

TERMS AND CONDITIONS OF DELIVERY AND BUSINESS OF SCHÄFFER MASCHINENFABRIK GMBH (Revised: February 2024)

Section 1 – General; Scope

1.1 These Terms and Conditions of Delivery and Business (the “Terms and Conditions”) govern all our business dealings with our customers. Our Terms and Conditions apply to the exclusion of all other terms. We do not acknowledge any conflicting or supplementary terms and conditions of customer unless we have expressly agreed to the application thereof in writing. Our Terms and Conditions are effective including in those cases where we make an unconditional delivery to customer regardless of being aware of conflicting or deviating terms and conditions of customer. Our Terms and Conditions are binding only upon commercial enterprises within the meaning of section 1 para. 1 of the German Civil Code (BGB).

1.2 The version of our Terms and Conditions last used for customer also has the effect of a framework agreement for future business dealings, including without limitation for future deliveries, without having to be referred to again in each individual case.

Section 2 – Signing of Contract; Offer; Offering Documents

2.1 Our quotations are subject to change without notice. This applies also in the event that we have provided customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or records – including in electronic format – the title and copyright of which we reserve. Customer is not entitled to disclose any of the above to third parties except with our express written consent.

2.2 Customer's purchase order is deemed to be a binding offer to contract which we may accept within a period of four weeks.

2.3 The offer to contract is deemed accepted when we send an order confirmation and/or invoice to customer, or at the latest upon delivery of the goods.

Section 3 – Delivery

3.1 Any binding or non-binding delivery dates or deadlines which are agreed on an individual basis or may be given by us upon acceptance of the purchase order by means of acknowledgement of order are valid and/or begin upon our acknowledgement of order only if all technical and commercial questions related to the delivery have been answered conclusively, unless Schäffer is responsible for failure to provide such answers. The fulfilment of our obligation to deliver is conditional upon timely and proper performance of all obligations customer may have. We reserve the defence of non-performance of the contract.

3.2 Insofar as we are unable to meet binding delivery dates and/or delivery periods for reasons beyond our control (unavailability of goods and/or services), we shall endeavour to notify customer immediately, at the same time informing customer of the expected delivery period. If the goods and/or services are unavailable within the newly defined delivery period, we are entitled to rescind the contract in whole or in part in which case we shall immediately reimburse to customer the consideration already paid in this context.

3.3 Unavailability of goods and/or services within the meaning of Section 3.2 hereof occurs, for example, in the event of delayed delivery by our own supplier; if we have entered into a congruent covering transaction (kongruentes Deckungsgeschäft); in the event of other disruptions in the supply chain, for example due to force majeure, strikes, lockouts; or if we are under no obligation to procure the items in an individual case.

3.4 We are deemed in default (as defined by the law) only after notification thereof by customer (at least in textual form, e.g. by email).

3.5 The rights of customer pursuant to Section 7 of these Terms and Conditions and our own statutory rights, including without limitation in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

Section 4 – Prices and Terms of Payment

4.1 Except as expressly agreed otherwise, all prices are “ex works” (in acc. with Incoterms© 2020) and do not include packaging. Prices do not include the statutory value-added tax effective on the day of invoicing.

4.2 Deduction of a discount is subject to a special agreement (at least in textual form, e.g. email).

4.3 If more than four months have passed from the conclusion of the contract until the date of delivery, our prices as effective at the time of delivery or supply apply.

4.4 Customer is entitled to set off claims or to exercise any right of retention only insofar as customer's claim is undisputed or has been acknowledged by court judgment. Customer's counterclaims remain unaffected in the event of defective or damaged shipments. In addition, customer is entitled to exercise a right of retention only insofar as customer's counterclaim is based on the same contractual relationship.

4.5 If after conclusion of the contract it becomes apparent that our claim to payment of the purchase price is at risk due to customer's inability to pay (e.g. as a result of a petition in bankruptcy), we are legally entitled to refuse performance and/or to rescind the contract after setting a deadline if necessary (section 321 of the BGB). In the event of contracts for the production of custom items (made to order items) we are entitled to rescind immediately; the legal provisions regarding the dispensability of setting a deadline remain unaffected. In addition, we are entitled to revoke payment deadlines we may have granted and to demand immediate payment of accounts receivable.

4.6 If we have agreed on partial payments or payment by instalments with our customer and our customer defaults on more than two partial payments or instalments, the entire unpaid balance becomes payable immediately.

Section 5 – Dispatch and Passage of Risk

5.1 Unless otherwise provided, delivery is “ex works” (in acc. with Incoterms© 2020). The risk passes to our customer as soon as the goods have been handed over to customer. At the request of customer, the goods are shipped to a different destination at customer's expense (“sale by dispatch” within the meaning of the BGB). Unless otherwise agreed, we are entitled to choose the type of shipment (including without limitation carrier, shipment method, packaging). In this case, the risk passes to our customer as soon as the goods have been handed over to the carrier and/or have been dispatched from our works. If shipping is delayed at the request of customer, the risk passes to customer upon notification that the goods are ready for shipment.

5.2 At the request of customer, we shall take out transport insurance for the shipment in the name of customer; customer shall bear the costs of such transport insurance.

Section 6 – Defects Liability and Other Liability

6.1 In accordance with section 434 para. 2, no. 1 of the BGB, our liability for defects is based primarily on the agreements made on the condition of the goods, including without limitation product descriptions and operating manuals and more specifically the limitations of use and maintenance requirements contained therein, which were provided to customer prior to customer's purchase order or were included in the contract in the same manner as the present Terms and Conditions. However, we assume no liability for public statements made by third parties, including without limitation advertising messages.

6.2 We assume no liability for defects in case of second-hand goods.

6.3 Customer is entitled to make claims based on defects only if customer has duly fulfilled its duty to inspect the goods delivered and make a complaint in respect of a defect found (section 377 of the German Commercial Code (HGB)). If a defect is found upon delivery, upon inspection, or at a later point in time, customer shall notify us thereof immediately (at least in textual form, e.g. email). In the event that obvious defects are found, customer shall in any case notify us (at least in textual form, e.g. email) within 7 working days of delivery of the goods; where defects not apparent upon inspection are found, customer shall notify us within 7 working days of discovery of such defects. If customer fails to duly inspect the goods and/or to notify us of a defect found, if any, our liability for such defect that has not been reported or has not been reported on time and/or in due form is excluded under the law. The goods are thereafter deemed to have been approved unless we have fraudulently concealed the defect.

6.4 In the event of defects in components provided by third-party vendors which defects we cannot remedy for licence reasons or practical reasons, we shall, at our option, assert our warranty claims against the relevant vendors and/or suppliers for the benefit of customer or shall assign such warranty claims to customer. Subject to the other requirements being satisfied and subject to the present Terms and Conditions, in case of such defects no warranty claims against us shall arise until the judicial enforcement of such claims (at a court of first instance) against the vendor and supplier has failed or has no prospect of success, e.g. by reason of insolvency. Any procedural costs incurred by customer which cannot be recovered from third parties shall be reimbursed by us in the event that a defect is present. During the course of the legal dispute, the limitation period for the relevant warranty claims of customer against us shall be suspended.

6.5 In the event the object of sale is defective, we are entitled to effect subsequent performance, at our option either by rectifying the defect or by supplying a new item free from defects. In the event of subsequent performance we shall bear all costs necessary for such purpose, including without limitation costs of transport, travel, work, and materials; provided, however, that such costs are not increased by moving the object of sale to a place other than the place of performance. If subsequent performance has failed or if customer cannot reasonably be expected to accept subsequent performance, customer is entitled to either reduce the purchase price or – in case of a material defect and/or breach of duty – to rescind the contract. The foregoing is without prejudice to our right to refuse subsequent performance if the legal requirements for such refusal have been met. We are entitled to make the subsequent performance owed conditional on payment of the purchase price by customer. However, customer is entitled to withhold a portion of the purchase price that is in a reasonable proportion to the defect.

6.6 Parts replaced in the course of rectification of defects become our property. Customer shall, for its own account and risk, return such parts to us at our request within 30 days. Customer shall store any parts not returned to us at its own cost for the duration of 180 days from the date of repair.

6.7 Any costs for remedial works not carried out by us will be reimbursed only up to the amount which would have been incurred in the event of a technical solution approved by us. Sections 6.4 and 6.5 hereof shall remain unaffected.

6.8 Any claims on the part of our customer for damages and/or reimbursement of wasted expenses are subject to the provisions in Section 7 Other Liability, and are otherwise excluded.

6.9 The warranty period is one year from delivery. The warranty period for yard, wheel and telescopic wheel loaders ends before the expiry of 12 month, provided that 1000 operating hours have been reached by then.

6.10 For demonstration machines, the warranty period for all defects is 18 months commencing on the date of the passage of risk. A necessary prerequisite here is that customer has upon initial demonstration registered the demonstration machine as such with us.

6.11 For storage machines, the warranty period for all defects is 18 months commencing on the date of the passage of risk. A necessary prerequisite here is that customer has registered the storage machine as such with us without undue delay after delivery.

6.12 The deadlines specified in items 6.9, 6.10 and 6.11 do not apply to claims for damages by customer under the Product Liability Act; or arising from fraudulent concealment of a defect; from assumption of a procurement risk; from injury to life, body or health; or from intentional or grossly negligent breach of duty on our part or on the part of our vicarious agents; such claims for damages expire by limitation in accordance with the statutory provisions.

6.13 If the goods consist of a building or of an object that – in line with its customary purpose – has been used in a building and has caused the building to be defective (building material), the limitation period as provided by law is five (5) years from delivery (section 438 para. 1 no. 2 of the BGB). Other special legal regulations on the statute of limitations (including without limitation section 438 para. 1 no. 1, para. 3; sections 444, 445(b) of the BGB) also remain unaffected.

6.14 Customer undertakes to co-operate in the rectification of defects and in the processing of applications related to defects liability or guarantees. This includes filing of applications in a timely manner for processing defects liability or guarantee cases and answering any questions regarding the applications. The provisions of section 377 of the German Commercial Code read in conjunction with Section 6.3 of these Terms and Conditions remain unaffected.

6.15 We reserve the right to request documents from customer which are proof of the necessary service work performed which forms the basis of the warranty or guarantee claim.

Section 7 – Other Liability

7.1 We are liable for damages – irrespective of their legal basis – only in case of intent and gross negligence. In the event of slight negligence, we are only liable for claims arising from damage to life, body or health and damage or loss caused by material breach of contract (i.e. a duty whose fulfilment is of the very essence for the proper implementation of the contract and on whose fulfilment the contractual partner has generally relied or may generally rely); in this event, however, our liability is limited to compensation for foreseeable damage that typically occurs.

7.2 Customer is entitled to rescind or terminate the contract for breach of duty other than a defect only if we are responsible for such a breach.

7.3 Any liability for damages beyond the scope of liability provided for herein above is excluded regardless of the legal nature of the claim asserted. This applies particularly with regard to damage claims arising from a violation of a pre-contractual obligation (culpa in contrahendo) or from any other breach of duty or with regard to tortious claims for property damage pursuant to section 823 of the BGB. The same applies if, instead of a claim for damages, customer demands reimbursement of expenditure incurred in vain.

7.4 Where our liability for damages is excluded or limited, such exclusion or limitation applies also to the personal liability for damages on the part of our employees, legal representatives or agents.

7.5 Insofar as we provide technical information or advisory services which do not fall within the scope of delivery owed by us under the relevant contract, such technical information and/or advisory services are provided without consideration and under exclusion of all liability.

7.6 The limitations provided in this Section 7 do not apply to our liability for wilful conduct; for warranties of quality; for fraudulent concealment of a defect; for assumption of a procurement risk; for injury to life, body or health; or for claims under the Product Liability Act. Our representations concerning the products may be regarded as warranties or assumption of the procurement risk on our part only if expressly designated as such.

Section 8 – Retention of Title

8.1 We retain title to goods sold until full payment of all our present and future receivables from the contract for sale and from the ongoing business relationship (secured claim) (hereinafter referred to as “Retained Goods”).

8.2 Customer shall handle Retained Goods with due care; more specifically, customer shall at its own expense insure the Retained Goods against fire, flooding, and theft at the replacement value. If any maintenance work and servicing is necessary, customer shall carry out such work in a timely manner and at its own expense.

8.3 In the event of attachment or other interventions with respect to the Retained Goods by third parties, customer shall inform us immediately (at least in textual form, e.g. email) so that we can bring action in accordance with section 771 of the ZPO (German Code of Civil Proceedings). Customer shall reimburse us for any resulting costs and losses.

8.4 Customer is entitled to resell Retained Goods in the ordinary course of business; provided, however, that customer hereby assigns to us all claims in the amount of the total invoice amount (including VAT) which accrue to customer from the resale of the goods. Customer retains its right to collect such claims even after the assignment. This does not affect our own right to collect the claims ourselves. We agree that we will not collect such claims provided that customer meets its payment obligations against us, that customer does not default on payment and more specifically no petition for the institution of composition or bankruptcy proceedings has been filed against customer, or that customer does not suspend payment. If any of the above does occur, we are entitled to demand that customer notifies us of the claims assigned and of the identity of the relevant debtors, provides us with all details necessary for collection, hands over the relevant documents and informs the debtors and/or third parties of such assignment.

8.5. We shall release Retained Goods and any objects or claims substituting them insofar as their realisable value exceeds the amount of the secured claims by more than 10 %. We are entitled to select the individual objects to be released at our own discretion.

8.6 In the event of breach of contract on the part of customer, in particular in the event of default in payment, we are entitled to take possession of the Retained Goods. Our taking back possession of the Retained Goods constitutes rescission from the contract. We are entitled to turn into cash any Retained Goods that we have taken back. The proceeds of realisation, less appropriate realisation expenses, are set off against customer's liabilities.

8.7 Retained Goods must not be pledged or transferred by way of security.

Section 9 – Reselling and Registration for Guarantee Purposes

9.1 If customer resells a machine to an end customer, customer undertakes to assist us in our grant of a guarantee. Such assistance serves exclusively for granting a guarantee on our part to the end customer. Any statutory rights of customer will remain unaffected.

9.2 Customer shall perform a pre-delivery check of the goods and shall deliver the machine to the end customer. The pre-delivery check must not take place more than 7 days before delivery to the end customer. Customer undertakes to fully complete the record of delivery and the guarantee card, to send us copies thereof, and to keep both documents in safe custody at its own cost and expense. This serves for recording the beginning of the guarantee period for the end customer.

9.3 Customer further undertakes, for guarantee purposes, to register all demonstration machines with us as such as soon as they have been used for demonstration purposes for the first time.

9.4 Customer further undertakes, for guarantee purposes, to register all storage machines as such with us without undue delay after delivery.

Section 10 – Governing Law; Place of Performance and Venue

10.1 These Terms and Conditions and all legal relationships between us and customer are governed by the laws of the Federal Republic of Germany without giving effect to conflict of laws provisions and international uniform law including without limitation the UN Sales Convention. Conditions and effects of any retention of title according to Section 8 herein above are governed by the laws at the location of the item if the above choice of law in favour of German law is impermissible or ineffective.

10.2 The place of performance for all and any obligations arising during the business relations between us and the customer is our place of business, Erwitte, Germany.

10.3 If customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a public-law special fund, the exclusive place of jurisdiction for all disputes – including without limitation international disputes – arising directly or indirectly out of this contract, is Erwitte, Germany. However, we are also entitled to take legal action against customer at customer's place of jurisdiction.