



Standard Terms and Conditions of Purchase

I. Conclusion of Contract

1. SCHMIDT shall order exclusively on the basis of its Standard Terms and Conditions of Purchase. Any other terms and conditions shall not become an integral part of the contract. If SCHMIDT accepts a delivery/work without any express objection, this cannot be interpreted under any circumstances as meaning that SCHMIDT has accepted Supplier's terms and conditions of delivery. On submission of offers, Supplier shall declare his agreement with the Standard Terms and Conditions of Purchase of SCHMIDT. If no such express declaration is made, the execution of the order shall at all events be considered as recognition of the Standard Terms and Conditions of Purchase of SCHMIDT. These Standard Terms and Conditions of Purchase shall also apply to all future contractual relationships with Supplier.
2. If Supplier submits an offer in response to an enquiry by SCHMIDT, he shall comply exactly with the request by SCHMIDT or expressly point out any deviations from such enquiry.
3. If Supplier fails to accept the order within 10 working days of its receipt in writing, SCHMIDT shall be entitled to revoke it.
4. Only orders placed in writing shall be legally binding. Any orders placed orally or over the phone shall require subsequent written confirmation if they are to have legal validity. The same shall apply to any oral ancillary agreements and amendments to the contract. Any work performed or deliveries made without a written order shall not be recognised. Any orders, requests for the delivery of orders or their amendments or supplements may also be placed – subject to prior written agreement – by telecommunications or machine-readable data carriers. In the event of an informal conclusion of a transaction, the order shall be deemed to be a commercial letter of confirmation.
5. If SCHMIDT is silent when Supplier presents a proposal, makes a claim or provides any sort of evidence, SCHMIDT's silence can by no means be interpreted as approval, unless explicitly stipulated otherwise in writing.
6. If SCHMIDT can prove by submission of a transmission report that SCHMIDT sent a declaration by fax or telecommunications, it shall be assumed that Supplier received such declaration.
7. Supplier shall treat the conclusion of the contract as confidential and may not refer to any business relationships with SCHMIDT in its advertising materials unless it has the prior written consent of SCHMIDT.

II. Scope and content of duty to supply

1. All deliveries have to comply with at a time newest DIN-CE and/or VDE-norms as well as with all other norms customary in trade and EU-norms, unless explicitly stipulated otherwise in writing. SCHMIDT shall only take delivery of the quantities or numbers of items ordered. Any higher or lower deliveries shall not be admissible unless agreed upon in advance with SCHMIDT.
2. The machine must have a CE-labelling. The machine must be accompanied by a declaration of conformity pursuant to appendix II section A of the Machinery Directive (Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery as amended by Directive 98/79/EC, OJ L 207). Furthermore an operating instruction in German language according to appendix I # 1.7.4 of the said Machinery Directive has to be handed over with the machine.

III. Alteration of performance

1. In the event that deviances from the originally agreed specifications should prove to be necessary and advisable, Supplier has to inform SCHMIDT immediately. In this case SCHMIDT will unhesitatingly inform Supplier if and where necessary to what extent Supplier has to make alterations in respect of the original order. If costs should change as a result of this, SCHMIDT as well as Supplier are entitled to claim a corresponding adaptation of the allowance to be paid to Supplier.
2. SCHMIDT may request alterations to the subject matter of delivery even after conclusion of contract to the extent that this is reasonably acceptable for Supplier. In the event of such an amendment the impact must be duly considered by the two partners, particularly with regard to additional or lower costs and delivery deadlines.

IV. Prices, shipment, packaging

1. The agreed prices shall be deemed to be fixed prices and shall exclude any additional claims whatsoever. Costs for packaging and transport to the delivery address and/or place of use stated by SCHMIDT as well as for any customs formalities and customs duties shall be deemed to be included in these prices. Unless otherwise agreed upon in writing, the price Unless otherwise stipulated in writing the prices shall include packaging and delivery to the address stated by Schmidt.
2. NZF spare parts shall principally be delivered by express under the conditions stipulated in paragraph 1. In the event of installation of plants or constructions delivery will go directly to the relevant premises of Schmidt's client or the chemical park, whereas in case of silo construction in general delivery by heavy transport has to be employed.
3. If a price has been agreed "ex works", "ex warehouse" or the like, the forwarder prescribed by SCHMIDT must be used. Any costs arising up to delivery to the carrier including loading and haulage shall be borne by Supplier. If no prices are stated in the order, the currently applicable list prices of Supplier shall apply with the rebates customary in the trade. The pricing shall not in any way affect the agreement on the place of performance.
4. Any delivery bills, consignment notes, invoices and all correspondence shall specify the order number of SCHMIDT. Offers shall bear the enquiry number.
5. The shipment shall be at the risk of Supplier. The risk of any deterioration, accidental loss shall, therefore, remain with Supplier until delivery to the delivery address and/or place of use requested by SCHMIDT.
6. Supplier's obligation to take back the packaging shall be governed by the statutory provisions. The goods shall be packaged in such a way that damage to the goods in transit is avoided. Packaging materials shall only be used to the extent necessary to meet this purpose. Only ecologically sound packaging materials may be used. If SCHMIDT is invoiced packaging separately by way of exception, SCHMIDT shall be entitled to return packagings, which are in good condition, against remuneration of two-thirds of the billed value, carriage paid back to Supplier.

V. Invoicing and payment

1. To the extent necessary for their understanding, invoices shall be submitted in a proper form with all corresponding documents and data specified separately after delivery has been made. Pending the submission of a proper invoice, SCHMIDT shall have a right to refuse payment. Payment shall be determined by the actual quantities, weights or other units on which the delivery is based as well as the prices agreed upon.
2. Payment shall be according to normal trade practice. SCHMIDT shall pay the contractual price with a 3% discount for unobjected goods and services within a period of 30 days calculated from the delivery and receipt of the invoice, unless agreed upon otherwise.
3. Insofar as certificates on material tests have been agreed upon, they shall constitute an integral part of the delivery and shall be made available to SCHMIDT together with the delivery. They must, however, be available to SCHMIDT no later than five days after receipt of the invoice. The term of payment shall not commence before the agreed certificate has been received.
4. The settlement of an invoice shall not be deemed to be a waiver in respect of a notification of defects in the invoiced goods. In the event of a defective delivery, SCHMIDT shall be entitled to withhold payment in the proportion of the corresponding value pending proper performance.
5. In the event of advance payments, Supplier shall furnish appropriate collateral in the form of the guarantee of an acknowledged major German bank in accordance with the SCHMIDT specimen.
6. In the event SCHMIDT is in delay with payment, Supplier can withdraw from contract only after having declared Supplier will no longer accept payment when SCHMIDT does not pay within an appropriate short period.

VI. Dates of delivery, delay in delivery, force majeure

1. The dates of delivery agreed upon shall be binding; Supplier shall be in default if a fixed date of delivery is missed, without this requiring any reminder. In the case of obligations to be performed, compliance with the date of delivery or the delivery period shall be determined by the receipt of the goods at the place of receipt and/or use specified by SCHMIDT. If acceptance is necessary, Supplier shall be in default without reminder if he has not performed the work or provided the service by the date agreed upon in a way that acceptance cannot be refused. (§ 640 para 1 sentence 2 BGB [German Civil Code]).
2. If Supplier realises that a date agreed upon cannot be met for any reasons whatsoever, he shall inform SCHMIDT without delay, at latest within five days, and state the underlying reasons as well as the probable duration of the delay in writing.
3. If Supplier defaults by exceeding the date of delivery, SCHMIDT shall be entitled to impose a penalty of 0.1% of the amount of the order per working day and no more than 5% of the amount of the order. The reservation as to the assertion of a penalty can be made pending payment of the invoice. The penalty shall be offset against any claim to damage caused by default. The penalty shall be deemed to be merely the minimum value of damage claims. In the event of SCHMIDT receiving the delayed item, SCHMIDT shall be entitled to assert the penalty within the next five working days.
4. Supplier may only invoke failure by SCHMIDT to submit any necessary documents if he requested such documents by way of a reminder in writing and did not receive them within an appropriate period of time.
5. Force majeure shall exempt the contracting partners for the duration of the interference and within the scope of its impact from their obligations. The contracting partners shall be obliged to provide the necessary information as soon as reasonably possible and adjust their obligations to the changed circumstances in accordance with the principle of good faith. SCHMIDT shall be exempt from the obligation to accept the delivery/service ordered as a whole or in part and shall be entitled to rescind the contract in that respect if the delivery/service/work can no longer be utilised because of the delay caused to SCHMIDT as a result of force majeure – taking into account economic aspects.
6. If the delivery is made earlier than agreed upon, SCHMIDT reserves the right to return the shipment at Supplier's expense. If no return shipment is made in the event of premature delivery, the goods shall be stored until the date of delivery agreed upon at SCHMIDT at Supplier's expense and risk. In the event of premature delivery, SCHMIDT reserves the right to make payment only on the due date agreed upon.
7. SCHMIDT shall not accept part deliveries unless expressly agreed upon. With regard to part deliveries agreed upon, the residual quantity must be specified.

VII. Liability

Supplier shall be liable for any form of contractual violations in accordance with the statutory provisions unless otherwise agreed upon in these Standard Terms and Conditions.

VIII. Remedies in case the goods do not conform with the contract

1. The specification agreed upon shall be an integral part of the order and may not be amended without the mutual consent of the contracting partners. Any description of the scope of delivery or any drawing to be considered as binding shall also be deemed to be a specification. A deviance from specifications shall always be deemed a fundamental breach of duty, unless SCHMIDT is able to transfer the item with very little effort to the status due according to contract.
2. Supplier undertakes to use ecologically sound products and processes in his deliveries/services/work and also for sub-contracted work and deliveries from third parties within the framework of economic and technical possibilities. Supplier shall be liable for the environmental compatibility of the products delivered and the packaging materials as well as for all consequential damage or loss caused by a violation of his statutory disposal obligations. At the request of SCHMIDT, Supplier shall issue a test certificate for the goods delivered.
3. SCHMIDT shall notify Supplier without delay in writing of any apparent defects in the delivery/service/work as soon as they are identified in accordance with the conditions of proper ordinary business, but no later than within ten working days of receipt of the delivery by SCHMIDT.
4. SCHMIDT shall be obliged to inspect any incoming goods within five working days of delivery for transport damage.
5. The condition of an item or a work agreed upon shall also be deemed to include properties which SCHMIDT may expect as a result of public declarations of the seller, the company, the manufacturer (§ 4 paras 1 and 2 German Product Liability Act) or any vicarious agents particularly in advertising or labelling in respect of certain properties unless they are in contradiction with properties agreed upon. This shall not apply if the contracting partner was not aware and did not need to be aware that the declaration had been corrected in an equally valid manner at the time of conclusion of the contract or that it could not influence the purchasing decision.
6. As a matter of principle, SCHMIDT shall have the right to choose the kind of subsequent performance, even for contracts for work, unless the contracting partner has the right to refuse subsequent performance or SCHMIDT chooses a right of subsequent performance which is unreasonable for the entrepreneur to accept.
7. In the event of a defect in the product delivered or work performed, SCHMIDT can remedy the defect itself after unsuccessful expiration of a period deemed to be appropriate for subsequent performance and request compensation for the necessary expenses unless Supplier is entitled to refuse subsequent performance. In this respect, the statutory provisions on self-performance in the case of contracts for work (§ 637 German Civil Code) shall apply mutatis mutandis to the purchase contract.
8. The warranty period shall be 24 (in words: twenty four) months, unless otherwise expressly agreed upon. It shall commence with the handing over of the subject matter of delivery to SCHMIDT or the third party designated by SCHMIDT at the place of reception and/or use specified by SCHMIDT. Insofar as dates for the acceptance have been agreed upon, the guarantee and warranty period shall commence with the successful acceptance. If acceptance is delayed without this being the fault of Supplier, the warranty period shall commence no later than 12 (in words: twelve) months after the subject matter of delivery has been made available for acceptance.
9. If during the first six months (guarantee period) of the warranty period, a defect appears, it shall be assumed that this defect already existed at the time of the passing of the risk unless such an assumption is incompatible with the type of object or defect.
10. For delivery parts which could not remain in operation during the inspection of the defect and/or the remedying of the defect, the running guarantee and/or warranty period shall be extended by the time of interruption of operation.
11. Claims which already exist on commencement of the warranty period or which occur during the warranty period shall become statute-barred in accordance with the statutory periods of limitation. The period of limitation shall commence when the claim arises.
12. In the event of defects in title, Supplier shall indemnify SCHMIDT against any existing claims of third parties.

13. If claims are asserted against SCHMIDT for violation of security provisions of public authorities or based on national or international product liability provisions or laws because of a defectiveness of a product which is attributable to goods supplied by Supplier, SCHMIDT shall be entitled to assert damages against Supplier to the extent that this is caused by the products delivered by Supplier. The damage shall also be deemed to include the costs of a necessary recall. If a defect occurs in a part delivered by Supplier, it shall be assumed that the defect exclusively arose within the sphere of responsibility of Supplier.
14. Supplier shall carry out proper quality assurance in terms of type and scope and in compliance with the state of the art and shall submit evidence of such quality assurance to SCHMIDT at the latter's request. Supplier shall enter into a corresponding quality assurance agreement to the extent considered necessary by SCHMIDT.

IX. Guarantee

1. Supplier guarantees and represents that all deliveries/services/work correspond to the state of the art, comply with the relevant legal provisions as well as the provisions and guidelines imposed by public authorities, employers' liability insurance associations and specialised associations. If deviations from these provisions are necessary in individual cases, Supplier must obtain a corresponding written consent. The warranty obligation of Supplier shall not be restricted by such consent. If Supplier has any concerns in respect of the type of execution requested by SCHMIDT, Supplier shall notify SCHMIDT without delay in writing.
2. Supplier guarantees and represents that all deliveries shall be free of proprietary rights of third parties and, more particularly, that the delivery and use of the subject matters of the delivery shall not infringe any patents, licenses or other proprietary rights of third parties within Germany. If Supplier knows that his products are distributed by SCHMIDT in certain countries, this shall also apply to these countries.

X. Spare parts

1. Supplier undertakes to supply SCHMIDT with all spare parts for a period of ten years after the last delivery.
2. The price for a spare part must not be higher than the price for a corresponding part on the free market.
3. If the spare part production was discontinued after the expiration of the period mentioned in clause 8.1, Supplier undertakes – at the request of SCHMIDT against an appropriate remuneration - to surrender construction documents/drawings to SCHMIDT and to use such documents for the manufacture of spare parts exclusively for SCHMIDT's own use. SCHMIDT undertakes not to make these documents accessible to third parties.

XI. Insurance

1. Supplier shall take out appropriate insurance against all risks arising out of product liability including the recall risk and insurance for installation that covers all risks even above the full value of the installation to be erected.
2. Supplier has to provide SCHMIDT, at the latter's request, with a copy of the insurance policy for inspection at the latest with the confirmation of order.

XII. Duties of indication

1. In the event of Supplier having objections against the way of performance desired by SCHMIDT, Supplier has to inform SCHMIDT immediately.
2. In the event of Supplier changing the specifications of a product he has previously supplied SCHMIDT with under the same identification, Supplier has to inform SCHMIDT, notwithstanding of further duties to provide information, without being requested about all alterations of product in detail.
3. According to § 4 para 1 German statute on the safety of devices and products (Geräte- und Produktsicherheitsgesetz) Supplier has to provide SCHMIDT with all information required to assess the risk arising from a product for health and/or security of its users or third parties. This in particular refers to
 - the characteristics of the product including its composition, packaging, the instruction for its assembly, in installation, maintenance and service life,
 - its influence on other products, as far as its use together with other products is to be expected,
 - its exhibit, presentation in trade, labelling, security warnings, operating instructions, instructions for disposal as well as all other information as far as the product is concerned,
 - groups of users which are jeopardized more than others when using the product.

XIII. Industrial and/or intellectual property rights

1. Supplier indemnifies SCHMIDT and its clients from all claims of third parties that may arise from possible infringements of any proprietary rights of third parties, intellectual and/or intellectual property rights (see above IX.2). Supplier has to bear all costs whatsoever that may result for SCHMIDT of a such-like incident.
2. Taking into consideration the due care of a diligent merchant, SCHMIDT may bring about the approval of the entitled person to use the delivered items or to grant the promised services at the expenses of Supplier.

XVI. Retention of title; provision of tools in the property of SCHMIDT

1. SCHMIDT shall retain title to all parts and products provided to Supplier. The processing or transformation of such parts and products by Supplier shall always be for SCHMIDT. If the said parts and products are processed together with other items which do not belong to SCHMIDT, SCHMIDT shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other processed items at the time of processing. Supplier will diligently keep the items in ownership or co-ownership of SCHMIDT free of charge.
2. Supplier shall be entitled to continue to transform the said parts and products in the ordinary course of business. Supplier may neither pledge nor transfer the said parts and products by way of security.
3. In the event of attachment or seizure or other disposals by third parties, Supplier shall inform SCHMIDT without delay. In the event of Supplier not being able to fulfil his duties to pay or an application for insolvency proceedings against Supplier being made, Supplier has to inform SCHMIDT about possible rights of ownership or co-ownership of third parties and their addresses immediately.
4. Provided tools remain sole property of SCHMIDT. Supplier is obliged to maintain tools in the property of SCHMIDT according to the regulations and to keep them in good condition. Supplier may use these tools only for carrying out the orders of SCHMIDT. Unless stipulated otherwise, maintenance, keeping in good condition and storage of tools will be free of charge. Supplier's right to possession ends with receipt of SCHMIDT's claim to hand over the tools in written form.
5. For the event of Supplier producing a tool on SCHMIDT's costs or of Supplier having a tool produced for SCHMIDT by a third party, SCHMIDT and Supplier agree that SCHMIDT shall acquire full and sole ownership with complete payment. Handing over of the tool to SCHMIDT will be replaced by the duty of storage and the loan of the tool with the sole purpose to have it used for carrying out SCHMIDT's orders.

XV. Confidential information and secrecy

1. The partners are obliged to keep strictly secret all information acquired due to this contract and to use this information exclusively for the purpose of this contract. This shall not apply in the event that the said information was generally accessible or became generally accessible later or that the said information has been conveyed by a third party that is not obliged to treat the said information as confidential. The duty to secrecy does furthermore not exist if the said facts can be proved to be known to the party before the obligation to secrecy was stipulated.
2. Conjoint companies as meant by § 15 German statute on joint stock companies (Aktiengesetz) shall not be deemed "third parties". Persons or companies which are employed by the partner to fulfil the duties from this contract shall neither be deemed "third parties", if they have been or will be equally obliged to secrecy.
3. Supplier is obliged to treat all our orders and the commercial and technical details combined herewith as secrets of business. The obligation to secrecy expires ten years after the end of the business relations between the partners.
4. The partners are obliged to transfer the said duties to third parties employed by them.

XVI. Extraordinary right to withdrawal

In the event of insolvency proceedings being introduced against Supplier SCHMIDT is entitled to withdraw from contract within a period of twelve month after opening of insolvency proceedings.

XVII. Business in foreign countries

If Supplier has his branch establishment outside Germany, the following shall apply in addition:

- a. For the relationship between Supplier and SCHMIDT, German law shall be the exclusive applicable law, to the exclusion of the Convention on the International Sales of Goods (CISG).
- b. The contractual language shall be German. If the contracting partners use any other language, the German wording shall prevail.

XVIII. Final provisions

- a. Should individual parts of these Standard Terms and Conditions of Purchase be legally invalid, the validity of the remaining provisions shall not be impaired.
- b. Supplier shall not be entitled to transfer the order or essential parts thereof to third parties without the prior written consent of SCHMIDT.
- c. Without the prior written consent of SCHMIDT, which may not be unreasonably refused, Supplier shall not be entitled to assign his claims against SCHMIDT.
- d. SCHMIDT shall treat any personal data of Supplier in accordance with the German Data Protection Act ("Bundesdatenschutzgesetz").
- e. Unless otherwise expressly agreed upon, the place of performance for the delivery obligation shall be the shipment address and/or place of use requested by SCHMIDT; for all other obligations of the two partners Heilbronn shall be the place of performance.
- f. For all disputes arising out of the contractual relationship and if Supplier is a fully qualified merchant, a legal entity under public law or a federal special fund under public law, the place of jurisdiction shall be the registered office of SCHMIDT. SCHMIDT shall also be entitled to sue Supplier at any other admissible place of jurisdiction.