

## **Supplementary terms and conditions of sale and delivery for surface finishing and associated services**

Schüco Polymer Technologies KG, Selauer Straße 155, 06667 Weißenfels (hereinafter referred to as "Schüco")

### **1. Scope:**

**1.1** These supplementary terms and conditions of sale and delivery (referred to hereinafter as 'ST&Cs (Finishing)') apply to the surface finishing of Schüco products obtained from Schüco and surface finishing of customers' own products which the Purchaser passes to Schüco for finishing purposes (referred to hereinafter as 'customers' own materials') and other services associated with finishing (such as mechanical pre-treatment, application of foil and anti-drum coating) by Schüco and third parties under contract to Schüco for this purpose. The current version of our general terms and conditions of sale and delivery (GT&CSD) also. Should there be any conflict between the provisions of these ST&Cs (Finishing) and our GT&CSD, these ST&Cs will prevail.

**1.2** These ST&Cs (Finishing) apply to all our supplies and services provided in the field of surface finishing to enterprises under § 310 para. 1 of the [German] Civil Code [BGB]. Any terms and conditions of the Purchaser to the contrary or which vary from our ST&Cs (Finishing) require our express consent in writing for them to be binding. Our ST&Cs (Finishing) also apply even if we carry out delivery to the Purchaser unreservedly knowing that the Purchaser has terms and conditions to the contrary or which vary from our ST&Cs (Finishing).

**1.3** Our ST&Cs (Finishing) become an integral part of the contract by when delivery is accepted at latest. With continuous business dealings our ST&Cs (Finishing) also apply to future transactions which do not refer to them expressly insofar as the Purchaser received them under an order we previously confirmed.

**1.4** All our supplies and services are also subject (although with these ST&C (Finishing) taking precedence) to the technical terms and conditions SCHÜCO's catalogues known to the Purchaser.

### **2. Offers / orders and information and documents required in orders:**

**2.1** All of our offers are subject to alteration until the order is confirmed in writing. Our written confirmation shall form the basis of the contract with regard to the scope of supply. No oral collateral agreements shall apply. Any agreements which differ from these conditions will not be binding unless we confirm them in writing.

**2.2** Schüco may contract with third parties to provide services under the contract, selecting those third parties at Schüco's sole discretion. Any instructions the Purchaser issues in this respect are immaterial.

**2.3** The Purchaser's orders must be made in writing and are binding, particularly with respect to the volumes and nature of the surfaces or colours ordered. Orders must specify the Purchaser's name

and address, delivery address if different, the surface or colour ordered as per Schüco's current colour chart at any time, the volumes to be finished, broken down by colour/surface and products and, with customers' own materials, also binding volumes in m<sup>2</sup> and all information required to carry out the finishing, such as finishing drawings, processing data, information on suspension, temperature resistance, incompatibilities, details on how customers' own materials to be finished are to be delivered etc. Schüco is not bound to inform the Purchaser that this additional information is missing with customers' own material. Should this information and documents be missing, finishing will be carried out to the best of our knowledge and in accordance with the state of the art. Schüco cannot accept any liability for any losses or variations resulting from the information and documents being missing.

### **3. Prices and billing methods:**

**3.1** Finishing customers' own materials is billed by cost and not based on the standard terms and conditions for Schüco products. For profiles, finishing is billed based on circumference, and, for sheet metal, based on single-sided length – minimum area 0.5 m<sup>2</sup> per unit. Backs to be partially finished or folded back edges in the case of sheet metal are billed based on circumference. With Schüco's own profiles, circumference is stated on coating drawings; with customers' own materials, the Purchaser must provide this information together with the finishing information required under section 2.3 when ordering. If this information is missing, billing will be by cost.

**3.2** Based on the Purchaser's binding order in writing and quantities as confirmed by Schüco, Schüco itself or via the third parties delegated to perform it will order the raw finishing materials (powder, wet varnish) and other materials and services required to perform the contractual services (such as mechanical pre-treatment, applying foil, anti-drum coating). The prices which Schüco quotes for finishing and/or other services apply only to the quantities ordered. Should quantities subsequently be varied (reduced/increased) at the Purchaser's request, Schüco may charge the additional costs incurred, such as on raw materials and other materials (e.g. disposing of surplus special powder because of its limited shelf life, or procuring small additional quantities of raw materials at increased raw material prices) to the Purchaser.

#### **4. Deliveries**

**4.1** Delivery dates are not binding unless expressly agreed. Our written order confirmation is final. Delivery times given other than in the contract, in particular in catalogues or other documents, are for information purposes only and are not binding on our part. Once agreed, delivery dates may be deferred by an appropriate length of time to a later date should there be any amendments to the order, depending on the extent of amendments requested, unless we expressly confirm in writing that the delivery date as originally agreed can still be met.

**4.2** We cannot comply with delivery dates unless the Purchaser provides all the information and documents, licences and releases required in good time (cf. section 2.3), and complies with agreed payment terms and other obligations in advance. Failure to comply with these conditions will result in delivery periods being extended by a reasonable length of time, unless we are responsible for the delay.

**4.3** Schüco's delivery obligations apply subject to its suppliers supplying it fully and on time.

**4.4** If a delivery date is expressly agreed and then deferred by the Purchaser, we reserve the right to demand payment of the invoiced amount for services rendered or goods made available.

**4.5** All costs arising from testing or acceptance shall be borne by the Purchaser.

#### **5. Packing and storing surface-finished materials:**

**5.1** Once finished, Schüco products will be packed to our specifications; customers' own materials will be packed safely for transport in accordance with the Purchaser's instructions. The costs of this packing will be borne by the Purchaser. Should the Purchaser refuse to allow customers' own materials to be packed safely for transport, Schüco will not be liable if finished surfaces are damaged in transit. The standard packing used is merely packing for transport, designed to protect the goods and finished surfaces in particular when carried in closed haulage media not exposed to the weather. Under no circumstances is the packing suited to storing finished products in the open air. Schueco cannot accept any liability where products packed for transport are stored outside. Should the Purchaser require packing suitable for storing outside, this instruction must be given in writing when placing the order, and the Purchaser will be charged with the additional costs this special packing involves.

**5.2** Finished materials must be stored protected from the effects of weather and other adverse effects such as contamination with typical site materials such as dust, mortar, cleaning agents etc. Laminated surfaces can be stored for up to three months from the date of delivery in weatherproofed indoor facilities.

#### **6. Defects**

**6.1** The characteristics of the finishing under the contract for which we are liable as agreed derive solely from the contractual agreements with the Purchaser. Any information given by way of samples, brochures or other advertising material is not binding and does not in any way constitute any warranty as to durability or quality for the purposes of § 443 BGB: on the contrary, it is merely descriptive, and is only intended to offer a general representation of the products described. This also applies in particular to the surfaces or colours as shown in the prospectuses or Schüco's colour charts and colour or type samples furnished to the Purchaser: these are given by way of example only, and are not binding acceptance samples. Should the Purchaser wish for binding samples, this must be stated in writing in the order, requesting this of us under the reference 'binding surface limit samples'. The Purchaser must approve binding surface limit samples it furnishes in writing: the order cannot be processed until the Purchaser's written declaration of approval is received, and any delivery times will not start to run until that declaration reaches us. The Purchaser must expressly request any variations from the finishing options shown in Schüco colour charts and/or colour samples in terms of gloss, flow, brilliance and structure: these then qualify as special options. These special options are not subject to the prices and terms for the standard options shown. Unless agreed otherwise, the characteristics of surfaces under contract will be assessed in accordance with the current standards of the current quality and test conditions for unit coating of aluminium components issued by GSB International e. V., Schwäbisch Gmünd and/or the current rules for coating aluminium with wet varnish and powder coating for architectural applications (Qualicoat/VOA-Verband für Oberflächenveredelung von Aluminium e. V.) and/or the current rules for anodising aluminium for architectural applications (Qualanod/VOA-Verband für Oberflächenveredelung von Aluminium e. V.) at any time. Any reference to technical standards serves merely to describe performance, and likewise must not be interpreted as a warranty as to quality. We reserve the right to make alterations to the design, material, style and profile construction and any other changes required for reasons of technical progress, within the bounds of what is reasonable, at any time and without prior notice.

**6.2** The Purchaser is aware that finished surfaces must not be exposed to permanent effects of heat – other than solar irradiation – over 70 °C, and that any surface changes due to such thermal effects are not defects. The Purchaser is also aware that finished surfaces must not be used at locations within the direct areas of influence (within an approx. 100 m radius) of emission sources which could damage the paint on the finished surface. Surface finishing under the contract is only suited, unless agreed otherwise, to areas where normal Central European open air weather conditions prevail. Emission sources also include areas within 500 metres of bodies of water (fresh or salt water). If filiform corrosion appears, this is not a defect, unless the material was pre-anodised prior to finishing. The Purchaser must request pre-anodisation expressly in writing. The Purchaser is aware that the surfaces under the contract must be cared for properly and regularly in accordance with the rules for the quality association for cleaning metal facades [Gütegemeinschaft für die Reinigung von Metallfassaden e.V. (GRM)] or VMRG in the Benelux countries. The Purchaser must inform its clients that finished surfaces must be cared for and cleaned properly and regularly in writing. Proper care involves cleaning, inspecting and servicing the finished services in accordance with the rules of the Gütegemeinschaft für die Reinigung von Metallfassaden e.V. (GRM) or VMRG in the Benelux countries. Finished materials must be cleaned at least annually, keeping records to show this has been done.

**6.3** We offer advice to the best of our ability on the basis of our experience but cannot accept any liability for this. Any details and information given as to the suitability and application and/or use of our products, such as written, mathematical, drawing and oral proposals, drafts and the like in respect of assembly, construction, arrangement, processing, finishing, installation, static loads, invitations to tender and assistance with calculations are not part of our service obligation, as either main or secondary obligations, and are not binding in any case. They do not exonerate the Purchaser from the obligation to conduct its own tests, unless a separate additional order is issued for payment. We cannot accept any liability for any additional services we perform in connection with finishing under contract, e.g. sawing, punching, drilling or providing raw finishing materials.

**6.4** The Purchaser must check deliveries immediately on receipt to see that they are not damaged in transit, are complete and free from defects. Any damage in transit, defects, incorrect or short deliveries and variations from the delivery note and/or invoice must be reported to us in writing immediately, and within seven days at latest, failing which, the consignment will be deemed to have been approved. If the Purchaser processes goods delivered after discovering a defect, any claims the Purchaser may have for defective goods will be forfeit. Customers' own material will be deemed to be accepted for the purposes of § 640 of

the Civil Code [BGB] after twelve days from the date of delivery or six days from when the finished products are first processed at the latest.

**6.5** If the defect in a delivery is our responsibility and exists at the time risk changes hands, we will be bound to make good the defect or to supply a replacement at our discretion. The Purchaser must allow us reasonable time and opportunity to make good the defect: if this is refused, we will cease to be liable for the defect.

**6.6** Should we fail to make good three times [in succession], the Purchaser may – subject to the provisions of section 7 - invoke the rights in respect of defects the law provides otherwise.

**6.7** No claims can be made for defects for natural wear and tear or for any damage arising after risk changes hands as a result of incorrect or negligent treatment or storage, over-stressing, incorrect installation and/or commissioning by the Purchaser or third parties, unsuitable working resources, using replacement materials, defective construction work or unsuitable construction sites or due to particular external influences (especially chemical, electrochemical or electrical) not provided for under the contract. Nor does liability for defects when finishing customers' own materials cover defects in surface characteristics which are attributable to defective characteristics of the customers' own materials for which we are not liable. We are not bound to check customers' own materials received in this respect.

**6.8** Actions for liability for defects are also excluded in the cases below:

- a) For damage due to improper storage of profiles, panels etc. packed on shrink-wrapped steel or wooden pallets and stored in the open air, for example, and/or where moisture or rainwater can penetrate (risk of spotting)
- b) For damage caused on site, even if not within the Purchaser's sphere of responsibility, such as welding work, insulation work, concrete and plaster work, or for damage and changes in colour triggered by contact with sealing profits and not neutrally cross-linked sealing mastics and paint-damaging cleaning agents or primers containing or emitting substances which damage paint.
- c) For damage as a consequence of direct or even indirect contacts damaging finishing and/or aluminium to building structures with dew salts, acids, lyes etc. ('indirect contacts' means runoffs from copper roofing, copper planking or the like), unless the Purchaser can show that the damage is not attributable to these.

**6.9** Colour and surface variations where finishing to the same surface or colour is spread over time are unavoidable in production and hence do not qualify as defects. The same applies should the Purchaser subsequently change the volume of material to be processed as originally ordered. We cannot guarantee that the surface of finishing on different substrates (such as galvanised steel or castings) will be the same: so any variations on this account do not constitute defects either. Should the Purchaser contract with a third party to process materials as well as ourselves, this may result in variations in the same colour or surface for production reasons. Such variations are not defects. We cannot warrant colours will be identical. This also applies if we subcontract finishing ordered from us to a third party. With customers' own materials, the Purchaser must ensure that the finishing as ordered is feasible in the first place or without damaging customers' own materials. We cannot accept any warranty in this respect. We will only inform the Purchaser of our concerns in cases of evident defects which we can perceive in the light of our specialist knowhow. If we supply raw finishing materials such as powder or paint at the Purchaser's request, we cannot accept any liability for those raw finishing materials being suitable for the finishing proposed or the place where the materials to be finished using the raw finishing materials are to be used. Any warranty and liability for the raw finishing materials supplied is also excluded, on any grounds in law whatsoever.

**6.10** Likewise, if the Purchaser or third parties make improper alterations or repairs, no claims for defect can be made for these or their consequences, unless the Purchaser can show that the defects were not caused by the improper alteration or repairs.

**6.11** Claims by the Purchaser for costs incurred in making good, and more particularly costs of transportation, travel costs, labour and material costs are excluded insofar as costs were increased as a result of delivery being made subsequently to a location other than the Purchaser's works, unless such movement is in accordance with its intended use. The value of the substitute performance will in any case be limited to the Purchaser's own costs (e.g. transport and material costs), and does not include its profit margin to its customers.

**6.12** The Purchaser cannot make any reversionary claims in law unless it has not made agreements with its customer above and beyond statutory actions for defects.

**6.13** The statutory period for claims for defects is limited to one year from delivery, except where the law provides for longer periods under §§ 438 para. 1 no. 2, 479 para. 1 und 634a para. 1 no. 2 of the Civil Code [BGB] and in cases of injury to life, body or health, where we are in breach of obligations intentionally or grossly negligently, where we give a warranty or accept procurement risks and if defects are concealed fraudulently. In the circumstances of §§ 438 para.

1 no. 2, 479 para. 1 and 634a para. 1 no. 2 BGB, actions for defects are statute-barred after four years.

## **7. Liability**

**7.1** We are liable without limit in law for injury to life, body or health due to intent or gross negligence on our part, including intent and gross negligence on the part of our lawful agents or assistants and for losses covered by liability under the product liability law. Where losses do not come under the provisions of clause 1 and are due to intentional or grossly negligent breach of contract or fraud by us, our lawful agents or assistants, we are liable as the law may provide; but our liability to indemnify losses is limited in such cases to typical foreseeable losses, unless we, our lawful agents or assistants acted intentionally.

**7.2** We are also liable for losses caused by mere negligence where that negligence concerns breaches of such contractual obligations with which compliance is particularly important to achieve the objects of the contract. On the other hand, liability here is limited to losses which are typically associated and foreseeable with the contract. These typical losses will not exceed EUR 1.3 m in any case. In particular, we shall not be liable in such cases for any loss of profits on the Purchaser's part or unforeseeable indirect consequential losses.

**7.3** Any further liability on Schüco's part other than as set out in sections 7.1 and 7.2 is excluded irrespective of the nature of the action in law. Insofar as our liability is excluded or limited, that also applies to personal liability on the part of our salaried staff, employees, co-workers, agents and assistants.