

# **Max Schlatterer GmbH & Co. KG**

## **General Terms and Conditions for Sale, Delivery and Payment**

### **1. General Terms/ Internet/ Scope of Validity**

- 1.1 Our terms of sales apply exclusively. They are posted on the internet [www.esband.de](http://www.esband.de). Any conditional or different terms proposed by the buyer are objected to unless we grant explicit written approval.
- 1.2 The offer, acceptance of order and confirmation of order or the sale of our products is conditioned upon the terms contained in this instrument.
- 1.3 Our general terms of sale extend to contracts with an entrepreneur in the meaning of § 14 of the German Code of Civil Law.
- 1.4 Our terms of sale also apply to follow-up orders.

### **2. Orders and Specifications**

- 2.1 No order submitted by the buyer shall be deemed to be accepted by us unless and until confirmed in writing within 7 working days after submittal. This does not apply if it was agreed that written form is not mandatory in our ongoing business relation with the customer.
- 2.2 The quantity, quality and description of and any specification for the goods shall be those set out in our quotation (if accepted by the buyer) or the buyer's order (if accepted by us). Any such specification, sales literature and price lists shall be strictly confidential and must not be made available to third parties.

- 2.3 The buyer shall be responsible for ensuring the accuracy of the terms of any order and shall give to us any necessary information relating to the goods within a sufficient time to enable us to perform the contract in accordance with its terms.
- 2.4 If the goods are to be manufactured by us in accordance with a specification submitted by the buyer, the buyer shall indemnify us against all losses, damages, costs and expenses awarded against us or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent or other industrial or intellectual right of any other person which results from our use of the buyers specification.
- 2.5 We retain property rights and copyright to illustrations, drawings, calculations and other instruments; it is not permitted to make them accessible to third parties. This applies in particular to such written documents that are marked "confidential". The buyer requires our explicit prior written consent to passing them on to a third party.

### 3. **Prices/Conditions of Payment**

- 3.1 Insofar as not otherwise determined in the confirmation of the order our prices shall apply "ex works" except packing and transport costs; these costs will be invoiced separately.
- 3.2 Statutory VAT is not included in our pricelist; this tax will be detailed separately in the invoice at the statutory rate for the date of the invoice.
- 3.3 Insofar as not determined otherwise in the confirmation of order payments are due within 10 days of the date of the invoice subject to 2 % discount or net cash 30 days. Should the buyer be in default of payment we are entitled to charge default interest amounting to 8 % above the relevant official basic interest rate. However, the buyer has the right to prove that no damage or only minor damage is incurred as a consequence of the delay in payment.
- 3.4 The buyer only has set-off rights if the counter claims have been confirmed by non-appealable verdict, are undisputed or recognized by us. The buyer is au-

thorized in exercising a right of retention insofar as his counter claim is based on the same contractual relationship.

#### **4. Delivery/Delivery Date**

- 4.1 The commencement of the confirmed delivery date is under the assumption that all technical questions have been settled.
- 4.2 Furthermore, compliance with our delivery obligation is conditional upon the punctual and orderly fulfillment of obligations by the buyer, in particular of compliance with the agreed conditions of payment. We retain the right of defense of lack of performance.
- 4.3 Should the buyer be in default of acceptance or should he offend in any other manner against duties to co-operate, we are entitled to claim compensation for damages thus incurred including any extra expenses. We retain the right to make additional claims.
- 4.4 Insofar as the conditions under item 4.3 exist the risk of accidental loss or accidental deterioration of the purchased object shall pass to the buyer from the time he is in default of acceptance or payment.
- 4.5 Should the non-compliance with the delivery date be due to force majeure, e.g. mobilization, war, uprising or similar incidents, e.g. strike or lock-out, then the delivery period shall be extended for the duration of the events responsible for the delay, insofar as these interruptions have more than minor influence on the completion or delivery of the goods. This also applies if these circumstances pertain to the suppliers.
- 4.6 Partial deliveries are admitted to a reasonable extent. If the delivery of specific quantities is confirmed excess delivery/short delivery of +/- 10 % is permitted.
- 4.7 If a fixed time for delivery is provided for in the contract, and we fail to deliver within such time or any extension thereof granted, the buyer shall be entitled, on giving to us within a reasonable time notice in writing, to claim a reduction of 0,5 % per week (and up to a maximum of 5 %) of the price payable under

the contract, unless it can be reasonably concluded from the circumstances of the particular case that the buyer suffered no loss. This limit shall not apply if the business had to be settled on a fixed date or if the delay was caused negligently or intentionally by us, our agents or representatives or if there is any further breach of any essential contractual obligation.

## **5. Passing of Risk**

5.1 Unless not otherwise determined in the confirmation of the order, delivery is agreed "ex works".

5.2 Insofar as desired by the buyer, delivery shall be covered by transport insurance; the costs incurred for the insurance shall be borne by the buyer.

## **6. Retention of Title**

6.1 The objects of deliveries (reserved goods) shall remain our property until all claims against the buyer from the business relationship have been fulfilled. Insofar as the value of all security rights that we have against the buyer shall exceed the total amount of all secured claims by more than 20 %, we will release a corresponding proportion of the security rights on request by the buyer.

6.2 For the duration of reservation of property rights the buyer is not permitted to pledge or transfer the goods by way of security, and resale is only permitted to customers in the course of normal business transactions and only on the condition that the reseller is paid by his customer, or reserves the right of transfer of property to the customer until payment obligations have been fulfilled.

6.3 The buyer must inform us without delay in the case of pledges, seizures or other third party orders or interventions, so that we can bring charges according to § 771 of the German Code of Civil Proceedings. Insofar as the third party is not able to refund court fees and extra-judicial expenses for charges according to § 771 Code of Civil Proceedings, then the buyer shall be liable for our losses.

- 6.4 In the event of breach of obligation by the buyer, in particular default in payment, we are justified to cancellation and repossession; the buyer is obliged to restoration. Repossession or enforcement of property reservation rights entail cancellation only if a reasonable term for payment set by us has expired and if we declare cancellation of the contract explicitly.
- 6.5 In the event of insolvency proceedings on the buyer's assets we are entitled to immediately rescind the contract and to claim for restoration of the purchase goods.
- 6.6 In the event that the buyer has resold the goods in the ordinary course of its business, he shall account to us for the proceeds of sale and assign them to us. The buyer is entitled to collect the purchase claims also after the assignment of the claims to us. Our own right to collect the purchase claims remains unaffected.

## 7. **Material Defects**

- 7.1 We accept liability for material defects as follows:

For all those parts or services that show material defects within the period of limitation – irrespective of duration of operation – we reserve the right at our reasonable discretion to remedy the defects or to effect substitute delivery without charge, insofar as the cause for the defects already existed at the time of the passing of risk.

- 7.2 Claims to material **defects shall be limited to 12 months**. The period shall commence with the passing of risk.
- 7.3 The buyer shall inform us in writing without delay of material defects.
- 7.4 In the case of material defects payment by the purchaser may be withheld in a reasonable relationship to the defects occurring. The buyer may only withhold payment if a material deficiency is claimed for which there is no doubt about

the justification. If claims to deficiencies are made that are not justified, we are entitled to demand that the buyer refund us for the expenses incurred.

- 7.5 In the first place we are always to be granted the opportunity to remedy a lack of performance within a reasonable period of time.
- 7.6 If the follow-up performance is unsuccessful then the buyer may cancel the contract or may reduce payment – without prejudice to any claims for compensation. The buyer may only demand compensation for expenses he had to no avail if we are responsible for the defects due to intent or gross negligence.
- 7.7 Material defects will not be recognized in the case of only minor deviations from the agreed quality, in the case of only minor impairment of usefulness, in the case of natural wear and tear or damage caused as a consequence of incorrect or careless handling, overloading, unsuitable equipment or particular outside influences that are not presupposed according to the contract.
- 7.8 Claims by the buyer for expenses for follow-up performance, in particular for transport, labour and material expenses, are excluded insofar as the expenses are increased because the object of delivery is brought to a different place than the buyer's premises at a later date, unless the transport corresponds to the place for intended use.
- 7.9 Statutory claims of recourse only exist for the buyer insofar as the buyer has not come to an agreement with his customer which entitles the customer to remedies that exceed the scope of the statutory claims for deficiencies.
- 7.10 Claims for damages are regulated in **section 9** below (over all liability). Additional claims, or claims other than those regulated in this section 7 or in section 9 relating to material defects are excluded.

## 8. **Industrial Protection Rights, Lack of Title**

Insofar as not otherwise agreed we are only obliged to perform delivery free of third party patents and copyright (hereinafter called industrial property rights) within the country of the place of delivery. Insofar as a third party shall bring

justified claims against the buyer for breach of industrial property rights by our deliveries which were used in accordance with the contract, we shall be liable to the buyer within the **limited period of 12 months according to 7.2** as follows:

- 8.1 At our option and on our account we shall either secure a right of use for the relevant delivery or alter it so that the industrial property right is not breached or exchange it. If this is not possible under reasonable conditions, then the buyer has the statutory right of cancellation or sales price reduction. The buyer may only demand compensation for useless expenses if we are imputed with intent or gross negligence. Our obligation to payment of compensation is covered by **section 9** ("overall liability").
- 8.2 The above detailed obligations only exist insofar as the buyer informs us in writing without delay of the third party claims, he does not recognize the breach and we retain the right to take all measures of defense and settlement negotiations. Should the buyer terminate use of the delivery for reasons of reduction of damage or other important reasons, then he is obliged to inform the third party that the termination of use may not be deemed to be an acknowledgement of a breach of industrial property rights.
- 8.3 Claims by the buyer are excluded insofar as he is responsible for the breach of industrial property rights.
- 8.4 Furthermore, claims by the buyer are also excluded insofar as the breach of industrial property rights is caused by special buyer specifications, by a use that we could not foresee, by a modification of the goods by the buyer or by using them together with products that we did not supply.
- 8.5 In the case of breach of industrial property rights buyers claims provided in section 8.1 shall be subject to the conditions **of 7.4, 7.7 and 7.9** accordingly.
- 8.6 Additional claims or other claims by the buyer against us or our employees for lack of title other than those provided in this section 8 shall be excluded.

## 9. Overall Liability

9.1 All claims by the buyer to compensation are excluded – irrespective of the legal nature of the claims made.

9.2 This exemption from liability does **not** apply to:

- a) Damages due to breach of important contractual obligations (cardinal obligations). However, in the event of slight negligence the liability for compensation shall be limited to foreseeable, typical damage.
- b) Damages due to injury to life limb or health, if we failed to comply with our duties.
- c) For other damages caused by intentional or gross negligent breach of duty, irrespective of whether we or our statutory representatives or employees are responsible.
- d) Compensation due to frustration or incapability.

9.3 A reversal of the burden of proof to the disadvantage of the buyer is not connected to the above provisions.

9.4 Liability according to the **Products Liability Act** shall remain unaffected.

9.5 Insofar as liability for compensation against us is excluded or limited, this shall also apply with respect to personal liability of our employees, our sales agents and our vicarious agents.

## 10. Place of Fulfillment, Legal Venue, Applicable Law, Partial Nullity

10.1 The headquarters of our company shall be the place of fulfillment for both parties for all rights and obligations evolving from our deliveries and services.

10.2 The Amtsgericht Stuttgart shall be competent for legal disputes concerning business transactions with entrepreneurs that fall under the competence of the



municipal courts. The Landgericht Stuttgart (regional court) shall be competent for legal disputes that fall under the relevant competence of the regional court.

- 10.3 The contractual relationship is subject to the law of the Federal Republic of Germany. Application of UN Purchase Law (CISG) is excluded.
- 10.4 We have the right to bring a claim before a court at the buyers principal place of business or at our discretion before any other court being competent according to any national or international law.
- 10.5 If any provision of this agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provision hereof and without effecting the validity or enforceability of such provision in any other jurisdiction or its application to other parties or circumstances.