

## **SCHENCK GENERAL TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION 2002**

Version dated November 8, 2002

### **I. Scope and Conclusion of Contract**

1. Our General Terms and Conditions of Delivery and Installation shall apply in the most recent version on the date of the respective conclusion of contract for all of our performance. The rates of our service charges as applicable from time to time shall apply in addition to the General Terms and Conditions in the most recent version on the date of the conclusion of contract.
2. Our General Terms and Conditions of Delivery and Installation and our rates of service charges, each in the most recent version on the date of conclusion of contract, also apply for future business with Customer.
3. The provisions listed under clause I.1. hereof shall apply exclusively, subject to contractual agreements. No other provisions shall become an element of the content of the contract even if not expressly contradicted by us.
4. Our offers are non-binding. No contract shall have been made until our written confirmation of order has been given. The scope of our performance shall be set down exclusively by our written confirmation of order, including the written schedules thereto.
5. Side agreements and changes shall only come into effect upon our written confirmation.
6. Our fulfilment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that the required licenses are issued to us.
7. The documents and information delivered and made by us such as pictures, drawings, weights and measures are only binding if we have expressly specified them as an element of contract or make specific reference to them.
8. We reserve all ownership and copyrights to samples, cost estimates, drawings, documentation and similar information of a tangible or intangible nature – even if in electronic form; they may not be made available to third parties without our express written consent.
9. Written form may be replaced by fax, but cannot be replaced by the qualified electronic form pursuant to Sec. 126a German Civil Code or the text form pursuant to Sec. 126b German Civil Code.
10. These General Terms are not intended for use in relation to consumers as defined in Sec. 13 German Civil Code.

### **II. Prices and Payment**

1. Our prices shall apply ex works and are exclusive of packaging, loading and additional VAT in the statutory amount.

- a. In the case of delivery within the European Union, Customer must provide us in good time prior to the contractually agreed delivery date with his VAT identification number as proof of his exemption from VAT. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.
  - b. In the case of delivery outside of the European Union we are entitled to charge VAT in the statutory amount after delivery if Customer does not send us a proof of exportation within one month after shipment.
2. Cost estimates are only valid if made in writing.
  3. Unless otherwise agreed, Customer shall make payment as follows:  
1/3 down payment upon receipt of the confirmation of order;  
1/3 upon delivery or, as the case may be, of the notice of readiness for shipment with respect to the main parts,  
the balance being due for payment upon the passing of risk.
  4. Installation, repairs and other services shall be invoiced at the current rates for our service charges applicable from time to time, which can be requested from us. Premiums shall be charged for work outside normal business hours. Travel and waiting time shall be deemed to be work time.
  5. Payments are to be made to one of our accounts without any discounts.
  6. Customer may only set-off or withhold payment with counterclaims whose legal basis or amount are not disputed or are final and absolute.
  7. Customer's payments shall be due upon receipt of our invoice. Customer shall be in default of payment 10 days after the receipt of invoice without the necessity of any reminder.
  8. The prices of an offer shall only apply for orders for the full scope of the offered performance.

### **III. Delivery, Passing of Risk, Receiving**

1. We reserve the right to reasonable partial deliveries.
2. Incoterms 2000 are deemed to have been agreed. Deliveries shall be EXW, and unless otherwise agreed, ex place of manufacture.
3. Only in the case of work performance shall risk pass to Customer upon the acceptance of such work performance. If Customer takes over the transport of the item from the place of manufacture to the site of its use, Customer shall bear the burden of risk for the duration of the transport.

4. The foregoing provisions on the passing of risk shall also apply if partial deliveries are made or other services are to be performed by us.
5. Should delivery or acceptance be delayed or not take place as a result of circumstances which are not attributable to us, risk shall pass to Customer as of the day of the notice of the readiness for shipment or acceptance. We agree to take out the insurance requested by Customer at his expense.
6. Notwithstanding his rights under section VIII hereof, Customer may not refuse the receipt of delivery in the event of insignificant defects or deviations in volume.

#### **IV. Reservation of Title**

1. Ownership to the subject of delivery shall not pass to Customer until payment has been made in full.

If the validity of this reservation of title is subject to certain conditions or special formal requirements in the country of destination, Customer shall ensure that they are fulfilled.

2. Customer may not pledge, sell or assign as security the subject of delivery prior to the passage of title. In the event of attachments and seizures or other dispositions by third parties, Customer must inform the third party of our title and notify us without undue delay.
3. In the event of actions on the part of Customer in breach of contract, including, but not limited to, default of payment, we shall be entitled to repossession following a notice of default, and Customer shall be obliged to surrender possession. Neither the enforcement of the reservation of title nor the pledge of the subject of delivery by us shall be deemed to be a rescission of contract.
4. An application for the initiation of insolvency proceedings concerning Customer's assets shall entitle us to rescind the contract and to demand immediate return of the subject of delivery.
5. If Customer is domiciled in the Federal Republic of Germany, the following shall apply in addition to the foregoing:
  - a. In deviation from section IV.1 hereof, we reserve ownership to the subject of delivery until all of our claims against Customer within our current business relationship have been satisfied.
  - b. In deviation from section IV.2 hereof, Customer is entitled within the scope of his normal business transactions to resell the subject of delivery for which we reserve ownership under the following conditions: He must resell the subject of delivery under reservation of ownership if the subject of delivery is not immediately paid in full by the third-party customer. There shall be no

entitlement to a resale if Customer is in default of payment. Customer hereby assigns the claims arising under the resale or under any other legal grounds to us to secure our claims. In the event that the reserved goods are processed and co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to our co-ownership.

- c. Customer shall remain entitled to collect the claims assigned to us after their assignment for as long as he complies with his payment obligations to us in accordance with the terms of this contract. We may demand at any time that Customer discloses the assigned claims and the debtors thereof, provides us with all information necessary for collecting such claims, delivers to us the documents pertaining thereto and informs the debtor of the assignment.
- d. Any processing of the reserved goods by Customer shall always be on our behalf. If the reserved goods are blended, bonded or processed with items to which we do not own title, we shall acquire co-ownership in the ratio of the invoiced value of the reserved goods to the other processed items at the time of processing. If our goods are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that Customer shall transfer proportionate co-ownership to us, provided that he is the owner of the main item. Customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as in the case of reserved goods.
- e. We agree to release the security to which we are entitled to the extent that its invoiced value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 15 %.
- f. Provided that the subject of our deliveries are affixed to the land or have been integrated into a building, such affixing or integration shall only take place for temporary purposes.

#### **V. Delivery Date**

1. Compliance with the agreed delivery date requires that all commercial and technical issues between Customer and us have been settled and that Customer has performed all of his obligations. If this is not the case, the delivery period shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.

2. Compliance with the delivery date shall be subject to the condition that deliveries to us are correct and on time. We shall notify Customer of any foreseeable delays.
3. The delivery period has been honoured if notice of the readiness for shipment has been given. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.
4. If non-compliance is attributable to acts of God, labour disputes, delays in procuring failure to procure government licences or other events outside our scope of influence, the delivery period shall be reasonably extended.  
This shall also apply if we are in default of rendering our performance. We shall inform Customer as soon as possible of the beginning and end of any such event.
5. If the shipment or acceptance of the subject of delivery is delayed on grounds for which Customer must bear responsibility, the costs incurred by the delay shall be charged to him. We reserve the right to assert further damage compensation claims.
6. We reserve the right to dispose of the subject of delivery if Customer has allowed a reasonable period for delivery or acceptance set by us to expire, and to supply Customer in a reasonably extended period.

#### **VI. Delays in Delivery, Impossibility**

1. In the event of partial impossibility Customer may only rescind the contract if it can be proven that partial performance is of no interest for Customer. If this is not the case, Customer must pay the prices according to the terms of contract attributable to the partial delivery. Otherwise, section IX shall apply.  
If impossibility occurs while Customer is in default of acceptance or because of Customer's fault, he shall remain obliged to pay consideration.
2. If the responsibility for impossibility is not to be borne by either party, we shall have a claim to the portion of the remuneration attributable to the work performed by us.
3. If we are in default and Customer incurs damages because of this, he shall be entitled to demand flat-rate default compensation. This default compensation shall be 0.5 per cent for each full week as of the date the claim has been received by us in writing, but for not more than a maximum of 5 per cent of the value of that portion of the total delivery which cannot be used on time or in accordance with the terms of contract as a result of the delay.
4. Within the scope of the statutory provisions, Customer is entitled to rescind the contract if, taking into account the exceptions under statute,

a reasonable period of grace for the rendering of our performance set for us by him during our default has been allowed to expire.

5. Any further claims because of a default in delivery shall be governed exclusively by section IX.

#### **VII. Acceptance**

1. Our work performance products shall be deemed to have been accepted 2 weeks after our notice of readiness for acceptance unless Customer issues a written notice of major defects within this period.
2. Customer is only entitled to refuse acceptance if the defect cancels out or significantly reduces the normal and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling Customer to refuse acceptance, acceptance shall be made under the reservation that the defects are remedied.
3. Refusals of acceptance, objections to acceptance or reservations against acceptance must be made without undue delay in writing and accompanied by the designation and description of the reported defect.
4. The use of the subject of delivery by Customer for production purposes shall be deemed to be acceptance.

#### **VIII. Claims because of Defects**

1. For defects in materials and title, Customer shall have the following claims:
  - a. Claims on the part of Customer because of defects shall require that he has duly complied with the obligations of inspection and notification owed under Sec. 377 German Commercial Code.
  - b. In our discretion we shall deliver a defect-free item or remedy the defect, provided the subject of delivery is proven to have already been defective upon the passing of risk pursuant to section III of these General Terms and Conditions.  
Customer shall provide written notice of the material defects, accompanied by a description of the defect, without undue delay. We reserve title to replaced parts provided within the scope of the replacement procedure.
  - c. No claims for defects shall be created by causes which are not attributable to any fault on our part, such as:  
Normal wear and tear, excessive use, improper interference or repair work on the part of Customer or third parties, incomplete or false information given by Customer, inappropriate or improper use, faulty operation, installation or start-up, faulty or careless handling, improper maintenance, use

- of unsuitable operating materials/substitute materials, defective construction work, unsuitable subsoil, hazardous ambience conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the subject of delivery made without our consent.
- d. Customer must provide us with the required time and opportunity for subsequent performance. If we are not provided with this opportunity, we shall not be liable for any consequences resulting from such failure. Customer shall only have the right to remedy the defect himself or through a third party and demand compensation from us for his necessary expenses in emergencies where plant safety is endangered or to avoid unreasonably greater damage, whereby we must be informed immediately.
- e. In the event of remedial work we shall bear all of the costs required for the purpose of remedying the defect, particularly transport and travel costs and the costs of labour and materials, provided these costs are not increased because the subject of delivery was moved to a site other than the place of performance.
- f. In the event that Customer culpably contributes to the cause of the defects, including, but not limited to, his failure to comply with the duty to avoid or reduce damage, we shall have a damage compensation claim after the subsequent performance which corresponds to Customer's contribution to the cause of the defect.
- g. Customer shall have at his option a right to rescind the contract if – taking into account the exceptions under statute - a period of grace set for us for subsequent performance with respect to a defect is allowed to expire. If the defect is only insignificant, Customer may only demand a reasonable reduction of the contract price. Otherwise, the right to a reduction of the contract price shall be excluded.
- h. For installation, repair and other services, section XIII.9 shall apply instead of section VIII.1.g.
- i. If the use of the subject of delivery within the periods set down in sections XII results in the infringement of intellectual property rights or copyrights, we shall generally procure the right to continued use for Customer or alter the subject of delivery in such manner that an infringement of the intellectual property or copyright no longer exists.  
If this is not possible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract.  
We shall indemnify Customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.
- j. Subject to section IX., our obligations described in section VIII.1.i. are final and conclusive for the case of infringements of intellectual property and copyrights.
- k. The claim to subsequent performance for infringements of intellectual property rights and copyrights shall only exist if
- Customer informs us without undue delay in writing with the designation and description of the alleged infringements of intellectual property rights or copyrights;
  - Customer reasonably supports us in the defence against asserted claims or enables us to carry out the modifications pursuant to section VIII.1. i. hereof;
  - we are reserved the right to undertake all defensive measures, including out-of-court arrangements ;
  - the infringement of intellectual property or copyrights is not based on instructions or specifications provided by of Customer;
  - the infringement of intellectual property or copyrights was not caused by the fact that Customer arbitrarily modified the subject of delivery or used it in a manner not conforming to the terms of contract.
2. All other claims for defects under warranty (including, but not limited to, compensation for damages not occurring to the subject of delivery itself) are governed exclusively by sections IX and XIII.9.
3. In the case of the sale of used products, all claims because of defects shall be excluded unless mandatory liability is set forth under law.

#### **IX. Liability**

1. We are only liable, even in the event of damage because of the breach of duties during contract negotiations and irrespective of the legal grounds for liability (including, but not limited to, compensation for damage caused other than to the subject of delivery itself) in the case of:
- intent;
  - culpable breach of major contractual obligations;
  - gross negligence on the part of corporate bodies or executive officers;
  - culpable bodily injury, death and damage to health;
  - defects we have fraudulently concealed;
  - breach of the guarantee of quality or durability;
  - personal injury and property damage to personal items, provided that liability exists

under the Product Liability Act for personal used items.

2. In the event of the breach of major contractual obligations we shall also be liable for gross negligence on the part of non-executive employees or for slight negligence on the part of corporate bodies and executive officers. In the event of slight negligence, our liability is limited to reasonably foreseeable damage typical to the given type of contract.
3. Our liability for the destruction of data is limited to the costs which would be required for their reconstruction if the data had been properly saved by Customer.
4. Compensation for mere financial loss is limited by the general principles of good faith and reasonableness, such as in the case of a disproportionate discrepancy between the value of the contract and the amount of loss.
5. Any further liability under any legal grounds whatsoever, including, but not limited to, compensation for damages not caused to the subject of delivery itself, shall be excluded.
6. We shall not be liable for the consequences of defects for which no claims for defects are provided for under section VIII.1.c.

#### **X. Insurance Claims**

To the extent we have direct claims as a joint policyholder against Customer's insurer with respect to the subject of delivery, Customer hereby gives his consent to the assertion of such claims.

#### **XI. Software**

1. The general terms and conditions of software providers for their software products contained in our deliveries shall have priority over these General Terms and Conditions. Should such terms and conditions not be available, we shall have them sent to Customer upon request.
2. Our General Terms and Conditions shall be in supplement to the general terms and conditions of other providers; sections XI.3 and XI.5 shall apply mutatis mutandis. In the event that the general terms and conditions of other providers are invalid, our General Terms and Conditions shall apply.
3. Customer shall receive a perpetual, simple, non-exclusive right of use to our software products. The grant of sublicences is not permitted.
4. We are generally not obliged to provide the source code on which the software product is based.
5. Customer may only process our software products to the extent permissible under law. Customer may neither remove nor change the manufacturer's product information, including,

but not limited to, notices of copyright, without our prior written consent.

#### **XII. Prescriptive Periods**

1. Customer's claims because of defects shall be barred 12 months as of the passing of risk.
2. Customer's claims because of defects to buildings or for work whose success consists in the rendering of planning or monitoring services for buildings, shall be barred 5 years as of the passing of risk.
3. With the exception of section XII.4, all other claims by Customer, regardless of the legal basis of claim, shall be barred 12 months as of the passing of risk.
4. For personal injury, grossly negligent acts and omissions by corporate bodies and executive officers, intentional or fraudulent acts and omissions, the breach of major contractual obligations or of guarantees and for claims under the Product Liability Act, the statutory provisions shall apply.
5. The commencement of the prescriptive period shall be governed by the statutory regulations.

#### **XIII. Installation, Repairs and Other Services**

For installation, repairs and other services, the following provisions shall apply in supplement:

1. Customer shall inform our personnel at his own expense of existing safety regulations and hazards and shall undertake all action for the protection of persons and property at the worksite.
2. Customer shall support our personnel in carrying out the work at his own expense and to the required extent and render the support services required under contract such as the preparation of the construction site, the provision of tools and cranes and elevators, and the provision of water and electricity, etc.
3. Customer's support must warrant that our work can begin immediately upon the arrival of our personnel and can be carried out without delay up to acceptance.
4. If Customer does not comply with his obligations, we shall be entitled, but not obliged, to take the action to which Customer is obliged in his stead and at his expense.
5. If our performance cannot be carried out by us on grounds for which we are not responsible, Customer shall compensate us for already rendered performance and any incurred time and expense.
6. Replaced parts shall become our property.
7. Should the performance perish or deteriorate prior to acceptance through no fault on our part, Customer shall pay us the price minus any savings in expenses.

8. Repair deadlines are only binding if confirmed by us in writing.
9. In the case of installation, repair and other services, Customer shall be entitled within the scope of the statutory provisions to make a reduction if, taking into account the exceptions provided for under statute, a period of grace set for us for subsequent performance with respect to a defect is allowed to expire. The right to a reduction shall also exist in other cases where remedial work has failed. Customer shall only be entitled to rescind the contract if, despite the reduction, the repair is proven to be of no interest for Customer.

#### **XIV. General Provisions**

1. All taxes, fees and levies in connection with the performance outside of the Federal Republic of Germany shall be borne by Customer and are to be reimbursed to us as the case may be.
2. Personal data shall be stored by us in compliance with the statutory regulations.
3. We shall not reimburse any costs for the return transport of packaging.
4. Customer shall procure at his own expense all of the licences and/or import/export papers for using the products.
5. Place of performance for Customer's obligations in relation to us is the location of our registered offices.

6. Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the remaining provisions.

#### **XV. Applicable Law, Venue**

1. If Customer's registered offices are located within the Federal Republic of Germany, venue for all disputes arising under the contractual relationship shall be the location of our registered offices. We reserve the right to file an action at the court having jurisdiction over Customer under law.
2. If Customer's registered offices are located outside of the Federal Republic of Germany, disputes shall be settled by arbitration proceedings at the International Chamber of Commerce in Paris in accordance with the ICC Rules of Arbitration. The award shall be final and absolute, and is to be made, with the grounds stated, by three arbitrators. It shall be possible for our insurance company to participate in accordance with the opportunities for participation available in proceedings before a court of law. We reserve the right to enter an action before a court of law having jurisdiction.
3. The laws of the Federal Republic of Germany shall apply with the exception of all of the provisions governing the conflict of laws and the UN Convention for the International Sale of Goods (CISG).