

General Terms & Conditions of Dr.-Ing. Max Schlötter GmbH & Co. KG

in accordance with the requirements
of the Central Association of Surface Treatment Professionals (ZVO) e.V.
for its members in the fields of chemistry and chemical installations

1. General provisions

1.1

The following Terms & Conditions form the basis of all our quotations, deliveries and services in the course of business transactions and are deemed to come into force when an order is accepted by us. Contracts for delivery are only deemed to have come into existence if they have been either individually confirmed by us or if the goods are shipped by us in fulfilment of the order. The mutually agreed terms are decisive as regards the extent of the deliveries or services (hereinafter referred to as deliveries). The General Terms & Conditions of the Buyer will only apply if we have explicitly agreed to them in writing.

1.2

We retain all property rights and copyright without exception in all our price quotations, drawings and all other documents (hereinafter referred to as documents) issued by us. These documents may not be made available to Third Parties unless and until our explicit prior approval has been granted and if we are not awarded the contract, all our documents are to be returned immediately at first request. Sentences 1 and 2 above apply equally to the property rights and copyright in documents issued by the Buyer where, however, we reserve the right to make these available to any Third Parties to whom we have subcontracted deliveries within the framework of the agreement, provided the documents provided by the Buyer are necessary for the fulfilment of these deliveries.

1.3

The Buyer is granted a non-exclusive right to use any standard software provided on condition that it is used in an unmodified form and only with the agreed functionality on the agreed hardware, provided the user is also permitted to use the software. In that case, the Buyer may create two back-up copies of the software without further agreement.

1.4

Partial deliveries are permitted provided they are reasonable for the Buyer.

2. Prices and terms & conditions of payment

2.1

Our prices are considered to be ex works excluding packaging and plus the currently applicable rate of value added tax. Where, after conclusion of a contract for delivery, but before the actual delivery is effected, our costs, e.g. for raw materials, power, ancillary materials, wages or transport, increase by a considerable amount, i.e. more than 5%, we reserve the right to renegotiate the price of the goods and services quoted or confirmed appropriately by a reasonable amount. This shall only apply after a period of four months has passed since conclusion of the contract. If no mutually acceptable agreement can be reached, we reserve the right to withdraw from the contract. If the cost factors defined above should be reduced, the customer is entitled to apply the above clause accordingly to its advantage to achieve an appropriate reduction in the price, where the customer is entitled to withdraw from the contract if no suitable mutually acceptable agreement can be reached.

2.2

If we have agreed to take over the installation or assembly of the equipment and in the absence of any agreement to the contrary, the Buyer undertakes to cover not only the agreed remuneration but also all ancillary costs such as travel expenses, costs for transporting the hand tools and personal luggage as well as the daily fees.

2.3

Payments are to be made without deduction to the place of payment of the user. Payments are due in cash with no deductions as follows:

a) non-ferrous metals, precious metals and their salts are payable immediately on receipt of the invoice,

b) installations, equipment and machines,

1/3 with order,

1/3 on readiness for shipping,

1/3 30 days after date of invoice,

c) other products, within 30 days of date of invoice.

If, after the contract has been concluded, we become aware that our claim to the consideration under this contract is in jeopardy due to the Buyer's inability to deliver payment, we reserve the right to refuse to provide our services or products until the Buyer has made payment in full, or provided collateral for that payment. The same applies if the Buyer is in arrears with a payment.

2.4

The Buyer is only entitled to offset claims against payments if these claims are either non-contentious have been declared legally enforceable by a court of law.

3. Delivery

3.1

Adherence to the agreed delivery periods assumes timely provision, in accordance with the contractual arrangements, of all documents, all necessary approvals and releases, in particular relating to plans and adherence to agreed terms & conditions of payment and other obligations by the Buyer. If these preconditions are not met in good time, the delivery periods are deemed to be extended accordingly. We retain the right to define a new grace period in accordance with Sec. 315 German Civil Code (BGB). This does not apply if we are responsible for causing the delay.

3.2

If, at the request of the Buyer, either the shipping or delivery is delayed by more than one month after notification of readiness to ship, we reserve the right to charge him storage fees amounting to 0.5 % of the price of the goods to be delivered for each month or part of a month, where the total charged is not to exceed 5 % of the total amount invoiced for our deliveries and services, unless we are able to demonstrate that the actual storage costs were, in fact, higher. The Buyer is entitled to demonstrate that no storage costs at all were incurred or that these were considerably lower than the above flat rate.

4. Packaging and transfer of risk

4.1

Unless prescribed provisions in German packaging legislation or other prescribed legislative provisions provide otherwise, chemicals will be shipped - at our discretion - either in disposable containers which are non-returnable and not reimbursable, whether we charge for them or not, or in returnable loan containers.

4.2

Unless prescribed provisions in German packaging legislation or other prescribed legislative provisions provide otherwise, other substances will be delivered in the kind of packaging / containers demanded by the nature of the shipment and these will be charged at cost price, but these are not returnable and will not be reimbursed.

4.3

Risk is transferred to the Buyer as follows, and this also applies to freight-paid delivery:

- a) for deliveries without assembly or installation: when they are dispatched or picked up i.e. as soon as they are handed over to the forwarding agent or driver. If so requested and at the expense of the Buyer, insurance against the usual transport risks can be arranged.
- b) for deliveries with assembly or installation: on the day of acceptance at the recipient's facility or if the contractual party's acceptance is delayed or, if so agreed, after trial runs have been successfully completed.

4.4

If delivery or the receipt of the ordered goods at the recipient's facility is delayed for reasons for which the Buyer is responsible or if the Buyer defaults on acceptance of the goods for any other reason, the risk is transferred to him.

5. Installation and assembly

Unless otherwise agreed, installation and assembly are subject to the following terms & conditions:

5.1

The Buyer is responsible at his own expense for providing the following services and equipment:

- a) all earth-moving, building and other ancillary work not covered by our business including any and all required skilled or unskilled workers, building materials and tools,
- b) any and all equipment and materials required for the installation and commissioning work, such as scaffolding, lifting gear and other jigs and equipment, fuels and lubricants,
- c) energy and water at the point of installation including all connections, heating and lighting,
- d) at the point of installation, sufficiently large, dry, lockable rooms for storing machine parts, equipment, materials, tools etc., and rooms suitable as working and recreation rooms for the installation engineers including sanitary arrangements suitable for the prevailing circumstances; in addition, the Buyer is required to take all necessary steps to ensure protection for our property and the personal belongings of the installation engineers on the site in the same manner as he takes for his own property,
- e) any protective clothing and safety equipment (PPE) required as a result of special circumstances on the site

5.2

Before installation work commences, the Buyer undertakes to volunteer the necessary details of the positions of concealed electricity wires & cables, gas and water pipes and similar installations as well as all necessary statics information.

5.3

Before assembly or installation commences, all the products and equipment required for the work must be present and correct at the installation site and all preparatory work must have been completed to a degree which enables assembly or installation to commence as agreed and to continue without interruption through to completion. Approach roads and the assembly or installation site themselves must be levelled and swept clean. In accordance with Sec. 315 German Civil Code (BGB), we are entitled to prescribe the specific requirements in terms of levelling and the degree of cleanliness.

5.4

If the assembly, installation or commissioning work is delayed for reasons for which we are not responsible, the Buyer undertakes to reimburse any additional expenses incurred by us or our installation engineers for waiting time and additional travel. We are therefore, entitled to determine those expenses in accordance with Sec. 315 German Civil Code (BGB).

5.5

Der Vertragspartner hat uns wöchentlich die Dauer der Arbeitszeit des Montagepersonals sowie die Beendigung der Aufstellung, Montage oder Inbetriebnahme unverzüglich zu bescheini The Buyer undertakes to notify us on a weekly basis of the duration of the working time of our installation engineers and the completion of assembly, installation or commissioning work without delay.

5.6

If we demand completion of the acceptance procedures for the goods delivered, the Buyer undertakes to comply within two weeks. If this does not happen for good reason, acceptance is deemed to have been completed successfully. Acceptance is also deemed to have been completed successfully if the goods delivered are put into use, where appropriate after an agreed test period.

6. Complaints concerning defective work

6.1

For chemicals and other consumables, we provide a warranty for the quality and composition of the products supplied, unless we have provided additional undertakings or guarantees for specific cases. Visible defects must be communicated to us without delay, at the latest however within 10 days of receipt of the delivery and concealed defects must be notified without delay on detection and in writing.

6.2

If the products supplied are defective in any way, the Buyer can, at his discretion, require delivery of non-defective goods or insist on the defect being remedied by way of remedial performance. Without prejudice to the provisions of subsection (1) above, we reserve the right, at our discretion, to exercise that right of choice if the contractual agreement is subject to German laws on individual contracts of work ("Werkvertragsrecht"). A sufficient period of time and the opportunity will be allowed us to remedy the defects. Where we are not granted sufficient time and opportunity, our liability to remedy defects lapses. Without prejudice to the provisions in Point 6.3 below, the right to withdrawal from the contract or a reduction in price or remuneration are excluded.

6.3

In the event that remedial performance is unsuccessful or if we refuse to provide a replacement delivery or reworked goods or if remedial performance is considered by the Buyer to be unacceptable, that party is granted the right, at his discretion, either to reduce the purchase price or remuneration or withdraw from the contract and claim damages. Remedial performance is considered to have failed if, after the second unsuccessful attempt, there is no different result in particular in regard to the nature of the goods or the defect or other circumstances

6.4

The Buyer's claims due to defective workmanship are subject to the statute of limitations one year after delivery of the goods or acceptance of the product. This limit does not apply where German law does not permit a reduction in the periods defined under Secs. 438, 634 a of the German Civil Code.

6.5

Where a valid complaint has been lodged, the Buyer is entitled to withhold payment in an amount which bears a reasonable relation to the extent of the defects.

6.6

Our liability for defects does not extend to natural wear and tear or damage occurring after transfer of risk as a result of improper treatment or handling which is careless or not in compliance with the intended purpose, or is caused by excessive use, unsuitable ancillary materials, incorrect building work, unsuitable foundations or particular external influences. If the Buyer or a Third Party performs improper modifications to or repairs on the products, the liability for defects for these components and liability for any resulting consequences shall be void.

Within the context of the contractual liability for defects, the contractor is only liable in the event of criminal damage or gross negligence both for himself and his employees, representatives and agents unless otherwise defined below, except in the event of death, injury or damage to health. Our liability for simple or minor negligence is excluded unless this involves the infringement of obligations under the contract within the context of decisions by the German Federal Supreme Court. Where the above disclaimer cannot be applied due to infringement of obligations under the contract, the contractor is only liable to the extent that the damage was foreseeable at the time the contract was concluded and typical as a result of the infringement of substantial contractual obligations. No further claims by the customer will be entertained. The above restrictions and exclusions of liability do not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.

The contractor's liability under product liability legislation remains unaffected.

Liquidated damages will not be entertained.

6.7

No further claims for defects by the contractual party will be entertained.

7. Proprietary rights and copyright

7.1

Where Third Parties make a justified claim against the Buyer as a result of an infringement of proprietary rights or copyright (hereinafter: proprietary rights) for a product supplied by us and used in accordance with the contract, our liability towards the Buyer is as follows:

a) The provisions of subsection 6.03 above will apply with the proviso that we are required, at the discretion of the Buyer, either to obtain permission to use the product, or to modify the product so that it does not infringe those proprietary rights or to exchange the product for one which does not carry this defect. In addition, the provisions under subsections 6.04, 6.06 and 6.07 above apply.

b) Our obligation to cover damages due to the delivery of goods which are subject to proprietary rights is excluded if the Buyer has not notified us immediately in writing of the claims made by the Third Parties, or if he has accepted the infringement or if we are precluded from exploiting all possible avenues of defense and negotiation and the extent of the damage increases as a result. If the Buyer ceases to use the products with a view to reducing the amount of damages claimed or for any other important reason, he is obliged to notify the Third Parties that ceasing to use the product is not tantamount to accepting liability for a possible infringement.

7.2

The Buyer's claims are excluded where he is responsible for the infringement of proprietary rights rather than us.

7.3

Claims by the Buyer are also excluded where the infringement of proprietary rights has come about due to special specifications requested by the Buyer, or due to a specific application of the machine which was not anticipated by us or if it was caused by the Buyer's own modifications to the machine or if it is used in conjunction with products not supplied by us.

7.4.

No further claims by the Buyer will be entertained. This does not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.

8. Restrictions on liability beyond liability for defects

In the event of damage not covered by Point 6.6, the liability of the contractor is restricted as defined at Point 6.6 - except in the event of damage arising from injury to life and limb or health generally. Where we agree to store objects belonging to our customer, notwithstanding the provisions of Point 6.6, which provide for liability only with regard to foreseeable and typical damage resulting from an infringement of substantial contractual obligations within the context of judgements of the German Federal Supreme Court, our liability is restricted to the material value of any items damaged or destroyed.

The above restrictions and exclusions of liability also do not apply in the event of the failure of the Parties to notify each other of any salient points affecting the contract before the contract was concluded. Liquidated damages will not be entertained either within or outside the warranty.

9. 9. Retention of title

9.1

The goods delivered by us remain our property unless and until all claims against the Buyer resulting from the transaction have been settled. Where the value of all collateral in our favor exceeds the value of the items thus secured by more than 10 %, we will, at the request of the Buyer, release a corresponding part of the collateral.

9.2

As long as retention of title exists, the Buyer is not permitted to pledge or use the goods delivered as further collateral and resale is only permitted to resellers in the normal course of business on condition that the reseller obtains payment from his customer at the latest on transfer of the goods or, alternatively, makes transfer of title to the new customer conditional upon that customer making payment for the goods in full.

9.3

If the Buyer resells goods subject to retention of title, he undertakes to assign to us here and now by way of security any and all future claims against his customer resulting from such resale including all rights and subsidiary rights – including any outstanding balances – so that it is not necessary to make a specific additional declaration. If the goods delivered under this contract are resold together with other goods in such a way that the goods under this contract are not assigned a specific individual price, the Buyer implicitly assigns to us a portion of the total amount owing to him which is equivalent to the amount we invoiced to him for those goods.

9.4

Where we are able to substantiate reasonable grounds, the Buyer undertakes to provide us with any information we may require to secure our rights against the customer and to transfer any documents required to us, provided they are in his possession.

9.5

Until further notice, the Buyer is entitled to collect the assigned claims from the resale. Where an important reason exists, in particular default of payment, cessation of payments, commencement of insolvency proceedings, contentious bills of exchange or similar reasons which amount to suspected insolvency of the Buyer, we reserve the right to cancel the Buyer's right to collect payment. In addition, in these circumstances, we reserve the right, after giving advance notice to the Buyer, to disclose the assignment of the collateral, collect the assigned outstanding amounts and require the Buyer to disclose to his customer the assignment of the collateral.

9.6

The Buyer is permitted to machine the goods subject of retention of title, restructure them or combine them with other objects. This machining, restructuring or combination with other objects is deemed to take place on our behalf. The Buyer takes care of the new item on our behalf with all due care and attention.

9.7

If the goods are machined, restructured or combined with other objects not belonging to us, we retain joint title in the new item in the amount of the proportion of the machined, restructured or combined goods to the value of the remaining goods at the time they are machined, restructured or combined. If the Buyer obtains sole title to the new item, we mutually agree that he grants us joint ownership in the new item created by machining, restructuring or combining with other objects in the amount of the proportion of the machined, restructured or combined goods to the value of the remaining goods at the time they are machined, restructured or combined while, at the same time, undertaking to care for the goods with all due care and attention at no charge to us.

9.8

If the Buyer resells the new item, he undertakes to assign to us here and now by way of security any and all future claims against his customer resulting from such resale including all rights and subsidiary rights so that it is not necessary to make a specific declaration later. The assignment only applies in the amount of the value of the machined, restructured or combined products as invoiced by us. The receivable amount claimed by us is to be given settlement priority. The provisions under Point 9.5 are deemed to apply accordingly to all matters relating to direct debits and the conditions for withdrawing the same.

9.9

Where goods are made subject of a distraint or confiscation order or other seizure or action by Third Parties, the Buyer undertakes to inform us immediately.

10. Court of jurisdiction, place of performance

Where the commissioning party is a businessman, legal entity under public-law or special fund under public law, the Court of jurisdiction for both parties is the registered office of the contractor. Disputes under Point 1 may also be settled at the Court of law responsible for the branch office concerned. The place of performance is our registered office unless it is a matter of warranty claims or claims in connection with the rescinding of a contract.

The contract is subject to German law and the provisions of the United Nations "Convention on Contracts for the International Sale of Goods" (CISG) are expressly excluded.

11. Employees

Contractual partners (customers) are not permitted to "poach" our employees where this is in violation of competition legislation, i.e. if this would amount to a violation of Sec. 4(10) of the German Fair Trade Practices Act (UWG). Our contractual partner shall bear the onus of proof in demonstrating that no reprehensible circumstances exist from the point of view of competition legislation, in particular, but not limited to, Sec. 4(10) Fair Trade Practices Act (UWG). Where the contractual partner is not able to do so, he shall pay us reasonable contractual damages which we shall define in accordance with Sec. 315 German Civil Code (BGB). The contractual partner is, however, entitled to apply to the Courts to have the reasonableness of the contractual damages verified. The contractual penalty shall amount to at least half the monthly net salary of the poached employee for every month until the end of termination with normal period of notice by the employee.

12. Severability

If any clause in these Terms & Conditions should be or become void, ineffective or unenforceable, the remainder of the provisions and the contract to which they apply shall remain unaffected.