

General Terms and Conditions of Delivery and Payment of Hans Schriever GmbH & Co. KG

§ 1 Scope

The following Terms shall apply to business dealings with businessmen, body corporates under public law and special assets under public law.

Our services are provided exclusively on the basis of these Terms and our order confirmation. These shall be exclusively applicable. Any contrary terms and conditions shall not be binding unless expressly accepted by us in writing.

§ 2 General provisions

Our offers and presentations and information provided in our brochures and catalogues, our recommendations for construction and information given on our website shall be without obligation and subject to change. Technical changes reserved.

The orderer shall upon placing an order be obligated to state the purpose for which the product will be used, in writing. Failing such information, we shall assume that the orderer will use our manufactured product in an area that is not critical, relevant to safety or hazardous.

Orders shall not be binding unless confirmed by us. Verbal collateral agreements shall not be valid unless confirmed by us in writing or text form.

§ 3 Prices & Price adjustments

Unless specifically otherwise agreed in individual cases, the EURO price given in the order confirmation, excluding value added tax, packaging, freight, postage and insurance, shall be decisive.

Our pricing includes fluctuating surcharges for raw materials, alloys and brass. The metal price will, for instance, depend on the current rate of the London Metal Exchange (LME). For delivery times in excess of 12 weeks we reserve the right to adjust prices up to the scheduled delivery date, to account for any rate changes. We shall furthermore in principle be entitled to make reasonable price adjustments of up to 10% in the event of significant changes in our processing costs, especially changes in the cost of wages, freight, energy, taxes, customs, our processed materials, etc. Should the change require price adjustments in excess of 10%, the orderer shall be obligated to negotiate a reasonable price adjustment with us. We shall be entitled to withdraw from the contract in the event that negotiations for price adjustments should fail.

§ 4 Terms of payment

Our invoices shall be payable without deductions within 30 days from date of invoice. Failing this, the orderer shall be in default. An interest rate on arrears pursuant to § 288 Para. 2 BGB [*Civil Code*] will be charged and we shall, following notification in writing or text form, be entitled to suspend our services until payment is made.

Set-off shall not be allowed unless for undisputed or legally binding claims. Set-off shall be allowed if the relevant counterclaim is based on costs of remedial measures or of completion of work.

§ 5 Long-term and Call-off contracts

Unless a termination date (limitation) has been agreed, contracts for long-term, ongoing delivery and delivery on call-off shall be subject to a 6-month notice of termination period. Delivery quantities and deadlines must be advised upon ordering. For deliveries on call, notification of binding

quantities shall be given at least 3 months prior to delivery dates. The orderer shall be liable for additional costs arising from late call-off or changed orders. We shall be entitled to manufacture delivery quantities commensurate with our production capacities. Unless a binding order quantity has been agreed, we shall base our planning on the orderer's non-binding expected quantities required over a certain period. The orderer shall to this end provide us with his calculation by no later than 01/03 each year. We shall be entitled to increase the unit price proportionately in the event that target quantities are not purchased. We shall also be entitled to reasonably reduce the unit price should the target quantity be exceeded. This presupposes that the orderer notified us of the additional demand at least 6 months prior to delivery and has met his obligations.

§ 6 Delivery, shipment & passing of risk

Our deliveries are ex works. Deviating agreements in writing or text form are acceptable.

The delivery period commences on dispatch of our order confirmation and shall be conditional upon performance of the consideration. Partial deliveries shall be allowed provided considered reasonable towards the orderer. They will be invoiced separately. Over-delivery or short delivery of up to 10% of the order volume are customary in the trade and shall be deemed compliant. The order amount shall be adjusted accordingly.

The goods shall be accepted immediately on notification of the orderer of readiness for shipment or for collection. The risk shall pass to the orderer when the goods leave our works or store. The type of shipment and packaging shall be at our discretion. This shall not apply if the orderer has issued explicit instructions.

Transport packaging shall be returned as per packaging ordinance. Other packaging will not be taken back.

§ 7 Delayed delivery

Our delivery is subject to timely and correct delivery by our suppliers. This shall not apply should we be responsible for non-supply.

Should delayed delivery be foreseeable, we shall inform the partner by phone, in writing or text form and as far as possible offer reasons and anticipated delivery times. We shall be in default of delivery only should we remain in default despite a reasonable delivery time or should we have culpably caused such default and provided the orderer has provided his consideration in full.

§ 8 Retention of title

The delivered goods shall remain our property until full payment of all our claims under the business relationship.

The orderer is entitled to resell the goods subject to retention of title within the normal and proper course of business. He undertakes to retain ownership until full payment of his claim against his buyer. Pledging and chattel mortgage are excluded. The orderer shall inform us without delay should third parties obtain garnishment or other access to the goods subject to retention of title. The processing of goods subject to retention of title shall be free of charge to us and the product shall remain in our ownership or corresponding co-ownership. The orderer shall cede to us and hold in escrow all his claims resulting from his resales. Should the claim against a third party be higher than our claim, the claim will only be ceded to the corresponding amount. The orderer shall be entitled to

General Terms and Conditions of Delivery and Payment of Hans Schriever GmbH & Co. KG

collect the claim against third parties in our name. Violation of this provision, especially in the case of default in payment, shall entitle us to withdraw from the contract and to demand return of the goods. We reserve the right to claim for compensation of damages.

§ 9 Warranty

The condition of the goods shall be exclusively in accordance with the specifications in our offer and order confirmation.

Warranty claims against us are conditional upon the orderer meeting his obligations pursuant to § 377 HGB [*Commercial Code*], the so-called notice of defects. Notices of defects shall be deemed in good time if received within 5 working days of delivery to the orderer or, in the case of hidden defects, from the date of detection. After the goods have been accepted by the orderer or initial sample testing has been conducted, notices of defects shall be excluded if the defect could already have been detected at this point in time.

In the event of a justified notice of defect, we shall at our discretion rework or replace the goods. In the event that rework fails after the orderer has set a reasonable deadline, the latter may demand a price reduction or withdrawal. Withdrawal will not be justifiable in the event of only minor defects. The warranty shall lapse 12 months from passing of risk. The warranty claim cannot be ceded.

§ 10 Exclusion of warranties

Warranties in terms of § 7 shall be excluded if

- a) we produce in accordance with the orderer's drawings, specifications, samples or similar requirements in terms of the designated purpose, the construction and compliance with any legal or safety requirements;
- b) our goods are incorrectly used, installed or operated, irrespective whether by the orderer or third parties, are handled incorrectly or carelessly or if our technical information or processing instructions were ignored or if our products were changed and/or improperly modified without our consent. Provided the orderer has proof that the defect cannot be the consequence of one of the aforementioned circumstances;
- c) claims are received about defects of the manufacturer's end product.

§ 11 Liability

We shall not be liable for violation of insignificant contractual obligations based on slight negligence.

Our liability for other cases of slightly negligent breach of duty will depend on the type of goods and limited to the foreseeable direct typical average damage under the contract for such goods. This shall include slightly negligent acts of our legal representatives or vicarious agents. Claims for compensation shall lapse 12 months from passing of risk. This shall exclude cases of claims asserted against us pursuant to the Product Liability Act, due to injury to life, limb or health.

§ 12 Industrial property rights and copyrights

Drawings or technical documentation pertaining to the delivered goods or their manufacture shall remain the property of the party making these available. The orderer shall ensure that our production will not violate third party industrial property rights. The orderer shall indemnify us from claims based on infringement of industrial property rights.

§ 13 Manufacturing tools & samples

Manufacturing tools includes all objects required for the manufacture of ordered parts in accordance with drawings or

samples and intended solely for the production process, such as tools, moulds, jigs, etc. Unless otherwise agreed, the cost of manufacturing the tools and samples shall be invoiced separately from the delivered goods. This shall include tools that need to be replaced due to wear and tear. We shall carry the costs of maintenance and proper storage and the risk of damage or destruction. In the event that the orderer terminates the cooperation during the manufacture of tools or production of a sample or should he temporarily suspend cooperation for more than 2 months, the orderer shall carry all costs of manufacture accrued up to that point. Manufacturing tools and samples shall remain our property until the delivery contract is complete and we shall store these free of charge for a period of 3 years from first delivery. Our duty to retain shall end when this period has expired and when the orderer, within 6 weeks of a request in writing or text form, does not take possession of the manufacturing tools or samples. This shall not apply if a new order is placed. Should the orderer demand the release during a current contractual relationship, we shall be entitled to refuse, pending agreement on the continuation or termination of the contractual relationship and provided the orderer has met his obligations. We shall not use consumer-related manufacturing tools for supplies to third parties, unless with the written consent of the orderer.

§ 14 Force majeure

We shall be indemnified from obligation to deliver in the event of force majeure, for the duration and extent of the impact. Force majeure constitutes any event beyond our control that fully or in part impedes the fulfilment of our obligations. This shall specifically include fire damage, floods and breakdowns through no fault of our own, particularly also industrial action and strikes or official administrative action, also supply bottlenecks and other interferences preventing our suppliers from meeting their obligations. We shall inform the orderer of the occurrence and end of force majeure events without delay and shall endeavour to eliminate the force majeure and limit its effects to the best of our ability. Notification shall be made in writing or text form or, in emergencies, by phone. Further action shall be determined in cooperation with the orderer.

§ 15 Insolvency

Should the orderer stop payment or should insolvency proceedings over his assets be applied for or rejected for lack of assets or insolvency proceedings be opened, we shall be entitled to withdraw from the order to the extent of the outstanding scope of delivery.

§ 16 Non-disclosure

The orderer undertakes not to disclose any commercial documentation or financial or technical data, especially samples and models (information) to which he may have become privy during the term of the contract. We undertake to likewise maintain confidentiality. The obligation shall enter into force from initial awareness and shall continue for 36 months from termination of the business relationship. The obligation shall lapse should the information be published or become generally accessible or should the third party have been verifiably aware of this already. It will furthermore also lapse should a party be obligated to disclosure for statutory or official administrative reasons.

§ 17 Data protection & EDP processing

The orderer agrees that we will store data required for order processing and auditing of accounts electronically, in due consideration of statutory data privacy regulations.

§ 18 Final provisions

General Terms and Conditions of Delivery and Payment of Hans Schriever GmbH & Co. KG

The domicilium citandi et executandi for disputes arising under the contractual relationship shall be the court responsible for our head office. We shall also be entitled to bring action at the orderer's headquarters.

In the event that a provision under these GTC is or becomes ineffective, this shall not affect the effectiveness and enforceability of the remaining clauses. The orderer undertakes to agree with us on an effective and enforceable substituting provision that will satisfy the purpose of the order and protect common interests. § 139 BGB [*Civil Code*] shall not apply.