

General Terms and Conditions of Sale, Delivery, and Service

1. General Information

1.1. These General Terms and Conditions of Sale, Delivery and Service shall apply to all business relations between Schaffler GmbH & Co KG ("Schaffler") and contracting parties (hereinafter referred to as "client(s)" and, together with Schaffler, "the parties"). In particular, Schaffler shall provide – irrespective of whether reference is expressly made to the General Terms and Conditions in a particular case – all sales, services and deliveries to the client exclusively on the basis of these General Terms and Conditions.

1.2. The client shall accept these General Terms and Conditions at the latest with the submission of his/her contract declaration to Schaffler. Any general terms and conditions of the client – irrespective of any reference by or to the client and of the time that such conditions of the client may have reached Schaffler – shall not be an integral part of the contract and shall therefore not be applicable. This shall also apply particularly if Schaffler does not contradict the general terms and conditions of the client or renders a service without any reservation, whilst being aware of the differing, contrary, or supplementary general terms and conditions of the client.

1.3. These General Terms and Conditions shall apply to the sales, but also to deliveries and services provided by Schaffler.

2. Conclusion of Contract

2.1. All offers made by Schaffler are subject to change and non-binding. Client orders, which do not contain a specific term of acceptance, are binding for a minimum of 30 days.

2.2. Contracts with Schaffler shall not come into effect until Schaffler confirms or accepts the order in writing ("order confirmation").

2.3. Deviations in the order confirmation or the documents referred to therein from written declarations previously made by the parties shall be deemed approved, if the client does not expressly object in writing within a reasonable period of time, at the latest within seven days from receipt of the order confirmation. The client shall have no right of objection with regard to the applicability and validity of these General Terms and Conditions.

3. Object of the Delivery/Service

3.1. The object of the delivery/service ("object of the contract", "goods", or "product") shall be determined exclusively by the information provided in the order confirmation and the documents referred to therein. References to third-party reference numbers shall be deemed to refer to the corresponding products from Schaffler.

3.2. In the case that, during the manufacturing process, a certain amount of the object of the contract cannot be specified in advance, Schaffler shall be entitled to make excess or short deliveries.

4. Intellectual Property Rights and Confidentiality

4.1. Schaffler shall retain the property rights and all protective and intellectual property rights and copyrights of all documents, in particular illustrations, construction plans, drawings, calculations, samples, and designs ("documents") as well as of all information contained in them or otherwise provided to the client ("information"). Also in the event that a delivery or service is carried out on the basis of the client's specification or if the client makes any other contribution to it, the exploitation and usage rights shall be fully and exclusively attributed to Schaffler. Without the prior written consent of Schaffler, the disclosure of documents and information to third parties as well as its use in a way that extends beyond the specific contract shall be strictly forbidden.

4.2. The client shall keep all information and know-how disclosed to the client by Schaffler or obtained by the client in any other way confidential, also for the time after the termination of the contract, if such information is not available to the public or has permissibly become available to the client from third parties.

5. Payment and Terms of Payment

5.1. All prices quoted by Schaffler shall be understood to be exclusive of the statutory value-added tax. The information given in price lists shall serve solely for general information purposes and shall not be binding.

5.2. Schaffler's prices are based on the cost structure (consisting of costs for raw materials, development, production and wages, taxes, duties, and other charges) at the time the order is confirmed by Schaffler. Should this cost structure change prior to the respective (partial) delivery by at least 10%, the affected price shall be adjusted in accordance with the change of the cost structure.

5.3. Invoices of Schaffler shall be paid within 14 days from the invoice date, free and clear of any charges and deductions.

5.4. The client shall have no right of retention against Schaffler.

5.5. The client shall be entitled to offsetting against Schaffler only on the basis of claims which have been legally established or which have been expressly acknowledged by Schaffler in writing.

6. Delivery

6.1. Schaffler shall deliver ex works (EXW in accordance with Incoterms 2010).

6.2. Contracts of Schaffler shall only be deemed to have a fixed date of delivery (as set out under § 919 Austrian General Civil Code, ABGB), if expressly agreed in writing. Moreover, delivery periods and dates shall only be binding for Schaffler if expressly guaranteed to the client by Schaffler in writing.

6.3. Schaffler shall be entitled to make partial deliveries. Refusal to accept delivery shall not release the client from his/her payment obligation.

6.4. Delivery periods commence at the earliest with the dispatch of the order confirmation by Schaffler. Delivery periods shall be suspended as long as Schaffler is not provided with all documents and information required for the execution of the contract and as long as the client fails to completely fulfill his/her obligations to cooperate.

6.5. In case of a delivery or service delay due to circumstances outside Schaffler's sphere of influence, in particular due to force majeure, official measures, confiscation, natural disasters, civil unrest or war, transport interruptions, operational disruptions, labour dispute or due to non-conforming or omitted self-delivery by Schaffler, the delivery periods and dates shall be extended accordingly. Should the delivery/service provision be delayed due to such events by more than the duration of the original delivery period (or the period between the order confirmation and the delivery date), each party shall be entitled to withdraw from the part of the delivery affected by the delay within 14 days from the end of the extension period by means of an express written statement.

6.6. Should the client be entitled to the right of withdrawal on account of legal provisions due to a delay by Schaffler, the right of withdrawal shall be limited to the delayed part of the deliveries in case of partial deliveries.

7. Warranty

7.1. The warranty period shall be 12 months from receipt of the product by the client. This also applies to services carried out on provided products.

7.2. Certain properties, characteristics, and possible uses of the object of the contract shall only be deemed promised upon express written agreement. In particular, Schaffler shall not assume any warranty for any suitability or possible uses not expressly promised in writing. Furthermore, the warranty shall be excluded for defects caused by the material or instructions provided by the client for manufacturing the object of the contract. Declarations and promises made by Schaffler, in particular with regard to promised characteristics, shall not serve as guarantees or warranties in any legal sense, unless expressly agreed otherwise in writing. Schaffler shall not be responsible for defects which are reflected in the product itself and were not subject of the services provided by Schaffler.

Therefore, Schaffler shall not be liable for the general condition of the product provided by the client, but rather only for the services provided by Schaffler.

7.3. In the event of a claim under warranty, Schaffler shall be entitled to choose between providing either an improvement or a replacement within a reasonable period of time. Replaced objects shall become the property of Schaffler and shall be returned to them. Should Schaffler fail to carry out the improvement or replacement within an appropriate period of time or should an improvement or replacement prove to be impossible, the client shall be entitled to request a price reduction or, provided that it is not a minor defect, a conversion of the contract. In the case of contracts with permitted partial deliveries, the right of conversion shall be limited to the part of the delivery that has not yet been duly executed. The client shall waive his/her right of conversion, if he/she sales, modifies, or processes the product, whilst being aware of its defectiveness. Should defects occur in the provided products after completion of the service, Schaffler shall only be held liable if the defect is directly related to the services rendered or if these services were defective.

7.4. The presumption according to § 924 of the Austrian General Civil Code (ABGB) shall be excluded.

7.5. The client shall have no right to recourse according to § 933b of the Austrian General Civil Code (ABGB).

8. Defect Complaints

8.1. The client shall immediately notify Schaffler expressly in writing of any defects with regard to the object of the contract. Obvious defects shall be reported within three working days from receipt of the goods and concealed defects at the latest within three working days after their discovery. In the case of partial and successive deliveries, the defects of each delivery shall be notified separately. The defect complaint shall be deemed delayed in any case, should Schaffler no longer be able to inspect the rejected goods. Upon discovery of the defect, any sale, processing, or treatment of the affected goods shall require the prior express written consent of Schaffler, as the client shall otherwise lose his right to assert claims.

8.2. The client shall ensure that the defect complaint is actually received by Schaffler and shall also bear the burden of proving it. The mere return of goods shall not constitute a defect complaint.

8.3. In the absence of a timely defect complaint, the assertion of claims for warranty or compensation on account of the defect itself as well as due to an error as to the non-defective nature of the item shall be excluded.

8.4. The client shall install and remove the components affected by the defect complaint and return them to Schaffler at his/her own expense and risk. Should it not be possible to return the components, the client shall give Schaffler the opportunity to inspect the components affected by the defect complaint. Schaffler shall not waive the objection of a delayed or not raised complaint by the inspection of the goods or by the unconditional acceptance of returned goods. During inspection and rectification of the reported defects, the client shall make all reasonable efforts to cooperate and in particular provide information. If, after inspection, Schaffler does not accept the defect subject to the complaint, the client shall be obliged to reimburse Schaffler all costs associated with the inspection. Should Schaffler not acknowledge the alleged defects after inspection, the client shall compensate Schaffler for all costs associated with it.

9. Liability

Schaffler shall only be liable for intent or gross negligence. The burden of proof for the occurrence of gross negligence shall lie with the client. The liability of Schaffler for return, installation and removal costs, consequential damages, indirect damages, financial losses, in particular loss of profit etc., and damages from claims of third parties against the client shall be excluded. Schaffler draws attention to the fact that the commissioning of Schaffler's service may result in the loss of any manufacturer's warranty.

10. Right of Retention

In the case of invoices not yet paid by the client and already due for payment, Schaffler shall be entitled to retain the products provided by the client until payment of the due invoices. In accordance with § 369 of the Austrian Commercial Code (UGB), the right of retention shall apply to all products provided by the client and not only to those which are subject of the due invoice.

11. Reservation of Title

11.1. Schaffler shall reserve the right of ownership of all goods sold until complete payment of all present and future claims of Schaffler resulting from a purchase/service contract and/or an ongoing business relationship (secured claims).

11.2. Prior to full payment of the secured claims, the goods subject to the reservation of title shall not be sold, pledged or assigned as security to third parties. The client shall notify Schaffler immediately in writing, if and insofar as any goods belonging to Schaffler are accessed by third parties.

11.3. In the event of breach of contract by the client, in particular in the case of non-payment of the due purchase price, Schaffler shall be entitled to withdraw from the contract in accordance with the statutory regulations and to demand the return of goods on the basis of the reservation of title and the rescission. Should the client fail to pay the due purchase price, Schaffler shall only be entitled to assert such rights, if Schaffler has unsuccessfully given the client a reasonable period of payment or if the setting of such a period is dispensable according to the statutory provisions.

12. Compliance and Social Responsibility

12.1. The contracting party shall be obliged not to take any action or refrain from actions which may lead to criminal liability for fraud or breach of trust, competition violations, granting of advantages, acceptance of benefits, bribery or similar facts (offenses or crimes) in terms of the Austrian Criminal Code (StGB), the Austrian Act on Responsibility of Legal Entities (VbVG), the Law against Unfair Commercial Practices (UWG), etc. of persons and/or leaders and/or third parties employed by the contracting party. Even a single breach shall entitle Schaffler to terminate all contractual relations with the contracting partner with immediate effect or without delay. In principle, the contracting party shall be obliged to comply with all laws and relevant regulations (guidelines, regulations, etc.) concerning him/her and the contractual relationship with Schaffler.

12.2. The contracting party undertakes to comply with the following principles and rights in the context of the fulfilment of his contractual obligations worldwide: respect for human dignity and human rights, ban on child labour and forced labour; no discrimination based on religion, origin, nationality, age, disability, sexual orientation or the like; compliance with socially adequate working conditions; responsible action of all employees regarding the sustainable treatment and protection of the environment; compliance with occupational safety and health requirements

12.3. The Code of Conduct published by Hirttenberger on its homepage and accessible under the following link shall be mandatory for the contracting partner: http://www.hirttenberger.com/wp-content/uploads/2016/10/HG_Code_of_conduct_d_Ansicht.pdf

13. Right of Withdrawal by Schaffler

13.1. Schaffler shall be entitled to withdraw from the contract by granting a reasonable extension of time of no more than 14 working days if the customer is in default of fulfilling essential contractual obligations, in particular the obligation to pay the purchase price or the cooperation necessary for the fulfillment of the contract by Schaffler.

13.2. If it becomes evident, after conclusion of the contract, that Schaffler's claim for payment is jeopardized due to the client's inability to perform, in particular due to poor financial circumstances, Schaffler may demand a security deposit. In the case of refusal of the client or fruitless expiry of the period, Schaffler shall be entitled to withdraw from the contract and to claim damages.

13.3. Schaffler shall have the right to withdraw from the contract for good cause. An important reason exists, in particular, if insolvency proceedings have been opened against the assets of the client or have not been opened due to lack of cost-covering assets.

14. Place of Fulfilment, Place of Jurisdiction, Applicable Law, and Severability Clause

14.1. Place of performance for both parties is Winzendorf, Lower Austria, Austria.

14.2. Any disputes arising from and in connection with the contract, including its conclusion and validity, shall be settled by the component Commercial Court of Wiener Neustadt, Austria.

14.3. The contract is governed by the Austrian substantive law, excluding the reference standards of International Private Law (IPL) and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

14.4. If any provision of these General Terms and Conditions is or becomes ineffective, invalid or unenforceable, the remaining provisions concerning their effectiveness, validity or enforceability shall not be affected. In such a case, the relevant provision shall be replaced by another provision which comes as close as possible to the economic effect of the original provision and which is not ineffective, invalid, or unenforceable.