

# General Terms and Conditions of Sale of SCHMITT-Kreiselpumpen GmbH & Co. KG

Last update: September 2014

## 1. General – scope

- 1.1 Our conditions of sale apply exclusively. We shall not recognise the Customer's opposing conditions or conditions that vary from our conditions of sale unless we had expressly approved the validity of such conditions in writing. Our conditions of sale also apply if we are aware of opposing conditions of the Customer or conditions of the Customer that differ from our conditions of sale while unconditionally providing performance for the Customer.
- 1.2 All agreements entered into by us and the Customer for the purpose of executing this contract are set out in this contract.
- 1.3 Our conditions of sale only apply to dealings with entrepreneurs within the meaning of Section 310(1) BGB [German Civil Code].

## 2. Offer – offer documents

- 2.1 Our offer is subject to change without notice provided nothing to the contrary is stated in the order confirmation.
- 2.2 We reserve ownership rights and copyright to diagrams, drawings, calculations and other documents. This also applies to written documents described as "confidential". The Customer is required to obtain our express, written approval prior to forwarding these to third parties.

## 3. Prices – payment conditions

- 3.1 In the absence of provisions to the contrary in the order confirmation, our prices apply as "ex works" prices and do not include packaging. This shall be invoiced separately. .
- 3.2 Statutory value added tax is not included in our prices. It shall be stated separately in the invoice at the statutory rate on the invoicing date.
- 3.3 Trade discounts are subject to a separate, written agreement.
- 3.4 In the event of agreed discounts on our prices, we reserve the right to request payment of the price prior to granting the discount if the Customer is in default of payment regarding his payment obligation for longer than 2 months.
- 3.5 The Customer shall only be granted the right to set off if his counter-claims are res judicata, undisputed or have been acknowledged by us. In addition, the Customer shall only be authorised to exercise a right of retention if his counter-claim is based on the same contractual relationship.

## 4 Delivery time

- 4.1 The start of the delivery time stated by us is conditional on the clarification of all technical matters.
- 4.2 We shall be entitled to withdraw from the contract insofar as we do not receive deliveries from one or our suppliers, do not receive such deliveries in good time or such deliveries are incomplete irrespective of previously entering into corresponding purchase contracts, and as a result we are unable to deliver the object of sale. This does not affect our responsibility with regard to intent and negligence. We shall inform the Customer without delay of the inability to deliver and if we wish to withdraw from the contract shall exercise the withdrawal right without delay. In the event of withdrawal, we shall reimburse the Customer for the respective counter-performance.
- 4.3 Furthermore, honouring our delivery obligation is conditional on the timely and proper honouring of the obligation on the part of the Customer. The parties reserve the right to object to a contract that has not been honoured.
- 4.4 If the Customer defaults in acceptance or culpably violates other co-operation obligations, we shall be entitled to request reimbursement for the damage we sustained, including additional expenses that may apply. Further-reaching claims or rights are reserved.
- 4.5 Insofar as the preconditions of sub-section 4.3 apply, the risk of accidental loss of or accidental deterioration in the object of sale shall pass

to the Customer at the time at which the Customer defaults in acceptance or defaults as debtor.

- 4.6 We are liable in accordance with the statutory provisions insofar as the contract of purchase taken as a basis is a fixed business transaction within the meaning of Section 286(2) No. 4 BGB or Section 376 HGB [German Commercial Code]. We are also liable in accordance with the statutory provisions insofar as the Customer is entitled, as a result of a default in delivery that is our responsibility, to assert its interest in the continued execution of the contract in the event of cessation.
- 4.7 We are furthermore liable in accordance with the statutory provisions insofar as the default in delivery is attributable to intentional or gross negligent breach of contract that is our responsibility. Culpability on the part of our representatives or vicarious agents is to be attributed to us. Insofar as the default in delivery is attributable to gross negligent breach of contract that is our responsibility, our liability for damages shall be limited to foreseeable, typical cases of damages.
- 4.8 We are also liable in accordance with the statutory provisions provided the default in delivery that is our responsibility is attributable to the culpable violation of a key contractual obligation. However, in such a case liability for damages shall be limited to foreseeable, typical cases of damage.
- 4.9 The Customer is reserved the right to assert additional statutory claims and rights.

## 5. Passing of risk – packaging costs

- 5.1 Unless otherwise stated in the confirmation of order, deliveries shall be agreed upon as "ex works".
- 5.2 Packaging material shall be invoiced at cost price, and shall not be taken back.
- 5.3 Where requested by the Customer, we shall take out transport insurance for the delivery. Insofar as costs are incurred in that respect, these shall be borne by the Customer.

## 6. Liability for defects

- 6.1 Customers' claims regarding defects are conditional on the fact that customers have properly honoured their obligations to inspect and provide notification of defects in accordance with Section 377 HGB.
- 6.2 Insofar as the object of sale contains a defect, we shall be entitled, at our discretion, to provide subsequent performance in the form of rectifying the defect or deliver a new fault-free item. In the event of the rectification of a defect or a replacement delivery, we undertake to carry all expenses required for the purpose of providing subsequent performance, in particular transport, transportation, work and material costs, insofar as these are not increased because the object of sale was brought to a location other than the place of performance.
- 6.3 If the subsequent performance fails, the Customer shall be entitled at its discretion to withdraw from the contract or request a reduction in price.
- 6.4 We shall be liable in accordance with the statutory provisions provided the Customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as blame for intentional breach of contract is not apportioned to us, liability for compensatory damages shall be limited to foreseeable, typical damage.
- 6.5 We shall be liable in accordance with the statutory provisions provided we culpably violate a key contractual obligation. However, in such a case, liability for compensatory damages shall be limited to foreseeable, typical damage.
- 6.6 Insofar as the Customer is entitled in other respects to assert a claim for compensatory damages instead of the performance because of a negligent violation of an obligation, our liability shall be limited to foreseeable, typical damage.

6.7 This does not affect liability regarding the loss of life, physical injury or detrimental effects on health. This also applies to obligatory liability in accordance with the German Product Liability Act.

6.8 In the absence of provisions to the contrary above, liability is excluded.

## **7. Overall liability**

7.1 Liability for compensatory damages that extends beyond that provided for in sub-section 6 is excluded – without consideration given to the legal nature of the asserted claim. This applies, in particular, to claims for damages resulting from culpability in the case of entering into the contract, regarding other violations of obligations or regarding tortious claims for compensation resulting from material damage in accordance with Section 823 BGB.

7.2 The limitation in accordance with sub-section 7.1 also applies insofar as the Customer requests in the place of a claim for damages instead of the performance requests compensation for expenses incurred in vain.

7.3 Insofar as claims for damages against us are excluded or restricted, this shall also apply with regard to the personal to pay compensatory damages of our white collar workers, employees, workers, representatives or vicarious agents.

## **8. Securing reservation of title**

8.1 We reserve ownership of the object of sale up until receipt of all payments resulting from the contract of purchase. In the event of conduct in breach of contract on the part of the Customer, in particular default in payment, we shall be entitled to take back the object of sale. Taking back the object of sale does not constitute withdrawal from contract on our part. After taking back the object of sale, we shall be entitled to utilise it and the utilisation proceeds are to be set off against the Customer's liabilities - less reasonable utilisation costs.

8.2 The Customer undertakes to treat the object of sale with due care. The Customer undertakes, in particular, to adequately insure it at replacement value at his own cost against damage caused by fire, water and against theft. Insofar as servicing and inspection work is required, the

Customer is required to have such work performed in good time at his own cost.

8.3 In the case of seizure or other intervention by third parties, the Customer is to inform us in writing without delay so that we can bring legal action in accordance with Section 771 ZPO [German Code of Civil Procedure]. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs regarding legal action in accordance with Section 771 ZPO, the Customer shall be liable for the shortfall we sustain.

8.4 If the object of sale is inseparably mixed with other items that we do not own, we shall acquire co-ownership of the new item in the proportion of the value of the object of sale (invoice amount, including VAT) to that of the other mixed items at the time of mixing. If the mixing is performed in such a manner that the Customer's item is to be regarded as the primary item, it shall be deemed agreed upon that the Customer shall assign proportionate co-ownership to us. The Customer shall store the item with sole or co-ownership created in this manner gratuitously on our behalf.

8.5 We undertake, at the Customer's request, to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the receivables to be secured by more than 10%. Selecting the securities to be released is incumbent upon us.

## **9. Place of jurisdiction - place of performance**

9.1 Our registered office is deemed the place of jurisdiction. However, we are also entitled to bring legal action against customers at the court with jurisdiction for their registered office.

9.2 The law of the Federal Republic of Germany applies. The validity of the UN Convention on Contracts for the International Sale of Goods is excluded.

9.3 Our registered office is deemed the place of performance in the absence of details to the contrary in the order confirmation.