

# Conditions of Delivery and Payment of SCHROTH Safety Products GmbH

## I. General scope of application

1. All business relations between the customer and us shall be governed solely by the following conditions of delivery and payment in the version last amended as of the date of order. The conditions of delivery and payment as last amended shall also apply as a master contract to future contracts with business entities notwithstanding our failure to expressly state this in each individual case.

2. Consumers in the sense of these terms of trade are natural persons with whom we enter into business relations to which a commercial or self-employed capacity cannot be ascribed.

Traders in the sense of these terms of trade are natural persons, legal entities or legally capable private companies with which we enter into a business relationship and which act in a commercial or self-employed capacity.

Customers in the sense of these terms of trade are both consumers and traders.

3. Deviating, contradictory or supplementary terms of trade are not components of contract, even if these are known, unless their application has been expressly agreed in writing.

## II. Conclusion of contract

1. The invitations to treat which are communicated on the Internet, in advertisements and in other marketing material shall be non-binding. They shall merely constitute an invitation for customers to submit to Schroth Safety Products GmbH a binding offer in the form of an order. No liability shall be assumed for any printing mistakes, errors or omissions.

2. The customer shall be bound by all orders signed by it but not yet accepted by us for a period of 14 calendar days after submitting the offer; we may accept this offer within this period. The date on which our acceptance is received by the customer shall be decisive for determining whether this period has been duly observed. The dispatch of the goods ordered shall also be deemed to constitute acceptance of the customer's offer.

3. If the consumer orders goods by electronic means, we will confirm receipt of the order without delay. The invoice, the standard terms and conditions of business as most recently amended, the consumer information on distance selling contracts and separate information on the right to return ordered goods shall be attached to this confirmation. The purchase contract shall be deemed to come into force upon the dispatch of these documents.

4. When consumers order goods by electronic means, we store the contractual text and, on request, e-Mail this to the customer together with these general terms of trade free of charge.

## III. Return of goods

1. Consumers may return the goods acquired in accordance with a distance selling contract within two weeks of receipt without stating any reasons. This period shall commence upon receipt of the separate written information on consumers' right to return goods (e.g. as a letter, fax, e-mail message) provided that this is no earlier than the date on which the goods are received by the recipient (no earlier than the date of receipt of the first part-delivery in the case of recurring deliveries of identical goods) and no earlier than the date on which the information duties provided for in Section 312c (2) of the German Civil Code in connection with Section 1 (1), (2) and (4) of the BGB Information Regulation as well as our obligations under Section 312e (1) Sentence 1 of the German Civil Code in connection with Section 3 of the BGB Information Regulation are discharged. In the case of goods which cannot be sent by parcel mail (e.g. bulky items), the consumer may also declare the return of the goods by means of a written request demanding that the goods in question be taken back. The period in which the goods may be returned shall be deemed to have been complied with if the goods have been returned or the request to take back the goods has been served within this period. In any case, the goods shall be returned at our expense and at our risk. The goods shall be returned or the request to take back the goods shall be sent to the following address: SCHROTH Safety Products GmbH, Im Ohl 14, D-59757 Arnsberg, Germany, Fax: +49(0) 2932 / 97 42-42, E-Mail: schroth.germany@baesystems.com.

2. If the goods are returned will full legal effect, any benefits received by the parties under the contract in question shall be returned and any advantages which have been derived (e.g. from the use of the goods) reversed. Compensation may be recovered in the event of any impairment of the goods unless such impairment is due solely to an inspection of the goods of the type which the consumer would reasonably have been able to perform in a physical shop. Moreover, the consumer can avoid the obligation to pay compensation for any impairment in the goods arising

from proper utilization by not using the goods as if they were his property and avoiding all activities liable to impair their quality. All payment reimbursement obligations shall be discharged within 30 days. This period shall be deemed to commence for the consumer upon the dispatch of the goods or the service of the request to take back the goods and for us upon receipt thereof.

## IV. Delivery

1. The delivery period shall be agreed individually or disclosed by us upon acceptance of the order. In the failure of any such agreement or disclosure, the delivery period shall be deemed to comprise 2 weeks after the date on which the contract takes effect. With the exception of fixed deadlines which have been bindingly agreed, delivery schedules are stated under the reservation that we receive our supplies in good time from our suppliers.

2. The point in time at which the goods leave the works is decisive for compliance with delivery schedules. If the goods cannot be dispatched on time for reasons which are not our fault, the delivery schedules are regarded as met upon notification of readiness to dispatch.

3. Acts of God: Industrial disputes, official intervention and other non-culpable disturbances to operations which hinder the fulfilment of our obligations entitle us to postpone the delivery for the duration of the hindrance, plus a reasonable start-up time (lasting a maximum of 14 work days), or to withdraw from that part of the contract which is still outstanding. The customer can set us a reasonable period of notice to declare whether we intend to withdraw or to deliver within a reasonable time. The customer may withdraw from the contract if we fail to make such a declaration within the period of notice set by the customer. This shall not prejudice the statutory right of rescission, in connection with which no notice is necessary.

4. If we are in default of delivery and the customer wishes to withdraw from the contract, it shall then set us a reasonable period of grace of at least 2 weeks to perform, unless the law does not require such a period of grace to be set.

5. The goods are delivered ex works. The customer bears the shipping costs.

6. In the case of deliveries made from external stores, freight is charged ex the external stores.

7. Goods are dispatched uninsured unless agreed otherwise.

8. If, due to the culpability of the customer, acceptance is not declared on time, then after setting a period of grace of 10 days, we can at our discretion either issue an invoice for the arrears, withdraw from the contract or demand compensation for damages.

## V. Minimum order value

The minimum order value per delivery is 76.70 Euro. If the order value is lower than this, we charge a minimum order surcharge of 10 Euro.

## VI. Reservation of ownership

1. In contracts with consumers, we reserve ownership of the goods until the purchase price has been paid in full.

In contracts with traders, we reserve ownership of the goods until all claims from the on-going business relationship have been paid in full.

2. The customer is obliged to treat the goods with care.

The trader is furthermore obliged to insure the reserved goods against the risk of destruction, loss or damage due to fire, water and theft for the time after risk is transferred. It is furthermore obliged to insure the reserved goods against the risk of destruction, loss and damage during transport. The trader shall inform us without delay if the reserved goods are lost, destroyed or become damaged. On request, it shall provide us with all the documentation concerning the damage to the reserved goods, in particular damage appraisal reports, inform us of existing insurance policies and, at its discretion, either provide us with the cover note or with a trust letter made out for our reserved goods by the insurer.

3. The customer is obliged to inform us without delay if a third party pursues legal action against the reserved goods, such as a seizure order, and likewise notify us of any damage to or destruction of the goods. The customer shall notify us immediately if the goods change possession or if the customer changes address.

4. We are entitled to withdraw from the contract and demand the return of the goods if the customer infringes the contract, particularly in case of default of payment or infringement of a duty under items VI. 2, 3, 5, 7 and 8 of these terms.

5. The Trader is entitled to resell the goods in a regular business transaction. It even now assigns all claims which accrue to it against third parties from the resale to us. We accept the assignment. After making the assignment, the trader is entitled to collect the claim. We reserve the right to collect claims ourselves as soon as the trader does not properly fulfil its obligations of payment and is thus in default.

We are furthermore entitled to notify the third party debtor of the assignment of claim after informing the trader of this beforehand.

If the object of delivery is resold together with other goods not belonging to us, the trader's claim against its customer is then assigned to us at the price agreed between ourselves and the trader.

6. We are obliged to release the securities due to us if their value exceeds the claims to be insured by more than 20 %, insofar as these claims have not been settled.

7. Reserved goods may not be pledged or assigned as security. We must be informed immediately of any seizures, attachments or other legal action taken by third parties.

8. The trader always processes or converts the reserved goods on our behalf. Insofar we are regarded as the manufacturer as per § 950 BGB. If the trader processes, combines or mixes the reserved goods with other goods not belonging to us, we then accrue co-ownership to the new goods in the ratio of the invoice value of the processed reserved goods to that of the invoice value of the other processed goods. The goods created by processing, combining or mixing, to which we acquire full or co-ownership, are otherwise subject to the regulations concerning reserved goods – insofar as these refer to traders.

## VII. Transfer of risk

1. If the purchaser is a trader, the risk of accidental destruction or deterioration of the goods is transferred to the purchaser upon hand-over, or for mail-order sales when the goods are passed to the carrier, the freight forwarder or to another person or agent commissioned to execute the shipment.

2. If the purchaser is a consumer, the risk of accidental destruction or deterioration of the purchased goods, including for mail-order sales, is first transferred to the purchaser upon hand-over of the goods.

3. Hand-over is assumed if the purchaser is in default acceptance.

## VIII. Liability for faults

1. If the purchaser is a trader, we rectify defective goods either by rework or a replacement delivery at our discretion.

2. If the purchaser is a consumer, it may initially choose whether subsequent fulfilment is made by rework or by a replacement delivery. We are nevertheless entitled to refuse the type of subsequent fulfilment chosen if this would only be possible with disproportionate costs and the other type of subsequent fulfilment would not significantly disadvantage the consumer.

3. Should subsequent fulfilment fail, then in principle the customer can demand a reduction in price or withdraw from the contract at its discretion. If the infringement of contract is negligible, however the customer shall have no right of rescission.

4. Traders must notify us in writing of obvious defects within 2 weeks of receiving the goods. Otherwise the warranty claim lapses. On time dispatch suffices for setting the deadline. The trader bears the full responsibility for justifying the claim, in particular for the defect itself, for the time at which the defect was established and for notifying us of the defect on time.

Hidden defects must be notified to us in writing immediately these become apparent, although at the latest within 2 weeks of their discovery.

5. If the customer chooses to withdraw from the contract due to a legal or material defect after subsequent fulfilment has failed, it has no further claims to damages because of the defect.

Should the customer choose compensation for damages after subsequent performance has failed; the goods remain with the customer unless this is unreasonable. Compensation for damages is limited to the difference between the purchase price and the value of the defective goods. This does not apply if the infringement of contract is due to malice afrethought on our part.

6. The warranty period for traders is 1 year from delivery of the goods. The period of limitation for consumers is 2 years from delivery of the goods.

7. If the customer receives faulty assembly instructions, we are solely obliged to supply accurate assembly instructions.

With respect to business entities, this shall also only apply if proper assembly is not possible due to the faulty assembly instructions.

- We do not give the customer any guarantees in the legal sense. Manufacturer guarantees are not affected by this.

**IX. Limitations of liability**

- If the object of delivery cannot be used by the customer as per contract due to our culpability because of neglected or defective execution of suggestions or advice given before or after conclusion of contract, or because of infringement of other auxiliary contractual obligations (in particular the operating and maintenance instructions for the object of delivery), the regulations under sections VII and VIII apply accordingly to the exclusion of further claims on the part of the customer.

- We are only liable for damages not incurred on the object of delivery itself, regardless of the legal reasoning, in case of
  - malice aforethought,
  - gross negligence on the part of our owner/our boards or our managers,
  - culpability for fatalities, physical injuries or harm to health,
  - defects which we have maliciously covered up or the absence of which we have guaranteed,
  - defects in the object of delivery, insofar as liability exists under product liability laws for personal or material damage from objects in private use.

In the case of culpable infringement of major contractual obligations, we are likewise not liable even for gross negligence on the part of non-managerial staff or for ordinary negligence, in the latter case damages are limited to those typical of contract which should normally have been foreseen.

Further claims are excluded.

**X. Payment**

- The invoice is prepared on the date the goods are delivered or made ready for pick up. The due date of the invoice may not be postponed as a matter of principle. If premature delivery is justified in the sense of the customer, an exception to this rule can be made by an order of execution.
- Invoices are payable against prepayment before delivery unless agreed otherwise. If the payment terms are separately agreed, the customer shall be deemed to be in default 30 days after payment is due and after receipt of the invoice notwithstanding the absence of any payment reminder.
- Modifications to these rules must be negotiated and are not recognised by us unless confirmed in writing.
- Payments are always used to settle the oldest due debts plus the default interest accrued on these.
- For any method of payment, the contractual date of payment is the day on which the funds are made available without reservation on one of our bank accounts. Any transaction costs for payments in foreign currency or from foreign bank accounts must be borne by the buyer.
- If the customer is in default with respect to any amounts which are due for payment, interest at a rate of 5 percentage points above the European Central Bank's base rate shall be charged.
- Payments shall be made exclusively in cash, by cheque or remittance by bank, giro or postal order.
- The customer may only net counter-receivables provided that these are undisputed or have been upheld in a court of law.
- All sales are solely concluded to stipulate delivery dates, quantities, articles, qualities and fixed prices. Both parties are bound to this.
- Block orders are nevertheless admissible. These can be regulated in the execution orders.
- Changes to orders issued require the agreement of both parties. The details of these can be regulated in the execution orders.

**XI. Export Control**

- If, after carrying out the order, the purchaser discovers facts and immediately informs us in a credible manner that they justify the assumption of a current or future contravention of the foreign trade regulations, the purchaser shall hereby be granted a reasonable period of grace by mutual agreement to carry out further investigations. The occurrence of any acceptance default shall be excluded by mutual agreement for the duration of this investigation period.

If corresponding contraventions are ascertained during the investigation period stipulated in the above-mentioned paragraph, the purchaser shall be entitled to refuse performance or withdraw from the contract. In this case the order shall be cancelled and the purchaser may choose to

either receive a refund of the remuneration paid for services affected by the supplier or to offset these services against other orders as part performance.

We shall give the purchaser an undertaking to observe all national, European (if applicable) and American export control regulations.

We shall hereby indemnify the purchaser internally against any damages which the latter incurs as a result of defective performance or non-performance of the obligations in this clause. The extent of the damages to be compensated shall also include the refund of all necessary and appropriate expenses which the purchaser incurs or has incurred especially the costs and expenses relating to any legal defence.

The supplier shall be obliged to automatically inform the purchaser – quoting the specific AL number or ECCN number – if goods to be supplied or their components are shown on the export list, Annexes I and IV or the CCL.

The purchaser shall have the right of extraordinary termination of the contract if facts give rise to the suspicion that we have contravened national, European or American export control regulations, especially European or American sanctions lists and other person embargoes, in supplying contractual services to the purchaser.

- If the customer intends to (re-) export goods, it shall be obliged to obtain the permits necessary for this and shall deliver all products in compliance either with the currently valid German Foreign Trade and Payments Act (Außenwirtschaftsgesetz – AWG) and German Foreign Trade and Payments Regulation (Außenwirtschaftsverordnung – AWW), or the Austrian Foreign Trade Act (Außenwirtschaftsgesetz - AWG), the EC Dual-Use Regulation and – where required – other laws and regulations e.g. US export control laws and regulations. (Re-) exportation of goods, individually or integrated within a system, contrary to this provision is not permitted.
- The customer must independently inform itself of the respective valid rules and regulations. Regardless of whether the customer states the final destination of the goods delivered, the customer shall be solely responsible for obtaining any and all necessary permits from the respective appropriate foreign trade authority before it exports such goods. We shall not be under any duty to provide information, to give advice or to cooperate.
- Where the customer is signatory under an export license or export agreement concerning one of our goods, individually or integrated within a system, the customer shall provide prompt notification to us in the event of changed circumstances affecting said license or agreement. The customer shall immediately notify us if any use, sale, import or export by our goods to be delivered under this contract is restricted by any export control laws or regulations or if the customer's export privileges are denied, suspended or revoked in whole or in part by any government entity or agency.
- The customer shall immediately notify us if the customer is listed in any denied Parties List of the American Bureau of Industry and Security. If the customer is engaged in the business of either exporting or manufacturing (whether exporting or not) defence articles or furnishing defence services, the customer represents that it maintains an effective export/import compliance program in accordance with the ITAR and it is registered with the United States Office of Defence Trade Controls (unless covered by one of the exemptions set forth in 22 C.F.R 122.1) as required by the ITAR.
- The customer shall indemnify us, our directors, officers, employees and agents from and against all liabilities, arising from or related to any act or omission of customer, its directors, officers, employees, agents, suppliers, or subcontractors at any tier in the performance of any of its obligations under this paragraph.
- Any further delivery of goods by the customer to a third party, with or without our knowledge shall be subject to simultaneous transfer of the terms and conditions of the export permit. The customer shall be fully liable in the event of non-compliance with relevant regulations by a third party. The customer shall notify us immediately, if it becomes aware of any violation of the laws and regulations listed above in Sec. 1 in connection with our goods by a third party.

**XII. Applicable law, place of jurisdiction, concluding provisions**

- German law shall prevail. The provisions of UN commercial law do not apply.
- If the customer is a merchant, a legal entity under public law or a special public law trust, our registered office is the sole place of jurisdiction for all disputes arising from this contract. The same applies if the customer has no general place of jurisdiction in Germany or if its abode or normal place of residence is unknown at the time legal action is initiated.
- Should individual provisions in the contract with the customer, including these general terms of trade, be or become unworkable in part or in full, this does not affect the validity of the remaining provisions. The partly or fully unworkable regulation shall be replaced by one which

comes closest to the financial intent of the unworkable provision.

**XIII. Ban on avoidance**

It is forbidden to avoid the conditions of payment and delivery, particularly through commission business.

**XIV. Data security**

- The data required to process the order is protected and treated in confidence in compliance with the Data Security Act.

Every customer has the right to information and a right of correction, protection and deletion of its stored data. Please contact datenschutz@schroth.com or send your request to us by fax or post.

- We nevertheless reserve the right to pass on data for the purpose of checking credit-worthiness. The customer has the right of revocation at any time.

**XV. Concluding provisions**

Should provisions in these terms of trade or a provision made under other agreements be or become unworkable, this does not affect the validity of any other provisions or agreements. The provision which has become unworkable shall then be replaced by a legal regulation which comes closest to the intent of the original one.

**SCHROTH Safety Products GmbH**

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