

## Sales and Delivery Terms and Conditions

Schwer Fittings GmbH, Deutschland

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### Important notice:

This English translation is provided for convenience and information purposes only. The contractual language is German. In the event of any discrepancy, inconsistency or conflict between the English and German versions, the German version shall prevail and be legally binding.

### 1. General

- 1.1 These Sales and Delivery Terms and Conditions shall apply to all business relationships of Schwer Fittings GmbH (hereinafter referred to as the "Supplier") with entrepreneurs (Section 14 German Civil Code (BGB)), legal entities under public law and special funds under public law (hereinafter referred to as the "Customer").
- 1.2 These Sales and Delivery Terms and Conditions shall apply exclusively. Any deviating, conflicting or supplementary terms and conditions of the Customer shall become part of the contract only if and to the extent that the Supplier has expressly agreed to their validity. This requirement of consent shall apply in all cases, including, for example, where the Customer refers to its own terms and conditions within the scope of an order and the Supplier does not expressly object thereto.
- 1.3 Unless otherwise agreed, the Supplier's Sales and Delivery Terms and Conditions, in the version valid at the time of the Customer's order or, in any event, in the version most recently communicated to the Customer in text form, shall also apply as a framework agreement to future contracts of a similar nature without the need for the Supplier to refer to them again in each individual case.

### 2. Offers and Contract Formation

- 2.1 All offers made by the Supplier are subject to change and non-binding. The Customer's order of goods shall constitute a binding contractual offer. The Supplier may accept such offer either by issuing an order confirmation or by delivering the goods and/or performing the agreed services.
- 2.2 Framework orders (including quantity contracts, call-off orders and similar arrangements) shall become binding upon confirmation by the Supplier. The Supplier shall be entitled to pre-produce the entire quantity covered by such framework order and to invoice any quantities not called off by the Customer upon expiry of the agreed call-off period.

### 3. Prices and Terms of Payment

- 3.1 Unless expressly agreed otherwise, all invoices shall be due and payable immediately and without deduction. The Customer shall be deemed in default without any reminder being required 14 calendar days after the due date and receipt of the invoice. The date of receipt of payment by the Supplier shall be decisive for determining timely payment. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. The Supplier reserves the right to assert any further damages resulting from the Customer's default. In transactions with merchants, the Supplier's entitlement to commercial maturity interest pursuant to Section 353 of the German Commercial Code (HGB) shall remain unaffected.
- 3.2 New customers shall, in principle, be supplied only against advance payment. The Supplier shall be entitled, at any time, including within the framework of an ongoing business relationship, to make delivery, in whole or in part, conditional upon advance payment. The Supplier shall declare any such reservation no later than upon issuance of the order confirmation.
- 3.3 All prices are stated Ex Works (EXW) and are exclusive of value added tax (VAT), packaging costs, as well as any additional fees and other public charges (for example customs duties in the case of export deliveries).
- 3.4 Certificates and inspection reports shall, insofar as they can be provided by the Supplier, generally be issued only upon prior agreement and against payment.
- 3.5 The Customer shall be entitled to set-off rights or rights of retention only insofar as its counterclaims are undisputed or have been finally adjudicated by a court of law. In the event of defects in the delivery, the Customer's statutory rights and remedies, in particular those set out in Section 7.4 of these Sales and Delivery Terms and Conditions, shall remain unaffected.
- 3.6 The Supplier shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after conclusion of the contract, circumstances become known to the Supplier which are likely to materially reduce the Customer's creditworthiness and which jeopardise payment of the Supplier's outstanding claims arising from the respective contractual relationship, including claims arising from other individual orders governed by the same framework agreement.

### 4. Delivery and Delay

- 4.1 Delivery shall be made from the Supplier's shipping warehouse (EXW Incoterms® 2020), which shall also be the place of performance for the delivery and any subsequent performance (Nacherfüllung). At the Customer's request and expense, the goods shall be shipped to another destination (sale involving carriage of goods). The Supplier shall be entitled to make partial deliveries.
- 4.2 Where goods are manufactured in accordance with specifications provided by the Customer, the Supplier reserves the right to make over-deliveries or under-deliveries of up to 10%. The Customer shall be responsible for ensuring that its specifications do not infringe any third-party intellectual property rights (including protected designs or similar rights). The Customer shall indemnify and hold harmless the Supplier against all claims asserted by rights holders arising from such infringement of intellectual property rights.
- 4.3 Where shipment has been agreed, any delivery periods and delivery dates shall refer to the time at which the goods leave the Supplier's warehouse or at which the Supplier notifies the Customer that the goods are ready for dispatch.
- 4.4 If shipment is delayed for reasons falling within the Customer's sphere of responsibility, the risk shall pass to the Customer as of the date on which readiness for dispatch is notified. Beginning one month after notification of readiness for dispatch, the Customer shall be charged for storage costs incurred, but in any event not less than 0.5% of the invoice amount for each month commenced. Evidence of higher damages and the Supplier's statutory claims (including, but not limited to, reimbursement of additional expenses, reasonable compensation and termination rights) shall remain unaffected; however, any flat-rate charge shall be credited against further monetary claims. The Customer shall be entitled to prove that no damage whatsoever, or substantially less damage than the foregoing lump-sum amount, has actually been incurred by the Supplier.
- 4.5 The Customer shall ensure that any damage to the transport packaging is certified by the carrier upon delivery of the goods. In addition, the statutory provisions regarding inspection of incoming goods and notification of defects shall apply.
- 4.6 The goods are, in part, manufactured only after receipt of the Customer's order. Manufacturing and delivery periods therefore depend upon factors over which the Supplier has only limited control. Accordingly, the Supplier shall not be liable for impossibility of delivery or for delays in delivery insofar as such impossibility or delay is caused by force majeure (including, for example, natural disasters, war or civil unrest) or by other events which were not foreseeable at the time of conclusion of the contract and for which the Supplier is not responsible. Such events include, without limitation: operational disruptions of any kind, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining required governmental permits or approvals, governmental measures or failure by the Supplier's own suppliers to deliver, to deliver correctly or to deliver on time.  
Insofar as such events substantially hinder or render impossible the Supplier's performance and the impediment is not merely of a temporary nature, the Supplier shall be entitled to withdraw from the contract. Where the impediment is of a temporary nature, delivery or performance periods shall be extended, and delivery or performance dates postponed, by the duration of the impediment plus a reasonable restart period.

## 5. Retention of Title

- 5.1 Goods supplied by the Supplier shall remain the property of the Supplier until all claims arising from the entire business relationship with the Customer have been satisfied in full (extended retention of title securing all claims arising from the business relationship).
- 5.2 Goods subject to retention of title may neither be pledged to third parties nor assigned by way of security prior to full payment of the secured claims. The Customer shall notify the Supplier in writing without undue delay if an application for the commencement of insolvency proceedings is filed or if third parties gain access to goods belonging to the Supplier (e.g. by way of attachment or seizure).
- 5.3 In the event of a breach of contract by the Customer, in particular in the event of non-payment of the purchase price when due, the Supplier shall be entitled, in accordance with the statutory provisions, to withdraw from the contract and/or demand the return of the goods on the basis of the retention of title. A demand for return of the goods shall not at the same time constitute a declaration of withdrawal from the contract; rather, the Supplier shall be entitled merely to demand return of the goods while reserving the right to withdraw from the contract. If the Customer fails to pay the purchase price when due, the Supplier may assert these rights only if the Supplier has previously set the Customer a reasonable deadline for payment without success, unless such deadline is dispensable under the applicable statutory provisions.
- 5.4 The Customer shall, until revoked in accordance with subsection (c) below, be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In such case, the following additional provisions shall apply:
- (a) The retention of title shall extend to the products resulting from the processing, mixing or combination of the Supplier's goods at their full value, whereby the Supplier shall be deemed to be the manufacturer. If, in the event of processing, mixing or combination with goods of third parties, the ownership rights of such third parties continue to exist, the Supplier shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods.
- In all other respects, the same provisions applicable to goods delivered subject to retention of title shall apply to the resulting product.
- (b) The Customer hereby assigns to the Supplier, by way of security, all claims arising against third parties from the resale of the goods or the resulting products, or, where applicable, a corresponding portion thereof equal to the Supplier's co-ownership share pursuant to the preceding paragraph. The Supplier hereby accepts such assignment. The obligations of the Customer set out in Section 5.2 shall also apply with regard to the assigned claims.
- 5.5 (c) The Customer shall remain authorised to collect the assigned claims in addition to the Supplier. The Supplier undertakes not to collect such claims as long as the Customer duly fulfils its payment obligations towards the Supplier, no deficiency in the Customer's ability to perform exists, and the Supplier does not assert its rights under the retention of title by exercising a right pursuant to Section 5.3. If, however, any of the foregoing circumstances occurs, the Supplier may require the Customer: to disclose the assigned claims and the respective debtors, to provide all information necessary for collection, to hand over the relevant documentation and to notify the debtors (third parties) of the assignment.
- In such case, the Supplier shall furthermore be entitled to revoke the Customer's authority to resell and process the goods subject to retention of title.

## 6. Liability

- 6.1 Unless otherwise provided in these Sales and Delivery Terms and Conditions, including the provisions set out below, the Supplier shall be liable for breaches of contractual and non-contractual obligations in accordance with the applicable statutory provisions.
- 6.2 Irrespective of the legal basis, the Supplier shall be liable for damages within the scope of fault-based liability in cases of intent and gross negligence. In cases of ordinary negligence, subject to statutory limitations of liability (for example, with regard to the standard of care exercised in one's own affairs or in the event of an insignificant breach of duty), the Supplier shall be liable only: (a) for damages arising from injury to life, body or health; and (b) for damages arising from the breach of a material contractual obligation, being an obligation the fulfilment of which is essential for the proper performance of the contract and upon the observance of which the contractual partner regularly relies and may reasonably rely. In the case referred to under subsection (b), however, the Supplier's liability shall be limited to compensation for foreseeable damage typically occurring in the ordinary course of events.
- 6.3 The limitations of liability set out in Section 6.2 shall also apply vis-à-vis third parties and in the event of breaches of duty by persons whose fault the Supplier is responsible for under the statutory provisions (including where such provisions operate in favour of such persons). They shall not apply where a defect has been fraudulently concealed, where a guarantee as to the quality or characteristics of the goods has been assumed, or with respect to claims asserted by the Customer under the German Product Liability Act (Produkthaftungsgesetz).
- 6.4 In the event of a breach of duty that does not consist of a defect, the Customer shall be entitled to withdraw from or terminate the contract only if the Supplier is responsible for such breach of duty. Any right of termination for convenience of the Customer (in particular pursuant to Sections 650 and 648 of the German Civil Code (BGB)) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## 7. Warranty and Limitation Period

- 7.1 The Supplier warrants that the goods delivered conform to the specifications set out in the product description. The Supplier shall warrant the suitability of goods for a particular application only where such suitability has been expressly confirmed in text form. Where there is any doubt as to the suitability of a product for a particular intended application, the Customer should first order a sample and test it under the specific operating conditions applicable to the intended use.
- 7.2 The technical properties of the Supplier's products shall be subject to tolerances. The Supplier's products shall be deemed free from defects if the delivered products fall within the applicable standard tolerances with regard to dimensions. In the case of goods with digital elements or other digital content, the Supplier shall provide and, where applicable, update such digital content only to the extent expressly agreed in a quality or specification agreement. To that extent, the Supplier assumes no liability for public statements made by the manufacturer or other third parties.
- 7.3 As a matter of principle, the Supplier shall not be liable for defects of which the Customer is aware at the time of conclusion of the contract or of which the Customer remains unaware due to gross negligence (Section 442 BGB). Furthermore, any warranty claims of the Customer shall be subject to the Customer having complied with its statutory duties of inspection and notification of defects pursuant to Sections 377 and 381 HGB. In the case of construction materials and other goods intended for installation, incorporation or further processing, inspection shall in all cases be carried out immediately prior to such installation, incorporation or processing. If a defect becomes apparent upon delivery, during inspection or at any subsequent point in time, the Supplier shall be notified thereof in writing without undue delay. In all cases, obvious defects must be notified in writing within five working days of delivery, and defects not identifiable during inspection must be notified in writing within five working days of their discovery. If the Customer fails to carry out a proper inspection and/or fails to notify defects properly and in a timely manner, the Supplier's liability for the defect not properly or timely notified shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation, mounting or incorporation, this shall also apply where the defect becomes apparent only after such installation, mounting or incorporation as a result of a breach of one of the foregoing obligations. In such case, the Customer shall, in particular, have no claim for reimbursement of corresponding costs of removal and reinstallation ("removal and reinstallation costs"). If goods delivered or services rendered by the Supplier prove to be defective, the Supplier shall be obliged, at its discretion, to remedy the defect or to provide a replacement delivery. In the event of a replacement delivery, the Customer shall return the defective goods to the Supplier in accordance with the statutory provisions.
- 7.4 The Supplier shall be entitled to make the performance of its obligation of subsequent performance (Nacherfüllung) conditional upon payment by the Customer of the purchase price due. The Customer shall, however, be entitled to withhold a portion of the purchase price that is reasonable in relation to the defect.
- 7.5 The Supplier shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, where applicable, removal and reinstallation costs, in accordance with the statutory provisions and these Sales and Delivery Terms and Conditions, provided that a defect actually exists. Otherwise, the Supplier may demand reimbursement from the Customer of the costs incurred as a result of an unjustified request for remedy of a defect if the Customer knew or ought reasonably to have known that no defect actually existed.
- 7.6 The limitation period for claims based on defects shall be one year from delivery or, where acceptance is required, from acceptance. The foregoing limitation periods under the law governing sales contracts shall also apply to contractual and non-contractual claims for damages asserted by the Customer which are based on a defect in the goods, unless

application of the ordinary statutory limitation periods pursuant to Sections 195 and 199 BGB would result in a shorter limitation period in the individual case. Any delivery of used goods agreed separately with the Customer shall take place to the exclusion of any warranty for material defects. Claims for damages of the Customer pursuant to Section 6.2, sentence 1 and sentence 2(a), as well as claims under the German Product Liability Act (Produkthaftungsgesetz), shall become time-barred exclusively in accordance with the applicable statutory limitation periods.

## **8. Information and Technical Advice**

The Supplier's information, advice and recommendations are provided without obligation and to the exclusion of any liability unless the Supplier has expressly undertaken, in text form, to provide such information, advice or recommendations. It shall be the Customer's responsibility to determine, by means of its own testing and trials, whether a product is suitable for the Customer's specific intended applications. Any information and advice provided by the Supplier shall not constitute a guarantee or agreement as to the quality or characteristics of the Supplier's products.

## **9. Governing Law, Jurisdiction and Place of Performance**

- 9.1 The place of performance for all obligations of both the Supplier and the Customer shall be the Supplier's registered office, unless otherwise stipulated or unless a different place of performance results from the nature of the respective obligation.
- 9.2 These Sales and Delivery Terms and Conditions and all contractual relationships between the Supplier and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 9.3 The exclusive place of jurisdiction shall be the Supplier's registered office. The Supplier shall furthermore be entitled to bring claims before the courts having jurisdiction at the Customer's general place of jurisdiction. Mandatory statutory provisions, in particular those regarding exclusive jurisdiction, shall remain unaffected.