

## **General Terms and Conditions of Sale and Delivery**

of Schüco Polymer Technologies KG, Selauer Straße 155, 06667 Weißenfels

### **1. Scope:**

**1.1** The following General Terms and Conditions of Sale and Delivery (hereinafter: 'GTSD') apply to the handling of all our deliveries of goods and to any related services to enterprises within the meaning of Section 310 (1) of the German Civil Code (BGB). Any terms and conditions of the Customer that are at variance with our own GTSD require our explicit, written consent to obtain effect. Our GTSD shall also apply if we are aware of GTSD used by the Customer that oppose or deviate from our own and execute delivery to the Customer without making reservations in this respect.

**1.2** Our GTSD become an integral part of the contract at the latest when the delivery is accepted. In the case of permanent business relations, our GTSD also apply to future transactions even if they are not explicitly referred to, but have been sent to the Customer with a previous order confirmed by us.

**1.3** For the delivery of glass, our supplementary Terms and Conditions of Sale and Delivery shall additionally apply to all deliveries of glass and panels. For surface finishing of Schüco products purchased from Schüco, and for surface finishing of materials belonging to the Customer which the Customer provides to Schüco for finishing, and for other services associated with product finishing (e.g. mechanical pre-treatment, foil application, anti-noise coating), our Supplementary Terms and Conditions of Sale and Delivery for Surface Finishing and Associated Services shall apply additionally.

**1.4** The Technical Terms and Conditions included in the product-specific Schüco catalogues known to the Customer shall also apply to all the products and services we supply.

**1.5** In these GTSDs, the term 'claims to damages' also includes claims to compensation for expenses incurred to no avail.

### **2. Orders and subsequent modifications:**

**2.1** All our offers are non-binding until a written confirmation of order has been issued.

**2.2** Orders submitted by the Customer are binding. We may accept them within two weeks after receipt either in writing or by delivering the goods to the Customer. If the order is submitted electronically and a confirmation of receipt is issued, said confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of order may be attached to the confirmation of receipt.

### **3. Prices, terms of payment:**

**3.1** Unless otherwise agreed, our prices are stated in Euro for ex works delivery (according to Incoterms 2010) and do not include freight, customs duties, import taxes and charges or packaging. Our prices do not include value added tax, which is separately itemised on the invoice at the statutory rate applicable on the invoice date.

**3.2** Unless otherwise agreed or explicitly indicated on the invoice, payments for delivered goods must be made without deductions within 30 days of the invoice date, or with a 2 % discount for payment within ten days of the invoice date. However, discount may only be deducted as long as there are no other outstanding invoices which are undisputed and due for payment. The above provisions do not apply to costs for packaging, including returnable packaging. These costs are payable immediately and without deductions.

**3.3** The Customer may not set-off counter-claims unless they are undisputed, acknowledged by us, or established by a final court judgement. The Customer has a right to exercise a right of retention only if his counter-claim derives from the same contractual relationship.

**3.4** Cheques are accepted as conditional payments only.

**3.5** We have the right to withdraw from a contract if it is evident after conclusion of the contract that our contractual claims are jeopardised by an inability on the part of the Customer to meet his obligations.

### **4. Deadlines for deliveries; delivery and default:**

**4.1** Only delivery dates explicitly agreed in writing are binding on us. Our written confirmation of order is authoritative. Any subsequent changes that we accept shall postpone agreed delivery dates, by a reasonable period according to the scope of changes desired, to a later date unless we have reconfirmed in writing that the originally agreed date will be met.

**4.2** In the event that a non-binding delivery date is not met, the Customer may request us in writing after two weeks to deliver within a reasonable period. The aforementioned period shall be extended to four weeks if the goods in question are produced according to Customer specifications.

**4.3** Compliance with delivery deadlines requires timely receipt of all documents, required licences and clearances to be provided by the Customer, as well as compliance with the agreed terms of payment and other obligations on the part of the Customer. If these preconditions are not met, the deadlines shall be extended by a reasonable amount; this rule shall not apply if we are responsible for the delay.

**4.4** Compliance with a delivery date is conditional on our own respective suppliers delivering properly and on time.

**4.5** If the goods are not accepted on the agreed delivery date, or are not accepted in a timely manner by the Customer, we may exercise our statutory rights. If we demand compensation for damages, the amount shall be 10 % of the purchase price of the goods not accepted. The amount of calculated damages shall be raised or lowered if we can prove greater damages or the Customer can prove lesser damages.

**4.6** We have the right to make partial deliveries or provide partial performance if this is deemed reasonable for the Customer.

**4.7** When delivering the goods, we reserve the right to reasonable deviations in weights, quantities and dimensions attributable to production processes. A deviation of up to 10% in weights and quantities is permitted.

**4.8** Any costs for inspections and acceptance procedures shall be borne by the Customer.

**4.9** If a delivery of goods includes software, the Customer is granted a simple right of use in order to use the unmodified software in combination with the goods. Any transfer of the right of use to third parties is only permitted in combination with the goods.

## **5. Return of goods:**

**5.1** If we take back the goods voluntarily, we charge a handling fee equal to 20 % of the invoice amount. We reserve the right to make further deductions for loss of value of goods taken back voluntarily. The Customer is at liberty to prove that the loss of value incurred by us as a result of taking back the goods is significantly less than what we charge, or that no loss of value was occurred. If transportation costs are incurred by taking back goods, these costs shall be borne by the Customer.

**5.2** As a general principle, goods that are specially produced or procured for the Customer will not be taken back.

## **6. Transfer of risk, dispatch:**

**6.1** Unless otherwise agreed, delivery terms are 'ex works' (in accordance with Incoterms 2010). Risk is transferred to the Customer when the goods leave our plant, even when delivery is carriage free.

**6.2** Unloading the delivery is the responsibility of the Customer and must be carried out by the Customer without delay. If the goods are unloaded by the driver, or the latter assists with unloading, this is entirely at the risk and expense of the Customer.

## **7. Packaging; pallets:**

**7.1** The type of packaging used is determined at our own discretion. Simple packaging such as boxes and crates will be charged to the Customer at our currently applicable packaging prices. In the case of deliveries to foreign countries, the Customer shall arrange for disposal of non-returnable packaging at his own expense.

**7.2** Europallets, returnable spools and other returnable containers and packaging shall initially be charged to the Customer according to our currently applicable packaging prices. In the case of carriage-free return in reusable condition within six weeks after delivery, they shall be credited at 100% of the amount charged.

**7.3** Unless explicitly agreed otherwise, steel pallets for long goods, returnable pallets and ancillary equipment, returnable packaging and other transportation equipment – referred to collectively hereinafter as transportation aids – remain our property and are not

for sale. They must be treated with care, marked as our property and may not be used for any purposes other than for storage of the delivered goods. We have the right to require surrender of the transportation aids at any time. The Customer must make the transportation aids available for collection on the date we specify. If they are not surrendered promptly, or if they are surrendered in a damaged condition for which the Customer bears responsibility, we have the right to charge the Customer the current market price for a new transportation aid of the same design unless the Customer is able to prove that we incurred less damages. These amounts are payable immediately, without deductions.

**7.4** If any legal regulations require regular inspections of the steel pallets for long goods and/or of other returnable packaging, the Customer shall comply with this obligation for the steel pallets and/or returnable packaging in his possession.

## **8. Warranty rights:**

**8.1** The agreed quality and properties of the contractual item to be warranted by us are derived exclusively from the contractual agreements concluded with the Customer. Specimens, statements in brochures or information derived from other advertising material do not constitute guarantees of durability, properties or quality within the meaning of Section 443 BGB. Statements in the aforesaid documents are subject to change and may contain errors. Images merely bear a similarity to the goods delivered. References to engineering standards are made only for the purpose of describing the product and may not be interpreted as a guarantee of quality or properties. We reserve the right to modify designs, the choice and style of materials and profiles, and to make any other changes arising from technological advances, at any time and within reasonable limits, even without prior notice.

**8.2** If the term 'guarantee' is used by us in any documents, specifically in catalogues, brochures and data sheets, then said guarantee is an independent warranty that is unrelated to statutory warranty rights.

**8.3** Consultancy services are secondary services provided at no charge under no obligation on our part, unless a separate additional order is placed for them and a charge is made.

**8.4** Immediately after receiving the goods, the Customer shall inspect them for any damage in transit, for completeness and for any defects. Damage in transit, defects, incorrect deliveries, short deliveries and deviations from the delivery note or invoice must be notified to us immediately and in writing within seven days at the most, otherwise the consignment shall be deemed approved. For the rest, Section 377 of the German Commercial Code (HGB) shall apply.

**8.5** If there is already a defect in the delivery when risk passes to the Customer, we are obligated to remedy the defect or to supply a replacement, at our own discretion. This option does not exist in the case defined in Section 478 (4) BGB, according to which

the Customer may demand remedy of defect or replacement delivery at his own discretion. If we are to remedy the defect, the Customer must grant us a reasonable amount of time and sufficient opportunity to do so.

**8.6** Claims by the Customers in respect of expenses necessitated by remedy, in particular transport, travel, labour and material expenses, shall not be accepted if the increase in expenses is because the delivery item was subsequently brought to a place other than the Customer's place of business, unless such delivery accords with the normal use of the delivery item.

**8.7** Warranty claims become statute-barred one year after delivery. Warranty claims based on a defect in an object that has been used for building construction in accordance with the normal use of such object and which has caused the defectiveness of such a building become statute-barred four years after delivery. This does not apply in the case of personal injury to life, body or health that occurs through our fault, or in the case of a negligent or wilful breach of obligations on our part, or if we have provided a guarantee or assumed the risks relating to procurement, or in a case of malicious non-disclosure of a defect, or in cases as defined in Section 479 (1) BGB. The statutory periods of limitation shall apply in these cases.

**8.8** For the rest, the statutory warranty rights shall apply. Claims to damages by the Customer due to a defect are governed exclusively by Section 9 of these GTSD.

### **9. Claims for damages:**

**9.1** We bear liability in accordance with the statutory provisions if the Customer claims damages caused by wilful action or gross negligence on our part.

**9.2** In the case of negligent breach of a material obligation, we bear liability according to the statutory provisions. Material contractual obligations are those which must be fulfilled for proper fulfilment of the contract and which the Customer may generally rely upon as being complied with. In such cases, claims to damages are limited to foreseeable, typical damage. However, typically occurring damages shall not exceed € 500,000 in any individual case.

**9.3** Unless specified otherwise above, claims to damages by the Customer, regardless of their legal basis, shall be excluded.

**9.4** The above limitations of liability do not apply if our liability is mandatory under the Product Liability Act, or in the case of personal injury to life, body or health, or if claims to damages are asserted against us due to the lack of a guaranteed property or quality, or in the case of malicious non-disclosure of a defect. If a guaranteed property or quality is absent, we bear liability only for such damages as are covered by the guarantee.

**9.5** If our liability is excluded or limited, the same exclusion or limitation of liability shall also apply to our employees, representatives and vicarious agents if they are sued directly by the Customer.

### **10. Retention of title:**

**10.1** We reserve ownership of the goods until receipt of all payments accruing from the business relationship with the Customer. If the Customer commits a breach of contract, in particular if he defaults on payment, we are entitled to take back the goods after withdrawing from the contract. We have the right to inspect the reserved title goods at any time at the place they are located. If we assert our claim to surrender of the goods after withdrawing from the contract, the Customer hereby grants us irrevocable permission to take back goods in our ownership, regardless of whether they have been processed or not, and to enter the premises where the goods are located in order to do so. If we take back and levy execution on the goods, this constitutes withdrawal from the contract, regardless of whether claims to damages are asserted. After withdrawing from the contract, we are authorised to sell the goods; the proceeds of sale shall be credited, minus a reasonable amount of sale expense, against the amounts owed by the Customer.

**10.2** The Customer shall handle the goods with care; in particular, he shall insure them adequately, at his own expense and for the value when new, against fire, water and theft. If maintenance and inspection work is required, the Customer must carry out such work at his own expense and in due time.

**10.3** The Customer must inform us immediately and in writing of any levies of execution or other seizures by third parties so that we can lodge an action under Section 771 of the German Code of Civil Procedure (ZPO). The Customer shall enclose a copy of the bailiff's return in the event of any levies of execution. If the third party is unable to reimburse us the judicial and extra-judicial costs for lodging such an action under Section 777 ZPO, the Customer shall be liable for any losses that we incur in this respect.

**10.4** The Customer has the right to resell the goods in the normal course of business; however, this right is forfeited if the Customer defaults on payment. The Customer hereby assigns to us all his receivables to the amount of the final invoice amount (including value added tax) which accrue to him against his customer or third parties from resale of the reserved title goods, regardless of whether the goods were processed prior to resale. However, if there are other suppliers besides ourselves who retain their co-ownership of the resold delivery item, the Customer hereby assigns his receivables from resale according to the ratio between the invoice amount of our own deliveries (including value added tax) and the total invoice value of deliveries made by the other suppliers retaining ownership. This assignment is made to secure all our present and future receivables from the business relationship with the Customer. Despite this assignment, the Customer remains authorised to collect this receivable from his own customer, in which case he is acting as our trustee. The above is without prejudice to our right to collect the receivable ourselves. However, we agree not to collect the receivable as long as the Customer

meets his obligations to pay from the proceeds of sale, is not in arrears and, in particular, has not applied for bankruptcy or composition or insolvency proceedings to be opened, and has not ceased to render payment. However, if any of the latter cases arises, we may require that the Customer: notify us of the assigned receivables and the respective debtors; provide all details needed to collect the receivables; surrender the relevant documents and inform the debtors (third parties) of the assignment.

**10.5** Any processing or transformation of the goods by the Customer is always done on our behalf as manufacturer. If the goods are processed with other items that do not belong to us, we acquire co-ownership of the new object in proportion to the value of our goods (final invoice amount, including value added tax) relative to the value of the other processed items at the time of processing. The object that results from processing is governed by the same provisions and conditions as for the goods supplied with retention of title.

**10.6** If the goods are inseparably mixed with other items that do not belong to us, we acquire co-ownership of the new object in proportion to the value of the goods (final invoice amount, including value added tax) relative to the other mixed items at the time of mixing. If mixing results in the object of the Customer or a third party being considered the main component, then it is deemed that the Customer transfers proportional co-ownership in the new object to us. The Customer shall keep our solely owned or co-owned property on our behalf.

**10.7** The Customer also assigns to us, as security for the amounts he owes to us, the receivables that ensue from third parties by combining the goods with real property.

**10.8** In the case of goods that the Customer must install as a significant element in a third-party's building, under a contract for work and services, the Customer hereby assigns to us his right under the law of obligations to have a lien registered in the land title register to the value of the goods (final invoice amount, including value added tax) in the land title register.

**10.9** At the request of the Customer, we shall release collateral accruing to us to the extent that the value that can be realised with our collateral exceeds by more than 10% the debts being secured; we may decide at our own discretion which collateral to release.

## **11. Miscellaneous provisions:**

**11.1** We reserve all ownership rights, patent rights, design rights and copyright in respect of images, drawings, designs, constructions, cost estimates and other documents. This applies also to any documents designated 'confidential'. Our express written consent is required before such documents may be disclosed to third parties. The Customer expressly acknowledges all intellectual property rights accruing to us.

**11.2** If we produce tools or arrange to have them produced for orders of the Customer and charge the incurred costs proportionally to the Customer, ownership of said tools and their accessories does not pass to the Customer, nor is the Customer entitled to their surrender. In particular, the tools shall not be delivered to the Customer. In terms of value added tax, payment of tooling costs is for miscellaneous services.

**11.3** With the exception of monetary claims, the rights of the Customer deriving from the contract are non-transferrable.

**11.4** We have the right to communicate data obtained from the Customer on the basis of the business relationship to a credit insurance agency for the purpose of taking out credit insurance.

## **12. Place of performance and place of jurisdiction:**

**12.1** For our deliveries, the place of performance is the place defined in our confirmation of order and the Incoterm used therein (according to Incoterms 2010). In that case, the place of performance is the same as the place of delivery as defined in the respective Incoterm (according to Incoterms 2010). If no place of performance is specified in the confirmation of order, delivery is ex works (according to Incoterms 2010) and the place of performance for all other obligations arising from the supply relationship is our registered business address, unless our confirmation of order states otherwise.

**12.2** For all disputes arising from this contract Bielefeld, Germany shall be the sole place of jurisdiction. However, we also have the right to sue at the domicile of the Customer.

## **13. Governing law:**

In addition to the terms of contract, the legal relations between domestic parties are also governed exclusively by the laws of the Federal Republic of Germany, under exclusion of the UN Conventions on Contracts for the International Sale of Goods (CISG).