

Terms & Conditions of Purchase of Schunk Carbon Technology GmbH

1. General

Our Terms & Conditions of Purchase shall be the only terms governing our purchasing and orders; the general terms and conditions of a supplier, contractor or service provider (hereinafter referred to as “supplier”) are only accepted if they are consistent with ours or we have expressly agreed to them in writing. Acceptance of goods, (work) performances, (work) deliveries or services of the supplier (hereinafter: subject matter of the contract) or the payment thereof may not be construed as consent, even if acceptance or payment is made being aware of conflicting or supplementary terms of the supplier.

2. Orders, conclusion of contract and contract amendments

Orders, the conclusion of contracts and delivery schedules, their amendments and supplements as well as amendments to an underlying contract including these Terms & Conditions of Purchase and the written form requirement per se must be made in writing to be legally effective. This also applies to any terminations whatsoever.

Verbal agreements of any kind—including subsequent amendments and supplements to our Terms & Conditions of Purchase and this written form requirement—must be confirmed by us in writing in order to be legally effective.

The written form requirement shall also be satisfied by remote data transmission in the form of e-mails or faxes.

Cost estimates and/or offers are binding and provided free of charge, unless expressly agreed otherwise in writing.

If we do not receive a response within 10 days of receipt of an order, it shall be deemed to have been accepted. If the supplier fails to accept an order within 10 days of receipt, we shall be entitled to cancel the order. Order confirmations are to be sent electronically to the following e-mail address: orderconfirmation@at.schunk-group.com.

Call-off orders in the context of an ordering and call-off schedule are fully binding unless the supplier expressly objects within two working days of transmission.

3. Delivery period and delivery date

Agreed dates and deadlines are binding. Default occurs without any reminder being required. The receipt of the goods at the place of destination is the defining criterion for compliance with the delivery date or the delivery period. In the case of a delivery not agreed “free works” (DAP or DDP according to Incoterms 2020), the punctual provision of the goods by the supplier, taking into account the time for loading and dispatch, is decisive.

If the supplier has assumed responsibility for installation or assembly and unless otherwise agreed, the supplier shall bear all necessary ancillary costs, such as travel expenses, provision of tools and allowances, subject to deviating provisions.

If the supplier fails to meet the agreed deadline, we shall be entitled, at our discretion and without prejudice to further statutory provisions, to withdraw from the contract after expiry of a reasonable grace period, to procure a replacement from a third party and/or to claim damages for non-performance. We are entitled to compensation for any additional costs incurred by us due to delayed deliveries or services for which the supplier is responsible. The acceptance of the delayed delivery or service does not constitute a waiver of claims for compensation to which we are entitled due to the delayed delivery or service.

In the event of the supplier's failure to comply with the delivery date, we may demand a contractual penalty in an amount equalling 0.5% of the order total per completed working day, up to a maximum of 5% of the order total. We have the right to claim the contractual penalty in addition to performance. Failure by us to reserve the option of claiming a penalty at the time of acceptance shall not preclude the penalty from being enforced by us until we have made payment. The assertion of a claim for damages in excess of the contractual penalty is not excluded.

If the supplier foresees difficulties with regard to production, the supply of primary materials, compliance with the delivery date or similar circumstances that could prevent him from delivering on time or in the agreed quality, the supplier shall immediately notify our ordering department in writing.

The unconditional acceptance of the late delivery or service does not constitute a waiver of the right to claim contractual or statutory damages to which we are entitled as a result of such late delivery or service.

The unconditional acceptance of the delayed delivery or service shall not constitute a waiver of contractual or statutory claims for compensation to which we are entitled on account of the delayed delivery or service.

Shipment is at the risk of the supplier. The delivery must be made carriage or postage paid. Unless otherwise agreed, packaging costs shall be borne by the supplier.

Should freight nevertheless be paid by us, we shall determine the method of shipment.

Each shipment must be accompanied by a delivery bill indicating the order number.

Work performances and deliveries require acceptance in the presence of the supplier. If the commissioning or putting into operation of the work performance (work delivery) is required to inspect the same for defects, acceptance shall only take place after successful completion of the test run.

4. Force majeure

Force majeure, labour disputes, operational disruptions through no fault of our own, civil unrest, official measures and other unavoidable events shall release us from the obligation to accept the subject matter of the contract for the duration of their occurrence.

During such events and within two weeks of their end, we are entitled—without prejudice to our other rights—to withdraw from the contract in whole or in part insofar as these events are not of insignificant duration and our requirements have been significantly reduced.

5. Transfer of risk

The supplier shall bear the risk of damage to and loss of the item until acceptance by us or one of our agents at the point to which the goods are to be delivered according to the order. Should a delivery entail installation by the supplier on our premises or on the premises of a third party and/or should acceptance be required by contract or by law, the risk shall only pass to us upon acceptance.

6. Prices

Unless otherwise agreed in writing, the agreed prices shall be deemed to be "fixed prices delivered to named place of delivery" including packaging. Value added tax is not included.

In the event of defective delivery or performance, we shall be entitled to retain our payment in full, unless otherwise agreed in good faith.

7. Insolvency of the supplier

In the event of insolvency of the supplier, we shall be entitled to retain an appropriate collateral, at least, however, 10% of the agreed price, until expiry of the limitation period for warranty claims.

The supplier assigns their warranty claims against their sub-suppliers to us. We are entitled to disclose such assignment in the event of an insolvency of the supplier.

In addition, we are entitled to withdraw from the orders for the scope of delivery not yet fulfilled at that time.

8. Invoicing and payments

The supplier shall submit invoices, that must contain the order number, electronically to the following e-mail address: invoice.sct-at@at.schunk-group.com

Payment shall be made after full delivery or performance and after proper invoicing, stating the order number, supplier number, part number, quantity and unit price.

Payment within 14 days of the due date shall qualify for a 3% discount. Otherwise, payment shall be made without deduction within 60 days of receipt of invoice and full delivery.

Payments do not mean that we accept the delivery or service as being contractually compliant.

9. Warranty, notice of defects, obligation to examine and give notice of defects

The technical specifications as well as the performance data specified by the supplier shall be deemed to be an assurance of their quality.

In the event of defects in the warranted specifications, operating parameters, operating points, our specification or the supplier's catalogue information, we shall have the right to choose between withdrawal, reduction of the price, new delivery, rectification on site or compensation for damages due to non-fulfilment. Other further claims for damages shall remain unaffected.

A replacement (new delivery) and rectification must be made/take place without delay following our request. In urgent cases, in particular if necessary to avert acute danger or avoid major damage, we are entitled, in the absence of compliance with our request, to carry out the replacement or improvement ourselves or to have it carried out by a third party at the supplier's expense.

If costs and expenses as a result of a defective contractual item occur, for example in connection with the repair or replacement of a contractual item, which we were reasonably expected to occur, in particular costs and expenses for sorting, for an incoming goods inspection exceeding the usual scope, for the examination and analysis of the defect, as well as costs for calling in third-party or own personnel, the supplier shall bear these costs unless they can prove that they were not responsible for the defect.

We may return goods not delivered in accordance with the contract at the supplier's expense and risk.

The supplier shall ensure that a diligent outgoing goods inspection is carried out. They therefore waive the fulfilment of the obligation under commercial law to examine and give notice of defects (§ 377 UGB).

A notice of defect shall interrupt the limitation period for the relevant contractual item. The warranty period starts anew after the defect has been remedied.

The warranty period shall generally be 36 months, unless longer periods are required by law.

10. Liability of the supplier

The supplier's liability shall be governed by the statutory provisions.

If a claim is made against us based on product liability, the supplier shall be obliged to indemnify us from and against such claims if and to the extent that the damage was caused by a defect in the contractual item delivered by the supplier. In cases of fault-based liability, however, this shall only apply if the supplier fails to prove that they are not at fault.

11. Materials provided, means of production, drawings, etc.

Materials and means of production provided by us, including drawings, models, samples, tools, gauges, etc., shall remain our property. The supplier shall be liable for their destruction, loss, deterioration or damage insofar as this is attributable to the supplier.

Materials, means of production, drawings, models, samples, tools etc. provided may not be transferred to third parties, sold, pledged or used in any other way without our approval. The products manufactured using these materials, means of production, drawings, models, samples or tools may only be delivered to us.

In particular, our materials, means of production, drawings, models, samples, tools, etc. may not be used as a template for production for third party recipients.

If the costs of production for means of production or tools have been fully borne by us, the property in these means of production or tools shall pass to us. As long as the items have not yet been handed over to us, they shall be held in safe custody for us by the supplier using appropriate care.

In the case of pro rata costs paid by us, ownership shall pass to us on a corresponding pro rata basis unless we settle the payment gap between the pro rata and the full costs.

12. Industrial property rights, third-party rights

All copyrighted rights of use, industrial property rights and legal interests similar to industrial property rights in the contractual item as well as in all other work results produced within the scope of this contract shall pass to us without any additional payment at the time of their creation. They shall belong exclusively to us without any restrictions in terms of space, time or content and may be extended, transferred, revised, adapted, changed, reproduced or published without the supplier's consent, whereby the supplier shall grant us the right to apply for a patent for patentable development results.

The supplier shall exclusively deliver products and use materials which are their free property, unrestricted by liens, and to which no third party property rights exist which would exclude or impair their use by us. With regard to any claims of ownership, lien, licence or other claims of third parties in relation to the contractual subject matter, the supplier shall indemnify us and hold us harmless. The supplier shall also be obliged, upon request, to immediately provide us with the information and documents relating to the contractual item required for the defence against such third-party claims. The supplier shall support the freedom from third party intellectual property rights in relation to the contractual item by taking appropriate action, such as research into third party intellectual property rights, and shall provide us with the relevant documents and analysis materials on request.

13. Export controls and customs regulations

The supplier shall inform us in their business documents of any licensing requirements for (re-)exports of their goods in accordance with Austrian, European, US export and customs regulations as well as the export and customs regulations of the country of origin of their goods.

14. References

The supplier may only reference their business relationship with us if we have provided our express consent.

15. General Provisions

Should any provision of these Terms & Conditions and the additional agreements made be or become invalid, this shall not affect the validity of the remaining provisions of these Terms & Conditions. The contracting parties shall be obliged to replace the invalid provision by a provision which reflects the intended commercial effect as closely as possible.

The offsetting of claims of the supplier against claims by us and the assertion of a right of retention shall be excluded; unless the claim of the supplier has been established by a court of law or has been recognised by us.

Insofar as no indications to the contrary are listed in inquiries and orders, queries are to be directed exclusively to our purchasing department.

The supplier shall ensure that all its goods, (work) performances, (work) deliveries or services comply with all currently applicable legal requirements. This applies in particular with regard to the obligations under REACH.

16. Governing Law, place of performance and place of jurisdiction

These Terms & Conditions shall be governed by the laws of the Federal Republic of Austria to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention).

The place of performance for all deliveries and services is the shipping address specified by us. In the absence of such and if it is also not apparent from the context, the place of performance shall be our incoming goods department.

The place of performance for all payments is the place of our registered office.

The place of jurisdiction is Wels. We shall, however, be entitled to bring an action at the supplier's place of business.