

**General Business Terms and Conditions  
Schäfter+Kirchhoff GmbH (S+K)  
October 2008**

**I. General Conditions**

1. Our General Business Terms and Conditions apply exclusively, together with any terms and conditions agreed between us (S+K) and the customer that have been added to the contract in writing. Our General Business Terms and Conditions apply without reservation even when delivery to the customer occurs under conflicting or deviating circumstances from these conditions, regardless of whether we have knowledge of this or not.
2. All agreements reached between us and the customer for the fulfillment of a contract are explicitly covered by the written contract.
3. Our General Business Terms and Conditions apply only to companies, legal representatives of public institutions or officially recognized trusts within the meaning of § 14 or § 310 of the German Civil Code (Bürgerliches Gesetzbuch, BGB).

**II. Written Offer and Documents**

1. Offers from S+K can be subject to change without notice. Contracts are subject to our General Business Terms and Conditions and are valid only after they have been confirmed in writing by us, or when we have begun with the execution of the contract, or that contracted deliveries have begun.
2. All offers, including pictures, drawings, weights and measurements are approximate and provided for guidance only, unless explicitly designated as a binding component of the contract. We retain exclusive property rights and copyright over all diagrams, drawings, calculations and other documents included with an offer. This also applies to written documents identified as "confidential". Before any of these can be transferred to a third party, the customer must request and have received our express consent in writing.
3. S+K provides no guarantees against procurement shortfalls of any kind, unless this is part of the written agreement with the customer.

**III. Pricing and Payment Conditions**

1. Unless the order confirmation indicates otherwise, our prices are "ex-works" exclusively and do not include charges for customs, packaging and shipping from Hamburg airport or other chosen transit point.
2. Statutory Value Added Tax is not included in our prices and is charged according to the statutory rate of the day as a separate item when the invoice is compiled.
3. Any deductions or discounts must be covered by a separate written agreement.
4. Unless the order confirmation indicates otherwise, the net purchase price (in full) must be paid within 30 days from the date of the invoice. § 288 paragraph 2 of the BGB determines that an interest rate of 8 percentage points above the current base rate can be charged for the delayed payment of an invoice.
5. The offsetting of payments against counter-claims by the clients or the withholding of payments due to such claims is only permitted when the counter-claims are undisputed or are under legal enforcement.

**IV. Delivery Dates**

1. Due delivery dates of supplies and services that have been proposed by S+K are approximate only, unless express provision for a fixed period or a fixed date is promised or agreed upon within the contract. When despatch has been agreed upon then delivery deadlines and delivery dates refer to the time of handover to the shipper, carrier or other form of transportation by a third party.
2. Compliance requirements for delivery deadlines and fulfillment dates apply only upon completion of any obligations required of the customer. A contracted delivery period starts after clarification of all the details of the execution of the contract and receipt from the customer of all documents and other information required for the execution of the contract, including the receipt of any previously agreed deposit.
3. S+K is not liable for the inability to supply or for delays in delivery of the contracted goods or services, insofar as such by *force majeure* or otherwise, including events

unpredictable at the time of contract closure (e.g. malfunctions of any kind, difficulties in material or energy procurement, transportation delays, difficulty in obtaining necessary regulatory approvals, governmental action or inaction, inappropriate or delayed delivery by suppliers) that are beyond the responsibility of S+K. S+K reserves the right to withdraw from the contract without loss if such events materially influence the delivery or performance possibilities so markedly that it is extremely difficult or impossible to complete the contract. For temporary delays, the delivery and performance deadlines are prolonged or postponed accordingly, together with a reasonable period for the effective restarting of the contracted services.

4. We are liable under the statutory provisions, when the underlying transaction has a stipulated completion date that is transgressed (*Fixgeschäft* in the meaning of § 286 Paragraph 2 No. 4 of the BGB or § 376 of the German Commercial Code, HGB, Handelsgesetzbuch). We are also liable under the statutory provisions, when a delay in delivery caused by us results in the customer having to withdraw from the contract.
5. We are liable under the statutory provisions, provided that a delay in delivery is attributable to us, or a fault of our representatives or agents, through intentional or grossly negligent breach of contract. Our liability for damages is restricted to conventional compensation for delays in delivery attributable to us, according to these provisions.
6. In accordance with statutory provisions, we are also liable for a delivery delay caused by our contributory negligence of a contractual obligation; again, liability is restricted to conventional compensation according to these provisions.
7. In the case of a substantial and substantiated delivery delay, we are liable only up to the value of no more than 5% of the value of the delivered goods or services.

## V. Transfer of Risk

1. Unless the order confirmation indicates otherwise, "ex-works" terms and conditions

for delivery are agreed. Our choice of packaging and shipping modalities are made at the expense of the customer.

2. With the transfer of the delivery to the shipper, carrier or other third-party transporter, all loss or deterioration of the goods is at the risk of the customer.
3. For delays in despatch through circumstances where SuK is not responsible, the risk of loss or deterioration reverts to the customer upon notification by SuK of the intended shipment.
4. If the customer stipulates, we will supply transportation insurance to cover the extent of the costs borne by the customer.

## VI. Liability for Defects

1. Warranty claims by the customer assumes that their complaints are subject to § 377 of the HGB and that the customer has conformed to their own obligations.
2. Where a defect in the purchased goods is evident, S+K reserves the right to replace or repair the item as necessary within a reasonable time span.
3. The customer may cancel the contract or reduce the purchase price accordingly for a defect in the supplied goods if a replacement or repair is unreasonably delayed, denied or rendered impossible.
4. Our liability is limited to the statutory provisions, unless the customer claims for extraneous damages, based on intent or gross negligence, including the intent or gross negligence of our representatives or appointed agents. If we have not breached the contract then our liability is restricted to reasonable damages appropriate to such a compensation claim.
5. We are liable under the statutory provisions if we culpably disregard an essential contractual obligation. Even in this case, the liability for damages is restricted to a level appropriate to the claim. A contractual obligation is deemed essential if the breach relates to an obligation which either the customer can reasonably expect or is an explicit part of the contract.
6. If the customer is entitled to compensation for damages through non-fulfillment of the contract, our liability is also limited to an appropriate level as delineated in paragraph 3.

7. Liability for culpable violation of life, body or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.
8. Any technical information or advice, and such information or advice not explicitly part of the contractual agreement, is provided free of charge as a courtesy and excluded from any liability or obligations on our part.
9. Unless explicitly part of the contract, all other liabilities are denied.
10. The warranty period is 1 year after delivery or, where installation is necessary, from the commissioning of the delivered goods.

## VII. Total Liability

1. Any further liability for damage compensation not contained in Section VI – regardless of the legal nature of the claim – is excluded. This is particularly true for damage claims for default on the contract because of other breaches of duty or because of tort claims for replacement of property pursuant to § 823 BGB.
2. The limitation under paragraph 1 applies even if the customer declines their right to claim compensation or accept a replacement and makes extravagant or impossible claims or demands.
3. Where the liability for damages against us is excluded or limited, this also applies to the personal liability of our employees, colleagues, representatives and agents.

## VIII. Retention of Title

1. We retain ownership of the goods until all contracted payments have been received from the customer. For contractual default by the customer, especially for late payment, we are entitled to recover our property. The recovery of our property absolves us from any contractual obligations and the contract is void. The recovery of goods by us is at the expense of the customer and the recovered value is reassessed against the account of the customer before any possible repayment is made, minus reasonable costs.
2. The customer is under an obligation to care for the purchased goods appropriately, in particular to insure for the full new value against fire, water damage and theft at their

own expense. All maintenance and inspection work that is required must be performed in time and at the expense of the customer.

3. In the case of seizure or other interventions by third parties, the customer must notify us immediately in writing, so that we can appeal under § 771 of the Civil Procedure Code (ZPO, Zivilprozessordnung) for their return. If the third party is unable to reimburse the judicial and extrajudicial costs of an appeal under § 771 ZPO then the customer is liable to us for the resulting costs and loss.
4. The customer is entitled to sell the goods in the ordinary course of business, assuming all contractual obligations and financial remuneration in the amount of the total invoice (including VAT) have been paid to us and independently of any claims or agreements made between the customer and a third party, regardless of whether the goods have been sold without or after further processing. Our claims and the responsibility to collect this debt remains the obligation of the customer even after resale. Our claims and rights to recover full payment ourselves remain unaffected. We commit ourselves, however, to not recover our costs from the customer as long as the payment obligations of the customer are being fulfilled, they are not in arrears with payment and, in particular, no application for insolvency proceedings or cessation of payments has been made. If this is the case, then we can demand that our customer divulge our claims to their debtors, provide us with all necessary information and related documents and to inform the debtors (or third party) of our right to a claim.
5. Any processing or transformation of the goods by the customer is always to our benefit. If the sold goods include other parts that do not belong to our catalogue, we then acquire ownership of the added components according to their value (invoice, including VAT) at the time of processing. This applies to the newly processed or transformed goods to the same degree as it applies to the original and unaltered goods supplied by us.
6. If the resold goods are inextricably mixed with components from others not belonging

to us, we acquire ownership of the new portions in relation to the value of the added goods (invoice, including VAT) at the time of mixing. If the mixing is in such a way that the resulting object is predominantly composed of the customer's contribution, it is to be understood that the customer accepts our proprietary rights in proportion to our contribution to the final object.

7. We commit ourselves to the rightful contribution of assets in obligation to our customer insofar as the realizable value of our assets for secured claims is more than 10%; the selection to be released being incumbent on us.

## **IX. Jurisdiction - Place of Fulfillment**

1. If the customer is a business, our business office is the place of jurisdiction; we are also entitled to prosecute any claims in the court of the customer's jurisdiction.
2. All legal involvement with the customer is under the jurisdiction of German law or, where applicable, the UN Convention on Contracts for the International Sale of Goods (CISG). Where any form of documentation, including general business terms and conditions or contracts, exists in languages other than German then the German version is the definitive version and any other versions in other languages are provided as a courtesy for the convenience of the customer or other partner only.
3. Unless the contract states otherwise, our place of business is the place of order fulfillment.