

Conditions for the Delivery of Goods from Schertzinger Pumpen GmbH & Co.KG

I. Scope of Application, General

1. These conditions only apply to persons acting in a commercial or self-employed professional capacity (company) as well as legal persons under public law or a special fund under public law at the conclusion of this contract.
2. All deliveries and services are subject to these conditions as well as any separate contractual agreements. Additionally, other purchase conditions of the Buyer shall not become part of the contract upon acceptance of the order.

A contract shall enter into force – in the absence of a special agreement – with the written order confirmation from the Supplier.

3. The Supplier reserves all property rights and copyrights concerning samples, cost estimates, drawings and, among other things, information, whether physical or non-physical, – even in electronic form; he is not permitted to make these accessible to third parties. The Supplier undertakes to make information and documents designated as confidential by the Buyer accessible to third parties only with his consent.

II. Price and Payment

1. In the absence of a special agreement, our prices are “ex works” including loading at the factory, nevertheless excluding packaging and unloading. The value added tax in the respective statutory amount shall be added to these prices.
2. All business transfers shall be settled in euros, unless otherwise agreed.
3. In the absence of a special agreement, the payment shall be made to the Supplier’s account without any deduction and, respectively: 30 days net after the passing of risk.
4. The Buyer shall only be entitled to retain payments insofar as his counterclaims are undisputed or declared legally binding.
5. The Buyer is only entitled to offset with counterclaims from other legal relationships insofar as they are undisputed or declared legally binding.

III. Delivery Period, Delivery Delay

1. The delivery period shall be clear from the agreements between the contractual parties. The Supplier’s adherence requires that all commercial and technical questions between the contractual parties have been clarified and the Buyer has fulfilled all obligations incumbent upon him, such as, e.g. the provision of the required official certifications or approvals or has made an advance payment. Should this not be the case, the delivery period shall be extended appropriately. This does not apply to the extent the Supplier is responsible for the delay.
2. The adherence to the delivery period is subject to correct and timely delivery from our suppliers. The Supplier shall notify regarding delays as soon as they become apparent. In this case, the Supplier will inform the Purchaser about the delay in delivery immediately after becoming aware of it. A claim for damages due to late delivery does not arise for the Purchaser. If the Supplier does not receive deliveries himself, even though he has placed congruent orders with reliable suppliers, the Supplier is released from his obligation to supply and can withdraw from the contract. The Supplier is obliged

to inform the Purchaser immediately about the non-availability of the goods and will immediately reimburse any payments already provided by the customer.

3. The delivery time is observed if the delivery object has left the Supplier's factory before its expiry or the readiness for shipment has been reported. As far as an acceptance shall occur – excepting justified rejection of acceptance – the acceptance period shall be decisive as an alternative for the report of readiness for shipment.
4. If the shipment or the acceptance of the delivery object is delayed for reasons for which the Buyer is responsible, he will be charged for costs incurred through the delay beginning one month after the notification of the readiness of shipment or acceptance.
5. If non-adherence to the delivery period is traced to force majeure, labor disputes or other events outside of the Supplier's area of influence, the delivery period shall be extended appropriately. The Supplier shall inform the Buyer of the beginning and end of such circumstances as soon as possible.
6. The Buyer can withdraw from the contract without a deadline if the complete performance is ultimately impossible for the Supplier prior to the passage of the risk. Furthermore, the Buyer can withdraw from the contract if the execution of a portion of the delivery for an order is impossible and he has a justified interest in a refusal of the partial delivery. Should this not be the case, the Buyer must pay the contractual price attributable to the partial delivery. The same shall apply in the event of inability of the Supplier. In addition, Section VII.2 applies.

Should the impossibility or inability occur during the acceptance delay or if the Buyer is solely or largely responsible for these circumstances, he shall be liable to provide return service.

7. If the Supplier enters into default and thereby causes damage to the Buyer, he is entitled to request a lump sum compensation for the delay. For every full week of the delay, it shall amount to 0.5 %, however, up to a maximum of 5 % of the value of the respective portion of the complete delivery which, as a result of the delay, cannot be used in due time or according to contract.

If the Buyer sets – considering the legal exceptions – an appropriate period for performance for the Supplier after the due date and the period is not observed, the Buyer is entitled to withdraw within the terms of the legal provisions. At the request of the Supplier, he is obliged to declare within a reasonable period if he makes use of his right of withdrawal.

Further claims from default in delivery are exclusively determined in accordance with Section VII.2 if these conditions.

IV. Transfer of Risk, Acceptance

1. The risk transfers to the Buyer when the delivery object leaves the factory, and, in addition, precisely when partial deliveries occur or the Supplier assumes other services, e.g. shipping costs or delivery and installation. Insofar as an acceptance shall occur, this is decisive for the transfer of risk. It must be conducted without delay on the acceptance date, alternatively following the notification of the Supplier of the readiness for acceptance. The Buyer is not permitted to refuse the acceptance on the grounds of a non-essential defect.
2. If the shipping or the acceptance is delayed or has been ceased due to circumstances not attributed to the Supplier, the risk transfers to the Buyer from the day of the notification of readiness for shipment or acceptance. The Supplier is obliged to conclude insurances requested by the Buyer at his expense.
3. Partial deliveries are permitted insofar as this is reasonable for the Buyer.

V. Reservation of Ownership

1. The delivered goods (reserved goods) remain under the ownership of the Seller until the complete payment of all claims from this contract.
2. The Buyer undertakes to handle the reserved goods with care and to sufficiently insure the goods at their original value to cover damage due to fire, water, and theft at his/her own cost as long as the ownership has not yet been transferred to him/her.
3. The Buyer is not authorized to pledge the reserved goods to third parties or assign them as security. The Buyer is however authorized to use the reserved goods and to continue to sell in the ordinary course of business provided he/she not in arrears in his/her payment obligations. The Buyer transfers the claims arising from the sale to his/her business partners to the Seller as a precaution. The Seller accepts this transfer.
4. The Seller revocably authorizes the Buyer to collect the claims transferred to the Seller for his/her account in his/her own name. The Seller's right to personally collect the claims remains unchanged by this. However, the Seller will not personally collect the claims and revoke the direct debit authorization as long as the Buyer regularly fulfills his/her payment obligations.
5. If the Buyer behaves contrary to contract with respect to the Seller, particularly if he/she defaults on his/her payment obligations, the Buyer can demand that the Seller disclose the transferred claims and respective debtors, notify the respective debtors of the transfer and submit all documents to the Buyer, and provide all the details that the Buyer needs for the assertion of the claims.
6. The treatment and processing or restructuring of the reserved goods by the Buyer always transpires on behalf and by the order of the Seller. If the reserved goods are processed with other items that do not belong to Seller, the Seller acquires co-ownership of the new items in relation to the value of the reserved goods to the other processed items at the time of the processing. If the reserved goods are inseparably combined or mixed with other items not belonging to the Seller, the Seller acquires co-ownership of the new item in relation to the value of the reserved goods to the other combined or mixed items at the time of the combining or mixing. If the combining or mixing occurs in such a manner that the Buyer's item is regarded as the main item, it is considered agreed that the Buyer transfers co-ownership to the Seller proportionately. The Seller accepts this transfer. The Buyer will safely preserve the resulting sole ownership or co-ownership of the item for the Seller.
7. If the reserved goods are pledged or exposed to other interventions by third parties, the Buyer is obliged to inform the third party of the Seller's ownership rights as long as the ownership has not yet been transferred and to immediately notify the Seller in writing so that the Seller can assert his/her rights. The Buyer is liable for the legal or extrajudicial costs to the Seller that accrue in this context if the third party is not in the position to reimburse these costs to the Seller.
8. The Seller undertakes, at the request of the Buyer, to release the securities to which he/she is entitled to the extent that the realizable value exceeds the value of the open claims against the Buyer by 10%.

VI. Claims for Defects

The Supplier is liable for material defects and defects of title of the delivery object, excluding further claims – subject to Section VII – as follows:

Material Defects

1. According to the choice of the Supplier, all respective parts which are proved to be defective due to circumstances occurring before the transfer of risk. The ascertainment of such defects shall be reported to the Supplier in writing without delay. Replaced parts are property of the Supplier.
2. Following consultation with the Supplier, the Buyer is obliged to grant the Supplier the required time and opportunity for the performance of all repairs and replacement deliveries deemed necessary by the Supplier; otherwise, the Supplier is released from the liability of the resulting consequences.

Only in urgent cases of threat to operational safety or the prevention of disproportionately serious damage of which the Supplier must immediately be notified does the Buyer have the right to eliminate the defect independently or through third parties and to demand the reimbursement of necessary expenses from the Supplier.

3. The Supplier bears – insofar as the claim is proved to be justified – the required expenses for the purpose of subsequent performance to the extent that this does not place an unreasonable burden on the Supplier. Insofar as the expenses increase due to the fact that, following the delivery, the Buyer brought the purchased object to a different location other than the place of fulfillment, the resulting additional costs shall be borne by the Buyer. In the case of the sale of a newly manufactured object additionally within the scope of his legal obligation, the Supplier reimburses the expenses paid by the Buyer within the framework of recourse claims in the delivery chain.
4. Within the legal provisions, the Buyer has the right to withdraw from the contract if the Supplier – considering the legal exceptions – allows a reasonably stipulated period granted to him for the repair or replacement delivery due to a material defect to lapse without success. If only a minor defect exists, the Buyer is only entitled to claim the right of a reduction of the contractual price. The right to a reduction of the contractual price is otherwise excluded.
5. Further claims are determined exclusively in accordance to Section VII. 2 of these conditions.
6. Liability shall not be assumed, in particular in the following cases: inappropriate or incorrect use, incorrect installation or commissioning by the Buyer or third parties, natural wear, incorrect or negligent treatment, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable foundation or chemical, electrochemical or electrical influences – insofar as the Supplier is not responsible for these.
7. If the Buyer or a third party repairs an object improperly, the Supplier is not liable for the resulting consequences. The same applies for modifications performed on the delivery object without prior consent from the Supplier.

Defects of Title

8. If the use of the delivery object leads to the infringement of commercial property right or copyrights, the Supplier shall obtain the right to further use at his own expense for the Buyer or modify the delivery object in such a manner that is reasonable to the Buyer so that the infringement on property rights no longer exists.

If this is not possible at commercially reasonable conditions or within a reasonable period, the Buyer is entitled to withdraw from the contract. Under the cited requirements, the Supplier also has the right to withdraw from the contract.

Furthermore, the Supplier shall release the Buyer from undisputed or legally enforceable claims of the respective holder of the property rights.

9. The requirements cited in Section VI. 8 on the Supplier are conclusively subject to Section VII.2 in the case of infringement of property rights or copyrights.

These exist only if

- the Buyer immediately notifies the Supplier of asserted claims of infringements on property rights or copyrights,
- the Buyer supports the Supplier in a reasonable scope in the defense of the asserted claims or
- the Supplier is able to implement the modification measures in accordance with Section VI. 8,
- all defense measures including extra-judicial settlements remain reserved to the Supplier,
- the defect of title is not based on an instruction given by the Buyer and
- the infringement of rights was not caused by the fact that the Buyer modified the delivery object without authorization or used it in a manner not in accordance with the contract.

VII. Liability of the Supplier, Liability Exclusion

1. If the delivery object cannot be used by the Buyer according to the contract as a result of culpably negligent or incorrect suggestions or consultations on the part of the Supplier which occurred before or after the contract conclusion or due to the culpable breach of other additional contractual obligations – in particular, instructions for operation and maintenance of the delivery object –, the provisions of Sections VI and VII.2 shall therefore apply with the exclusion of further claims from the Buyer.
2. For damages not caused to the delivery object itself, the Supplier is liable – on whatever legal grounds – only
 - i in the case of intent and gross negligence,
 - ii in the case of culpable injury to life, limb, health,
 - iii in the case of defects which he has maliciously concealed,
 - iv within the framework of a guarantee assurance,
 - v in the case of defects of the delivery object to the extent there is liability for personal and material damages to privately used objects in accordance with the Product Liability Act.

In the case of culpable violation of essential contractual duties, the Supplier is also liable for minor negligence, albeit restricted to the reasonably foreseeable damages typical of the contract. Further claims are excluded.

VIII. Statute of Limitations

All claims of the Buyer – on whatever legal grounds – are subject to a statute of limitations of 12 months; this also applies to the statute of limitations of recourse claims in the supply chain in accordance with § 445b Para. 1 of the German Civil Code insofar as the last contract in this supply chain does not concern consumer goods purchase. The suspension of expiry from § 445b Para. 2 of the German Civil Code remains unaffected. For damage claims in accordance with Section VII.2 a-d and f, the statutory periods shall apply. They shall also apply for defects of a construction or for delivery objects which were used appropriately for a construction according to their customary application and caused its deficiency.

IX. Use of Software

If software is included in the scope of the delivery, the Buyer is granted a non-exclusive right to use the software supplied including its documentation. It is provided for the use on the delivery object intended for this purpose. The use of the software on more than one system is not permitted.

The Buyer may only copy, process or translate the software or convert from the object code to the source code in the legally permissible scope (§§ 69 a ff. of the Copyright Act). The Buyer undertakes to not remove or change the manufacturer information – in particular, copyright notices – without prior express consent of the Supplier.

The Supplier or, respectively, the software distributor retain all other rights concerning the software and the documentation, including the copies. The allocation of sub-licenses is not permitted.

X. No re-export to Russia

1. The Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with these Conditions that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
2. The Buyer shall undertake its best efforts to ensure that the purpose of section X.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
3. The Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of section X.1.
4. Any violation of section X.1, X.2 or X.3 shall constitute a material breach of an essential element of these Conditions, and the Supplier shall be entitled to seek appropriate remedies, including, but not limited to:
 - i termination of the business relationship; and
 - ii a penalty of 1.000% of the price of the goods exported.
5. The Buyer shall immediately inform the Supplier about any problems in applying section X.1, X.2 or X.3, including any relevant activities by third parties that could frustrate the purpose of section X.1. The Buyer shall make available to the Supplier information concerning compliance with the obligations under section X.1, X.2 and X.3 within two weeks of the simple request of such information.

XI. Applicable Law, Court of Jurisdiction

1. The law of the Federal Republic of Germany (to the exclusion of the UN Sales Convention) shall apply exclusively for all legal relations between the Supplier and the Buyer; the relations shall be interpreted according to German legal understanding.
2. The court of jurisdiction is the relevant court for the registered office of the Supplier. The Supplier is, however, entitled to take legal action at the registered office of the Buyer.