provisions that achieve the commercial purpose of the invalid provisions as nearly as possible. The same applies to any loopholes that need to be filled.
- 14.3. Austrian law under exclusion of the referral norms shall apply. The United Nations Convention on Contracts for the International Sale of Goods (UN commercial law) shall not apply. The contract, proceeding and court language is German. For the purposes of contract interpretation, the German version of the conditions of purchase is authoritative for the English translation.
- 14.4. The legal venue is the ORDERER's domicile. However, the ORDERER may also, at its discretion, sue the SUPPLIER at its domicile or at the place of performance.

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