

General Conditions for the Supply of Products and Services of the Schischek GmbH

1. Scope of application and contracting

- 1.1. The following terms and conditions are applicable for deliveries and/or services (hereinafter called "deliveries") rendered by corporations forming part of the Schischek GmbH (each of such corporations hereinafter called "Schischek") insofar as no special terms for specific deliveries are issued by Schischek. General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by Schischek. Side agreements must be made in writing to be effective.
- 1.2. The offer issued by Schischek is non-binding. The Purchaser is bound to his order for 4 (four) weeks after placing the order. The contract shall be concluded by our confirmation of the order exclusively.
- 1.3. The copy right of any construction plans, illustrations, schemata, connecting diagrams or any other documentaries remains with us. Publishing or copying, even partial, is not allowed without the prior written approval of Schischek.
- 1.4. Apparent error on the part of Schischek shall lead to retroactive invalidity of the contract.

2. Prices, Payment

- 2.1. The list prices of Schischek at the time of delivery shall be charged if not otherwise agreed upon by the contracting parties.
- 2.2. All prices are quoted ex works (INCOTERMS 2000), manufacturing entity of Schischek, without packaging or insurance plus the current value added tax.
- 2.3. The packaging will be provided according to our best judgement. The Purchaser shall additionally carry the costs of any special request.
- 2.4. All circuit diagrams, adjustments, assembly of equipment etc. are special services even if they are performed within the premises of Schischek and shall be invoiced separately. They shall be charged either through a flat rate or through the actual expenditure plus travel costs and allowances.
- 2.5. The Purchaser shall pay the invoices of Schischek free of charge and/or fee within 10 (ten) days of the invoice date minus 2% (two) discount or net within 30 days of the invoice date. Invoices for services only (e.g. for repairs) are to be paid net cash within 10 (ten) days.
- 2.6. Surcharges for any work carried out at Purchaser's request on Sundays, holidays, as well as overtime, will be borne by the Purchaser. Preparations, travel, waiting and home to site time shall be invoiced equally as work time.
- 2.7. No transfer of Purchaser's rights or claims against Schischek to third parties shall happen without Schischek's prior written approval.
- 2.8. The Purchaser may set off only such claims as are undisputed or have become res judicata. The Purchaser may not assign rights against Schischek to third parties without the prior written approval of Schischek.

3. Delivery, Transfer of Risk, Delay

- 3.1. The time of delivery begins with conclusion of the contract and complete clarification of kind and range of the supplies.
- 3.2. If the dispatch or the delivery is delayed due to reasons imputable to the Purchaser, or if the Purchaser for other reasons is in default of acceptance, then the risk shall pass to the Purchaser.
- 3.3. If any delay in delivery occurs due to reasons beyond Schischek's control the delivery period will be prolonged for at least this period of delay.
- 3.4. For delay of the payment in due time the Purchaser owes interests at a value of 8% over the current valid interest basis of the EZB.
- 3.5. Penalties for delay in delivery must be agreed upon expressly in writing to have legal effect.
- 3.6. The Purchaser shall not refuse the acceptance of supplies for minor default. Partial deliveries are permissible, insofar as not otherwise agreed upon by the contracting parties in writing.
- 3.7. Any exportation of the supplies can be subject to Governmental Approval. Our contractual obligation is valid subject to the pre-requisite of the existence of such permission.

4. Warranty

- 4.1. The Purchaser will examine the goods immediately after arrival at the place of delivery and will indicate material defects immediately to Schischek in writing.
- 4.2. Deliveries, which show defects at the time of the Transfer of Risk, will be repaired according to the standard work time of Schischek or replaced by faultless material at Schischek's choice without cost to the customer. If the repair or replacement fails, the Purchaser can require a reduction of Price or revoke the contract. Clauses 5.3 to 5.7 shall apply regarding claims for damages.
- 4.3. The warranty period shall be 12 months after the Transfer of Risk. This does not apply to longer periods imposed by compulsory law. The legal regulations regarding inhibition or new beginning of the time periods remain unaffected.
- 4.4. The Purchaser can hold back payments for warranty reason only to an extent, which is appropriate in relation to the material defects and then only if he made notice of a warranty claim over which no doubt can exist. If the warranty claim was unjustified, the Purchaser shall reimburse Schischek for the accrued expenses.
- 4.5. Warranty claims for insignificant deviation from the agreed upon conditions and during natural wear are excluded. Furthermore such claims are excluded in case of damage, after the Transfer of Risk, due to incorrect treatment, excessive use, unsuitable utilities, incorrect build-lateral conditions or technical data given by the Purchaser, or because of special outside influences which are contractually not presupposed. There shall be no warranty in case of inappropriate changes or repairs are made by the Purchaser or third parties.
- 4.6. Other or further warranty claims apart from those stipulated under number 4 are excluded.

- 4.7. If not otherwise expressly stated by the client, the client's request for subsequent improvement shall include his declaration of the fact that he always wishes the removal of the defect as to quality or not. The fact that we are prepared to perform and the performance itself shall not be considered as an acknowledgement of the existence of a defect as to quality. If during the performance of such a removal it comes out that the defect of deviation is not caused by a defect as to quality, the client shall bear the costs for the removal (in case of mutual responsibility, the costs shall be borne proportionally.)

5. Claims for damages, Rescission of Contract

- 5.1. If and insofar as the Purchaser suffered damage due to Schischek's failure to comply to an agreed delivery date, he can claim damages for each completed week of the delay of 0,5 % up to a extent of in whole 5 % of the value of that part of the supply concerned, which because of the delay cannot be used. Claims for damages due to delay of the supply as well as claims for damages instead of the achievement, which go beyond the limits specified in sentence 1, are excluded. This applies even after expiration of an additional respite for delivery set against Schischek. The Purchaser can only withdraw by law from the contract, if and insofar as the delay was imputable to Schischek.
- 5.2. Should the delivery become finally impossible through the fault of Schischek, the Purchaser is entitled to claim for damages. The claim for damages is limited to 5 % of the value of that part of the supply, which because of the impossibility cannot be used. The right of the Purchaser to revoke the contract by law remains unaffected.
- 5.3. Schischek shall be liable by law for any personal injury and shall compensate the real damage suffered up to the amount of € 100.000,00 for each damage incident up to no more than a total amount of € 1.000.000,00. Compensation for the replacement of data and /or information shall be excluded.
- 5.4. Further compensation of damages and costs suffered by the Purchaser (hereinafter: "Claims for Damages"), irrelevant on whatever legal grounds, including but not limited to violation of obligations resulting from contract or law, shall be excluded.
- 5.5. The limitation of the rights of the Purchaser according to Clauses 5.1 up to 5.4 shall not apply insofar as the liability is imposed by compulsory law, e.g. for product liability, for intention, for gross negligence, for bodily injury and for breach of a taken over guarantee as well as of substantial contract obligations, however in the latter case only for the contract-typical foreseeable damage.
- 5.6. Claims for damages under Clause 5 shall expire upon expiration of the warranty period in accordance with Clause 4.3. This does not apply in case of liability for intention, for gross negligence, for bodily injury or for liability resulting from product liability law.
- 5.7. A change of the burden of proof to the disadvantage of the Purchaser is not implied by the preceding regulations.

6. Redemption of Goods

- 6.1. A non-contractual return of goods requires the previous written approval of Schischek. In case of such approval, the Purchaser owes a logistic lump sum of 20% of the invoice amount and has to return the goods to Schischek in the original/new condition with original packaging.
- 6.2. We shall have the right to dispose of or utilize otherwise without compensation any items which the client has sent to us in order to have facts or costs determined and which have not been collected after 30 days after our request despite our request to do so.

7. Retention of title

- 7.1. The supplied goods remain the property of Schischek until complete payment and have to be returned upon Schischek's first request until payment is fulfilled.
- 7.2. Until passage of title the Purchaser is not allowed to use the goods and is obliged to treat the goods in a good manner, to protect against damage and to store in a dry and non condensing place and to insure the original value at own expense.
- 7.3. Pledging, transfer of title for mortgage and resale of Schischek's property is forbidden. Access of third parties to Schischek's property is to be reported to Schischek immediately and must be forcefully prevented. The Purchaser bears any costs of intervention on the part of Schischek.
- 7.4. In case of imminent bankruptcy/insolvency or similar events and the assumption of our property or attempted control by third parties, Schischek shall be notified immediately.

8. Spare parts, environmental protection

- 8.1. Unless otherwise stated in the product information no periods are fixed, Schischek keeps available spare parts for wearing parts and replacements frequently required for maintenance (spare parts) for an appropriate period of time insofar as in special cases (e.g. expiry of IT components) and at the end of the period specified in number 4.3 the source of supply of Schischek does not precipitate. Schischek can also offer examined used parts as spare parts if required, or other function-receiving technical solutions.

9. Place of jurisdiction

- 9.1. The place of jurisdiction for all legal disputes resulting from contracts referring to these General Conditions and from agreements regarding the performance of such contracts is Nuremberg.
- 9.2. The legal relationship between the Parties shall be governed by the laws of the Federal Republic of Germany, excluding the UN law regarding contracts over the international sale of goods (CISG).

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