

**General Terms and Conditions (AGB) of Schiess Werkzeugmaschinenfabrik GmbH applicable with companies (05/2020)**

**I. General Information**

1. These General Terms and Conditions (GTC) apply in particular to contracts for sale and/or delivery of movable objects, regardless of whether the goods are manufactured by ourselves or purchased from external suppliers. The GTC shall apply in their respective version as a framework agreement also for future contracts for sale and/or delivery of movable objects with the same customer, without us having to refer to the GTC again in each individual case; in this case, we shall inform the customer immediately of any changes to our GTC.
2. Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. A written contract or our written confirmation shall be decisive for the content of such agreements. Legally relevant declarations and notifications, which are to be submitted towards us by the customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) require the written form in order to be effective.
3. Our GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, in particular also if we, being aware of customer's GTC, execute deliveries to the customer without reservation.
4. We reserve the right to include individual clauses of Incoterms® 2010 separately. In relation to any agreed trade terms, the Incoterms® 2010 shall apply. Should these contradict the terms and conditions listed here in individual points, our GTCs shall take precedence.

**II. Offers and placing of orders**

1. Our offers are subject to change and non-binding. This shall also apply if we have provided the customer with catalogs, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyright.
2. The order of goods by the customer constitutes a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this contractual offer within two weeks of receipt.
3. The acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.
4. The written contract, including these GTC, is solely decisive for the legal relationship between our customers and us. This fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Oral promises made prior to the conclusion of this contract are legally non-binding and oral agreements between the contracting parties are replaced by the written contract, unless it is expressly stated therein that they continue to be effective and binding.
5. Supplements and amendments to the agreements made, including these GTC, must be made in writing to be effective. With the exception of managing directors or authorized signatories, our employees are not entitled to make oral agreements deviating from this. To comply with the written form, transmission by fax is sufficient; otherwise, telecommunication transmission, in particular by e-mail or SMS, is not sufficient.
6. Our information on the object of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately applicable, unless the usability for the contractually intended purpose requires exact conformity. They are not a guaranteed characteristic of their state, but a description or identification of the delivery or service. Customary deviations and deviations resulting from legal provisions or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible, insofar as they do not impair the usability for the contractually agreed purpose.
7. We reserve the ownership or copyright for all offers and cost estimates submitted by us as well as for drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and auxiliary materials made available to the customer. The customer must not allow third parties access to these items themselves or to their contents without our express consent, nor may he inform third parties of them, use or reproduce them himself or allow third parties to use or reproduce them. At our request, he shall return these objects to us in full and destroy any copies that may have been made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

**III. Prices**

1. The prices are valid for the scope of services and deliveries stated in the order confirmations. Additional or special services will be charged separately. The prices are in EURO ex works or warehouse plus packaging, the statutory value added tax, customs duties for export deliveries as well as fees and other public charges.
2. Insofar as the agreed prices are based on our list prices and the delivery is not to take place until more than four months after conclusion of the contract, our list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount). In the case of missing list prices, this shall also apply if, after conclusion of the contract, our cost prices increase - also as a result of changes in exchange rates and EC regulations - or if public charges including levies, taxes, fees, customs duties or freight are newly introduced or increased, even if the additional costs are incurred by our suppliers. We will inform the customer of the price increase before further deliveries are made.

**IV. Terms of payment and maturity**

1. Invoice amounts are to be paid within thirty days of receipt of our invoice without any deductions, unless otherwise agreed in writing. The receipt of payment by Schiess Werkzeugmaschinenfabrik GmbH is authoritative for the date of payment. Checks shall only be considered as payment after they have been cashed. If the customer does not pay by the due date, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.
2. If acceptance by the customer is required for the due date, this shall be deemed to have been declared at the latest upon commencement of the intended use of our goods if the customer has previously been requested by us to expressly declaring acceptance within a reasonable period and such declaration has not been made.
3. Bills of exchange will only be accepted after prior written agreement and only by way of payment where the right to return them at any time is retained, and where all liability for proper protest is excluded. All costs arising from the acceptance and enforcement of bills of exchange, including discount and bill charges, shall be borne by the customer.

4. The offsetting of counterclaims of the customer or the retention of payments based on such claims is only permissible if the counterclaims are undisputed or have been legally established.

5. We shall be entitled to execute or render outstanding deliveries or services only against prepayment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the customer's creditworthiness and as a result of which the payment of our outstanding claims from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is endangered.

**V. Delivery, delivery dates and delivery periods**

1. Delivery shall be made „ex works“, unless otherwise stated in order confirmation.
2. We shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events that were unforeseeable at the time of conclusion of the contract (e.g. all kinds of operational disruptions, difficulties in obtaining materials or energy, delays caused by transit problems, strikes or legal lockouts, shortage of labor, energy or raw materials, difficulties in obtaining official authorizations, official provisions or the absence, incorrect or non-timely delivery by suppliers) and which have not been caused by us. As far as such incidents make the delivery or service difficult or impossible for us and in case, the obstruction is not only of temporary duration, we are entitled to withdraw from contract. In the event of temporary impediments, the deadlines for delivery or service shall be extended or the delivery or service dates shall be postponed by the period of the impediment plus a reasonable start-up period. If it is unreasonable for the customer to accept delivery or service due to the delay, they may withdraw from the contract by immediate written declaration to us.
3. Deadlines and dates for deliveries and services announced by us are always only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed in writing. Insofar as shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, freight carrier or other third party commissioned with the transport.
4. We are only entitled to make partial deliveries if:
  - a. the partial delivery can be used by the customer within the scope of the contractual intended use;
  - b. the delivery of the remaining goods ordered is ensured; and
  - c. if this does not result in any significant additional work or costs for the customer (unless we agree to assume these costs).
5. If the acceptance or, in the case of call-off orders, the call does not take place, does not take place in time or is incomplete and if the customer does not comply with a written request for acceptance or call-off within 10 days, we are entitled, at our discretion, to dispatch the goods without acceptance or call-off or to store the goods at customer's expense and risk at our own discretion and to invoice them for delivery ex works or ex warehouse, or to withdraw from the contract without setting a further deadline or threat of rejection r to withdraw compensation for non-performance with regard to the part of the contract that has not yet been fulfilled to demand.
6. If we are in default with a delivery or service or if a delivery or service becomes impossible for us, for whatever reason, our liability is limited to damages in accordance with IX. and XI. of these GTC. If we are in default of delivery or performance or if we are unable to make delivery or performance, no matter on what ground, our liability for damages shall be limited in accordance with § IX and XI of these GTC.

**VI. Shipping**

1. Type and route of dispatch, means of transport and protection as well as packaging are subject to our dutiful discretion. Means of protection prescribed by the customer will be charged separately.
2. If the goods are accepted by railway, shipping company or another carrier without complaint, any liability on our part for improper packaging or loading is excluded.
3. Transport and other packaging according to the German Packaging Ordinance will not be taken back with the exception of pallets.

**VII. Passing of risk**

1. The risk shall pass to the customer at the latest when the delivery item is handed over (whereby the start of the loading process is decisive) to the forwarding agent, carrier or other third party designated to carry out the dispatch. This also applies if partial deliveries are made or we have taken over other services (e.g. dispatch or installation). If dispatch or handover is delayed due to circumstances caused by the customer, the risk shall pass to the customer on the day on which the delivery item is ready for dispatch and we have notified the customer of this, but at the latest after the date defined in § V fig.3.
2. Storage costs arising after transfer of risk shall be borne by the customer. In case of storage by us, the storage costs amount to 0.25% of the invoice amount of the objects of supply to be stored per week of elapsed time. The assertion and proof of higher or lower storage costs is expressly reserved.
3. Upon request of the customer, the delivery will be insured at his expense against theft, breakage, transportation, fire and water damages as well as against other risks that may be insured.

**VIII. Quality, application-technical consultation, quantities/weights**

1. If no other agreement has been made, goods of standard commercial quality are to be delivered. If a sale is made based on a sample, this sample only constitutes a model for the approximate description of the goods.
2. In case the customer demands special material certificates, test or acceptance certificates, etc. we are entitled to invoice these separately. This does not apply to data sheets for standard components we hold ready.
3. In any case, the customer remains obliged to examine the goods upon receipt to determine their suitability for the intended purpose. We do not assume any liability for this, nor for the completeness and correctness of application-technical advice in connection with deliveries or of processing instructions and guidelines.

**IX. Warranty, liability for defects**

1. The warranty period shall be one year from delivery or, if acceptance is required, from date of acceptance. § IV fig. 2 will apply.
2. The delivered items must be carefully examined immediately after delivery to the customer or to a third party, designated by the customer. They shall be deemed to be approved if we have not received a written notice of defects pertaining to visible defects or other defects which were recognizable in an immediate, careful inspection within seven working days after delivery of the delivery item or otherwise within seven working days after the discovery of the defect or any earlier point in time at which the defect was identified by the customer during normal usage of delivered item without closer inspection, and has been received in the specific form as stipulated under § II fig. 5

3. Upon our request, the defective shall be returned to us carriage paid. In the event of a justified notice of defect, we will reimburse the costs of the cheapest shipping route; this shall not apply if the costs increase because the goods are located at a place other than the place of intended use.
4. If the delivered items exhibit material defects, we shall be obliged and entitled to either rectify the defect or provide substitute delivery within a reasonable period. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of rectification of defects or substitute delivery, the customer shall be entitled to withdraw from contract or reduce the purchase price by a reasonable amount.
5. If the defect is based on our fault, the customer shall be entitled to claim compensation subject to the conditions set forth in § XI.
6. If components of other manufacturers exhibit defects which we cannot rectify because of licensing restrictions or for other reasons, we undertake to either assert our warranty claims against the manufacturers and suppliers for the account of Purchaser or assign these claims to customer. In the case of such defects, warranty claims can only be asserted against us under the other conditions and in accordance with these General Terms and Conditions of Sale and Delivery if the legal enforcement of such claims against the manufacturer and supplier has failed or is futile, e.g. due to insolvency. For the duration of the legal dispute, the limitation period for the corresponding warranty claims of Purchaser against us shall be suspended.
7. The warranty shall expire if the customer modifies the delivered item or allows a third party to do so without our consent, making the rectification of the defect impossible or unreasonably difficult. In any case, any resulting extra costs of the rectification shall be borne by the customer.
8. The delivery of used items arranged with customer on a case-by-case basis shall take place to the exclusion of any warranty for material defects.
9. Special legal requirements for the final delivery to a consumer remain unaffected (supplier regress as per § 478, 479 BGB).

#### X. Retention of title

1. The provisions on retention of title set forth below serves to secure all our present and future claims against the customer arising from the supply relationship between the Parties (including balance claims from a current account agreement limited to this supply relationship).
2. We shall retain the title to the delivered goods until all secured claims have been paid in full. The goods as well as the goods subject to retention of title taking their place in accordance with the clauses below are hereinafter referred to as the "retained goods".
3. Customer shall keep the retained goods for us free of charge.
4. Customer shall be entitled to process and resell the retained goods in the normal course of business until enforcement (fig. 9). Pledging and transfer as security are not permissible.
5. If the customer processes the retained goods, it is agreed that the processing shall take place in our name and for our account as manufacturer and that we immediately acquire the ownership or – if the processing involves materials of more than one owner or the value of the processed item exceeds the value of the retained goods – the co-ownership (ownership in fractional shares) of the newly created item in proportion of the value of the retained goods to the value of the newly created item. In case we should not acquire such ownership, the customer hereby transfers to us as security his future ownership or – in the above proportion – co-ownership of the newly created item. If the retained goods are combined with other items to form a uniform item or inseparably mixed with other items and one of the other items is regarded as the main item, we shall, to the extent that the main item belongs to us, transfer to Purchaser the proportionate co-ownership of the uniform item in the proportion stated in sentence 1 above.
6. In the event that the retained goods are resold, the customer hereby assigns to Seller as security the resulting claim against the purchaser – if Purchaser holds co-ownership of the retained goods, proportionately in accordance with his share of co-ownership. The same applies to other claims that take the place of the retained goods or otherwise arise in respect of the retained goods, such as insurance claims or tort claims in case of loss or destruction. We authorize the customer on a revocable basis to collect the assigned claims in his own name. We may only revoke this collection authorization in the event of enforcement.
7. In the event of seizure of the retained goods by third parties, in particular by way of attachment, the customer shall immediately inform that third party of our ownership and notify us to enable us to enforce our rights of ownership. If the third party is unable to reimburse us for the judicial or extrajudicial costs arising in this connection, the customer shall be liable to reimburse us for these costs.
8. We undertake to release at our discretion on request the retained goods as well as the items or claims taking their place if their value exceeds the value of the secured claims by more than 50%.
9. If we withdraw from the contract (enforcement) due to breach of contract on part of customer – in particular default of payment –, we shall be entitled to demand return of the retained goods. If the customer fails to pay the purchased price as owed, we may only assert these rights if we have set the customer an appropriate payment deadline to no avail or if such a deadline as provided by law has become legally superfluous.

#### XI. Liability to pay compensation based on fault

1. Our liability to pay compensation, no matter on what legal ground, in particular based on impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, shall, to the extent that such liability depends on proof of fault, be limited pursuant to this § XI.
2. We shall not be liable in the event of slight negligence of our executive bodies, legal representatives, staff members or other agents, unless contractual obligations are breached. Essential contractual obligations include the obligation of timely delivery and installation of the delivered item that is free of essential defects, as well as the duties of advice, protection and care which are to enable the customer to use the delivered item in the contractually agreed manner or are aimed at protecting the life and limb of customer's personnel or his property from considerable damage.
3. To the extent that we are liable to pay compensation on the merits pursuant to § XI fig. 2, our liability shall be limited to the compensation of damage which was foreseeable upon conclusion of the contract as a possible consequence of a breach of contract or should have been foreseeable by applying due care. Furthermore, indirect and consequential damage shall only be eligible for compensation to the extent that such damage can be typically expected when using the delivered item as intended.

4. In the event of slight negligence, our liability to pay compensation for material damage shall be limited to EUR 1,000,000.00 (in words: one million), for personal injury limited to EUR 2,000,000.00 (in words: two million) and for financial loss limited to EUR 100,000.00 per claim, even if material contractual obligations are breached.
5. The foregoing exclusions and limitations of liability shall apply to the same extent in respect of our executive bodies, legal representatives, staff members and other agents.
6. To the extent that we provide technical information or advisory services and this information and advice is not included in the contractually agreed scope of services, this shall take place free of charge and to the exclusion of any liability.
7. The limitations of liability set forth in this § XI shall not apply to our liability for willful intent, warranted quality features, injury to life, limb or health or our liability in accordance with the Product Liability Act.

#### XII. Proprietary rights

1. In accordance with this § XII, we guarantee that the delivered item is free from any industrial property rights and copyrights of third parties. Each party will inform the other contract party immediately in writing, if claims are asserted against them based on the infringement of such rights.
2. In the event that the delivered item infringes the industrial property rights or copyrights of a third party, we undertake, at our own expense, to either modify or replace the delivered item in such a way that the rights of third parties are no longer infringed but the delivered item continues to fulfil the contractually agreed functions or obtain the right of use for the customer by concluding a license agreement. If we are unable to do so within a reasonable period, the customer shall be entitled to withdraw from the contract or reduce the purchase price by a reasonable amount. Any claims for compensation on part of Purchaser shall be subject to the limitations set forth in § XI of these General Terms and Conditions of Sale and Delivery.
3. In the event that products of other manufacturers delivered by us infringe any rights, we undertake to either assert our claims against the manufacturers and upstream suppliers for the account of the customer or assign these claims to customer. In such cases, claims in accordance with this § XII can only be asserted against us if the legal enforcement of such claims against the manufacturers and upstream suppliers has failed or is futile, e.g. due to insolvency.

#### XIII. Exemption from third party product liability claims

1. The customer is under the obligation to hold harmless from any claims raised against us by third parties on the ground of any damage which may have been caused by any product received from us, regardless of whether such damage is caused solely by such product or in correlation with any other product built into any final product (product liability).
2. This shall not affect our liability under § IX and XI.

#### XIV. Limitation of own claims

Our claims for payment are limited to five years varying from § 195 BGB; for the beginning § 199 BGB shall apply.

#### XV. Export clause

1. In recognition of national and international export control legislation, the customer undertakes to obtain all necessary export licenses and other documents before exporting goods or technical information received from us.
2. The customer undertakes not to directly or indirectly sell, export, re-export or otherwise transfer such goods or technical information to any person, company or country in breach of national or international laws, regulations or agreements. The customer further undertakes to inform all recipients of these goods and technical information about the necessity to comply with these laws, regulations and agreements. The customer will procure at his own expense all necessary licenses, export and import papers and documents required to purchase and resell the goods. The refusal of an import and export license does not entitle the customer to return or to compensation.

#### XVI. Place of jurisdiction, place of performance and severability clause

1. For these GTC and all legal relations between the customer and us, the law of the Federal Republic of Germany shall apply excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. However, conditions and consequences of the reservation of title in accordance with § X are subject to the law of the country where the item is stored, in so far as this states that the choice of German legislation is inadmissible or ineffective.
2. Place of fulfillment and payment is Aschersleben.
3. If the customer is a merchant in the sense of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, including legal proceedings regarding checks and bill of exchange shall be the court having jurisdiction for our registered office in Aschersleben. However, we shall also be entitled to take action at the general legal venue of the buyer.
4. In the event that, after conclusion of the contract, the customer moves his place of business or habitual residence outside the valid territory of German law or does not have a general place of jurisdiction in Germany, our place of business is also agreed as the place of jurisdiction for all disputes arising from this contractual relationship, including bill of exchange and check processes. The same applies in the event that the customer's place of business or habitual residence is not known at the time the action is filed.
5. In so far as the contract or these GTC should be incomplete or contain any regulatory gaps, such regulation shall apply that to the closest extent possible reflects the economic objectives and intentions of the parties and that the parties would have agreed if they had had knowledge of the regulatory gaps.

#### Special instructions

The customer should register, that as stipulated under § 28 Data Protection Act, we utilize Data from our contractual relationship to save information for the purpose of data processing and also reserve the right, as long as it is imperative for the execution of the contract, to pass this information onto a third party (e.g. insurance companies).

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