

General Sales Conditions of SCHILLING Kran- und Hebetechnik GmbH for the Supply of Movable Items

I. Scope of applicability/purchasing and works supply contracts for movable items

1. These Conditions apply for the supply of movable items according to the purchasing contract or works supply contract concluded between SCHILLING and the buyer pursuant to § 433 BGB [German Civil Code] and/or § 650 BGB and therefore irrespective of whether SCHILLING has manufactured the goods itself or purchased them from suppliers (§§ 433, 650 BGB). However, these Sales Conditions do not apply to service contracts (§ 631 BGB [German Civil Code]).
2. Unless otherwise agreed in individual cases, these General Sales Conditions apply in the version valid at the time of contract conclusion.
3. Any individual agreements with the buyer made in individual cases (including auxiliary agreements, supplements and changes) shall always have precedence over these General Sales Conditions.
4. The Sales Conditions of SCHILLING only apply when the buyer is a business owner (§ 14 BGB), a legal entity under public law or a special fund under public law.
5. Any notes on the validity of statutory provisions are only provided for clarification. Therefore, even without such clarification, the statutory provisions apply unless they are directly altered or expressly excluded in these General Sales Conditions, or if individual agreements with the buyer in individual cases take precedence.

II. Inapplicability of the buyer's terms of delivery

The Sales Conditions of SCHILLING apply exclusively. Deviating, contradictory or supplementary purchasing conditions or General Terms and Conditions of Trade of the buyer shall only become part of the contract if and only to the extent that SCHILLING expressly consents to their validity. This requirement for consent applies in all cases, for example also if SCHILLING delivers to the buyer without reservation although SCHILLING is aware of the buyer's General Terms and Conditions of Trade.

III. Non-binding offer – binding order – acceptance by SCHILLING

1. Offers by SCHILLING are subject to change and are non-binding.
2. Ordering of the goods by the buyer constitutes a binding offer of contract.
3. SCHILLING can declare its acceptance of the order either verbally, in writing or by delivering the goods to the buyer.

IV. Delivery delay – unavailability – reservation of self-supply

1. The delivery period is individually agreed or, if no individual agreement is made, stated by SCHILLING upon acceptance of the order.
2. Should SCHILLING be unable to observe binding delivery periods for reasons for which SCHILLING is not responsible - i.e. unavailability of a product or service – SCHILLING shall immediately inform the buyer of this and simultaneously announce the expected new delivery period. Should the product or service still be unavailable within the new delivery period, SCHILLING shall be entitled to withdraw from the contract completely or partly. In such a case, SCHILLING shall immediately refund any payment already made by the buyer.

Should an agreed, binding delivery period be exceeded, the buyer shall be entitled to set a reasonable additional period for performance. Should this period expire without performance, the buyer shall be entitled to withdraw from the contract in accordance with § 323 BGB.

The following case in particular is considered a case of unavailability of the product or service as specified above: Failure of a supplier of SCHILLING to deliver on time when SCHILLING has concluded a congruent covering transaction, when neither SCHILLING nor the supplier are responsible and when SCHILLING is not obliged in the individual case to procure the product or service.

3. The statutory provisions determine whether SCHILLING is responsible for default of delivery. However, in all cases, the buyer must serve a notice of overdue delivery.
4. The rights of the buyer according to Section VIII of these General Terms and Conditions of Sale and the statutory rights of SCHILLING, in particular in the case of exclusion of obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or non-performance), remain unaffected.

V. Delivery, transfer of risk, default of acceptance

1. Delivery is made from the supply warehouse of SCHILLING in 88045 Friedrichshafen, which is also the place of fulfilment for the delivery. On request and at the cost of the buyer, SCHILLING shall send the goods to a different destination (sales shipment). Unless otherwise agreed, SCHILLING is entitled to determine the type of shipping itself (in particular forwarding company, shipping route, packaging).

2. Packaging is charged for in addition to the cost price and is non-returnable.
3. The risk of accidental destruction and accidental deterioration of the goods is transferred to the buyer at the latest upon transfer of the goods. However, in the case of sales shipment, the risk of accidental destruction and accidental deterioration of the goods as well as the risk of delay is transferred upon delivery of the goods to the forwarder, the carrier or other person or entity entrusted with performing shipping.
4. Should the buyer default on taking delivery or fail to provide active cooperation, or if the delivery from SCHILLING is delayed for other reasons for which the buyer is responsible, SCHILLING shall be entitled to demand compensation for the damage incurred, including additional costs (e.g. storage costs). For this, SCHILLING shall charge a fixed damages sum of 0.5% of the net purchase price per calendar week up to a max. 10% of the net purchase price.

This does not affect our right to provide evidence of higher damages or our statutory rights (in particular the right to claim reimbursement of additional expenses, reasonable compensation, termination); however, the fixed damages sum shall be offset against any higher claims. The buyer retains the right to provide evidence that we have incurred no damage at all or only damage that is much lower than the aforementioned fixed sum.

VI. Prices and payment conditions

1. Unless otherwise agreed in the individual case, the current prices of SCHILLING at the time of contract conclusion apply. Prices are ex warehouse plus the statutory sales tax.
2. In the case of sales shipment, the buyer bears the transport costs ex warehouse as well as the costs of any transport insurance required by the buyer. The buyer also bears the costs of any customs duties, taxes and other official charges.
3. The buyer is only entitled to rights of offset or retention to the extent that its claim has been legally established or is uncontested. In the case of defects to the delivery, counter-rights of the buyer, especially according to VIII, subsection 6 of these General Sales Conditions, remain unaffected.
4. Should it become evident after contract conclusion (e.g. if an application is filed for opening insolvency proceedings) that SCHILLING's right to the purchase price is threatened by the buyer's inability to pay, then SCHILLING shall be entitled – possibly after setting a new payment deadline – to withdraw from the contract according to the statutory provisions on refusal to pay (§ 321 BGB). In the case of contracts for the production of specific items (one-off production), we are entitled to withdraw immediately. This does not affect the statutory provisions on the dispensability of setting a deadline.

VII. Reservation of ownership

1. All goods delivered remain the property of SCHILLING (reserved goods) up to fulfilment of all claims from the business relationship with the buyer, irrespective of the legal basis, including any future or contingent claims (retention of ownership). However, the retention of ownership does not apply for prepaid or cash transactions which are paid on delivery. In such a case, the delivered goods remain the property of SCHILLING until the purchase price for the goods has been paid in full.
2. The buyer must immediately notify SCHILLING of any seizure or other impairment by a third party.
3. Should the realisable value of the securities exceed the claims of SCHILLING by more than 10%, SCHILLING shall on request by the buyer release additional securities of its own choice.

VIII. Buyer's rights to claim for defects:

1. Unless determined otherwise below, the statutory provisions apply to the rights of the buyer in the event of material defects and defects of title (including incorrect deliveries and short deliveries as well as incorrect assembly or defective assembly instructions). In all cases, the statutory special provisions for final delivery of the goods to a consumer (supplier recourse according to § 478 BGB) remain unaffected. Claims from supplier recourse are excluded if the defective goods have been further processed by the buyer or another business entity, e.g. by installation in another product.
2. The basis for SCHILLING's liability for defects is above all the agreement reached on the properties of the goods.
3. If a property has not been agreed upon, then the judgement on whether a defect exists or not shall be made according to the statutory provisions (§ 434 para. 1, sentence 2 and para. 3 BGB). However, SCHILLING accepts no liability for public statements by third parties (e.g. advertising) which the buyer has informed SCHILLING were not instrumental in its decision to make the purchase.

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4. Claims for defects by the buyer require that it has fulfilled its legal obligations of inspection and notification of defects (§§ 377, 381 HGB [German Commercial Code]).
5. If the item delivered is defective, SCHILLING can initially decide whether to provide subsequent performance by rectification of the defect (rework) or by delivery of a non-defective item (replacement delivery). The right of SCHILLING to refuse subsequent performance under the legally required conditions remains unaffected.
6. SCHILLING is entitled to make subsequent performance contingent on payment of the purchase price by the buyer. However, the buyer is entitled to retain a part of the purchase price which is in reasonable proportion to the defect.
7. The buyer shall allow SCHILLING the necessary time and opportunity for subsequent performance and in particular it shall provide the goods which are the subject of the complaint to SCHILLING for inspection. In the event of replacement delivery, the buyer shall return the defective item to SCHILLING according to the statutory provisions. Subsequent performance does not include disassembly of the defective item nor reassembly of the defective item by SCHILLING if SCHILLING was not originally obliged to assemble the item.
8. If a defect is actually present, the costs for the inspection and subsequent performance, in particular transport, road, labour and material costs as well as, if applicable, disassembly and assembly costs, shall be borne or reimbursed by SCHILLING according to the statutory provisions. Otherwise, SCHILLING can demand that the buyer reimburse the costs incurred from its unfounded demand for defect rectification (in particular inspection and transport costs), unless the lack of defects was not recognisable for the buyer.
9. In urgent cases, i.e. threat to operational safety or to prevent unreasonable damage, the buyer is entitled to repair the defect itself and to demand compensation from SCHILLING for the costs objectively required for this. The buyer shall immediately - if possible in advance - inform SCHILLING of any such self-remedy. The right to self-remedy does not exist if SCHILLING would have been entitled according to the statutory provisions to refuse corresponding subsequent performance.
10. Should subsequent performance fail or the reasonable period for subsequent performance set by the buyer expire without success or should it be dispensable according to the statutory provisions, then the buyer can withdraw from the purchase contract or reduce the purchase price. However, no right to withdrawal applies in the case of minor defects.
11. Buyer's claims to compensation or reimbursement of fruitless expenditures only exist, also in the case of defects, according to the terms of IX and are otherwise excluded.

IX. Other liability

1. Unless otherwise determined in these General Sales Conditions including the following terms, SCHILLING is liable for breach of contractual and non-contractual obligations according to the statutory provisions.
2. SCHILLING is liable to pay compensation – on whatever legal grounds – within the framework of fault-based liability in the case of intent and gross negligence. In the case of simple negligence, SCHILLING is only liable, subject to statutory liability restrictions (e.g. diligence in its own affairs; minor breach of obligation), as follows:
 - a) For damages from loss of life, physical injury or damage to health
 - b) For damages due to breach of an essential contractual obligation (an obligation whose fulfilment is essential for the correct performance of the contract and whose observance the contracting partner ordinarily relies on or is entitled to rely on); however in such a case, our liability is limited to reimbursement of the foreseeable, typically occurring damages.
3. The limits to liability resulting from the above subsection 2 also apply in the case of breach of duty and/or for the benefit of persons for whose culpability SCHILLING bears responsibility according to statutory provisions. They do not apply if SCHILLING has maliciously concealed a defect or has undertaken a guarantee for the properties of the goods and for claims of the buyer under product liability law.
4. The buyer may only withdraw from or terminate the contract due to a breach of obligation other than a defect if SCHILLING is responsible for the breach of obligation. A free termination right of the buyer (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

X. Limitation period

1. In deviation from § 438 para. 1, No. 3 BGB, the general limitation period for claims based on material and legal defects is one year after delivery. In as far as an acceptance has been agreed, the limitation period starts with the acceptance.
2. However, if the goods consist of a building or an item which has been used for a building according to its normal mode of use and which has caused the building's defectiveness (building material), then the limitation period is, in accordance with the statutory provision, five years after delivery (§ 438 para. 1, No. 2 BGB). This does not affect other statutory special provisions regarding limitation periods (in particular §§ 438 para. 1, No. 1, para. 3, 444, 445 b) BGB).
3. The aforementioned limitation periods under purchasing law also apply to contractual and non-contractual compensation rights of the buyer which are based on a defect of the goods, unless in the individual case application of the regular statutory period of limitation (§§ 195, 199 BGB) would lead to a shorter limitation period. Compensation claims of the buyer according to section IX, subs. 2, sentence 1 and sentence 2 a) as well as according to the Product Liability Law expire exclusively according to the statutory limitation period provisions.

XI. Rights of title and copyrights

1. SCHILLING retains the rights of title and copyright to any manuals, design drawings, cost calculations, layouts, calculations and other documents possibly provided to the buyer. They may only be made accessible to third parties with the consent of SCHILLING.
2. Should no contract be concluded, the buyer shall return the documents provided in connection with the contractual negotiations to SCHILLING on request.

XII. Place of fulfilment, place of jurisdiction and applicable law

1. The place of fulfilment for payments by the buyer is the SCHILLING works in 88045 Friedrichshafen.
2. If the buyer is a businessperson in the sense of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction - also internationally - for all conflicts arising directly or indirectly from the contractual relationship is the business seat of SCHILLING in 88045 Friedrichshafen, unless a binding statutory provision stipulates another place of jurisdiction. However, SCHILLING is also entitled to bring an action at the general place of jurisdiction of the buyer. This also applies to injunctions or the initiation of or application for other judicial measures.
3. The terms under the above subsection 2 apply correspondingly if the buyer is an entrepreneur in the sense of § 14 BGB.
4. Applicable for all legal disputes between SCHILLING and the buyer is German law under the exclusion of the terms of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980. The requirements for and effects of the reservation of ownership according to subs. VII. are subject to the law at the respective storage location of the item in as far as the choice of German law is not permitted or not effective at that location.

XIII. Authoritative version

In cases of doubt, the German version of these General Terms and Conditions of Sale is the authoritative version.