

General Terms and Conditions of Purchase of Schiller, Osterhofen (Status June 2024)

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I. General

1. The following General Terms and Conditions of Purchase (hereinafter referred to as "Terms and Conditions of Purchase") of Schiller shall apply exclusively to the order placed.
2. We shall not recognise any terms and conditions of the supplier that contradict or deviate from Schiller's terms and conditions of purchase unless Schiller has expressly agreed to their validity in writing. The purchasing conditions of Schiller shall also apply if Schiller accepts the delivery or service of the supplier without reservation in the knowledge of conflicting conditions or conditions of the supplier that deviate from these purchasing conditions.
3. Amendments and additions to the contractual agreements are only effective if they are made in writing. Notwithstanding this, informal amendments or additions are also effective if they are individual agreements within the meaning of Section 305 b BGB [German civil code].
4. Schiller's Terms and Conditions of Purchase shall also apply to all future transactions with the supplier. This also applies if they are not expressly agreed again.
5. These terms and conditions of purchase apply only to companies, legal entities under public law or public funds within the meaning of section 310 (1) BGB [German Civil Code].

II. Quotation, acceptance, documents

1. The supplier shall be asked to submit a free quotation by means of a request from Schiller.
2. In the quotation, the supplier shall orient themselves to the descriptions and objectives of Schiller and shall expressly point out any deviations. The supplier recognises their obligation to provide information.
3. If the quotation submitted by the supplier does not contain a binding period, the supplier shall be bound by the quotation for a period of 30 days.
4. Orders from Schiller must be confirmed by the supplier without delay. If we do not receive an order confirmation within 8 days, Schiller shall be entitled to cancel the order.
5. Schiller may demand changes to the design and execution of the delivery item within the scope of what is reasonable for the supplier. In doing so, the effects, in particular with regard to additional or reduced costs as well as the delivery dates, shall be settled by mutual agreement in an appropriate manner.
6. Schiller shall always have property rights and copyrights to samples, illustrations, drawings, calculations and other documents. They are to be used exclusively for production based on the order. They may not be made accessible to third parties without our express consent.

III. Prices, remuneration, due date, offsetting, right of retention, assignment

1. Prices agreed in orders placed are fixed prices plus statutory VAT and exclude subsequent claims of any kind. These include price increases in particular. This does not affect the provision in section II. 5. Unless otherwise agreed in writing, costs for packaging, transport, customs formalities and customs duties are included in these prices.
2. Unless otherwise agreed, Schiller shall pay the purchase price within 14 days of delivery of the goods and receipt of the invoice with a 3% discount or within 30 days net. The receipt of the transfer order by Schiller's bank shall be sufficient for the timeliness of the payments owed by Schiller.
3. Schiller reserves the right to recognise excess or short deliveries.
4. Additional costs for a faster mode of transport for the purpose of meeting the deadline shall be borne by the supplier.
5. Advance payments are not made. If advance payment has been agreed, the payment claim shall not become due until the supplier has provided security in the form of a bank guarantee. The bank guarantee shall be returned after delivery of defect-free goods or after successful acceptance.
6. Schiller is entitled to offsetting and retention rights to the extent that is legally permitted.
7. Claims of the supplier against Schiller may only be assigned to third parties with the consent of Schiller.

IV. Delivery or performance time, delay, cancellation

1. The delivery or service dates or delivery or service deadlines stated in the order are binding.
2. Delivery or performance deadlines shall be deemed to have been met if the subject matter of the contract has been received at the contractual destination by their expiry and readiness for acceptance has been notified.
3. Schiller shall not be obliged to accept the delivery or service before the expiry of the delivery or service period.
4. The supplier shall be obligated to inform Schiller immediately in writing, stating the reasons and expected duration of the delay, if circumstances occur or become recognisable to the supplier from which it results that the agreed delivery or service time cannot be adhered to.
5. If the specified delivery or service deadlines are exceeded, Schiller reserves the right, after prior notice of default and granting a reasonable grace period, to either demand subsequent delivery and compensation for damages due to delayed delivery or compensation for damages due to non-fulfilment or to withdraw from the contract, without prejudice to the statutory provisions.
- 6.a. In the event of culpable delivery delays, Schiller shall be entitled to demand a contractual penalty in the amount of 0.5% of the respective order value for each commenced week of the delivery delay, up to a maximum of 5%, after prior written warning to the supplier.
- 6.b. Schiller shall also be entitled to claim damages in excess of the contractual penalty.

7. If there are doubts before or after the due date for which the supplier is responsible regarding their ability or willingness to deliver/perform, in particular because the supplier already announces that they cannot or do not want to deliver or perform on time, and if Schiller has an urgent interest in clarification, the supplier can be given a deadline before or after the due date for clarification and, if necessary, for proof of their ability or willingness to deliver/perform with the threat of refusing acceptance of the delivery or service after the deadline expires without result.

8. The supplier may only invoke the absence of necessary drawings and technical data to be delivered by Schiller if they have sent a written reminder for the documents and data and has not received them within a reasonable period of time.

9. In cases of force majeure, the consequences of the delay in delivery shall remain ineffective, provided Schiller is informed immediately of the occurrence of the events.

10.a. In the event of cancellation of the contract for which the supplier is responsible, Schiller may demand lump-sum compensation in the amount of 25% of the gross order value for which the cancellation was declared. The supplier shall be entitled to prove that no damage or less damage than the lump sum has been incurred.

10.b. Schiller shall be entitled to claim damages in excess of the lump sum.

11. The supplier shall not be authorised to make partial deliveries without the prior written consent of Schiller.

V. Terms of delivery, transport insurance, transfer of risk, acceptance

1. If no other written agreements have been made, the delivery or service shall be free domicile, packaged, insured and, if applicable, duty paid to the contractual destination.

2. Schiller reserves the right to determine the dispatch route and the type of dispatch as well as the means of transport and the type of packaging.

3. In the case of purchase contracts, the risk shall pass to us upon handover of the goods at the contractually agreed destination. In the case of work performance contracts, the transfer of risk shall only take place after acceptance.

4. After proper completion of the commissioned service and delivery, the supplier shall declare readiness for acceptance and hand over all documents belonging to the object of the contract to Schiller. If the inspection of the supplier's services requires commissioning of the systems that are the subject of the order or similar for test purposes (e.g. individual tests, integration test), acceptance shall only take place after successful completion of the test.

5. All deliveries shall be made subject to a waiver of retention of title by the supplier.

VI. Third party property rights

1. The supplier warrants in accordance with para. 2 that the products supplied by them do not infringe any industrial property rights of third parties in countries of the European Union or other countries in which they manufacture the products or have them manufactured.

2. The supplier shall be obligated to indemnify Schiller from all claims that third parties assert against Schiller due to the violation of industrial property rights named in Paragraph 1, and to reimburse Schiller for all necessary expenses in connection with this claim. This shall not apply if the supplier proves that it is neither responsible for the infringement of the property right nor should have been aware of it at the time of delivery if it had exercised due commercial care.

3. The further legal claims to which Schiller is entitled due to legal defects in the products delivered to Schiller shall remain unaffected.

4. The supplier shall not be authorised to recognise the claims of third parties and/or conclude agreements with third parties regarding these claims without the written consent of Schiller.

5. Schiller shall be authorised to obtain permission from the owner of the infringed property right to the required extent at the supplier's expense.

6. If the question of property right infringement is disputed, Schiller shall have the right to demand a security deposit from the supplier in the full amount of the impending damage for the duration of the dispute.

7. The limitation period for indemnification claims shall be three years, calculated from the time Schiller becomes aware of the claim by the third party, but at the latest after 10 years from delivery or acceptance.

VII. Product liability

1. Insofar as the supplier is responsible for claims asserted by third parties due to personal injury or property damage, the supplier shall be obligated to indemnify Schiller from resulting claims for damages by third parties, including the necessary costs for defence against these claims upon first request, insofar as the cause lies within the supplier's area of control and organisation and where the supplier is liable in the external relationship.

2. Insofar as recall measures are required due to a product defect mentioned in section 1, the supplier is obliged to reimburse the necessary expenses in accordance with §§ 683, 670 BGB [German civil code]. Further claims by Schiller shall remain unaffected by this.

3. The supplier undertakes to take out and maintain public liability insurance with a lump sum cover of at least € 5 million per personal injury / property damage. Further legal claims of Schiller shall remain unaffected by this.

VIII. Compliance with the law

1. In connection with the contractual relationship, the supplier is obliged to comply with the relevant statutory provisions. This applies in particular to anti-corruption and money laundering laws as well as antitrust, labour and environmental protection regulations (e.g. minimum wage act, supply chain due diligence act, etc.).

2. The supplier shall ensure that the products supplied by them fulfil all relevant requirements for placing on the market in the European Union and in the European Economic Area. The supplier must prove conformity to Schiller upon request by presenting suitable documents.

3. The supplier shall use reasonable endeavours to ensure that its subcontractors comply with the obligations incumbent on the supplier under this Section VIII.

IX. Scope of delivery and services, spare parts, warranty claims, notice periods

1. The supplier shall ensure that their deliveries or services include all measures necessary for a proper, safe and economic use, that they are suitable for the intended use and correspond to the state of the art in science and technology, as well as the documents on which the order is based (specifications, descriptions, samples, drawings, etc.). The supplier shall observe all relevant standards, laws and legal regulations, in particular the relevant environmental protection, hazardous materials, hazardous goods and accident prevention regulations, as well as the generally recognised safety and occupational health regulations and the factory standards of Schiller for the delivery or provision of services. The supplier shall inform Schiller of the required official authorisations and reporting obligations for the import and operation of the delivery objects.
2. Schiller must be notified of changes in the type or composition of the processed material or in the constructive design compared to earlier similar deliveries and services before the start of production. They require the written consent of Schiller. Schiller shall not be obligated to examine deliveries and services for similarity upon receipt.
3. The supplier shall ensure that it can also supply Schiller with the delivery items or parts thereof as spare parts for a period of 10 years after termination of the delivery relationship under reasonable conditions. If the supplier intends to discontinue the production of spare parts for the products delivered to Schiller, they shall inform Schiller of this immediately after the decision on the discontinuation. Subject to clause 1, this decision must be made at least 12 months before production is discontinued.
4. The legal warranty rights shall be available to Schiller without limitation. Schiller shall always be entitled to demand that the supplier remedy the defect or provide a replacement delivery at its own discretion. In this case, the supplier must bear the expenses required for the purposes of fault rectification or replacement delivery. Schiller expressly reserves the right to claim damages.
5. In urgent cases, Schiller shall be authorised, after notifying the contractor, to rectify the defect themselves or through third parties and to demand compensation for the necessary expenses.
6. As long as defects exist, Schiller shall have the right to withhold payment of the remuneration owed to a reasonable extent.
7. The warranty period shall be 24 months after delivery to the customer of Schiller, but no longer than 36 months after transfer of risk, unless expressly agreed otherwise or the law provides for longer periods.
8. The warranty period shall begin with the handover of the delivery object at the contractual destination to Schiller or the third party named by Schiller at the prescribed place of receipt or use. In the case of devices, machines and systems, the warranty period begins with the inspection date specified in the written inspection statement from Schiller. If the inspection is delayed through no fault of the supplier, the warranty period shall be two years from the time when the object of delivery is provided for inspection. If the supplier reworks or delivers a replacement, the warranty period for the affected individual part shall begin anew.
9. Upon receipt of a written notification of defects by the supplier, the limitation period for warranty claims shall be suspended until the supplier rejects the claims of Schiller or declares the defect eliminated or otherwise refuses to continue negotiations regarding the claims of Schiller. In the case of replacement delivery and rectification of defects, the warranty period for replaced and repaired parts shall begin anew, unless Schiller had to assume from the behaviour of the supplier that the supplier did not consider themselves obligated to the measure, but instead only carried out the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.
10. Insofar as Schiller is obligated to inspect the delivered goods for any defects within a reasonable period of time, the complaint shall be deemed to have been made on time if it is received by the contractor within a period of three weeks from acceptance of the goods at Schiller. Schiller may give notice of defects that are not recognisable during a proper inspection within three weeks of their discovery.
11. Schiller shall be authorised to inspect the supplier's production facilities - also accompanied by our customer.

X. Warranty and security retention

1. Schiller shall be authorised to retain a security of 10% of the order value for warranty claims. In the event that the supplier becomes insolvent before our final payment, Schiller shall be entitled to an additional security retention of a further 20% of the order value for the duration of the warranty period.
2. The supplier is authorised to redeem the warranty and additional security retention by providing an unlimited, directly enforceable warranty guarantee from a German credit institution subject to German law. In the case of foreign suppliers, Schiller shall also recognise warranty guarantees from internationally active credit institutions authorised in the European Union.

XI. Retention of title, provision of material, tools

1. Provided materials shall remain the property of Schiller and shall be stored separately by the supplier free of charge.
2. If the reserved goods are processed, mixed or remodelled with other objects not belonging to Schiller, Schiller shall acquire co-ownership of the new object in the ratio of the value of the object provided by Schiller (purchase price plus VAT) to the other processed, mixed or remodelled objects at the time of processing.
3. If the combination takes place in such a way that the property of the contractor should be considered the primary item, it applies as agreed that the supplier transfers to Schiller proportional co-ownership; the supplier stores the item for Schiller under sole ownership or co-ownership.
4. Tools and models that Schiller makes available to the supplier or that are produced for contractual purposes and charged separately to Schiller by the supplier shall remain the property of Schiller or shall become the property of Schiller. The supplier shall mark them as the property of Schiller, store them carefully, insure them to an appropriate extent against damage of any kind and only use them for the purposes of the contract. The costs of their maintenance and repair shall be borne equally by the contracting parties, unless otherwise agreed. However, if these costs are attributable to defects in the items manufactured by the supplier or to improper use by the supplier, its employees or other vicarious agents, they shall be borne solely by the supplier. The supplier shall inform Schiller immediately of all damage to these tools and models, other than insignificant damage. Upon request, the supplier shall be obliged to return them to Schiller in proper condition if they are no longer required by the supplier to fulfil the contracts concluded with Schiller.

XII. Supplementary provisions for the utilisation of cranes, lifting equipment or other technical aids

1. If the supplier also provides the operating personnel, the supplier shall undertake to properly transport the objects and goods to be lifted or transported to the respective location specified by Schiller using its vicarious agents and to supervise this. In this respect, it is a work performance contract. A work performance contract also exists at least if and insofar as the supplier has only undertaken to install or dismantle the equipment.

2. In all cases, the supplier must take out crane liability insurance with a lump sum cover of at least € 1 million and - if operating personnel are also provided - hook load insurance with a lump sum cover of at least € 250,000.00, in each case for personal injury, property damage and financial losses caused by such damage. Special remuneration shall only be granted for this if this has been agreed with us. Schiller shall be entitled at any time to obtain proof of insurance cover and to inspect the insurance contracts.

XIII. Confidentiality

1. The supplier undertakes to treat all non-public, commercial or technical details of which it becomes aware through the business relationship as business secrets and to protect them against unauthorised inspection, use or loss.

2. Devices, models, samples, illustrations, drawings, calculations, print templates, tools, other aids, documents and information provided by Schiller or produced at the expense of Schiller shall be the property of Schiller and may not be reproduced, sold or passed on to third parties without the express written consent of Schiller, nor may they be used for purposes other than those contractually agreed. This also applies if the documents have not been labelled as confidential. They shall be secured against unauthorised inspection or use and shall be returned to Schiller - including any copies - upon termination of the contract without being requested to do so.

3. This confidentiality obligation shall also apply after the contract has been processed or after the end of the business relationship. It shall expire if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known without the contractor breaching this confidentiality obligation.

4. The supplier shall oblige its subcontractors in accordance with this Clause XIII.

XIX. Severability clause, place of jurisdiction, place of fulfilment, applicable law, data storage, termination

1. Should a provision of the General Terms and Conditions of Purchase of Schiller be or become invalid, this shall not affect the validity of the other provisions.

2. For all disputes arising from the business relationship, Schiller's registered office in 94486 Osterhofen shall be agreed as the place of jurisdiction, insofar as this is legally permissible. However, Schiller shall also be entitled to sue the contractor at their place of business.

3. Unless otherwise stated in the order, Schiller's registered office in Osterhofen shall also be the place of fulfilment. If a different place of fulfilment is agreed, this shall not affect the place of jurisdiction.

4. The law of the Federal Republic of Germany applies. The UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 - CISG) shall not apply.

5. Schiller shall be authorised to collect, store, modify, transmit or use the data of the contractor received from the business relationship in accordance with the EU General Data Protection Regulation (GDPR) and the new version of the German federal data protection act [Bundesdatenschutzgesetz n.F.].

6. Schiller shall be entitled to terminate the contract at any time prior to completion. In this case, the contractor is obliged to cease work immediately. The contractor shall be entitled to demand the agreed remuneration; however, they must allow credit for the expenses they save as a result of the cancellation of the order or that they acquire or maliciously fail to acquire through other use of their labour.

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