

Terms and Conditions of Delivery and Service

Schwing GmbH St. Stefan / Jn

1. General, scope of application

- 1.1. These general terms and conditions for delivery and service (henceforth also called "sales conditions") apply exclusively to all contracts between Schwing GmbH, FN 89408 h, Friedrich-Wilhelm-Schwing-Straße 1, A-9431 St. Stefan im Lavanttal, Austria (henceforth also called "SCHWING") and the Customer. The Contracting Parties consent to the exclusive application of these sales conditions. Any contrary or diverging general business terms and conditions or other conditions of the Customer shall not become contract components and the validity thereof shall be expressly excluded, unless SCHWING expressly approves the validity thereof in writing. The following sales conditions shall also apply even if SCHWING performs its services to the Customer, without reservation, in full knowledge of the existence of terms and conditions of the Customer which run contrary or diverge from these sales conditions.
- 1.2. SCHWING reserves the right to (unilaterally) amend the General Business Terms and Conditions in individual cases. Amendments require the written form and apply only to the individual business case.
- 1.3. The General Conditions for the Supply and Installation of Mechanical, Electrical and Electronic Products issued by the European association ORGALIM representing the mechanical engineering, electrical engineering and electronics, and metal technology industries, as amended, shall additionally apply to installation and assembly work, provided that these conditions do not run contrary to the SCHWING sales conditions; the SCHWING sales conditions shall have priority in cases of doubt. The latter can be sent to the Customer at any time upon request by email to schwing-austria@schwing.at.

2. Conclusion of contracts

- 2.1. All SCHWING offers are subject to change and non-binding, unless they are expressly designated as binding. If offers expressly designated as binding do not contain any specific acceptance period, SCHWING shall be held to 14 days counting from the date on the offer, wherein the date on which SCHWING receives the Customer's written declaration of acceptance is authoritative for timely acceptance. SCHWING may accept the Customer's orders or jobs within 14 days after receipt, but SCHWING is not obligated to accept a Customer's order or job.
- 2.2. A contract is concluded either by SCHWING sending written confirmation of an order or by implied acceptance (e.g., by actual delivery or fulfillment).

3. Offer documents, price quotation

- 3.1. The information and statements regarding product features (e.g., weight, dimensions, capacity, price, output and the like) in catalogs, brochures, newsletters, advertisements, figures and price lists, etc. are non-binding for SCHWING, unless expressly agreed in writing otherwise. SCHWING shall only guarantee product features expressly promised in writing. Any planning documents are not part of SCHWING's offer.
- 3.2. If an offer is made on the basis of calculation documents or specific design drawings of the Customer, a change made to the same by the Customer in the course of the work shall lead to a corresponding change of the offer. The Customer shall promptly notify SCHWING in writing of changes in the calculation documents or design drawings and is liable to SCHWING for all disadvantages and additional costs arising therefrom. The same applies to faulty or incomplete calculation documents and design drawings of the Customer.
- 3.3. Although SCHWING prepares all price quotes to the best of its expertise, it cannot assume any liability for correctness. Should cost increases of more than 15% arise after the placement of the order, SCHWING shall notify the Customer accordingly without delay. Unavoidable cost excesses of less than 15% do not require separate notification and SCHWING is at liberty to invoice for these costs. Unless agreed otherwise, order changes or additional orders may be invoiced at reasonable prices.
- 3.4. SCHWING reserves ownership rights and copyrights to all plans, sketches, price quotes and other technical documentation, catalogs, brochures, figures and the like. Any use, duplication, reproduction, dissemination and distribution to third parties, publication and presentation may only take place with the prior written authorization of SCHWING. The Customer shall not be granted usage or exploitation rights of any kind whatsoever.

4. Price, packaging

- 4.1. Unless indicated otherwise, all prices for goods and services are understood as net prices (henceforth also called simply "prices"), to which the valid VAT on the invoicing date shall be added and indicated separately on the invoice in each case.
- 4.2. Unless agreed otherwise, the stated prices shall be "ex works" (EXW) according to INCOTERMS in the version valid on the date on which the contract was concluded, and do not include the costs for packaging, freight, installation, assembly, insurance, etc.
- 4.3. In the absence of other agreements, packaging shall take place in standard fashion at the customer's expense, in order to prevent damage to the goods en route under normal transport conditions to the specified destination. The packaging material shall only be taken back and disposed of under separate agreement and at the Customer's expense.
- 4.4. Cash discounts require separate written agreements. The entitlement of the Customer to discounts or rebates on the basis of a special written agreement shall be exclusively on a voluntary basis and shall not give rise to any legal claim to future services and deliveries.

5. Place of fulfillment, transport, risk transfer

- 5.1. The place of fulfillment for deliveries, services and payments is the premises of Schwing GmbH, Friedrich-Wilhelm-Schwing-Straße 1, A-9431 St. Stefan im Lavanttal. This is also the case if the handover takes place by agreement at another place. Delivery is "ex works" (EXW) by agreement, unless the order confirmation states otherwise. "Ex works" means that the goods are considered delivered when SCHWING places them at the disposal of the Customer at the place of fulfillment not loaded on any collecting vehicle and not cleared for export ("provision of the goods"). The transport/shipping of the goods (including the loading of the goods) shall be organized by the Customer at its own expense and risk. The Customer shall also assume the loading risks if the goods are loaded by SCHWING on SCHWING's premises. SCHWING is under no obligation to conclude either a transport contract or an insurance contract.
- 5.2. In the event that import and/or export licenses or foreign currency permits or similar permits are required for the performance of the contract, the party responsible for obtaining the same shall make every reasonable effort in order to obtain the required licenses or permits.
- 5.3. The INCOTERMS in the version valid on the date on which the contract was concluded shall apply.
- 5.4. The risk of accidental loss and accidental deterioration of the goods shall be transferred to the Customer no later than when the goods are delivered to place of fulfillment. This shall also apply if the Customer is in default of acceptance.

6. Delivery times, acceptance

- 6.1. Delivery times and dates (henceforth also called simply "delivery times" or "delivery deadlines") shall be agreed individually or indicated by SCHWING upon acceptance of the order. Times and dates for deliveries and services proposed by SCHWING are always non-binding and are always understood as meaning the estimated date of handover to the Customer, unless a binding deadline or binding date (fixed deadline) is expressly promised or agreed upon in writing.
- 6.2. The Customer shall receive a readiness for pick-up notification (orally or in writing) from SCHWING as soon as the goods are ready for collection. Any delivery deadline counts as met with the readiness for pick-up notification, even if the goods cannot be picked up or cannot be picked up in a timely manner through no fault of SCHWING or its suppliers. Goods declared ready for pick-up but not immediately called shall be stored at the Customer's expense and risk as SCHWING sees fit and considered delivered.
- 6.3. In principle, delivery periods start to run with the sending of the order confirmation. In addition, the beginning of the times of delivery specified by SCHWING implies that all technical issues have been

clarified. If the Customer has to provide documents, permits or materials, the delivery times do not start to run until these have been provided. Delivery deadlines and dates shall be extended in the case of unforeseeable events such as force majeure, outbreak of a pandemic, industrial problems at SCHWING, delays in the advance supply of materials, material defects, etc. An appropriate extension of the deadlines is considered agreed in such cases. Schwing is entitled to make deliveries in installments. Acceptances in installments are permissible if deliveries are made in installments.

- 6.4. Compliance with delivery deadlines by SCHWING furthermore implies the timely and proper fulfillment of the Customer's obligations arising from the contract on which the delivery is based. The rights to which SCHWING is entitled due to default of the Customer remain unaffected. If the Customer has not undertaken the required cooperative actions in due time, an appropriate extension of the delivery deadline shall be granted.
- 6.5. The Customer is obligated to accept the deliveries and services that SCHWING places at its disposal.

7. Delay in delivery, impossibility of performance

- 7.1. If SCHWING is unable to observe (binding) delivery deadlines or dates for reasons for which SCHWING is not responsible, SCHWING shall immediately inform the Customer accordingly and at the same time inform the Customer of the expected, new delivery date or deadline. In particular, such a case includes incorrect or late deliveries by a supplier, provided that SCHWING is not at fault and SCHWING has not expressly undertaken to maintain stock in the specific case.
- 7.2. The Customer may withdraw from the contract by written declaration to SCHWING only if it cannot reasonably be expected to accept the delivery or service as a result of the delay. In this case, SCHWING shall be compensated for the costs and expenditures that have been incurred thus far and for costs and expenditures that will be incurred (e.g., material, processing, handling), including lost profit.
- 7.3. If the service is also not provided by the new delivery deadline or if SCHWING is in significant arrears with a delivery or service for reasons for which SCHWING is responsible, the Customer may either demand contract fulfillment or rescind the contract after setting a reasonable grace period commensurate with the scope of service. The rescission requires the written form in order to be valid. The right to withdraw relates only to the part of the delivery or service affected by the delay.
- 7.4. Should force majeure or other events that were unforeseeable when the contract was concluded (e.g., all forms of industrial problems, difficulties in procuring materials or power, delays caused by transport problems, strikes, legal lockouts, shortage of labor, power or raw materials, official measures or difficulties in obtaining necessary official permits, natural disasters, pandemics, etc.) make delivery impossible, SCHWING shall be released from its obligations. SCHWING shall reimburse a return service already rendered by the Customer.
- 7.5. If SCHWING is in arrears with a delivery or service or if a delivery or service becomes impossible for SCHWING, the liability of SCHWING for damages shall be limited in accordance with section 13 of these sales conditions, provided that SCHWING is at fault for the disruption of performance in question. Further claims of the Customer against SCHWING are excluded.

8. Delay in acceptance

- 8.1. If the Customer does not accept the goods provided under the contract at the place or time agreed upon in the contract, if the Customer fails to perform a cooperative action or if the delivery is delayed due to other reasons for which the Customer is at fault (delay in acceptance), SCHWING may either demand fulfillment of the contract or, after setting an appropriate grace period, withdraw from the contract and sell the goods elsewhere.
- 8.2. SCHWING shall store, at the expense and risk of the customer, any goods not accepted on the agreed date 6 weeks, and the Customer shall be charged storage fees in the amount of 0.25% of the (net) invoiced amount of the delivery items to be stored for each week or part thereof. SCHWING reserves the right to assert claims for further or excess damages or additional expenses.

9. Acceptance test

- 9.1. If the Customer desires an acceptance test in order to determine whether the goods are in conformity with the contractual provisions, this must be expressly agreed upon in writing with SCHWING during the conclusion of the contract. Diverging arrangements notwithstanding, the acceptance test shall be performed at the place of fulfillment, or at a place to be specified by SCHWING, during SCHWING's normal working hours. In this connection, the general practice of the industry concerning in Austria shall govern the acceptance test.
- 9.2. SCHWING shall notify the Customer of the readiness for pick-up of the goods according to section 6.2. of these sales conditions (notification of readiness for collection). This notification shall also contain a date for the acceptance test, which will allow the Customer sufficient time to prepare for the test and to be present during it, or to engage an authorized representative for this purpose. If the goods prove to be non-conforming to the contract during the acceptance test, SCHWING shall immediately remedy any defects and ensure that the goods are in a condition that complies with the contract. The Customer may only demand a repeat of the test in cases of substantial defects.
- 9.3. SCHWING shall draft an acceptance report after an acceptance test. The acceptance report shall be signed for approval by the parties present during the acceptance test. The Customer shall receive a copy of this report, whether the Customer was present or not during the test. If the Customer is not present or is not represented during the acceptance test after having received a notification according to section 9.2., then the Customer may no longer contest the correctness of the acceptance report. If the Customer impedes the performance of the acceptance test, the test shall be deemed successfully performed on the day indicated as the date for the acceptance test in SCHWING's notification.
- 9.4. Unless otherwise agreed in writing, SCHWING shall assume the costs for the acceptance test that is performed. But in any event, the Customer shall assume the costs incurred by itself or by its authorized representative (e.g., travel and living costs and expense allowances) in connection with the acceptance test.

10. Payment terms and conditions

- 10.1. Payments shall be made in accordance with the agreed payment terms and conditions. Unless the order confirmation states otherwise, the agreed payment, including installments, is due to be paid (without deduction) within 30 days after the invoice date. The statutory rules concerning the consequences of default of payment (in particular interest on arrears in the legal amount) apply. In the event of default of payment, SCHWING furthermore reserves the right to withhold deliveries and/or services until payment is made in full. In addition, all collecting costs and a warning/handling lump sum of 40 EUR per warning shall be charged.
- 10.2. In the event that payment in installments is agreed, a deadline is also considered missed even if just one installment payment is late or incomplete. In the case of a missed deadline, the entire outstanding remaining amount is due immediately. If a deadline is not met, SCHWING has the right to take possession of the goods delivered under reservation of ownership, without withdrawing from the contract, until the entire amount receivable, including ancillary costs, has been paid in full.
- 10.3. Any offset whatsoever against SCHWING's claims with counterclaims by the Customer is excluded. Any rights of the Customer to retain possession are likewise excluded.

11. Retention of title

- 11.1. SCHWING shall retain ownership of the goods until payment is made in full by the Customer (henceforth also called "reserved goods"). The Customer is obligated, when possible, to indicate the ownership of SCHWING on the outside of the reserved goods until the transfer of title.
- 11.2. In the event of seizures or other actions by third parties, the Customer must notify such parties of SCHWING's right of ownership and immediately notify SCHWING in writing.
- 11.3. The Customer is entitled to sell the reserved goods in normal business transactions up to the point of instigation of recovery, wherein such a further sale is only permissible if SCHWING has been notified of this in advance and in a timely manner, with the name or the company and the exact (business) address of the buyer provided, and if SCHWING approves of the sale. Pledges and transfers by way of security are not permissible.

- 11.4. In the event of a resale (further sale) of the reserved goods approved by SCHWING, the Customer shall with immediate effect undertake to assign the resultant purchase price claim against the buyer to SCHWING, and SCHWING is authorized to notify the debtor's debtors of the assignment at any time. The same shall apply to any other claims that take the place of the reserved goods or are otherwise incurred with respect to the reserved goods. SCHWING revocably authorizes the Customer to collect the claims assigned to SCHWING in the Customer's own name.
- 11.5. The working and processing of the reserved goods by the Customer always takes place on behalf of and by order of SCHWING. If the goods are processed, SCHWING shall acquire co-ownership of the new item in proportion to the value of the goods delivered by SCHWING. The same shall apply if the goods are processed or mixed with other items not belonging to SCHWING.
- 11.6. If SCHWING withdraws from the contract in the event of behavior of the Customer contrary to the contract, in particular default in payment, SCHWING has the right (without prejudice to further claims) to demand the return of the reserved goods on this basis.

12. Warranty

- 12.1. For the rights of the Customer in the event of material defects and defects of title, the statutory provisions with regard to warranties shall apply, unless other arrangements have been made below.
- 12.2. The warranty period is six months, counting from the date on which SCHWING delivered the goods to the place of fulfillment pursuant to section 5.1. of these sales conditions.
- 12.3. SCHWING shall not be liable for any defects attributable to circumstances arising after the transfer of risk (provision of the goods at the place of fulfillment).
- 12.4. The Customer bears the burden of proof for the existence of defects. Section 924 ABGB [Austrian Civil Code] shall not apply.
- 12.5. The Customer shall examine the goods carefully immediately after delivery. In no case does the submission of the acceptance report according to section 9.3. of these sales conditions absolve the Customer from its duty to examine. The Customer shall give prompt written notice of any defects that arise, specifying the defect (notice of defects). The goods shall be considered as approved (free of defects) by the Customer if SCHWING does not receive a (written) notice of defects within 7 working days after delivery of the goods.
- 12.6. In the event of a notice of defects, after considering the interests of both parties SCHWING shall inform the Customer of the place where the defect(s) will be corrected. Upon request by SCHWING, the rejected delivery item shall be sent back to SCHWING free of delivery charges (without calculation of freight expenses for SCHWING). In the event of a legitimate defects complaint, SCHWING shall reimburse the costs of the least expensive shipping route; this shall not apply if the costs increase as a result of the delivery item being at a place other than the place of intended use. If the customer has complained about a defect and no defect is found for which SCHWING is liable, the Customer shall reimburse SCHWING for any costs incurred by SCHWING as a result of such an unjustified notice of defects.
- 12.7. In the case of warranties, SCHWING has the right to define the type of guarantee (improvement, replacement, price reduction or change) itself.
- 12.8. SCHWING is liable for those parts of the goods which it obtained from a subcontractor specified by the Customer only to the extent of the warranty claims held by SCHWING itself against the subcontractor.
- 12.9. SCHWING accepts no liability for defects resulting from Customer-supplied materials (substances) or from designs, drawings or models (instructions) stipulated or specified by the Customer. SCHWING has a duty to warn in this case only to the extent that the unsuitability of the material or the unsuitability of the instructions is obvious. In these cases, the Customer shall indemnify and hold harmless SCHWING in the event of any property rights infringements.
- 12.10. SCHWING assumes no guarantee for orders accepted to repair goods, nor for modifications or alterations to old goods and goods manufactured elsewhere, nor for deliveries of used goods.
- 12.11. Subject to the provisions according to this section 12, SCHWING is not liable for defects. SCHWING shall only reimburse the costs of a repair performed by the Customer itself or by a third party if the incurred costs are reasonable and SCHWING has given its written authorization for this.
- 12.12. If SCHWING remedies defects not covered by the warranty or performs other services or administrative work, such work shall be charged according to expenditure of effort and according to SCHWING's valid price list.

13. Damage compensation, liability

- 13.1. Unless these sales conditions state otherwise, SCHWING shall be held liable for a breach of contractual obligations pursuant to the relevant statutory provisions.
- 13.2. In all cases coming into consideration, SCHWING is only liable for damages in the case of intent or gross negligence. SCHWING shall be held liable only for personal injuries in the case of minor negligence.
- 13.3. In any case, any damage compensation claims include only the rectification of the damage (positive loss), but not subsequent damages and lost profits. Furthermore, any liability (if legally permissible) per damage case is limited to the value of the order, wherein in any case the following maximum liability limits shall apply: 15 million euros max. for damage to property and personal injury and 5 million euros for damages under extended product liability.
- 13.4. Liability shall become statute-barred after six months from the date on which the Customer became aware of the damage and the party causing the damage.
- 13.5. SCHWING accepts no liability for indirect damages, lost profits, lost interest, unrealized savings, subsequent damages and financial losses, damages incurred through claims from third parties or any other (indirect) subsequent damage.
- 13.6. If for whatever reason a contractual penalty at the expense of SCHWING was agreed, this penalty can be reduced by court order and the assertion of claims for damages which go beyond the penalty is excluded.

14. Data protection, confidentiality

- 14.1. SCHWING is entitled to process (store, transmit, rework and delete) person-related data of the Customer in the context of direct business transactions for the purpose of contract processing or contract fulfillment. Data processing shall take place exclusively on the basis of statutory provisions, in particular the General Data Protection Regulation (GDPR), the Data Protection Act (DSG) and the Telecommunications Act (TKG). Please also see the data protection statement, which can be accessed at www.schwing.at. Upon request (written or by email to schwing-austria@schwing.at), this statement can be sent to the Customer at any time, also in written form or by email. The Customer also has a duty to comply with the data protection provisions and to document that it has done so upon SCHWING's request.
- 14.2. The Contractual Parties herewith irrevocably undertake to keep any knowledge obtained in the course of their business relationship absolutely confidential with respect to third parties.

15. Legal venue, applicable law

- 15.1. It is agreed that the court responsible for Klagenfurt am Wörthersee has sole jurisdiction in all disputes arising from or in connection with an agreement, unless the legal provisions compulsorily require another place of jurisdiction. As an alternative, SCHWING may also sue in the court of jurisdiction of the Customer.
- 15.2. The contract together with all rights and duties of the Parties are subject exclusively to Austrian law, to the exclusion of UN commercial law and other conflict-of-law rules.

16. Miscellaneous provisions

- 16.1. The engagement of subcontractors is permissible.
- 16.2. Each Contracting Party is obligated to report any change in their address and other contact data to the other Contracting Party without delay, otherwise all communications sent to the last known address shall be considered delivered.
- 16.3. Should a provision of the contract or of these sales conditions be deemed invalid or infeasible or lose its validity or feasibility, this shall not affect the validity and feasibility of the other provisions. The invalid or infeasible provision shall be replaced with a valid and feasible provision that comes closest to the commercial purpose of the invalid or infeasible provision. The same also applies to any loopholes in the contract that need to be filled (severability clause).
- 16.4. Although only one form was used to make the text easier to read, all terms are understood as gender-neutral/referring to both genders.
- 16.5. Amendments and/or riders to a contract, including these sales conditions, require the written form. Any deviation from this written form requirement must also be in written form. Oral agreements have no validity.
- 16.6. For contract interpretation purposes, the German version of these terms and conditions shall take precedence over a translation.

September 2020 version