

General Terms and Conditions of Sale and Delivery for Automotive Products

Schunk Carbon Technology GmbH, Bad Goisern

1. Applicable conditions

Our offers and acknowledgements of orders are subject to the following Terms and Conditions of Sale and Delivery. The following Terms and Conditions of Sale and Delivery are applicable for all deliveries of goods and products and services rendered to customers and related to automotive products, unless the parties agree otherwise in writing. Terms and conditions or forms of the customer shall in no way be applicable, irrespective if we are aware of them or not, irrespective if we disagreed to them or not and irrespective if they are contrary to our Terms and Conditions or not. The customer acknowledges the application of this Terms and Conditions automatically by accepting the delivery.

2. Offers

Our offers are without obligation unless otherwise stated by us in writing.

3. Contents of contracts, reservation of export licence

3.1 Our obligation of delivery comes into force after the customer has received our written acknowledgement of order. In case of a binding offer on our part the obligation of delivery comes into force with and its legally binding acceptance by the customer. Any collateral agreements or modifications shall be effective only when confirmed by us in writing.

Production-related deviations of our products from the quantity ordered shall be permitted within a reasonable scope and may be invoiced separately.

3.2 Our statements shall be deemed warranties as to quality only when expressly designated as warranted or guaranteed in our acknowledgement of order.

3.3 Any licenses or permits required for the production or operation of the goods to be delivered shall be obtained by the customer at its own costs. In case we assist the customer in obtaining the said permits the customer shall bear the costs incurred by us in this respect.

3.4 Shipment by instalments shall be permitted.

4. Reservation of export licence

Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contract partners shall obligate themselves to provide all information and documentation needed for the export/domestic shipment/import.

Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, and claims for damages shall be excluded.

5. Copyright, confidentiality

Our drawings, models, designs, templates, patterns, etc., as well as offers and acknowledgements of order remain our exclusive property. They are submitted for the purpose agreed upon only and may not be used for any other purpose. Copies shall be made only for the purpose agreed upon.

Neither originals nor copies shall be submitted or disclosed to any third party. We reserve the right to demand at any time that any of the aforementioned items be returned to us. They shall be returned to us immediately when the order is placed with another supplier. The customer assumes liability that the use of any drawings, samples or similar items submitted to us will not infringe against any patent, copyright in design, or trademark protection right.

6. Prices

Unless otherwise agreed upon our prices are in Euro and shall be ex-works, including loading on our premises, however exclusive of packing, insurance and any other costs. Our prices are exclusive of Value Added Tax in the statutory amount where applicable.

Should the market conditions, such as raw material prices, wage costs, energy costs or overhead costs change during the duration of a long-term supply relationships (contract duration > 3 months), we have the right to adjust the prices accordingly.

7. Cost of tools

In the event that any new tools, moulds or other devices are required for executing an order they shall remain our exclusive property and will not be surrendered by us even if paid for by the customer in part. Only in case of a corresponding separate contractual agreement and after complete payment of a tool by the customer, the ownership is transferred to the customer.

In order to ensure delivery within the deadlines agreed-upon we are obliged to keep a sufficient quantity of wear parts on stock and available in time. In case that a part is not needed any more the customer shall advise us of this fact as soon as possible. Otherwise, we will be entitled to invoice the costs incurred by us.

In the event that any part for which we prepare a special tool by the customer's order is not introduced we shall be entitled to subsequently invoice the full tool costs.

Any agreement departing from these provisions shall be valid only when made in writing.

8. Payment, default in payment, withholding of payment

8.1 The amount of any invoice plus value added tax shall be due for payment 10 days from the date of invoice. From this date onward, we will be entitled to demand payment of default interest at a rate of 9,2 % above the then current European Central Bank base rate. We reserve the right to furnish proof of any major loss to be compensated for. Our invoices are payable without any discount. Any tacitly tolerated deduction of discounts shall not give rise to any legal claim even after having been practised over a prolonged period of time.

8.2 The customer shall not be entitled to withhold payment or to offset the amount of any invoice

8.3 If, after entering the agreement, it becomes evident that our right to receive payment is in jeopardy as a result of deficient solvency on the part of the buyer (§ 1052 ABGB), then we shall have the right to refuse performance and to set an appropriate deadline for the buyer, within which he shall either make an advance payment or provide suitable collateral security.

If the buyer refuses to meet such demands or that the aforesaid deadline expires without success, then we shall be entitled to withdraw from the agreement and shall have a right to compensation for any damages we may have incurred.

8.4 We are entitled to invoice EUR 15.00 for each reminder.

8.5 We are not obliged to accept bills of exchange. Any bill charges shall be borne by the customer. If a bill is not honoured any and all claims against the customer shall fall due immediately.

9. Date and term of delivery, default in delivery

9.1 Any date or term of delivery shall be binding only if designated as such in our acknowledgement of order.

9.2 The term of delivery shall commence at the earliest when sending the acknowledgement of order, however not before receiving the drawings authorised by the customer, release of documents to be procured, not before having obtained any required licenses or permits, not before having received any and all information required for executing the order, clarification of all commercial and technical issues and not before receipt of any deposit agreed upon or.

9.3 If noncompliance with the specified delivery deadline is caused by acts of God, labor disputes or other events which we are not able to influence, then the delivery deadline shall be extended by an appropriate and reasonable amount. This shall also be applicable if any such circumstances occur with our subcontractors.

We shall not be held liable for any circumstances as aforesaid even if they occur while already being in default. In important cases, we will inform the customer of the occurrence and end of any such obstacles as soon as possible.

- 9.4 The date or term of delivery shall be deemed complied with if the goods to be delivered leave our plant or the customer is advised that they are ready for shipment prior to the lapse of the said term.
- 9.5 Our obligation to comply with the delivery deadline is subject to punctual and correct delivery by our own suppliers.
- 9.6 Any claims for compensation on the part of the customer in any case of delayed delivery shall be excluded, even after the lapse of a grace period granted to the supplier, to the extent that this is permitted by law. This shall not be applicable in case of imperative liability for loss or damage caused intentionally or by gross negligence. This provision shall not affect the right of the customer to rescind a contract after a grace period granted to the supplier has lapsed without delivery being made.
- 9.7 In the event that delivery or collecting is delayed upon the customer's request we will invoice the costs incurred for storage starting one month after having advised the customer that the goods are ready for shipment, at a rate of at least 0.5 % of the amount of the invoice per month of storage on our premises. At the same time, the invoices for all goods delivered and services provided previously shall be due for payment. We shall, however, after setting an appropriate deadline and after the expiration of such deadline proves fruitless, be authorized to reschedule delivery to the buyer within a new and appropriate deadline.
- 9.8 In case of call orders we are entitled to manufacture the goods at once. Shipment by instalments is permitted. In the event that no fixed dates or deadlines have been agreed upon for taking delivery we shall be entitled to make delivery within reasonable periods if the customer fails to issue call-forward notices.
- 9.9 In case the customer is in default with his payment obligation, any further delivery can be stopped and denied by us.
- 9.10 Over- or Under-delivery in the amount of +/- 5 % for bulk goods are permitted

10. Taking delivery, acceptance, passage of risk, default in acceptance

- 10.1 The risk shall pass to the customer upon shipment or when collecting the parts to be delivered at the latest, even in case of shipment by instalments, and even in case we bear the shipping costs or have undertaken to perform additional services such as delivery to the customer's premises.

We shall be entitled to take out transport insurance for all consignments at the customer's expense.

In the event that transport damage is detected upon arrival of a consignment at the customer or at a later date the customer shall immediately demand ascertainment and a written statement of facts from the carrier.

- 10.2 In the event that dispatch or collecting is delayed due to circumstances to be attributed to the customer the risk shall pass to the customer as of the day the goods are ready for shipment. However, we shall be obliged to take out insurance at the customer's request and expense, and in accordance with the customer's instruction.

- 10.3** Notwithstanding the rights defined in Clause 12 the customer shall take delivery of goods delivered even if they have irrelevant defects.
- 10.4** In the event that any material supplied by the customer is damaged or becomes unfit for use in our plant, particularly in the course of machining, processing or repairs, we shall be held liable only if loss or damage was caused by gross negligence. This liability shall be limited to 10 % of the processing value, unless imperative provisions of law provide for unlimited liability.
- 10.5** We take out fire insurance at our own cost for any materials owned by the customer and stored on our premises. Any additional insurance will be taken out only upon written application by the customer and at the customer's expense.

11. Retention of title

- 11.1** We retain ownership right of any and all goods supplied by us until the amount of the respective invoices plus any costs and interest have been paid in full. Up to that point, the customer may re-sell, machine, process or combine the goods with other goods only subject to our consent in writing unless any such goods have been supplied for re-sale, machining, processing or for being combined with other goods. The customer undertakes to assign its claim arising from re-sale to us as security for our purchase price claim and to make a note of any such assignment in its books or on its invoices. In case of seizure or any other third-party claim to the goods the customer shall draw attention to our ownership right and shall inform us forthwith.
- 11.2** If the customer is in breach of contract, in particular in case of default in payment, after having requested the customer once to remedy the said breach within 7 days, we shall be entitled to demand that the goods be returned to us, and the customer shall be obliged to surrender the goods. The assertion of the reservation of ownership as well as the attachment of the delivery goods by us shall not be deemed to constitute withdrawal from the agreement.
- 11.3** The customer assigns to us already at this point any and all of its future claims against its customers or any third party arising out of the re-sale of goods supplied by us in the pro-rata amount of our invoice, as well as any and all ancillary rights. This provision shall also be applicable in the event that the customer allocates the claim to which it is entitled in respect of the re-sale to a current account agreed upon with its customer or with any third party. We accept this assignment.
- 11.4** The customer is hereby authorised to collect the claims assigned as aforesaid in the course of ordinary business, provided that it shall transfer to us any amounts received without delay.

The authorisation to collect any claims assigned shall expire automatically in the event of default in payment, if an application for an out-of-court arrangement with creditors or a petition in bankruptcy is filed, as well as in case of protest in connection with bills of exchange or cheques.
- 11.5** The filing of a petition for insolvency proceedings shall entitle to withdraw from the agreement and to demand the immediate return of the delivery goods.

12. Warranty and Liability for defects in goods delivered

With respect to any defects in goods delivered we shall be liable and warrant excluding any further claims as follows:

- 12.1** Any parts which turn out to be unfit for use or considerably impaired in their fitness for use as a result of any circumstance originating before the time of handover, including but not limited to defective design, poor quality of materials or defects in workmanship shall be replaced or repaired free of charge at our discretion. The burden of proof that a defect existed at the time of handover shall lie with the Purchaser. If any such defect is detected the customer shall inform us forthwith in writing. Any replaced parts shall become our property.
- 12.2** The warranty period shall be 6 months from handover of the goods supplied.
- 12.3** We do not assume liability for any defect or damage due to any of the following reasons: improper or inexpert use, lack of maintenance or insufficient maintenance, faulty installation and/or commissioning by the customer or any third party, natural wear, inexpert or negligent treatment, use of unsuitable consumables, replacement of materials, chemical, electrochemical or electrical effects unless to be attributed to our fault.
- 12.4** After having contacted us in case of any defects, the customer shall give us the required time and opportunity to make the repairs and/or replacement deliveries required at our discretion. Otherwise we shall be relieved of our liability for defects. The customer shall be authorised to remove a defect on its own or to have it removed by a third party and entitled to demand reimbursement of necessary costs from us only in urgent cases where there is a danger to operational safety and in order to prevent unreasonably high loss, or in case we are in default in removing a defect, and shall inform us forthwith of any such measures taken.
- 12.5** With respect to the direct cost of repairs and/or delivery of replacement parts in case of justified complaints we shall bear the cost of the replaced parts including shipment free Austrian border, as well as reasonable costs of removal/installation. In addition, if within Austria, and if this can be reasonably demanded in the given case we shall bear the cost of sending the required installation personnel and helpers. Any other costs shall be borne by the customer. Any replaced parts shall become our property.
- 12.6** The buyer shall have the right, within the scope of legal regulations, to withdraw from the agreement, if we - subject to legal exceptions - allow an appropriate deadline, which has been granted to us for the reworking or replacement of the delivery goods, to expire without satisfactory results. If only a minor defect is present, then the buyer shall only be entitled to a reduction in the contract price of the delivery goods. In all other cases, the right to price reductions shall be excluded.
- 12.7** In the event the customer or any third party make any modifications or repair work in an inexpert manner without our prior consent we shall not be held liable for any consequences thereof.

12.8 Should the use of the delivery goods lead to a breach of industrial property rights or copyrights, then we will, on principle, secure at our expense the right for the buyer to continue using the delivery goods, or, we will modify the delivery goods in a manner which is reasonable for the buyer and which eliminates the breach of property rights. If this is not possible to be done under economically suitable conditions or within a suitable period of time, then the buyer is entitled to withdraw from the agreement. We also shall be entitled to withdraw from the agreement if the aforesaid requirements are met. Moreover, we shall indemnify the buyer against any undisputed claims of the respective owner of the property right or against such claims which are pronounced and granted through due process of law.

12.9 Our obligations pursuant to point 12.8, in the event of breach of property rights and copyrights are ultimately subject to point 12.10 below.

Such obligations shall only exist if:

- the buyer notifies us immediately about asserted breaches of property rights or copyrights,
- the buyer provides us with reasonable support in our efforts to defend against any asserted claims or allows us to carry out the modification measures pursuant to point 12.8,
- all defensive measures, including out of court settlements, are left open to us as options,
- the deficiency in title does not stem from an instruction. Specification or drawing given by the buyer (“built to print”), and
- the breach of rights was not caused by the buyer modifying the delivery goods on his own or using them in a manner not authorized by the agreement.

12.10 Any claims on the part of the customer against us, our staff, or any other person employed by us in performance of our obligations, in particular any claim for compensation of any loss or damage to any objects other than the goods supplied shall be excluded.

This exclusion of liability shall not be applicable in case of loss or damage caused intentionally or by gross negligence.

In case of culpable breach of any material obligations under the contract we shall be liable only for the reasonably foreseeable loss typically related to the contract - except in cases of intentional breach or gross negligence.

Furthermore, the exclusion of liability shall not apply in those cases where we are liable under the Product Liability Act (“Produkthaftungsgesetz”) for personal injury or damage to privately used property due to defects in the goods supplied. Furthermore, it shall not apply if expressly warranted quality or characteristics are not present where the purpose of warranty was to protect the customer against loss or damage other than damage to the goods supplied.

12.11 Any liability for lost profits or costs or damages of interruption of business, loss of production or any indirect or any immaterial damages shall be excluded.

13. Liability with respect to ancillary obligations

If the goods supplied cannot be used according to contract by the customer for our fault, as a result of failure to implement or faulty implementation of any proposals or counselling before or after signature of the contract, and/or as a result of our failure to comply with any other ancillary obligations under the contract, including but not limited to providing instructions for operation and maintenance of the goods supplied, the provisions of Clauses 11 and 13 shall be applicable analogously. Any further claims on the part of the customer against us shall be excluded.

14. Our claim for damages in case of non-performance by the customer

In case we are entitled to demand damages for non-performance the liquidated minimum damages shall be 20 % of the price agreed upon not including Value Added Tax. The amount of damages shall be increased if we furnish proof that the actual loss is in higher, and lowered if the customer furnishes proof that the actual loss is lower.

15. Customer's right of rescission, additional liability on our part

- 15.1** The customer may rescind the contract if it becomes definitely impossible for us to perform the contract in its entirety. The customer may also rescind the contract in case of orders of identical objects if it becomes impossible to deliver part of the goods ordered and the customer has a legitimate interest to refuse partial delivery. If this is not the case, the customer may reduce the purchase price proportionally.
- 15.2** In case of default in delivery/performance within the meaning of Clause 8 of these Terms and Conditions the customer may rescind the contract after having granted us a reasonable grace period declaring that it will refuse to take delivery after the said period has lapsed, if we fail to perform the contract within the grace period.
- 15.3** If it becomes impossible for us to perform the contract while the customer is in default of acceptance or due to the customer's fault the customer shall be obligated to pay the purchase price according to contract.
- 15.4** Any further claims against us or our employees on the part of the customer, in particular any claim for rescission of contract, notice of termination or reduction of the purchase price, for compensation of any loss or damage, even damage caused to other objects than the goods delivered, shall be excluded.

16. Force Majeure

- 16.1** Neither Party can be held responsible for non-fulfillment of a Contract, provided the nonfulfilling Party proves that this is caused by force majeure, including but not limited to labor conflict involving other than Supplier's employees unless an involvement of Supplier's employees is due to national labor conflicts, a general shortage of the required raw materials, terrorism, fire, pandemics, epidemics, floods, lock-out, theft, export and import prohibitions, currency restrictions or other obstructions beyond its control, which could not reasonably have been avoided, foreseen or limited.

- 16.2** The Party intending to claim relief due to force majeure shall, in writing, without delay inform the other Party of the obstruction(s) and the implication of this for the fulfilment of the Contract. This Party is furthermore obligated loyally to co-operate in mitigating the consequences of a force majeure situation.
- 16.3** In case the force majeure situation is not be brought to a termination within three (3) months, the other Party is entitled to cancel the Contract by written notice with immediate effect.

17. Binding character of the contract

In the event that any provisions of a contract are invalid the remaining provisions of the contract shall remain in full force and effect. This shall not be applicable if sticking to the contract would cause unreasonable hardship for one of the parties.

In the event that any provision is invalid in its entirety or in part the parties to the contract shall immediately make efforts to achieve the economic intention of the invalid provision in another legal manner.

18. Place of jurisdiction, applicable law

The place of fulfilment for delivery and payment shall be the headquarters of the seller, even in those cases where delivery takes place at another place according to agreement. The place of jurisdiction for settling any dispute arising out of or in connection with the contract shall exclusively be the court having subject-matter jurisdiction in Salzburg, Austria. However, we may also sue in another court having jurisdiction over the customer. The contract shall be subject to Austrian law without the statutory provisions of international private law and under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).