

The General Conditions of Purchase are part of our General Terms and Conditions

General Conditions of Purchase

1. Scope and form

1.1. These General Conditions of Purchase (hereinafter referred to as the "GPC") apply to all business relations between

Schmale Maschinenbau GmbH

represented by managing directors Andreas Schmale and Siegfried Schmale

Altenaer Strasse 95

58762 Altena

Tel.: +49 2352 548 64-0

Fax: +49 2352 548 64-01

Email: info@schmale-gmbh.de

Internet: <https://www.schmale-gmbh.de>

VAT ID number: DE 177 101 069

Registered place of business of the company: Altena

Register court: Iserlohn District Court

Register number: HRB 5420

(hereafter referred to as the "Buyer") and the Buyer's business partners and suppliers (hereafter referred to as the "Seller"). These GPC only apply if the Seller is an entrepreneur. According to Section 14 of the German Civil Code (BGB), an entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession. On the other hand, according to Section 13 of the German Civil Code (BGB), a consumer means every natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or profession.

1.2. The GPC apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether the Seller manufactures the goods itself or purchases them from suppliers (Sections 433 and 650 BGB). Unless otherwise agreed, the GPC in the version valid at the time of the Buyer's order or, in any case, in the version most recently communicated to the Seller in text form shall also apply as a framework agreement for future contracts of the same kind without the Buyer having to refer to them again in each individual case.

1.3. These GPC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller shall only become part of the contract if and insofar as the Buyer has expressly agreed to their validity in writing. This requirement for agreement shall apply in all cases, for example, even if the Buyer accepts the deliveries without reservation in knowledge of the Seller's general terms and conditions.

1.4. Individual agreements made with the Seller in individual cases (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GPC. Subject to proof to

the contrary, the content of such agreements shall be defined in a written contract or written confirmation by the Buyer.

1.5. Material declarations and notices by the Seller in relation to the contract (e.g. setting period, reminder, revocation) must be made in writing, i.e. in written or text form (e.g. email, fax or a letter sent by post). Statutory formal requirements and further proof, in particular in the event of doubt concerning the identity of the person making the declaration, remain unaffected.

1.6. References to the applicability of statutory provisions are for clarification only. Even without clarification, the statutory provisions therefore apply, unless they are directly amended or expressly excluded in these GPC.

2. Conclusion of contract

2.1. The Buyer's order shall be deemed binding at the earliest on written submission or confirmation. The Seller must notify the Buyer of obvious errors (e.g. typing and calculation errors) and inconsistencies in the order including the order documents so that the order can be corrected/completed before acceptance; otherwise the contract shall be deemed not to have been concluded.

2.2. The Seller must confirm the Buyer's order in writing within a period of two (2) working days or, in particular, execute the order without reservation by dispatching the goods (acceptance).

2.3. Delayed acceptance shall be deemed to be a new offer and shall require acceptance by the Buyer.

2.4. If the Seller becomes financially unable to fulfil its obligations to the Buyer, the Buyer may terminate existing reciprocal agreements with the Seller without notice by way of revocation. This shall also apply in the event of that the Seller applies for insolvency. Section 321 BGB and Section 112 of the Insolvency Statute (InsO) remain unaffected. The Seller shall inform the Buyer in writing in good time of any imminent insolvency.

3. Delivery time and delay in delivery

3.1. The delivery time indicated by the Buyer in the order is binding. If the delivery time is not specified in the order and not otherwise agreed, it shall be two (2) working days from the conclusion of the contract. The Seller must inform the Buyer immediately in writing if it is likely to be unable to meet agreed delivery times – for whatever reason.

3.2. If the Seller fails to deliver or does not deliver within the agreed delivery time or if the Seller is in default, the Buyer's rights – in particular to revoke the contract and to claim damages – shall be determined by the statutory provisions. The provisions in paragraph 3 remain unaffected.

3.3. If the Seller is in default, the Buyer may – in addition to further legal claims – claim lump-sum compensation as default damages for the sum of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered late. The Buyer reserves the right to prove that greater loss has been incurred. The Seller reserves the right to prove that no loss at all or only a considerably lower loss has been caused.

4. Performance, delivery, transfer of risk, and default of acceptance

4.1. The Seller shall not be entitled to have the performance owed to the Buyer performed by third parties (e.g. subcontractors) without the prior written consent of the Buyer. The Seller bears the

procurement risk for its performance, unless otherwise agreed in individual cases (e.g. limitation to stock).

4.2. Delivery within Germany is "free to the free" to the place indicated in the order. If the destination is not specified and nothing else has been agreed, delivery shall be made to the Buyer's place of business. The applicable destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

4.3. The delivery must be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (item number and quantity) and the Buyer's order reference details (date and number). If the delivery note is missing or incomplete, the Buyer is not responsible for any resulting delays in processing and payment. Separately from the delivery note, the Buyer shall be sent a corresponding dispatch note with the same content.

4.4. The Seller can only invoke possible delivery restrictions if these have already been clearly stated in its offer and the Buyer has not objected to them.

4.5. The Seller is only entitled to make partial deliveries if the Buyer has expressly agreed to this beforehand. Where the Buyer has agreed to partial deliveries, the Seller is also entitled to issue partial invoices.

4.6. The risk of accidental loss and accidental deterioration of the goods shall transfer to the Buyer on delivery at the place of performance. If acceptance has been agreed, acceptance determines the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly in the case of acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to transfer or acceptance.

4.7. The statutory provisions shall apply to any default of acceptance by the Buyer. However, the Seller must also expressly offer to perform its obligation to the Buyer if a certain or determinable calendar time has been agreed for an action or cooperation by the Buyer (e.g. provision of material by the Buyer). If the Buyer is in default of acceptance, the Seller may demand compensation for its extra expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a specific item to be manufactured by the Seller (custom-made), the Seller shall only be entitled to further rights if the Buyer undertakes to cooperate and is responsible for the failure to cooperate.

5. Prices and terms of payment

5.1. Unless otherwise stated in the Seller's offer, the prices quoted are net prices plus the statutory value added tax applicable on the date of invoicing.

5.2. Unless otherwise agreed in individual cases, the price shall include all performance and ancillary performance by the Seller (e.g. assembly and installation) and all ancillary costs (e.g. proper packaging and transport costs including any transport and liability insurance).

5.3. The agreed price is due for payment within 30 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If the Buyer makes payment within 14 calendar days, the Seller grants the Buyer a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made on time if the Buyer's transfer order is received by the Seller's bank before the expiry of the payment deadline; the Buyer shall not be responsible for delays caused by the banks involved in the payment process.

5.4. A single original copy of the invoice must be sent to the Buyer, stating the invoice number, order number, quantity, price and other reference details.

5.5. The Buyer is not liable to pay due date interest. The default interest rate is 5 (five) percentage points above the base rate per annum. The statutory provisions shall apply to default in payment. In all cases, however, a written reminder from the Seller is required.

5.6. The Buyer is entitled to rights of set-off and retention and to the defence of unperformed contract to the extent permitted by law. In particular, the Buyer is entitled to withhold due payments as long as it is still entitled to claims against the Seller from incomplete or defective performance.

5.7. The Seller has a right of set-off or retention only for counterclaims that have been legally established or are undisputed.

6. Secrecy, right of disposal, processing and retention of title

6.1. The Buyer reserves the right of ownership and copyright in illustrations, plans, drawings, calculations, instructions for performance, product descriptions and other documents. Such documents must be used exclusively for performance of the contract and must be returned to the Buyer after completion of the contract. The documents must be kept secret from third parties, even after the end of the contract. The obligation of secrecy shall only expire if and insofar as the knowledge contained in the documents that have been provided has become generally known.

6.2. The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and other items that the Buyer provides to the Seller for the purpose of production. As long as they are not processed, such objects are to be stored separately at the Seller's expense and insured to an appropriate extent against destruction and loss.

6.3. The Seller warrants that it has the right to sell the goods to the Buyer in the condition agreed in the contract and the right to transfer ownership of the goods. The Seller also warrants that the goods are free from any third-party rights.

6.4. Any processing, mixing or combination (further processing) of provided objects by the Seller is carried out on behalf of the Buyer. This also applies to further processing of the delivered goods by the Buyer, so that the Buyer shall be deemed to be the manufacturer and shall acquire ownership of the product in accordance with the statutory provisions at the latest on further processing.

6.5. Ownership of the goods must be transferred to the Buyer unconditionally and regardless of payment of the price. If, however, the Buyer accepts an offer from the Seller for transfer of title in individual cases, which is conditional on payment of the purchase price, the Seller's reservation of title expires at the latest on payment of the purchase price for the delivered goods. In the ordinary course of business, the Buyer shall remain authorised to resell the goods in advance of payment of the purchase price and to assign the resulting claim in advance (alternatively, simple reservation of title and reservation of title extended to resale). All other forms of retention of title are thereby excluded in all cases, in particular extended and forwarded retention of title and retention of title extended to further processing.

7. Defective delivery

7.1. Unless otherwise specified below, the statutory provisions apply to the Buyer's rights in the event of material defects and defects of title in the goods (including incorrect and short delivery, as well as improper assembly and defective assembly, operating or instruction manuals) and other breaches of obligation by the Seller.

7.2. In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods are of the agreed quality at the time of transfer of risk to the Buyer. In any event,

those product descriptions which – in particular by description or reference in the Buyer's order – are the subject matter of the respective contract or have been incorporated into the contract in the same way as these GPC shall be deemed to be an agreement on quality. In this regard, there is no difference whether the product description comes from the Buyer, the Seller or the manufacturer.

7.3. Contrary to Section 442 para. 1 sentence 2 of the German Civil Code (BGB), the Buyer is entitled to claims for defects without restriction, even if the Buyer was unaware of the defect at the time of conclusion of the contract due to gross negligence.

7.4. The statutory provisions (Sections 377 and 381 of the German Commercial Code (HGB)) shall apply to the commercial duty to inspect and give notice of defects, with the following proviso: The Buyer's obligation to inspect is limited to defects that become apparent during the Buyer's incoming goods inspection from external inspection, including the delivery documents (e.g. transport damage, wrong and short delivery), or which are identified during sample-based quality control by the Buyer. If acceptance has been agreed, there is no obligation to inspect. Otherwise, the obligation depends on the extent to which inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The Buyer's obligation to give notice of defects that are discovered later remains unaffected. Notwithstanding the Buyer's duty to inspect, a complaint (notice of defect) shall in any event be deemed to be prompt and timely if it is sent within ten (10) calendar days of discovery of the defect or, in the case of obvious defects, of delivery.

7.5. Subsequent performance shall also include removal of the defective goods and reinstallation, where the goods have been installed in or attached to another item in accordance with their nature and intended use; the Buyer's legal claim to reimbursement of applicable expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and subsequent performance, even if it is found that there was in fact no defect. The Buyer's liability for damages in the event of an unjustified demand for the rectification of defects remains unaffected; the Buyer, however, is only liable if the Buyer has recognised or failed to recognise through gross negligence that there was no defect.

7.6. Without prejudice to the statutory rights of the Buyer and the provisions in clause 7.5, the following shall apply: If the Seller does not fulfil its obligation to render subsequent performance – at the Buyer's option either by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by the Buyer, the Buyer may remedy the defect itself and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. If the subsequent performance by the Seller has failed or is unreasonable for the Buyer (e.g. due to particular urgency, risk to operational safety or the imminent occurrence of disproportionate damage), no deadline needs to be set; the Buyer shall inform the Seller of such circumstances without delay, if possible in advance.

7.7. Otherwise, in the event of a material defect or defect in title, the Buyer shall be entitled to a reduction of the purchase price or to revoke the contract in accordance with the statutory provisions. The Buyer shall also be entitled to compensation for loss and expenses in accordance with the statutory provisions.

8. Supplier's recourse

8.1. In addition to the claims for defects, the Buyer shall be entitled to the legally determined recourse claims of the Buyer within a supply chain (supplier recourse according to Sections 445a, 445b, 478 BGB) without restriction. The Buyer shall be entitled in particular to demand the exact type of subsequent performance (repair or replacement) from the Seller that the Buyer owes its

customer in the individual case. The Buyer's statutory right to choose according to Section 439 para. 1 BGB remains unaffected.

8.2. Before the Buyer acknowledges or fulfils a claim for defects asserted by its customer (including reimbursement of expenses in accordance with Sections 445a para. 1 and 439 para. 2 and 3 BGB), the Buyer shall notify the Seller and, after a brief description of the facts of the case, request the Seller's opinion in writing. If a substantiated opinion is not provided within a reasonable period of time and no mutually agreed solution is reached, the claim for defects in fact granted by the Buyer shall be deemed to be owed to its customer. In this case, the Seller is responsible for providing proof to the contrary.

8.3. The Buyer's claims arising from supplier recourse shall also apply if the defective goods have been further processed by the Buyer or another entrepreneur, e.g. by installing in another product.

9. Producer liability

9.1. The Seller must comply with the recognised rules of technology and the statutory provisions on product safety, in particular the German Product Safety Act, and guarantees that the goods meet the relevant statutory requirements.

9.2. If the Seller is responsible for damage to a product, it shall indemnify the Buyer to this extent against all legitimate third-party claims that are asserted in connection with an infringement of third-party rights in relation to the goods delivered to the Buyer.

9.3. The Seller shall inform the Buyer without delay if third parties assert claims against the Buyer covered by the above obligation to indemnify and, to the extent possible under the circumstances of the individual case, shall give the Buyer the opportunity to defend against the asserted claim. The Seller must immediately provide the Buyer with all information available to the Seller regarding the relevant facts in full, truthfully and promptly in text form. The Seller also undertakes to assume all legal costs incurred by the Buyer in connection with claims by third parties, to the extent that such costs are necessary and reasonable. These include in particular all court and legal fees at the statutory rate. There shall be no assumption of costs if the Seller is not responsible for the infringement.

9.4. Under its above obligation to indemnify, the Seller shall reimburse expenses pursuant to Section 683 and 670 BGB that arise from or in connection with a claim by third parties, including recall campaigns carried out by the Buyer. The Buyer shall inform the Seller of the content and scope of recall measures – as far as possible and reasonable – and give Seller the opportunity to comment. Other statutory claims remain unaffected.

9.5. The Seller shall take out and maintain product liability insurance with a combined limit of at least one (1) million EUR per personal injury/property damage claim.

10. Limitation

10.1. The claims of the contracting parties against each other shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

10.2. Contrary to Section 438 para. 1 No. 3 BGB, the general limitation period for claims for defects shall be 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall commence on acceptance. The 3-year period of limitation shall also apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for third-party claims for return based on real rights (Section 438 para. 1 no. 1 BGB) shall remain unaffected; furthermore, claims arising from defects of title shall not become statute-barred under any circumstances as long

as the third party can still assert the right – in particular in the absence of a period of limitation – against the Buyer.

10.3. The limitation periods under sale of goods law including the above extension apply – to the extent permitted by law – to all contractual claims for defects. Insofar as the Buyer is also entitled to non-contractual damages for loss due to a defect, the standard statutory limitation period (Sections 195 and 199 BGB) shall apply, unless applying the limitation periods under sale of goods law results in a longer limitation period in individual cases.

11. Choice of law and place of jurisdiction

11.1. These GPC and the contractual relationship between the Buyer and the Seller shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of goods.

11.2. If the Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising from the contractual relationship is the Buyer's place of business. This also applies accordingly if the Seller is an entrepreneur within the meaning of Section 14 BGB. However, in all cases, the Buyer shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GPC or an overriding individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular those provisions concerning exclusive jurisdiction, shall remain unaffected.