

## General Terms and Conditions of Purchase and Contract of Alfred H. Schütte GmbH & Co. KG

### 1. General provisions

1.1 The services and deliveries to be provided to us, including any ancillary performance, consulting services and information, shall be exclusively subject to the terms and conditions stipulated below, unless otherwise determined in writing in any individual case. These Terms and Conditions shall extend to future contracts with our contractor without any reference thereto being required in the individual case.

1.2 Our contractor's General Terms and Conditions, if in deviation from these present General Terms and Conditions, shall not apply, unless expressly accepted in writing by a separate agreement. Any implied acceptance of such deviating General Terms and Conditions by placing an order and/or accepting deliveries or services without a separate objection thereto shall be excluded.

### 2. Placement of orders

2.1 **Orders must be placed in writing** in order to be valid. The requirement of written form shall also apply to any and all declarations required to be made in connection with the order and any waiver thereof shall not be effective unless made by written agreement.

2.2 The contractor shall be obliged to **confirm acceptance of the order in writing** within 2 weeks upon receipt and to state **binding** prices and dates for delivery and/or service. After such period of 2 weeks, our order shall be deemed cancelled.

2.3 Our contractors shall not be entitled to transfer their contractual obligations **to any third party without our prior consent**.

2.4 We shall be entitled to terminate the contract by written notice at any time. In case of termination, we will remunerate the contractor for any partial performance completed before the date of termination.

### 3. Final planning documents, models, tools, secrecy

3.1 We reserve **title and copyright** to all plans, drawings, calculations, models and other documents and the contractor must not disclose them to any third party nor use or copy them or enable third parties to use or copy them without our express consent. The contractor shall be obliged to return them to us as soon as they are no longer required in the ordinary course of business or if negotiations do not result in the conclusion of a contract. Any copies made by the contractor must be destroyed.

3.2 Any models, devices, tools etc. provided by us for the execution of an order shall be deemed **lent** to the contractor. Any right of retention, right of pledge etc. shall be excluded.

3.3 The contractor shall be obliged to **treat confidentially** the terms and conditions of an order and any related **information and documents** for a period of 10 years after conclusion of the contract and not to use such information except for the execution of the order. We shall be entitled to claim a contractual penalty amounting to the net order value for any violation of this obligation. This shall not affect our right to assert additional claims for damages.

### 4. Terms of delivery and service

4.1 All **dates for delivery and service** stipulated in the orders shall be binding to the extent no reservations were made. The contractor shall be obliged to inform us without delay and in writing if the contractor is probably unable to comply with the agreed terms of delivery and service, without prejudice to the reason for such non-compliance.

4.2 In **case of any delay** by the contractor, we shall be entitled to assert a contractual penalty amounting to 0.2% of the net order value applicable to the delayed delivery/service per working day, however, not more than 5% of the total net order value. We shall be entitled to demand performance and additionally, such contractual penalty as the minimum amount of damages the contractor owes in accordance with statutory provisions. This shall not affect our right to assert additional claims for damages. Should we accept the delayed delivery / performance, we will assert the contractual penalty together with the final payment at the latest.

### 5. Delivery, transfer of risk

5.1 Without our express consent, the contractor shall not be entitled to deliver higher or lower quantities than ordered or to render additional services.

5.2 The contractor shall bear the risk until unloading for any deliveries made **free domicile** to the destination indicated in the order.

5.3 For **deliveries ex works**, the contractor shall be obliged to ensure that the goods are carefully packed and that proper forwarding and shipping documents are issued. Unless we instructed the contractor to use a specific forwarding company, the contractor shall be liable for the diligent selection of the forwarding company. The contractor shall formally inform us of the shipment of goods with a total value of more than EUR 15,000 in due time.

### 6. Invoicing, terms of payment

6.1 The **prices and discounts** stipulated in the invoice must correspond to the terms and conditions that are stipulated in the order and/or that are agreed upon with the contractor. Subsequent charges for surcharges for reduced quantities, a minimum order value or other surcharges that are not expressly agreed upon shall not be accepted.

6.2 **Price changes** by the contractor based on errors, typing errors, miscalculations or price increases and higher or lower costs due to changes in the form of execution of the order shall not be binding unless we expressly accept them.

6.3 The **invoice** must be auditable and in compliance with the statutory formal requirements. Our order details (order number and date) must be stated. Unprocessable invoices will be rejected and do not establish an obligation to pay.

6.4 The agreed price shall become due and payable 30 calendar days after complete performance of delivery and services (including acceptance, if agreed upon) and after receipt of a duly issued invoice. The contractor shall grant a discount of 3% on the net invoice amount for payment within 14 calendar days. If made by bank transfer, a payment shall be deemed made in time if our bank receives our transfer order before expiry of the payment term. We shall not be responsible for any delays caused by the banks involved in the payment transfer.

6.5 All payments will be made to the contractor. **Claims for payment must not be assigned** without our express consent.

### 7. Warranty

7.1 Our rights regarding defects in quality or defects of title and regarding any other violations of the contractor's obligations shall be

subject to statutory provisions unless otherwise stipulated hereinafter. The contractor shall in particular be obliged to guarantee that the goods are of the **agreed quality** at the time title is transferred to us. The product descriptions that are the subject matter of the contract, in particular if such product descriptions are referred to or stated in our order, shall in any case be deemed to be agreements on quality. The **warranty period** shall be 36 months unless otherwise agreed upon and shall commence in accordance with statutory warranty regulations. The warranty period for goods that were delivered before the agreed date shall not commence before the original and/or last agreed date of delivery.

7.2 The commercial **obligation to inspect and to make a complaint in respect of a defect immediately on receipt of goods** shall be governed by statutory provisions, subject to the following provisions: Our obligation to inspect shall be restricted to defects that become evident during our external inspection of incoming goods and delivery documents or during our quality control measures (spot checks). We shall have no obligation to inspect the goods for which acceptance was agreed upon. In addition, the relevant question is whether and if so, to what extent an inspection – taking into consideration the individual circumstances – is reasonable in the due course of business. Our obligation to immediately make a complaint in respect of defects that we detect at a later time shall remain unaffected. In any case, our complaint shall be deemed made immediately and in due time if received by the contractor within 10 working days.

7.3 Any costs incurred by the contractor for inspection and rectification of defects (including without limitation costs for de-installation and re-installation) shall be borne by the contractor in any case, even if the inspection reveals that there is no defect. Our liability for damages for unjustified demands to rectify a defect shall remain unaffected. However, we shall only be liable therefor if we noticed – or failed to notice based on gross negligence – that there was no defect.

7.4 If the contractor fails to fulfil its obligation to provide subsequent performance – in our discretion by rectification of the defect (repair) or by delivery of an item that is free from defects (replacement delivery) – within a reasonable period of time set by us, we shall be entitled to rectify such defect ourselves and to demand compensation for expenses incurred and/or a prepayment thereon from the contractor. If the contractor is unable to provide subsequent performance or if such subsequent performance is unreasonable for us (e.g. due to urgency, danger to occupational safety or immediate danger of excessive damage), we shall not be obliged to set a period of time for fulfilment. We will inform the contractor immediately, if possible in advance, of any such circumstances.

7.5 For a period of not less than 10 years after delivery, the contractor shall be obliged to offer **spare parts** for the goods we ordered.

## **8. Place of performance, place of jurisdiction, final provisions**

8.1 Place of performance and exclusive place of jurisdiction for any and all rights and obligations directly or indirectly resulting from the contractual relationship shall be Cologne, Germany.

8.2 These General Terms and Conditions and all legal relationships between us and the contractor shall be subject to the laws of the Federal Republic of Germany. The international uniform law, in particular the UN Sales Convention, shall be excluded.

8.3 The above conditions shall apply even if one or more individual provision(s) is/are ineffective.

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