

## **TERMS AND CONDITIONS OF DELIVERY**

### **1. GENERAL**

1.1 SCHMID delivers goods and provides services on the basis of the present general terms and conditions of business only. Diverging terms and conditions made by the customer shall not apply, even if such were not expressly repudiated in a particular case.

1.2 These general terms and conditions of business shall also apply for further orders without reference thereto having to be separately reiterated.

1.3 All offers are without engagement unless agreed otherwise.

1.4 SCHMID retains the title to and copyright of samples, estimates of costs, drawings and other documents, records or data pertaining to the offer, including such in electronic form. They shall be disclosed to third parties only with the consent of SCHMID. The customer is obliged to disclose information, documents, records or data described or identifiable as confidential to third parties only after prior express consent by SCHMID.

1.5 Collateral agreements with respect to the order or supplements to the present terms and conditions must be made in writing in order to be valid.

### **2. PRICES AND PAYMENT**

2.1 The prices of SCHMID apply ex works and are understood without costs for packing, freight, insurance and other forwarding costs. The prices are net prices to which value-added tax is added at the statutory rate applicable at the time.

2.2 Unless agreed otherwise, the payments are to be made to SCHMID without any deduction and free of charge, 1/3 of the contract price after receipt of the order confirmation, 1/3 after notification that the main parts are ready for dispatch and the balance 30 days after the risk has passed.

2.3 The customer has a right of retention or the right to offset own claims against those of SCHMID only insofar as the customer's claims are undisputed or validated.

### **3. DELIVERY, TERM FOR DELIVERY**

3.1 Partial delivery is admissible insofar as is reasonable for the customer.

3.2 The terms for delivery indicated by SCHMID are without engagement and are only approximate unless fixed dates were expressly agreed. Terms are relevant only if and when SCHMID has received from the customer all the documents, records or data, approvals and releases necessary for executing the order and has received agreed payments in due time. If the customer has not performed his obligation to cooperate, the term for delivery shall be extended by a reasonable period.

3.3 The term for delivery begins no earlier than upon the customer's receipt of the order confirmation. The term for delivery is observed if, within that term, the delivery item has left the manufacturer's works or notification has been given that it is ready for dispatch. Delivery period days are working days.

3.4 If the customer demands an amendment of the order after the contract has been concluded and such amendments affect the term for delivery, any delivery dates shall be agreed anew; in cases of doubt, the term for delivery shall be extended commensurately.

3.5 If dispatch is delayed due to reasons for which the customer is responsible, then, beginning one month after notification of the readiness for dispatch, the customer shall bear the costs incurred by the delay, but at least the warehousing costs amounting to 0.5% of the net invoice sum for every com-

menced month. The customer is entitled to provide evidence of a lower loss. SCHMID is entitled to dispose otherwise of the delivery item after a reasonable set term for taking delivery has expired, and to supply the customer with reasonably prolonged delivery dates.

3.6 In cases of force majeure or other circumstances for which SCHMID is not responsible (e.g. measures taken by authorities, strike, lockout, interruption of operations, problems in the procurement of material, interruption of traffic, etc.), the terms for delivery, including confirmed ones, shall be extended by an appropriate period. The foregoing also applies if the above-described circumstances arise when delivery is already in arrears. If such circumstances render performance impossible or unreasonable for SCHMID, SCHMID shall be released from its obligation of performance.

3.7 If delivery is delayed - including delays when delivery has already been in delay - due to a delay in delivery for which SCHMID is not responsible on the part of the sub-supplier, the term for delivery shall be extended accordingly.

3.8 The customer is entitled to withdraw from the contract if it becomes definitively impossible for SCHMID to effect full performance before the risk passes. If the impossibility occurs during the default in taking delivery or if the customer is solely or predominantly responsible therefore, the customer remains obliged to give consideration.

### **4. SCOPE OF DELIVERY, ASSEMBLY**

4.1 SCHMID reserves the right to improve the equipment accordingly the technical progress, provided that this doesn't affect an disadvantage for the customer.

4.2 The installation will be completely pre-assembled at the production site. The supply lines from the machine to the switch cabinet include permanent connections with approx. 3 m of intermediate cable. All mechanical and electrical components will be tested for proper function subsequent to preliminary assembly, and the entire installation is subjected to a trial run. After the trial run the installation will be dismantled to segments for transport. Piping of the supply and drain lines to the end of the installation and the laying of all electrical cables between the central switch cabinet and the terminal boxes must be stipulated in the contract.

4.3 All constructional measures (e.g. work on flooring, openings in walls and roof, foundation bases, acid protection for flooring), all supply and drain lines (e.g. connections for water, waste water, supply and exhaust of air and compressed air) along the installation, as well as connection to the central supply and drainage networks, the main electrical distributor (including fuses and isolating switches up to the switch cabinet) are not included in the scope of delivery.

4.4 Personnel and equipment for unloading the installation at the customer's plant, as well as transport within the plant to the place of installation are not included in the scope of delivery.

4.5 With respect to the installation / assembly the General-Terms for Installation Work of SCHMID shall apply.

### **5. PASSING OF RISK**

5.1 The risk for the delivery item passes to the customer upon notification that it is ready for dispatch, but no later than when it leaves the manufacturer's works. This also applies for deliveries by installments and for cases in which SCHMID has taken over forwarding costs or delivery and/or installation of the goods.

5.2 A transport insurance policy or other insurance policy is taken out only at the customer's express request and at the customer's expense.

## 6. RESERVATION OF TITLE

6.1 The delivered goods remain the property of SCHMID as goods sold with retention of title until all the claims arising from the business relations have been settled. This provision also applies if some or all claims have been included in a current account and the balance has been struck and recognized.

6.2 If the goods sold with retention of title are combined with other articles to form a unitary item and if the other item is to be regarded as the main item, the customer is obliged to transfer co-ownership on a pro rata basis to SCHMID, insofar as the main item belongs to the customer.

6.3 If the customer resells the supplied goods as designated, he at the present juncture assigns the claims against his customers accruing from the resale, including all ancillary rights, to SCHMID until all SCHMID's claims have been settled. If good reason is shown, the customer is obliged, at SCHMID's request, to give the third party purchasers notification of the assignment and to give SCHMID the information and documents necessary for asserting its rights.

6.4 The customer engages to sell the goods supplied by SCHMID only subject to the provision that said customer retains title to said goods until the purchase price has been paid in full and said customer stipulates that if the retention of title lapses due to the goods being resold, combined, processed or mixed, the retention of title shall be superceded by the title to the new item or to the claim arising therefrom.

6.5 In the event of failure to pay on the due date or in the event of a petition to commence insolvency proceedings on the customer's property, SCHMID is entitled to claim the immediate return of the goods sold with retention of title. No withdrawal from the contract is constituted by the goods being taken back. At the same time all claims become immediately due for payment.

6.6 If the value of the existing securities surpasses the debts to be secured by more than 20%, SCHMID is obliged at the customer's request to release those securities exceeding the value of 120% of SCHMID's claims. SCHMID is entitled to select the securities to be released.

6.7 The customer is obliged to insure the goods sold with retention of title against every insurable damage or loss. The customer shall assign his claims from the insurance contracts in advance to SCHMID and, at SCHMID's request, shall furnish evidence of the contracts having been concluded.

6.8 The customer shall inform SCHMID immediately of third party attachment to goods sold with retention of title or of claims superceding such and shall append documents.

## 7. WARRANTY AND LIABILITY

7.1 SCHMID gives the warranty described below for defects as to quality and defects of title to the exclusion of further rights.

7.2 For parts, which were defective when risk was passed, SCHMID shall elect whether to rectify their defects or to replace them. Complaints in respect of a defect and objections must be made immediately in writing. Replaced parts become the property of SCHMID and are to be returned there. Warranty for wear parts is excluded.

7.3 The regular period of warranty is 12 months from the delivery, but not more than 14 months from the notice of readiness for dispatch. The warranty period for spare parts is 6 months from delivery.

7.4 The period of warranty pursuant to paragraph 7.3 is reduced to 2000 operating hours if the delivery item reaches the said number of hours within the 12 month period.

7.5 In case of replacement, SCHMID shall bear the costs for the replacement part, including forwarding costs to the place of delivery originally contractually agreed, but not for disassembly

or assembly or other expenditure. If, by reason of the customer's request, dispatch is effected to a different place or SCHMID renders on-site services, the customer shall bear the additional costs hereby incurred.

7.6 If rectification of defects or replacement is impossible or has failed at least twice or has not been carried out by SCHMID despite a reasonable period of time having been set, it is admissible for the customer to claim reduction of the purchase price, to withdraw from the contract or to claim damages. The condition for asserting damages is that the customer proves that SCHMID is at fault.

7.7 SCHMID does not give any warranty for defects or damage which, without fault on SCHMID's part, have resulted from inappropriate or improper use, incorrect assembly or commissioning, excessive overload, natural wear, incorrect or negligent treatment, inappropriate operating material or equipment, chemical, electro-chemical or electrical influences (insofar as such are not preconditioned in the contract).

7.8 If the customer or third parties rectify defects without the express consent of SCHMID, SCHMID is not obliged to carry out any further rectification of defects on that item or part thereof, unless the customer proves that his own attempt to rectify defects was carried out properly and the defect persisting thereafter was not affected by said attempt.

7.9 The Liability of SCHMID for damages is excluded insofar as is permitted by law. All exemption of liability does not apply for damages caused intentionally or by gross negligence or if the fault should concern a cardinal obligation and/or an owner or a director of SCHMID. The exemption from liability shall moreover not apply in cases in which SCHMID is held liable for personal injury to life, to the body or to health or in case of an infringement of the Product Liability Act (*Produkthaftungsgesetz*).

7.10 SCHMID's liability is limited to the net value of the goods of the consignment from which the defective item originates. The liability is always limited to typically foreseeable damage. In no case the customer shall be entitled to claim for remote consequential damages (e.g. loss or reduction of production, downtime costs, loss of profit etc.).

## 8. PROPERTY RIGHTS

8.1 SCHMID confirms that the delivery item is free from third party property rights and SCHMID is entitled to dispose of all rights. The customer shall inform SCHMID forthwith if third party claims are made against him owing to alleged infringement of property rights associated with the delivery item or if the customer obtains knowledge of the infringement of such property rights by third parties.

## 9. MISCELLANEOUS

9.1 The place of performance and jurisdiction shall be the place of the registered office of SCHMID.

9.2 The Contract is governed by the laws of the Federal Republic of Germany. The United Nations' Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

9.3 The invalidity of any provision of these terms and conditions does not affect any part of the remaining provisions. The invalid provision will be replaced by one best achieving the economic purpose originally aimed at.