

General Terms and Condition of Sale and Delivery

OF SCHWENK LÄNGENMESSTECHNIK GMBH & CO. KG
(HEREINAFTER REFERRED TO AS "SCHWENK LMT")

A. General information, scope

- (1) Our General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General Terms and Conditions") apply exclusively. Any opposing, supplementary or deviating client's conditions will not be accepted, unless explicitly agreed to in writing. Our General Terms and Conditions shall also apply in case we render deliveries and services to the customer without reservations and with the knowledge of any conditions of the customer that contradict or deviate from our conditions. These conditions shall also apply for future business transactions even if these have not once again been explicitly agreed upon.
- (2) Any rights to which SCHWENK LMT is entitled to under statutory provisions or other agreements that go beyond these General Terms and Conditions shall remain unaffected.
- (3) Our General Terms and Conditions shall only apply towards organizations in the sense of double sections §§ 14, 310 I BGB (German Civil Code) or legal persons of public law.

B. Quotes and offers, acceptance, contractual content

- (1) Unless explicitly stated otherwise our offers are always non-binding. Our written order confirmation is relevant for the contractual agreement. Subsidiary agreements and changes shall always be confirmed by us in writing.
- (2)) We reserve all proprietary and intellectual property rights as well as copyrights to any and all tender documents (including any samples, illustrations, drawings, product descriptions provided, etc.). Such documents must not be made available to third parties or be used for purposes that go beyond the scope of the contract.
- (3) We reserve the right to implement design changes, improvements as well as other changes to technical data and performance features to an extent reasonably acceptable to the customer.
- (4) Any documents provided to the customer together with the quotation request or the order (drawings, samples and such) form a binding basis for preparing a quote.

C. Prices, payment, maturity

- (1) All prices are net prices, unless (in individual cases) otherwise agreed upon in writing and the prices are stated in euro, exworks, excluding packaging expenditures, insurance, taxes, transport costs, duties, etc. plus statutory VAT applicable at the time of delivery. The prices will be calculated on the basis of the respective price list applicable on the order date.
- (2) For small orders we charge a minimum quantity surcharge based on the current price list valid at the order time.
- (3) Unless otherwise agreed the following payment conditions shall apply:
 - payment within 10 days from date of invoice: 2 % discount,
 - payment within 30 days net from date of invoice.This shall also apply to partial deliveries. Repair invoices shall immediately become due and payable without a discount. Payment by the customer shall not be deemed to have been made until the amount is credited on our account. In case of payment by check, payment is considered rendered once the check has been cashed in.
- (4) The retention of payments or the set-off because of any counter-claims shall only be admissible in case of uncontested, acknowledged or legally recognized counter-claims of the customer.

D. Delivery dates, impossibility of delivery, partial delivery, delay in acceptance

- (1) The delivery dates shall only be binding if explicitly confirmed by us in writing. The delivery time shall commence on the date of order confirmation.
However, this shall only apply in case all technically and otherwise contractually relevant details have been clarified with the ordering party (such as a down payment, material supply etc.) and the ordering party has completely fulfilled the required obligations to cooperate in time. If this is not the case the delivery time shall be extended accordingly, unless SCHWENK LMT is responsible for the delay.
- (2) We reserve the right to object to unfulfilled contracts.
- (3) The delivery time shall be deemed to have been met if the object of delivery has left SCHWENK LMT's works in Fellbach by the expiry of the delivery period or the readiness for dispatch has been communicated.
- (4) In case shipment or acceptance of the object is delayed for reasons within the customer's responsibility, the customer shall bear the costs incurred due to the delay as of one month after notice of readiness for delivery and/or acceptance has been given.
- (5)) In case the delivery time is delayed due to force majeure, strike or other events beyond the scope of influence of SCHWENK LMT, the delivery period shall be extended accordingly. SCHWENK LMT shall inform the ordering party on the beginning and end of such circumstances as soon as possible.
- (6) The ordering party can withdraw from the contract without setting a grace period if SCHWENK LMT is definitely unable to fulfill all his obligations under this contract before the transfer of risk.
Furthermore, the ordering party can withdraw from the contract if the execution of a part of the delivery becomes impossible or in case the ordering party has a legitimate interest in rejecting partial delivery. If this is not the case the ordering party shall pay the contractually agreed price for the partial delivery. The same shall apply in case of impossibility of performance of SCHWENK LMT. Apart from that H and M shall apply.
- (7)) In case of a delay in acceptance caused by the customer or in case he culpably infringes his / her obligation to cooperate, SCHWENK LMT shall be entitled to claim for damages, including additional expenditure. The right to assert further claims or rights shall remain unaffected.
- (8) In case the prerequisites of paragraph (4) shall apply, the risk of accidental loss or deterioration of the purchase object shall be transferred to the customer at the time when the latter has got into arrears of acceptance or payment of debts.
- (9) Partial deliveries are admissible if the deliveries can be divided and are (reasonably) acceptable to the ordering party. SCHWENK LMT is entitled to claim partial payments and down payments in this respect.

E. Transfer of risks

- (1) The risk of accidental loss or accidental deterioration shall be transferred to the ordering party once the delivery object has been handed over to the transport company (also in case partial deliveries are made or in case SCHWENK LMT has also taken over other items, e. g. transport costs or delivery and installation.
- (2) In case delivery and acceptance are delayed or not possible due to circumstances beyond SCHWENK LMT's responsibility, the risk shall be transferred to the ordering party as of the time of receipt of the notification on the readiness for shipment. On explicit and written request and on expense of the customer, insurance can be concluded for the goods.

F. Packing

Unless individually agreed on in the contract, packing shall be charged at cost price. On request, the packaging material will be taken back on delivery.

G. Reservation of title

- (1) All the goods delivered shall remain our property until complete fulfillment of all existing or future claims arising out of the business relationship with the customer.
If the customer acts in a way contrary to the contractual obligations, in particular in case of default of payment we are entitled to take back the delivered goods. In case insolvency proceedings are opened against the customer, SCHWENK LMT is entitled to withdraw from the contract and demand the immediate return of the object of delivery. SCHWENK LMT's taking back of the goods delivered shall not constitute a withdrawal from the contract. After taking back the goods SCHWENK LMT is entitled to dispose of them; the revenue from such utilization must be set off against the customer's liabilities minus any reasonable costs of utilization.
- (2) In the event of seizures or other action by third parties, the customer shall notify us immediately in writing so we can file a lawsuit in accordance with sec. 771 German Code of Civil Procedure (ZPO). Unless the third party is able to refund the court and out-of-court costs incurred by us in accordance with sec. 771 German Code of Civil Procedure (ZPO), the customer shall be liable for any losses incurred by us.

- (3) The customer is entitled, subject to revocation, to the intended further sale of the delivered goods in the framework of the ordinary course of business. Already now, the customer transfers all claims to the amount of the final invoice amount (including VAT) of our claim, which arises from reselling the goods to his customers or third parties. We hereby accept the assignment. The assigned claims serve to secure all claims in accordance with paragraph 1. On our request the customer is obliged to immediately disclose the assignment to his customers and to provide the information and documents necessary to assert our rights.
 - (4) For the time of the reservation of title the goods shall be treated with due care and the customer shall sufficiently insure the goods, at the original value and at his expense, against fire, water and theft.
 - (5)) On the ordering party's request, SCHWENK LMT is obliged to release the securities to which the ordering party is entitled to if the realizable value of the security, taking into account the downward valuation adjustment, which is customarily used by banks, exceeds the receivables arising from the business transaction with the customer to secure by more than 15 %.
- As regards the evaluation, the invoiced value of the products subject to retention of title and, the nominal value of receivables shall be authoritative. The selection of the items to be released in detail lies at the discretion of SCHWENK LMT.

H. Warranty

- (1) SCHWENK LMT shall assume warranty that the delivered goods are suitable for the use designated in the contract and that they are free of defects.
- (2) The goods shall be checked and verified on receipt. Any obvious defects of the goods shall be immediately, and at the latest within two weeks as of receipt of the goods, contested in writing. Hidden defects must be reported within 2 weeks after discovery of the defect.
Otherwise, the goods are regarded as complete and delivered without faults.
- (3) In case the goods are defective SCHWENK LMT may choose, at its own discretion, repair or replacement. For the repair option, the defective parts shall be sent to SCHWENK LMT's headquarters. Repair works will not be implemented at the place of use. If SCHWENK LMT fails to provide repair or replacement, the ordering party is entitled to reduce the purchase price accordingly or to withdraw from the contract. In order to carry out all subsequent improvements and replacement deliveries deemed necessary to SCHWENK LMT in our fair judgment the ordering party shall grant SCHWENK LMT the necessary time and opportunity.
- (4) The ordering party's right to assert claims on grounds of default is subject to the statute of limitations after 1 year from the time of transfer of risks.
- (5) No warranty is given for damage resulting from any of the following causes: improper or inappropriate use or storage, defective installation or commissioning by the ordering party or a third person, normal wear and tear, dirt, incorrect or negligent handling, in particular excessive usage, improper operating and cleaning agents, substitute materials, chemical, electrochemical or electrical influences unless the damage can be attributed to SCHWENK LMT. The same applies if the labeling by the manufacturer (serial or article number, model name etc.) has been removed or made illegible.
- (6) SCHWENK LMT shall not be liable for damages, which are the result of the design prescribed by the ordering party or the material supplied by the ordering party.

I. Return of goods, conditions of return, delivery, repairs

- (1) In principle, properly ordered and delivered goods shall not be taken back. Following different, previous agreements, the return shipment shall be made by the customer free of charge. The goods must be properly packed and transported. Any costs for rework necessary due to an infringement of this obligation shall be borne by the ordering party.
- (2) For return consignments for which SCHWENK LMT does not account (e.g. erroneous order), we charge administrative costs to the amount of 20 % of the value of the goods and a minimum of 20 Euro.
- (3) If a cost estimate is requested for repairs sent to us, the checking and handling charges for preparing the cost estimate will be charged at a flatrate of 17 Euro. In case of an order (repair or new gauge) no flatrate is applicable.

J. Samples

Samples will be charged.

K. Tool costs

Unless other agreements have been made, the tools, moulds and devices made for executing the order shall remain our property. This also applies in case the costs have been invoiced (in part or total) to the customer.

L. Custom-made products

For custom-made products, binding information must be provided in writing on the execution, amount etc. in the order. Changes or omissions are only possible within one week after receipt of the order. Any subsequent changes or omissions will incur costs. Custom-made products cannot be returned.

M. Liability, exclusion of liability

- (1) We are liable in accordance with the statutory provisions insofar as the customer asserts claims for damages caused by intent or gross negligence, including intent or gross negligence of our representatives or agents. Insofar as we cannot be charged with intentional or grossly negligent breach of contract the liability for damages is limited to a predictable damage that might typically occur.
- (2) If the delivered object cannot be used by the ordering party for the purposes agreed upon in the contract due to the fault of SCHWENK LMT, the provisions according to M, N are to be applied, to the exclusion of further claims by the customer.
- (3) We do not assume warranty for damages caused by erroneous use of the goods, in particular inappropriate or improper use or storage, incorrect assembly by the client or third parties, unauthorized repair attempts and changes, normal wear and tear, erroneous or negligent treatment etc. beyond our influence and control and in case of unintended use or ignorance of our manuals.
- (4) SCHWENK LMT makes no warranties, in particular no guarantees regarding quality or durability, unless otherwise agreed in writing.
- (5) The limitation period in case of delivery regress is based on the statutory provisions.
- (6) Any additional claim for compensation other than the aforementioned in "M" is, regardless of the legal nature of the asserted claim, excluded.
- (7) Unless otherwise specified or unless mandatory statutory regulations stipulate something else, our liability is excluded. The aforementioned limitation of liability shall not apply to claims for damages of the ordering party in case of injury to life, body or health and for mandatory claims according to the product liability or medicine act (e.g. double sections 1.4 German ProdukthaftG, etc.).
- (8) As far as the liability for compensation against us is excluded or restricted, this shall be applicable as well with respect to the personal liability for compensations of our employees, staff members, representatives and vicarious agents.

N. Data protection

We expressly point out to our business partners that we store and process personal data by use of electronic data processing tools in accordance with the regulations of the Federal Data Protection Act.

O. Jurisdiction, German law, contract language, severability clause

- (1) Our business headquarters is the place of performance (to the extent that the customer is a merchant) and also the place of jurisdiction. We are, however, authorized to sue the customer at the court of his place of residence.
- (2) The law of the Federal Republic of Germany shall apply. The terms of the UN Sales Convention shall not apply. The contract language is German.
- (3) Should one of the terms of the General Terms and Conditions become invalid or be or become impracticable, the validity of the remaining sections is not affected.