

GENERAL TERMS AND CONDITIONS

SCHÜLKE & MAYR GMBH

D- 22840 NORDERSTEDT

1. General

(1) Our General Terms and Conditions shall apply exclusively; any of the Purchaser's conditions opposing or supplementing our Terms and Conditions shall not apply with respect to us. This shall also apply if we do not expressly object to such conditions or if we supply the Purchaser without reservation and with the knowledge of such conditions.

(2) Our General Terms and Conditions shall also apply for all future business transactions with the Purchaser.

(3) Any agreements concluded between us and the Purchaser concerning the subject matter of the document of which these General Terms and Conditions form an integral part are set forth in this document.

(4) Our General Terms and Conditions shall apply only vis-à-vis companies, legal entities under public law as well as separate estates created under public law [*Sondervermögen*] as defined by Sec. 310 Para. 1 of the German Civil Code [*Bürgerliches Gesetzbuch - BGB*].

2. Orders and Acceptance

(1) Our offers are non-binding. Orders from the Purchaser shall have binding effect on us only upon written or printed confirmation of such order (including invoices and delivery notes).

(2) If an order from the Purchaser qualifies as an offer as defined in Sec. 145 *BGB*, we can accept such offer within two weeks.

3. Shipping and Transfer of Risk

We shall deliver ex works Norderstedt-Glashütte in accordance with INCOTERMS 2010. In the event of subsequent change of destination upon the Purchaser's request or where a shipping route or distributing warehouse becomes necessary in deviation from the Purchaser's request for good cause, the Purchaser shall also bear all additional costs incurred thereby. The shipping risk shall in all cases pass to the Purchaser upon availability of the goods in our works, even if we bear the shipping costs due to a special agreement. Transport insurance cover, notably for shipping hazardous goods, shall be taken out only upon the Purchaser's request and on his account.

4. Delivery

(1) Unless agreed otherwise, we are obliged to deliver only after the Purchaser has effected payment. Where we are exceptionally obliged to perform in advance, we may refuse such advance performance until consideration is effected or a security furnished for such performance if after conclusion of the Agreement justified doubts about the solvency or the creditworthiness of the Purchaser arise or become apparent.

(2) Circumstances for which we are not responsible, e.g. events of *force majeure*, industrial action, traffic disturbances and impairments, lack of transport means, raw materials or supplies, any disruptions of operation either at our facilities or at any facilities related to the respective performance, as well as any impediments to performance caused by official orders, shall result in an extension of the agreed delivery period by the duration of the respective disruption.

(3) Any claims for damages not relating to life or limb or health shall be limited to such cases of delay in delivery which are caused by intent or gross negligence, unless timely delivery has exceptionally been agreed as a material contractual obligation.

5. Set-off and Retention Rights

The Purchaser shall have set-off rights only with respect to counterclaims which are *res iudicata*, uncontested or acknowledged by us. Moreover, the Purchaser may exercise any right of retention only to the extent such counterclaim is based on the same contractual relationship.

6. Notification of Defects and Warranty

(1) The Purchaser's warranty claims for defects in material require that the Purchaser has duly fulfilled its inspection and notification duties pursuant to Sec. 377 German Commercial Code [*Handelsgesetzbuch - HGB*]. Notifications of defects shall be accepted only if they are in writing, sent in along with the relevant documents, samples, shipping slips quoting the invoice number, invoice date and any identification marks on the packaging. The return of objectionable goods is subject to our express consent. We must be notified of any defects detectable upon thorough inspection within seven days of receipt of the goods. We must be notified of any defects not detectable upon examination without undue delay after their detection, but at the latest one year after receipt of the goods.

(2) The takeover of the goods by forwarding agents or carriers shall be deemed to be proof of unobjectionable packaging until otherwise proven.

(3) In the event of justified notification of defects the Purchaser shall be entitled only to replacement delivery of a defect-free product. In the event of failed replacement delivery pursuant to Sec. 440 Sentence 2 *BGB*, the Purchaser may opt for either reduction (of the purchase price) [*Minderung*] or rescission of the Agreement. Claims for damages are excluded.

(4) Our oral and written application-technical advice is non-binding – also with respect to any third-party proprietary rights – and shall not release the Purchaser from the obligation to examine our products as to their suitability for the intended processes and purposes itself. Use and processing of the products is beyond our control possibilities and thus falls within the Purchaser's exclusive area of responsibility.

(5) Above warranty claims shall become statute-barred one year after delivery of the product.

7. Special Rules for the Supply of Equipment

(1) Any information on performance, dimensions and volume of the devices and components offered shall in each case correspond to the state-of-the-art, but shall not be regarded as an assumption of guarantee within the meaning of Sec. 434 *BGB*. Illustrations, information included in brochures, publications, descriptions and technical drawings shall not be binding with respect to performance and shall not entitle the Purchaser to subsequent performance

[*Nacherfüllung*], reduction of the purchase price [*Minderung*], rescission of the Agreement or damages.

(2) In the event of justified notification of defect the Purchaser may in

alteration of Clause 6 Para. 3 demand removal of the respective defect on site by our service technicians free of charge. Where removal of the defect fails, the Purchaser shall then be entitled to replacement delivery of a defect-free product free of charge. In the event of failed subsequent delivery pursuant to Sec. 440 Sentence 2 *BGB* the Purchaser may opt for either reduction (of the purchase price) [*Minderung*] or rescission of the Agreement. Subject to the claims pursuant to Clause 8, no further-reaching claims for damages exist.

(3) We reserve all our title and copyrights to drawings, cost calculations and any other documents. These must not be made accessible to third parties.

(4) The installation of devices and components supplied by us shall be the Purchaser's responsibility and must be properly carried out observing any official regulations. Our instructions, notably the operating and installation instructions, must be observed. Where commissioning by our service technicians or other agents has been agreed, we must be informed of the commissioning date at least fourteen days in advance.

(5) Warranty pursuant to Paragraph 2 is excluded for damages caused by the Purchaser connecting devices incorrectly or by improper operation contrary to the instructions for use.

(6) The use of disinfectants produced by other manufacturers is permissible only if and to the extent S&M has confirmed to the Purchaser in writing the compatibility of such disinfectants with the supplied dispensers upon the Purchaser's request. S&M shall issue such confirmation unless prevented from doing so by compelling technical reasons. Otherwise warranty pursuant to Paragraph 2 is also excluded.

(7) Warranty is also excluded in the event of wilful or negligent damage to the device caused by the Purchaser or any third party instructed by the Purchaser, and in the event of significant damages caused by repair works performed by the Purchaser itself.

(8) The warranty period pursuant to Clause 6 Paragraph 5 shall not be renewed or extended by subsequent performance [*Nacherfüllung*].

8. Liability

(1) Unless otherwise agreed in the provisions below, any claims of the Customer that are further-reaching than the ones stipulated in the above clauses - irrespective of their legal grounds - are excluded. We therefore accept no liability for any damage not caused to the object of delivery itself; and we notably accept no liability for lost profits or any other mere pecuniary loss on the part of the Purchaser. The above exclusion of liability shall not apply if and to the extent the damage was caused by intent or gross negligence. Moreover, it shall not apply if the Purchaser may assert claims for damages for non-performance due to the absence of a guaranteed quality. It shall lastly not apply where we negligently breach a material contractual obligation.

The liability clause shall also not apply for any injury to life or limb or health negligently caused by us.

(2) Our obligation to pay compensation for damage to property and injury to persons shall be limited to the compensation paid under our third party liability insurance cover. The Purchaser may inspect our insurance policies should it so request.

(3) Our liability shall in any case be limited to the foreseeable damage.

(4) Where our liability is excluded or limited pursuant to the above Paragraphs 1-3, this shall also apply for all claims for *culpa in contrahendo*, breaches of subsidiary obligations, claims under producer's liability pursuant to Sec. 823 *BGB* and any further bases for claims. Above provisions shall not apply for mandatory statutory claims, e.g. claims based on the German Product Liability Act [*Produkthaftungsgesetz - ProdHaftG*].

(5) Where our liability is excluded or limited, the above shall also apply for the personal liability of our employees, staff, representatives and vicarious agents [*Erfüllungshelfern*].

9. Prices

(1) We shall charge the prices as valid at the date of delivery. Should there be an overall increase of our prices between conclusion of the Agreement and delivery, the Purchaser may rescind the Agreement within a period of two weeks from announcement of the price increase. The right to rescind shall not apply for long-term supply agreements (agreements on continuous obligations).

(2) Statutory VAT is not included in our prices; it shall be separately stated in the statutory amount on the invoice on the date the invoice is issued.

10. Payment

(1) Our invoices are payable ten days from date of invoice with 2% discount or thirty days from date of invoice without any discount.

(2) Invoices for services are payable without undue delay and without any discount.

(3) Where the Purchaser exceeds the payment term as stipulated in Para. (1) or any other individually agreed payment term, we may charge interest of eight percentage points above the base rate as from such date. Where we can prove higher damage, we may assert the same.

11. Reservation of Title

(1) All deliveries shall take place with reservation of title subject to the following provisions:

(2) The supplied goods shall remain our property until the Purchaser has paid all (also future) claims from the business relationship.

(3) The Purchaser is obliged to treat the goods with care, it is notably obliged to sufficiently insure the goods against every insurable damage (in particular against fire, damage by water, storm, theft, third-party liability, etc.) at replacement value; it hereby assigns its claims under such insurance contracts to us in advance; we accept such assignment. To the extent that inspection work is required, the Purchaser must carry this out in good time at its own expense.

(4) Any processing or reworking of the goods shall always be carried out on behalf of us as manufacturers, but without any obligations on our part. If our title extinguishes through combination or commingling it is already now agreed that the Purchaser's (co-) title in the combined/commingled object shall pass to us on a *pro rata* (invoice value) basis. The Purchaser shall retain our (co-) title free of charge.

The Purchaser shall also assign to us the claim for securing our claims vis-à-vis the Purchaser which may arise against third parties due to the combination or commingling of the goods with other movables. The (co-)title in the processed, reworked, combined or commingled goods obtained by us in accordance with the provisions of this Paragraph shall pass to the Purchaser in the same way as title in the goods delivered by us.

(5) The Purchaser is entitled to resell the goods in the ordinary course of business activities. However, the Purchaser already now assigns to us all claims in the amount of the invoice (including VAT) accruing to the Purchaser against its customers or third parties by resale, irrespective of whether or not the goods have been resold prior to or after processing or commingling. The Purchaser shall remain entitled to collect such receivables also after the assignment. Our power to collect receivables ourselves shall not be affected thereby. However, we shall not collect the claims as long as the Purchaser fulfils its payment obligations from the proceeds taken in, is not in default of payment and notably has not filed a petition for the opening of bankruptcy or composition proceedings, or payments are not suspended. If this is the case, though, we may request the Purchaser to disclose to us the assigned claims and their respective debtors, to supply us with all data necessary for collection, to hand over to us all documents pertaining thereto and to inform the debtors (third parties) of the assignment.

(6) The Purchaser may not realise the goods otherwise, notably not by transfer as security or pledge. Any claims assigned to us may be pledged or assigned to third parties only with our consent.

(7) In the case of attachment or any other interference by third parties the Purchaser shall notify us thereof in writing without undue delay so that we may take legal action according to Sec. 771 German Code of Civil Procedure [*Zivilprozessordnung - ZPO*]. To the extent the third party is unable to reimburse us for the court and out-of-court costs of a legal action pursuant to Sec. 771 *ZPO*, the Purchaser shall be liable for the loss thus incurred to us.

(8) If the value of security furnished to us exceeds our receivables by more than 20%, we shall be obliged upon request of the Purchaser to release items of security of our choice in the corresponding amount.

Upon payment in full of all our claims under the business relationship, also the assigned claims along with our title in the reserved goods shall pass to the Purchaser.

(9) If the Purchaser is in default of payment or if it fails to fulfil any other material contractual obligations, we may demand hand-over of the reserved goods and may subsequently realise the same. The Purchaser shall tolerate such removal and for this purpose grant us access to its business premises. This shall not be deemed to be a rescission of the Agreement. The Purchaser shall be liable for the difference between the purchase price and realisation proceeds.

12. Trademarks

(1) The Purchaser may not offer or deliver replacement products in lieu of our products referring to such replacement products, nor associate our product names – whether or not protected – in price lists or similar business documents with the word "replacement" or compare them to names of replacement products.

(2) Furthermore, when using our products for manufacturing purposes or further processing, the Purchaser may not use our product names, notably our trademarks, on such goods or the packaging of such goods or in the printed documents and advertising materials pertaining thereto, notably in ingredient statements, without our prior consent. The supply of products under a trademark shall not be regarded as consent to the use of this trademark for the products manufactured therefrom.

13. Place of Fulfilment

The place of fulfilment for the mutual obligations under the contractual relationship is Norderstedt.

14. Place of Jurisdiction, Governing Law

The place of jurisdiction for all legal disputes arising from this Agreement is Hamburg, provided that both contractual partners are merchants and that no exclusive place of jurisdiction has been established. German law shall apply.

15. Data protection

Schülke & Mayr GmbH is obliged to inform business partners about the processing of personal data acc. Art 12 et seq. GDPR. The Privacy Policy can be found on the Schülke & Mayr GmbH website under the "Privacy Policy" link. (<https://www.schuelke.com/en/priv-privacy-policy.php>)