General Terms and Conditions of Delivery and Payment

of Scheidt & Bachmann GmbH, Mönchengladbach, Germany (Version 08/2021)

These General Terms and Conditions of Delivery and Payment apply to all contracts regarding the delivery of hardware and/or software concluded by Scheidt & Bachmann GmbH or any of its subsidiaries, unless such subsidiary refers to its own General Terms and Conditions of Delivery and Payment.

1 General

1.1 All contracts for the delivery of hardware and/or software are subject to these terms together with any separate contractual agreements which may be concluded. Any contradictory General Terms and Conditions issued by the customer are not deemed to be a constituent part of the contract notwithstanding whether the order or unconditional delivery is accepted.

1.2 We reserve proprietary rights and copyright on all samples, cost estimates, offers, catalogues, brochures, illustrations, drawings and separate comparable documentation, as well as all forms of physical and non-physical information – including that parted in an electronic form. These are not to be made available to third parties.

1.3 Licensed products as well as any product not produced by ourselves are, in supplement, subject to the licensing conditions attached to the products.

1.4 Our offers are made subject to the reservation that the required approvals (e.g export licences) are granted.

1.5 The customer is obligated to abstain from any use of the delivered goods which may be constituted as being a breach of contract.

2 Prices and payments

2.1 Should nothing to the contrary be expressly agreed in writing, we invoice the prices which have validity on the date of delivery.

2.2 The prices are indicated as net prices plus the packaging costs and the statutory rate of value-added tax. If not contrary agreed, these are deemed to be "ex works" prices. Should nothing to the contrary be explicitly agreed to in writing, the prices are deemed to be valid as long as the products are used within the territory of the Federal Republic of Germany. Acceptance, inspection and other official fees are always calculated on the basis of the rates which have validity on the date of delivery. Should it be agreed that the goods be dispatched, the costs incurred are to be borne by the customer.

2.3 Payments are due immediately without any deductions and have to be made in cash, by cheque or by means of a bank transfer. Cheques are accepted on account of performance. In the event of a partial delivery the partial price becomes due after the partial delivery is effected.

2.4 In the case of default in payment, we are entitled to charge default interest in the amount of 8% above the respective basic interest rate of the European Central Bank pursuant to § 247 of the German Civil Code (BGB) . In addition we may charge a processing fee of 8 €. Further we reserve the right to claim damages which are in excess of the foregoing charges.

2.5 The customer only has a right to set-off if it's counterclaims have been finally and non-appealable determined by a court of law or are ready for a court decision, are undisputed or accepted by ourselves, and if the set-off has been announced in writing 14 days prior to the assertion. The customer has no right of retention with regard to counterclaims which are disputed, not acknowledged or not finally and conclusively determined by a court of law, the exception being when the customer is neither a commercial capacity, nor a legal entity nor a special fund according to public law.

3 Delivery

3.1 The agreement of a binding delivery time requires the written form. Our adherence to the delivery time is dependent upon all business and technical questions between the contractual parties having been clarified and all obligatory liabilities such as the furnishing of the required official certification or authorisation or the paying of a deposit have been fulfilled by the customer. Should this not be the case, the delivery time will be reasonably extended. This does not apply when the delay is caused solely by us.

3.2 The compliance with delivery deadlines is subject to the reservation that we obtain supplies correct and punctual ourselves.

3.3 Insofar as nothing else is agreed, the period of delivery is deemed to be adhered to when the objects for delivery have left our works or a notification has been made of the readiness for delivery. If an acceptance is agreed on, the decisive date is deemed to be the date on which the acceptance is carried out or by way of alternative, the date of commissioning is decisive, depending on the earlier date, the only exception being the entitled refusal to accept delivery.

3.4 Partial deliveries are permitted in as far as these are reasonable for the customer.

3.5 If installation on site is to be carried out by us as part of our performance, it is the duty of the customer, if not otherwise expressly agreed, to establish the structural prerequisites for the installation in due time and at their own cost. If installation, assembly or the start of operations is delayed due to the customer not fulfilling their structural prerequisite obligations, the costs will be borne by them. The customer must reimburse us for any expenditure resulting from such delays.

3.6 If the dispatch or acceptance of the delivered goods is delayed at the request of the customer, any costs incurred by this delay will be issued one month after the readiness for dispatch is notified.

3.7 If delivery deadlines are not met due to force majeure, industrial action or other events beyond our control, the delivery times will be extended appropriately. We will inform the customer of the commencement and termination of such circumstances as soon as possible.

3.8 The customer can terminate the contract when our complete performance becomes definitely impossible before the risk is transferred. Furthermore, the customer can terminate the contract if the execution of a part of the delivery from an order is not possible and the customer has a legitimate interest in rejecting the partial delivery. If this is not the case, the customer is obliged to pay the contract price relevant to the partial delivery. The same applies in the event of inability from our side. Besides that, paragraphs 7.2 and 7.3 apply.

If the impossibility or inability occurs during the acceptance delay or if the customer is solely or mainly responsible for these circumstances, he is still obliged to make payment.

3.9 Default in delivery will not be incurred unless we failed to deliver despite a written reminder from the customer.

3.10 Should we be in default in delivery and the customer incurs a damage as a result, he is entitled to demand lump-sum compensation. This amounts to 0.5% for each full week of default, maximum 5% of that part of the performance which is delayed. Should the customer grant us a reasonable period for the fulfilment of our performance, under consideration of the legal exceptions, and the said period is not adhered to, the customer is entitled to terminate the contract within the scope of the legal stipulations.

Other claims arising from a default in delivery are only those stipulated in paragraph 7.2 and 7.3 of these terms.

4 Transfer of risk, Acceptance

4.1 Risk will be transferred to the customer when the delivery items left the warehouse or were handed over to the forwarder - irrespective who bears the freight costs. This applies also to partial deliveries or when we have taken on other duties, as the freight costs or delivery and installation.

4.2 If dispatch is delayed or does not take place due to circumstances beyond our solely responsibility, risk is transferred to the customer

from the day of the information of the readiness for delivery. In that case we will take out insurance at the cost of the customer.

4.3 Insofar as an acceptance of performance is agreed to irrespective of the transfer of risk, this must take place by the date of acceptance. Without prior acceptance the customer has no right to use delivery items for its designated operations. If the acceptance is delayed by reasons beyond our control, our performance shall be deemed to be accepted by the customer within 12 working days following the receipt of the notice of completion. Should the customer take our performance into operation before acceptance, this act shall be deemed to be an implied acceptance.
The acceptance may only be refused in the event of major defects.

4.4 If it is expressly agreed in writing that a formal acceptance will take place, the following regulations will apply:
The customer is obligated to accept the delivery and issue a written certification of acceptance; integral components and such that could be withdrawn from testing and verification, due to the performance of external work, must be accepted separately by the customer upon our request.
If we deliver "ex works" the customer will get a notice of completion as an evidence for readiness for acceptance; if installation is to be made on site by us, the notice of completion will be issued upon verification of functionality. Following the receipt of the notice of completion an appointment is made for the carrying out of the formal and final acceptance that may include function testing if contractually specified. The customer is obliged to perform the acceptance without delay; besides the regulations set out in paragraph 4.3. shall apply; especially the customer waives it's right to formal acceptance by using delivery items for its designated operations.

5 Retention of title

5.1 We will retain the title in any of the items delivered by us, until complete settlement of all of our claims.

5.2 We are within our rights to insure the delivery items against theft, breakage, fire, water damage and other damage at the customer's expense, as long as the customer has not provided proof that insurance has been taken out by him.

5.3 The customer may not pawn the delivery items or transfer them as security. In the event of pawning as well as confiscation or other such possession by third parties, the customer must inform us immediately.

5.4 Upon any breach of the contract by the customer, especially in the case of delayed payments, we will be entitled to take back the delivery items following a written reminder and the customer is obliged to hand over the goods. We are entitled to utilise the goods after they are returned; we will utilise these as properly as possible and offset the proceeds – less deduction of appropriate utilisation costs – against the debts of the customer.

5.5 Notwithstanding our retention of title, the customer is entitled to sell or process the goods within the scope of his regular business activities. The authority of the customer to sell or process the goods retained under title within their normal business activities expires if the customer breaches the contract, especially in the case of delayed payments
The proceeds due to the customer from re-selling the reserved goods will be assigned to us in the current value of the reserved goods as security for debts with us arising from the business relationship. The right of the customer to resell the reserved goods is dependent on the assignment of the resulting proceeds to us. The pawn of these debts in favour of third parties or the assignment of these debts to a third party without our agreement is prohibited. The customer is obliged to inform us immediately about seizure of these debts by third parties. We will not recover the assigned debts as long as the customer complies with his payment duties. The customer is, however, obliged to provide information on the third party debtors upon our request and to inform these of the assignment. The customer also assigns, as security for the debts resulting from our business relationship, the debts arising from third parties due to the connection of the delivery item with real estate of any kind.

5.6 The further processing or conversion of the reserved goods is always deemed to be on our behalf. In the event of reserved goods being processed further together with other materials not belonging to us, we acquire a co-ownership in the resulting item in the ratio of the value of the reserved goods to the value of the other processed objects at the time of processing, otherwise the resulting item is deemed to be retained within the meaning of these conditions.
Should the reserved goods be combined with other objects which do not belong to us, we acquire co-ownership of the new item in the ratio of the value of the delivered object to the value of the other combined objects at the time the combination was made. It is agreed that should the combination be produced in such a manner that the item is to be deemed as belonging to the customer, it is agreed that the customer is to transfer co-ownership to ourselves. The customer keeps the resulting sole or co-ownership in safe custody for ourselves.

5.7 The customer is obliged to handle the goods under proprietary retention with care, he is especially obliged to take out adequate replacement value insurance against fire, water and theft damage at his own cost. Insofar as maintenance or inspection work is required, this must be carried out punctually at their own expense, unless other contractual agreements are made to the contrary.

5.8 Should the value of the existing securities exceed our claims by more than 10%, at the request of the customer or at the request of a third party who is restricted by our over security, we are obliged to release securities; the choice of securities to be released is made by us.

5.9 The enforcement of the retention of proprietary rights as well as the seizure of delivery items by us is not regarded as a rescinding of the contract.

5.10 The applying for the commencement of bankruptcy proceedings entitles us to terminate the contract and request the immediate return of delivered items.

6 Liability for defects

We assume liability for all defects with regard to the products supplied with the exclusion of additional claims - subject to paragraph 7 – as follows:

6.1 In the case defects are obvious at the time of delivery the notification of defects will only be taken into consideration if we receive it in writing within 14 days of the receipt of the goods. In the case of hidden defects the notification of defects will only be taken into consideration if we receive it in writing at the latest within 14 days following discovery of the hidden defects. If it is proven after an inspection that the customer has made an unfounded complaint regarding delivered items, we can demand reimbursement for the actual costs involved in investigating the customer's complaint.
The customer is obliged to send us small parts which only need to be substituted to solve the fault, as long as he is able to remove the parts himself after consultation with us.

6.2 All such parts, which prove to be defective due to a circumstance which existed prior to the transfer of risk, are to be repaired by us or replaced at no cost to the customer. We are to be immediately provided with written notification of the detection of such defects. Replaced parts are our property.

6.3 Works on site are not deemed to be a constituent part of the repair work as stipulated in sole delivery agreements. If the delivered item

is a used part – for example a reconditioned part – the liability is restricted to repair work at our facilities.

6.4 In order to make all necessary improvements to defective goods and provide the customer with new parts, we must be provided with the required amount of time and opportunity following consultation with us, otherwise we are exempt from any consequences arising from this. As far as possible or necessary and in consideration of the effect of the defect, we are within our rights to find a provisional solution for the defect until such time as a final solution is found; the provisional solution can include the supplying of a replacement unit for a temporary period.

6.5 If the subsequent fulfilment of the remedy of defects should fail, the customer has the right to terminate the contract. The subsequent fulfilment is only deemed to have failed if it is not successful after two attempts. The customer has no right to demand that the price be reduced; additional claims are those stipulated in paragraphs 7.2 and 7.3.

6.6 The liability does not cover the remedy of defects caused by normal wear and tear, external influences or operator errors. Liability ceases as soon as the customer or third parties alter the delivery items or components without our permission, unless the customer can furnish proof that the defects concerned were neither completely nor partially caused by such alterations and that the elimination of the defects is not made more difficult by the alterations.

7 Liabilities

7.1 Irrespective to the following limitations of liability we are liable without any limitations in accordance with the statutory provisions for such damages, which occur to human life, bodies or health as a result of wilful or negligent violation of obligations by us, including our legal representatives and vicarious agents and/or which are covered by the Product Liability Act (Produkthaftungsgesetz). The same applies for all damages which are caused by wilful or gross negligent violation of contractual obligations. We are also liable for all damages caused by wilful or gross negligent behaviour of our legal representatives, business executives and vicarious agents. For damages as a result of simple negligent behaviour we are only liable insofar as the violation concerns such contractual obligations, which are protected by the contract by its content and its intention, which are essential for the fulfilment of the intent of the contract and on which the costumer can trust on.

7.2 In the event of the negligent violation of essential contractual obligations we are only liable, insofar as the damage is closely connected with the contract and is foreseeable. We are not liable for the violation of non-essential contractual obligations by our vicarious agents caused by simple negligent behaviour. The limitation of liability contained in this paragraph 7.2 also applies insofar as the liability of our legal representatives, business executives and vicarious agents are concerned.

7.3 Compensatory damages shall only be paid by us for damages which are foreseeable at the time of conclusion of the contract and for direct damages. Such claims are restricted to the value of the delivered items. We are not liable for (a) damages which are indirectly caused by or are attributable to the delivered item, or (b) any loss of profit by the customer, or (c) any loss of turnover by the customer.

7.4 If the delivered items can not be used in accordance with the contract due to recommendations and consultations made prior or subsequent to the conclusion of the contract not being or not correctly being implemented or due to a violation of other contractual liabilities – especially instructions for use and maintenance of the delivered items – the ruling as per paragraph 6 applies to the exclusion of further claims by the customer resulting in the customer having the right of contract termination. Claims for damages shall only be valid under the conditions within paragraphs 7.2. and 7.3.

8 Limitation

Claims of the customer to liability for defects are subject to a limitation period regarding newly produced goods as well as services of 12 months, regarding used goods - particularly generally re-conditioned parts – of 2 months; this does not apply to consumers. All other claims of the customer lapse after 12 months, this applies also in the context of § 218 of the German Civil Code (BGB). In the case of deliberate or malicious behaviour as well as claims concerning the Product Liability Act (Produkthaftungsgesetz) the limitation periods according to German Civil Law are valid.

9 Software use

Insofar as software is included in the scope of delivery, the customer will be granted non-exclusive rights to use the software including its documentation. The software can only be used on the delivered item. It is undue to use the software on another system. The customer may only duplicate, revise, translate or change the software from the Object Code into the Source Code in a legally permissible capacity (§§ 69a ff. German Copyright Act (UrhG)). The customer is obliged not to remove manufacturer's details, particularly copyright observations or to change these without our express permission. All other rights to the software and the documentation including all copies remain with us or the software supplier. The awarding of sublicenses is undue.

10 Applicable law, place of performance, jurisdictional venue

10.1 Any legal relationships between the customer and ourselves are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on the international sales of goods (CSIG) is not applicable.

10.2 In the case of multilingual written contracts, the German version is exclusively decisive.

10.3 Place of performance is Mönchengladbach, if not otherwise agreed.

10.4 If the customer is a commercial capacity, or a legal entity or a special fund according to public law the place of jurisdiction is Mönchengladbach. However, we reserve the right to file legal proceedings at the customer's corporate domicile.