

## General Terms and Conditions of Purchase of the SCHIESS GmbH

(Issue May 2012)

### 1. GENERAL

These General Terms and Conditions of Purchase shall apply to all orders, purchases and other orders placed by the Schiess GmbH („Schiess“), regardless of the nature of contract (supplies and performance of services). Conflicting or deviating terms of delivery or other limitations of the Supplier shall not be recognised, unless the purchaser has expressly consented to them in writing. The acceptance of delivery and performance of service as well as the payment does not constitute consent.

### 2. OFFER

The Supplier shall have to adhere exactly to the request in the quotation and must in the event of deviations explicitly point these out. The offers shall have to be effected free of charge. Cost estimates shall be binding and not payable unless otherwise expressly agreed upon.

### 3. ORDER PLACEMENT

3.1 Only written orders which are furnished with a legally signed signature are valid. Changes or additions to the order as well as verbal agreements shall only be valid if confirmed by Schiess in writing.

3.2 Verbal agreements of any kind including subsequent amendments and additions to our purchasing conditions require written confirmation by us to be effective.

3.3 The complete or partial passing on of orders by the Supplier requires the express prior written consent of Schiess.

### 4. ORDER ACCEPTANCE

4.1 Each accepted order shall have to be confirmed by way of return mail stating the order number, the order date and the reference number of the purchaser. Schiess reserves the right to revoke the placed order, insofar as the order confirmation has not been received by Schiess, within a reasonable time, at the latest within two weeks, pursuant to the placement of the order.

4.2 Insofar as the order confirmation differs from the order, the Supplier must clearly point out the respective deviation therein. Schiess shall only be bound to a deviation insofar as Schiess has expressly agreed to it in writing.

4.3 Within the scope of the reasonableness for the Supplier, changes of the contract object in terms of design, execution and delivery date, could be required. In doing so, the effects, in particular with regard to additional and reduced costs as well as the delivery dates, shall be regulated appropriately and by mutual agreement.

### 5. DELIVERY TIME

5.1 Decisive for the observance of the delivery date or the delivery period is the correct receipt of the goods or the flawless performance of service as well as the handing over of the documentation to the shipping address or place of use specified by Schiess or the timeliness of the successful acceptance. Agreed deadlines and dates are binding. Insofar as delivery „free to our plant“ (DDU or DDP in accordance with Incoterms 2000) is not agreed upon, the Supplier must provision the goods in time for loading and shipping, taking into account the time required in this regard, agreed with the freight forwarder. Insofar as the Supplier has taken over the assembly or installation, unless otherwise agreed, the Supplier shall subject to deviating regulations bear all necessary ancillary costs, such as, but not limited to, travel costs, tooling as well as per diem rates.

5.2 As soon as the Supplier can assume that he cannot fulfill his contractual obligations either in full or in part or in time, he must immediately notify the customer thereof in writing, stating the reasons and the expected duration of the delay.

5.3 In the event of a delay in delivery, Schiess shall be entitled to the statutory claims. Irrespective of this, Schiess is entitled to demand from the Supplier a contractual penalty of 0.5% per calendar week with effect from the date of the delay in delivery, however up to a maximum of 5% of the total order value of the

delivery. Schiess expressly reserves the right to assert further damages.

5.4 Insofar as the Supplier fails to meet the agreed delivery time, he shall be liable in accordance with the statutory provisions. The unconditional acceptance of the delayed delivery or performance of service does not constitute a waiver of the claims for compensation on our part, due to the delayed delivery or performance of service; this shall remain valid until full payment of the fee we owe for the affected delivery or performance of service.

5.5 In the case of a delay in delivery, Schiess is entitled to withdraw from the contract after a reasonable grace period.

5.6 In the event of the physical delivery earlier than agreed, Schiess reserves the right to return the goods at the expense of the Supplier. Insofar as the goods are not returned in the event of premature delivery, the goods shall be stored at the expense and risk of the Supplier up to the agreed delivery date at Schiess. In the case of an early completion of the entire delivery process, Schiess reserves the right to make payment on the agreed due date.

### 6. PRICING

6.1 The prices specified in the order are fixed prices.

6.2 In the case of imports, the specified prices are ex-works (in accordance with Incoterms 2000) and are moreover fixed prices, which include transport, customs duties, warehousing, customs clearance and packaging costs free German border.

### 7. SHIPPING, DELIVERY, TRANSFER OF RISKS

7.1 Unless otherwise agreed, the Supplier shall ensure that the most favourable solution for Schiess is selected with regard to the type and the duration of the transport. Additional costs for an accelerated transport which may be necessary to meet the delivery date shall be borne by the Supplier.

7.2 In addition to the article description, our article and order number, the order date and the quantity must be specified in all shipping notices, delivery notes, packing slips, bills of lading, invoices and on the outer packaging. The Supplier shall be liable for the consequences of incorrect declaration of an incorrect bill of lading.

7.3 In any case, the transport risk and costs shall be borne by the Supplier. The risk of any deterioration, including the accidental loss, remains with the Supplier until delivery to the agreed shipping address or place of use.

7.4 Any damage caused by improper packing shall be borne by the Supplier.

7.5 In the case of delivery of hazardous goods, the existing statutory requirements, in particular the requirements for the execution and marking of the packaging and the means of transport must be observed.

### 8. INVOICES

8.1 The price stated in the order is binding. In the absence of any other written agreement, the price shall in particular include the costs for packaging, dispatch equipment and transport up to the delivery address indicated by Schiess as well as custom duties and other public charges.

8.2 Schiess reserves the right to return invoices unprocessed, which do not comply with its specifications, in particular with regard to the order data or the sales tax provisions. In this case, the invoice shall be deemed as not issued.

8.3 In the case of delivery or performance of service, which is not contractual-compliant, in particular defective, delivery or performance of service, Schiess is entitled to withhold a reasonable amount up to the proper fulfillment without loss of rebates, cash discounts or similar preferential terms of payment.

### 9. PAYMENT

9.1 Unless otherwise expressly agreed, payment shall be made within 30 days minus 3% discount or net within 60 days.

9.2 An offsetting or assertion of a right of retention by the Supplier is only possible based on undisputed or legally established claims.

9.3 Payment shall not constitute acceptance of the regularity of delivery and performance of service.

## 10. WARRANTY, NOTIFICATION OF DEFECTS, LIABILITY AND QUALITY ASSURANCE

10.1 The statutory provisions on material and legal defects shall apply, unless otherwise stipulated hereinafter. In the event of legal defects, the Supplier shall indemnify us against any third-party claims, unless he is not responsible for the defects.

10.2 The Supplier assumes the liability for assuring that the delivery item does not exhibit any defects which diminish its value or impair its suitability, as well as for assuring that the delivery item has an agreed or guaranteed quality, is suitable for use according to the contract, meets the applicable safety requirements as well as the occupational health and safety and accident prevention regulations. Insofar as the delivery item deviates wherefrom, the purchaser may even after receipt of the delivery, within ten working days from the date of notification by the Supplier, at his option either demand for the remedy of the defect, the delivery of a defect free item, withdraw from the contract pursuant to the statutory provisions, demand for a reduction of the purchase price or otherwise claim for compensation for damages or the reimbursement for futile expenses.

10.3 In the event that the Supplier is in default with the performance of the warranty obligations incumbent upon him, Schiess shall reserve the right to at its option and at the cost and risk of the Supplier, to either remedy the defect itself, arrange for the remedy of the defect through a third party or procure a replacement. In urgent cases, Schiess may, after consultation with the Supplier, carry out the necessary rectifications itself or arrange for the necessary rectifications to be executed by a third party.

10.4 The warranty of the Supplier also extends to cover the parts manufactured by sub-suppliers.

10.5 The acceptance is subject to an inspection for absence of defects, in particular also for completeness and correctness, as far as and as soon as this is practicable pursuant to the proper course of business. Defects of any kind will be immediately reported by us pursuant to the discovery thereof. In this respect, the Supplier waives the objection of the delayed notification of defects.

10.6 In the case of a notification of defects, the period of limitation shall be extended by the period of time between the notification of defects and the remedy of the defects. Insofar as the delivery item is completely renewed, the period of limitation begins anew, in the case of partial renewal this applies mutatis mutandis to the renewed parts.

10.7 If and insofar as damage has been caused by a defect on the object of the contract delivered by the Supplier, the Supplier shall waive Schiess from any claims arising wherefrom. In cases of fault-based liability, this applies only if the Supplier is at fault or insofar as negligent omission can be attributed to the Supplier. In such cases, the Supplier shall indemnify Schiess against all costs in the respective amounts thereof, including the costs for due recalls, as well as legal costs of due legal action. Insofar as the cause of the damage lies within the area of responsibility of the Supplier, he bears the burden of proof for the freedom from defects of the object of the contract at the time of the transfer of the risk. Otherwise, the statutory provisions apply.

10.8 The warranty period for material and legal defects is 36 months, with effect from the transfer of risk. This does not apply insofar as the law provides for longer periods.

10.9 The Supplier shall be obliged to carry out an effective quality assurance, maintain it and, upon request, demonstrate to Schiess proof thereof. The Supplier shall maintain records of the above quality assurance measures, in particular records on measured values and test results, and store these in an orderly manner. The test documents must be stored for 10 years and must upon request be presented to Schiess.

The Supplier shall be obliged to commit the sub-suppliers to the same extent within the scope of the legal possibilities. Schiess reserves the right, if necessary, to require proof of the quality assurance system of the Supplier and the documentation of the quality tests, which also includes the authorisation to conduct an audit in the company of the Supplier.

10.10 Insofar as parts of the scope of delivery do not correspond to the requirements of Schiess or the standards customary in the trade, pursuant to a random sample inspection, the entire delivery may be rejected.

10.11 Insofar as costs arise for Schiess as a result of the defective delivery or service, the contractor shall bear these costs. This also applies mutatis mutandis to a total control which exceeds the usual level of an initial inspection and which has become necessary due to a defective delivery.

10.12 The Supplier shall, at his own expense, be required to take out adequate liability insurance for damages caused by him, his staff or his commissioned agents, by way of services rendered, work performed or objects delivered. The amount of cover per event shall upon request have to be demonstrated to the purchaser.

## 11. PRODUCT LIABILITY

11.1 In the event that claims based on product liability are asserted against us, the Supplier shall be obliged to indemnify us from such claims, if and insofar as the damage has been caused by a defect on the object of the contract delivered by the Supplier. In cases of fault-based liability, however, this only applies insofar as the Supplier is at fault. Insofar as the cause of the damage lies within the area of responsibility of the Supplier, he bears the burden of proof in this respect.

11.2 The Supplier shall assume all costs and expenses, including the costs of any legal prosecution, in the cases described under point 11.1. Otherwise, the statutory provisions apply.

11.3 Prior to a recall action, which is wholly or partly a consequence of a defect on the object of the contract delivered by the Supplier, we shall notify the Supplier thereof and offer him the opportunity to participate and coordinate an efficient implementation with us, unless the notification or participation of the Supplier is not possible due to particular urgency. Insofar as a recall action is a consequence of a defect on the object of the contract delivered by the Supplier, the Supplier bears the costs of the recall action.

## 12. PROVISIONED AUXILIARY MEANS

12.1 Provisioned auxiliary means shall in all cases remain in the unrestricted sole ownership of Schiess and must be separately stored, marked and managed. On request, these items must be handed over to Schiess.

12.2 Processing or transformation by the Supplier shall solely be deemed to be carried out on behalf of Schiess. Defects on the provisioned auxiliary means discovered during processing, shall have to be reported immediately and the further processing shall have to be discontinued until further instructions are issued by Schiess.

12.3 The Supplier can only rely on the assertion of a claim on account of non-performance with regard to the auxiliary means to be provisioned by Schiess, insofar as he has admonished Schiess in writing to provision the auxiliary means and has not received them within a reasonable period of time

12.4 In the event of impairment or loss, the Supplier shall immediately provide for defect-free replacement.

12.5 The Supplier herewith guarantees the gap-free and fully availability of spare parts for a period of 10 years.

## 13. DRAWINGS, TOOLS, EXECUTION AIDS

13.1 Any tools, moulds, models, samples, drawings, standard sheets, printed materials or other documents handed over by Schiess for the purposes of the execution of the order shall remain in the unrestricted sole ownership of Schiess and shall neither be passed on to third parties, nor used for any other purposes other than for the contractual purposes, without the prior written consent of Schiess. Tools, moulds and alike, which are manufactured at the expense of Schiess, shall upon payment thereof become the property of Schiess.

13.2 All such supplements and devices shall in a broader sense be suitably designated as the property of Schiess and shall be secured against unauthorised inspection or use as well as, if necessary, repaired or replaced.

Without prejudice to any further rights, Schiess may demand their surrender insofar as the Supplier violates these obligations or insofar as production difficulties exist. The right of retention of the Supplier is any case excluded.

Drawings and other documents shall only be authoritative for the order for which they were made available. The drawings delivered to the Supplier are not subject to the alteration service at Schiess. Valid is always the last drawing with the corresponding change index. The Supplier is responsible for any damage resulting from non-observance of this circumstance.

## 14. INDUSTRIAL PROPERTY RIGHTS

The Supplier is liable for assuring that neither the goods supplied by him or the passing on, processing or use thereof by Schiess violates the industrial property rights of third-party, in particular utility models, patents or licenses. The Supplier shall indemnify Schiess and the customers of Schiess from claims asserted by third parties arising from possible violations of industrial property rights and

shall bear all costs incurred by Schiess in this context. In the case of countervailing industrial property rights of third parties, the Supplier shall be obliged to procure the consent or approval for the passing on, processing or use by those authorised to do so, which should also be effective for Schiess.

## 15. CONFIDENTIALITY, DATA PROTECTION

15.1 The Supplier undertakes to treat all information received in connection with the order, with absolute confidentiality, insofar as it is not demonstrably publicly known.

15.2 The Supplier hereby grants his consent to the processing and use of his personal data for order and information purposes. Schiess shall comply with the relevant data protection provisions, in particular the Federal Data Protection Act.

15.3 On our request, the Supplier is obliged to notify us in writing of all foreign trade data about his goods and their components, as well as to inform us immediately in writing (prior to the delivery of accordingly affected goods) about all changes to the data provided so far.

## 16. FORCE MAJEURE

16.1 Labour disputes, operational disturbances without fault, unrest, official measures and other unavoidable events, waive us for the duration of their existence, from the duty of timely acceptance.

16.2 During such events as well as within two weeks pursuant to the end thereof, we are entitled - without prejudice to our other rights - to withdraw from the contract in full or in part, insofar as these events are not of an insignificant duration and our requirements are as a consequence considerably reduced, due to the necessity arising wherefrom, to procure from elsewhere.

## 17. PLACE OF FULFILLMENT, PLACE OF JURISDICTION AND APPLICABLE LAW

17.1 Unless expressly agreed otherwise, the place of fulfillment for the delivery and performance obligation shall be the shipping address or place of use specified by Schiess; the place of fulfillment for all other obligations of both parties is Aschersleben.

17.2 The place of jurisdiction is Stendal.

17.3 Applicable is exclusively German law under exclusion of the UN purchase law.

## 18. SEVERABILITY CLAUSE

Should any provision of these terms and the underlying agreements be or become invalid, the validity of the remaining provisions shall remain unaffected wherefrom. The parties to the contract are obliged to replace the invalid provision with a regulation which is as far as possible equitable in terms of economic success. Insofar as no agreement is reached, the invalid provisions shall be replaced by the general statutory provisions.