

## I. General

1. The terms mentioned below apply to all current orders (in case of commercial orders also for future orders), unless expressly agreed differently in writing. The Customer's terms and conditions shall only be binding for us, if we expressly accept them to be binding in written form.
2. Our offers are non-binding. A contract only comes into being by our order confirmation in writing; delivery and provision of services are equivalent to the order confirmation.
3. Verbal agreements or deals made on the phone require confirmation in writing in order to be effective.

## II. Offer

Documents related to an offer, such as images, drawings as well as weight and dimension specifications, statements with regard to processes, consumption and performance are only approximate, unless expressly confirmed as binding. Unless agreed differently, we reserve all ownership and copyright to cost estimates, drawings and other documents; they must not be disclosed to unauthorized third parties. Likewise, we commit not to disclose plans indicated as confidential by the Customer without the Customer's agreement

## III. Scope of delivery

1. The scope of delivery shall be determined by our written offer and our order confirmation, respectively. Side agreements and amendments require our written confirmation in order to be effective.
2. The object of delivery is designed in accordance to principles as established in the German Act on Technical Work Equipment (Product Safety Act - ProdSG) of November 08, 2011. Costs for additional arrangements, which are required due to local circumstances on the Customer's side, due to fitting together the parts of the machinery or due to statutory provisions or official orders and/or regulations, which are made after signing the order, are to be borne by the Customer. The same applies insofar as costs are incurred because the competent local authorities have different opinions of the generally acknowledged technical regulations or interpret them differently.
3. We reserve the right to change or improve the object of delivery with regard to its design, material used and/or its execution, to the extent this does not negatively affect the usability of the object of delivery and the changes are not unreasonable for the Customer.

## IV. Prices and Payment

1. Unless otherwise expressly agreed in writing, the stated prices shall apply for deliveries within Germany ex works (EXW according to Incoterms® 2020) plus the applicable statutory value-added tax. For deliveries outside Germany, the prices shall apply free carrier (FCA according to Incoterms® 2020).
2. Invoices are due on receipt. Discounts are only granted on special agreement. Deducting early payment discounts is not permitted to the extent that older invoices, which are due for payment, are still open. Discountable is exclusively the value of the goods, without freight. We only consider payments as having been made to the extent that they are available to us at a bank. We only accept checks and bills of exchange as conditional payment; bills of exchange only after prior agreement in writing. Discounts and expenses as well as any foreign exchange losses shall be payable by the Customer, regardless whether the respective bill of exchange is provided or not.
3. In case reasonable doubts arise in the Customer's solvency or insolvency proceedings are initiated concerning his assets, we are, at our option, entitled to ask for prepayment or security or terminate the portion of the contract not fulfilled yet.
4. We are entitled to assign any accounts receivable due to us.

## V. Taxes and tariffs

1. Unless stated differently, the prices are plus taxes and tariffs of any kind.
2. The Customer agrees to be solely responsible for submitting all tax declarations and paying all applicable taxes and tariffs as well as charges for export preparation and export documentation resulting from the purchase of products. If it is determined that additional or similar taxes on the purchase of products by the Customer apply for the Vendor, the Customer furthermore agrees to indemnify the Vendor for all possible additional taxes, charges and tariffs.
3. Unless stated differently, all prices are stated in euro.
4. Current and future taxes on the sale, transfer, rental or use of products shall be paid by the Customer. As an alternative, the Customer shall submit to the Vendor a tax exemption, which is acceptable to the competent tax authority, which confirms that such a tax shall not become due with regard to the corresponding sale, transfer, rental, or use.

## VI. Delivery

1. The delivery times starts on sending the order confirmation; however, not before the documents, approvals, releases to be provided by the Customer are produced nor prior to receipt of an agreed deposit. The delivery time is considered to be observed if the object of delivery has left the factory until its expiration or notification of shipping readiness is given.
2. As a rule, keeping the delivery time requires that the Customer fulfills the obligations of the contract.
3. Partial delivery are permitted to an extent reasonable for the Customer.

## VII. Inspection and Acceptance of Machines

1. The Customer agrees to inspect the machine immediately on receipt (however no later than fifteen (15) days after receipt) and to notify the Vendor in writing about any deviations or defects.
2. In addition, the Customer agrees that a notification given immediately as well as the commercial use of the machine are considered as acceptance.
3. The acceptance is final and the Vendor waives the right to revoke the acceptance, for whatever reason and independent of whether the Vendor was aware of it at the time of the acceptance. On the Customer's submitting such a notification to the Vendor, the Vendor's warranty provisions automatically take effect and regulate the rights, duties and liability obligations of the parties with regard to the deviation or the defect; although a rejection does not mean that a liability of the Vendor for collateral or consequential damages or losses of any kind applies.

## VIII. Warranty

1. By purchasing a machine from Schoeller special machines, you have made an excellent choice, since it will provide you with a maximum of reliability.

Schoeller special machines GmbH warrant that their newly manufactured and sold machines, when used and properly serviced on a daily basis, are free from manufacturing or material defects during a period

- of twelve (12) months after delivery to the first end customer,
- of twelve (12) months after the first start-up of the machine, no matter whether the corresponding machine is being sold, rented or leased,
- or 2,000 operating hours,
- whatever comes first,

provided, that this warranty, on no account, exceeds a period of twenty-four (24) months from the date of shipping ex works.

The warranty shall expire in the event that the machine is being resold without the written consent of the manufacturer or if the machine had been subjected to modifications and/or attachments without approval from Schoeller special machines.

2. The prerequisites for the aforementioned warranty are:

- Proper use
- Installation acceptance by SSM
- Commissioning and instruction by SSM

the prescribed maintenance intervals are carried out and adhered to by an SSM service specialist

Wear parts and damage caused by improper operation, negligence, accident, or misuse are excluded from this warranty. This warranty expressly replaces all other warranties.

3. The Vendor warrants that his genuine spare parts, when ordered from SSM and installed by SSM, are free from manufacturing and material defects

- during a period of twelve (12) months from the date of shipping ex works or Vendor's warehouse, or
- during the period of the remaining machine warranty for the corresponding machine (if applicable),
- whichever period is shorter

The above warranty is subject to the condition that the Customer notifies the Vendor of the defect in writing within thirty (30) days after it was found and that he proves that the machine was operated and serviced within the scope of the intended and customary use.

Furthermore, the Customer must prove that, on no account, the defect had been caused by intentional or negligent acts or omissions on the side of the Customer, his representatives or employees.

4. On request of the Vendor, the Customer has to return the defective machines and parts to SSM for inspection.
5. If the Customer cannot prove that the above-mentioned conditions were complied with, this warranty does not cover the asserted defect.

6. Unless a defect is reported in writing within the stated deadline, this is considered as waiving this warranty, which shall not be extended or reinstated by support of any kind provided later.

Accessories, assemblies and components, which are elements of the Vendor's machines and parts but were not manufactured by him, are subject to the warranty of the respective manufacturer.

7. This warranty does not apply to items, the serial numbers of which were changed, made illegible or removed. Service components and wear parts\*1 are excluded from this warranty. They are exclusively in the responsibility of the Customer. This warranty is limited to first end-customer and cannot be assigned or otherwise transferred without the written consent of the manufacturer.

8. This warranty expressly applies in the place of all other specific and implied warranties (including warranty of merchantability or suitability for a specific purpose) as well as any further obligation and liability on the side of the Vendor and excludes these. No further warranties are granted in excess of the limited warranty contained here.

9. Relating to the sale of machines and parts of the Vendor, the Vendor does not accept any further liability. This exclusion of liability extends to all persons acting on behalf of the Vendor as well. This warranty does not apply to products of the Vendor or parts thereof, which were modified or misused or subjected to improper or malicious use, involved in an accident, or damaged by force majeure or sabotage. This limited warranty can only be extended or renewed, respectively, with the prior written consent of the Vendor.

10. Except in cases of gross negligence, intent and/or product liability, the Vendor, his subsidiary companies or divisions do not accept any liability for indirect collateral, subsequent or other damages or losses, which are caused by a violation of the warranty. This includes costs for labor, downtime of other machines, repairs by third parties, physical injuries, emotional or mental disorders, inappropriate services or work, fines of any kind, service or personnel shortfalls, or non-compliance with the laws and regulations applicable for the machines. In the event of non-compliance of this warranty by the Vendor, the Vendor's liability is limited exclusively to the remedy by repair or replacement, respectively, of the defective machine under warranty (in the sole discretion of the Vendor).

11. Under the terms of this warranty, Schoeller special machines does not accept any subsequent costs associated with warranty work, such as transport costs for machines or pieces of equipment, overtime surcharges outside normal opening hours, job sites with particularly difficult access (job sites underground, far away from public roads, etc.), or additional costs for freight and packaging as well as cleaning work, which are required in order to carry out warranty work.

## **IX. Force majeure**

1. The delivery period adequately extends in case of measures within the scope of legal industrial disputes, in particular strikes and lockouts, as well as in the event of unforeseen obstacles, which are beyond our area of influence, to the extent as such obstacles evidently have a significant impact on finishing or delivering the object of delivery. This also applies if these circumstances occur at subcontractors. The contractual party concerned will inform the other party immediately of the occurrence of such an event.

2. The delivery period also extends if the Customer asks for changes, which are accepted by us.

## **X. Transfer of risk, delayed receipt**

1. At the latest on handing over the objects of delivery to the forwarding agency, the risk passes to the Customer; this also applies if only partial deliveries are made or if we have taken over additional other services, e.g. the costs of shipping or transportation. On request of the Customer and at his expense, we will insure the shipment against transportation damages as well as other insurable risks.

2. If shipping is delayed on request of the Customer or as a result of circumstances the Customer is responsible for, the risk passes to the Customer on notification of shipping readiness; we are however obligated to initiate the insurances requested by the Customer, on his request and at his expense. Furthermore, we are entitled to ask for payment of the agreed price; to charge to the Customer the costs incurred by storage; for storage at our factory we charge a minimum of 0.5% of the invoice amount for each started month; after setting an adequate deadline and its unsuccessful expiration to freely dispose of the object of delivery and to supply the Customer after an adequately extended deadline; after setting an adequate deadline and its unsuccessful expiration to cancel the contract and ask for damages. Setting a deadline is not required if the Customer seriously and conclusively refuses acceptance or is evidently unable to pay the purchase price even during this period. Independent of this, in case of an unsuccessful expiration of the deadline, we are entitled to ask for damages amounting to 15% of the agreed price even without proving that a damage has occurred. The Customer has the right to prove that our damages were lower.

## XI. Guarantee

1. After receipt of the goods, the Customer is obliged to examine the goods promptly with reasonable care. Obvious defects as well as variances in quantity or incorrect deliveries must be reported promptly in writing, but no later than 8 days after receipt of the goods. §§ 377, 381 para. 2 of the German Civil Code (BGB) shall remain unaffected.

2. In case of justified complaints, we will deliver the missing quantities and – at our sole discretion – repair or exchange the defective goods. If the Customer is a consumer, the Customer may choose between replacement or subsequent improvement. In individual cases, the subsequent fulfillment can also be performed by delivery of spare parts. Insofar as a subsequent fulfillment is performed by spare part delivery, the defective parts replaced must be returned to the supplying factory. The Customer already accepts that ownership to the replaced parts is transferred to us.

If we cannot remedy a defect that is covered by our guarantee obligation, or if further attempts at subsequent fulfillment are not acceptable for the Customer, the Customer is entitled to demand a decrease of the compensation (reduction) or to withdraw from the contract. In case of insignificant defects, however, termination of the contract is excluded.

3. The guarantee period is 12 months from delivery, in case of services from acceptance by the Customer, under the assumption that the object of delivery is operated in single-shifts. If the object of delivery is used in two-shift or multiple-shift operations, the guarantee period is shorted accordingly.

If the Customer is a consumer as well as in cases of §§ 438 para. 1 no. 2 und 634a para. 1 no. 2 German Civil Code (BGB) the statutory guarantee period applies.

4. Normal wear is excluded from guarantee in any case. The same applies if defects are the result of non-compliance with the regulations contained in the operating manual or other regulations with regard to handling, maintenance, inspection, and operation or are the result of modifications of the object of delivery by the Customer or third parties.

Furthermore, we do not accept any guarantee for machine combinations not tested and approved by us as well as for machines assembled outside of our factory, unless the assembly was performed with our written approval or was supervised by a party authorized by us and with our approval.

Likewise, we do not accept any guarantee for fabrication of test assemblies (prototypes), unless at delivery the supplying factory expressly accepted the guarantee in writing within the scope of the abovementioned guarantee provisions, or if the test assembly (prototype) was resold to third parties with the written approval of the supplying factory.

5. If the Customer alleges a defect, which cannot be found even after our inspection, we are entitled to charge the costs we incurred in connection with the inspection, including possible transportation costs. The same applies if the defect the Customer complained about is not a guarantee defect.

## XII. Limitation of Liability

1. Any claims for damages against us - in any form whatsoever - are excluded for slight negligence on the part of us, our legal representatives or our agents. This limitation of liability does not apply if guaranteed features are missing or material obligations of the contract were violated in a way that jeopardizes the fulfillment of the purpose of the contract. In these cases, damages are however limited to the scope of the accepted warranty or - in case of a slight violation of material obligations of the contract - to contractually typical foreseeable damage.

Claims pursuant to the Product Liability Act as well as claims from personal injuries remain unaffected.

2. We do not accept any liability for any damages arising from natural phenomena, burglary, theft, fire and other unforeseen incidents or force majeure to the property of the Customer, which is located in the workshop of the supplying factory.

## XIII. Export

1. Without our approval in writing, the goods delivered by us must not be resold abroad or exported. No approval is required for states of the European Community, EFTA or the European Economic Area.

2. In case of a violation, we shall be entitled, besides any possible claims for damages, to rescind the part of the contract not fulfilled yet as well as from other current orders.

## XIV. Retention of title

1. Vendor retains title to the goods delivered (conditional goods) until all payments arising from the transaction have been made, including future outstanding accounts arising from contracts concurrently or later. Should an open account relationship with the Customer exist, Vendor retains title for the amount of the recognized balance.

2. The Customer shall be entitled to sell the conditional goods in the course of his normal business. However, the Customer surrenders in advance all claims against any customer or third party due from the resale of the conditional goods, irrespective whether the conditional goods are sold without or after processing; we accept the assignment.

The Customer shall be entitled to collect all claims resulting from the sale of the conditional goods as long as the Customer fulfills its payments obligations to the Vendor. This does not affect our right to collect the outstanding amounts ourselves; however, we commit not to collect the outstanding amounts as long as the Customer is not in default of payment, and in

particular has neither stopped payment nor filed for insolvency proceedings. Should any of these situations exist, Vendor may demand disclosure of information about the claims assigned and its debtors, provides all information required for their collection, submits the relevant documentation and notifies the obligors of the assignment.

In case the delivered goods are being resold together with other goods, which are not our property, the Customer's claim against the recipient is considered to be assigned to the amount of the delivery price agreed between the Vendor and the Customer.

Should the value of the goods secured by retention of title exceed Vendor's claims by more than 20%, Vendor shall release security of its choice equal to the difference between the value of the goods and the value of the claims.

3. Customer shall not be entitled to pledge the conditional goods or transfer ownership for security reasons. In case of an impoundment or a levy of execution by a third party, Customer will immediately inform Vendor thereof.

4. In case of Customer's breach of contract, e.g. in case of late payment, Vendor – after setting and expiration of a reasonable grace period – shall be entitled to withdraw from the Contract and demand return of the respective goods.

## **XV. Place of fulfillment, place of jurisdiction, applicable law**

Place of fulfillment for all obligations under this contract is Hausen am Bach. We reserve the right to deliver from another site of our choice in Germany instead.

If the Customer is a merchant within the meaning of the German Commercial Code, the place of jurisdiction for any legal disputes arising from or in connection with this contract is Hausen am Bach, depending on substantive competence. However, we are entitled to file action against the Customer at his general place of jurisdiction instead.

This contract and follow-up contracts shall be governed exclusively by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **XVI. Partial invalidity**

In case individual provisions of these terms of delivery should be fully or partially ineffective or incomplete, this shall not affect the effectiveness of the remainder of the provisions. Instead of the ineffective clause, a regulation shall apply which comes nearest to what the parties had intended. Otherwise, the statutory provisions apply.