

GENERAL TERMS AND CONDITIONS OF SCHWIHAG-GROUP

§ 1 Validity

(1) All offers, services and deliveries of companies of the SCHWIHAG GROUP (SCHWIHAG) are made exclusively on the basis of these General Terms and Conditions. The General Terms and Conditions of SCHWIHAG are part of all contracts of SCHWIHAG with its contractual partners. After their first inclusion, they shall also apply to future offers, services and deliveries, even if they are not expressly agreed again separately.

(2) References of the contracting party to its own General Terms and Conditions in order confirmations, counteroffers or in any other way are hereby objected to. Terms and Conditions of the contracting party deviating from the present Terms and Conditions of SCHWIHAG shall only apply if their inclusion has been confirmed in writing by SCHWIHAG.

§ 2 Conclusion of contract

(1) All contractual offers of SCHWIHAG are subject to change and nonbinding unless their binding nature is expressly and explicitly stated and they are provided with a deadline for acceptance.

(2) Contract offers of the contracting party shall only be deemed accepted if they have been confirmed in writing or in text form by SCHWIHAG. If a contract discussed orally or by telephone is not confirmed in writing, only the order confirmation of SCHWIHAG shall be deemed to be a declaration of acceptance.

(3) SCHWIHAG is the owner and holder of the copyright to all offers made by it as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the contracting party. The contracting party acknowledges property rights, industrial property rights and copyrights of SCHWIHAG to these items and may not make these items accessible to third parties either as such or in terms of content, make them known, use them itself or through third parties or reproduce them without the express consent of SCHWIHAG. Upon SCHWIHAG's request, the contracting party shall destroy these items completely together with any copies made if they are no longer required by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices

(1) Unless expressly stated otherwise in the written offer, SCHWIHAG's prices are FCA Incoterms 2020 (respective production or storage site of SCHWIHAG) plus packaging and VAT applicable at the time of delivery.

(2) If, between conclusion of the contract and delivery, additional or increased duties or costs - in particular customs duties, levies, currency compensation, inspection costs, audits, quality inspections, etc. - are incurred due to changed legal standards or supplementary requests of the customer, SCHWIHAG is entitled to increase the agreed purchase price by these costs plus a handling flat rate of 15%.

§ 4 Quantity; quality

Information provided by SCHWIHAG on the subject matter of the delivery or service (in particular weights, dimensions, utility values, load capacity, tolerances and technical data) as well as the representations of the same (in particular drawings) are to be understood as approximate values only, unless expressly agreed otherwise or unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or identifications of the subject matter of the contract. Deviations customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

§ 5 Delivery; transfer of risk; shipping

(1) Unless otherwise agreed in writing, deliveries by SCHWIHAG shall be made FCA Incoterms 2020 (respective production or storage site of SCHWIHAG). The risk shall pass in each case upon delivery.

(2) SCHWIHAG shall be entitled to make reasonable partial deliveries.

(3) SCHWIHAG's delivery obligation is always subject to timely and proper delivery by its own suppliers.

(4) Stated delivery and unloading times are always non-binding unless expressly agreed otherwise in writing. If shipment by SCHWIHAG has been agreed, delivery periods and delivery dates refer to the time of handover to the first freight forwarder, carrier or other third party commissioned with the transport.

(5) Delivery impediments due to force majeure or due to unforeseen events for which SCHWIHAG is not responsible, such as operational disruptions, strike, lockout, official orders, subsequent discontinuation of export or import possibilities, epidemics or pandemics as well as the reservation regarding own supplies according to the above paragraph (3) shall release SCHWIHAG from the obligation to comply with any agreed delivery or unloading times for the duration and scope of their effects. They entitle SCHWIHAG to withdraw from the contract without the contracting party being entitled to damages or other claims as a result.

(6) If an agreed delivery or unloading time is exceeded without there being an impediment to delivery according to the above paragraph (5), the contracting party shall grant SCHWIHAG a reasonable grace period of at least two weeks in writing. If this grace period is also culpably not met, the contracting party shall be entitled to withdraw from the contract, but not to assert claims for damages due to non-performance or delay, unless SCHWIHAG can be accused of intent or gross negligence.

(7) SCHWIHAG may - without prejudice to its rights arising from default of the contracting party - demand from the contracting party an extension of delivery and performance periods or a postponement of delivery and performance dates by the period of time during which the contracting party does not meet its contractual obligations towards SCHWIHAG.

§ 6 Obligation to examine and give notice of defect

- (1) At the time of delivery, the contracting party is obliged to immediately
- a) examine the goods according to number of pieces, weights and packaging and to note any complaints in this respect on the delivery note or other suitable documents, and
 - b) to carry out a quality control at least on a random basis and, for this purpose, to open the packaging (cartons, foils, etc.) to a reasonable extent and to inspect the goods themselves for their external condition.
- (2) The contracting party shall observe the following forms and deadlines when giving notice of any defects:
- a) The complaint must be made by the end of the working day following the delivery of the goods. In the case of a complaint about a hidden defect which initially remained undiscovered despite proper initial inspection in accordance with the above paragraph (1), the complaint must be made by the end of the working day following the discovery.
 - b) The notice of defect must be received by SCHWIHAG within the aforementioned deadlines in writing, by email or by fax with a detailed description of the defect. A notice of defect by telephone is not sufficient. Notices of defects to commercial representatives, brokers or agents are irrelevant.
 - c) The type and scope of the alleged defect must be clearly evident from the complaint.
 - d) The contracting party is obligated to keep the rejected goods available at the place of (destination or) delivery for inspection by SCHWIHAG, its suppliers or experts commissioned by SCHWIHAG.
- (3) Complaints regarding the number of pieces, weights and packaging of the goods shall be excluded if the remark on the delivery note or similar document required in accordance with the above paragraph (1) (a) is missing. Furthermore, any complaint shall be excluded as soon as the contracting party has mixed, reused or resold the delivered goods or has started to treat or process them.
- (4) Goods which are not complained about in due form and time shall be deemed approved and accepted.
- (5) Insofar as acceptance is to take place, the delivery item shall be deemed to have been accepted when
- a) the delivery is completed,
 - b) SCHWIHAG has notified the contracting party thereof with reference to the notional acceptance and has requested acceptance by the contracting party,
 - c) or 3 working days have passed since delivery or the customer has started to use the purchased item (e.g. has put the delivered item into operation) and
 - d) the contracting party has failed to accept the item within this period for a reason other than a defect notified to SCHWIHAG, which makes the use of the purchased goods impossible or significantly impairs them.

§ 7 Material defects; limitation of liability

(1) In the event of material defects of the delivered items, SCHWIHAG shall first be obligated and entitled to rectify the defect or to make a replacement delivery at its discretion within a reasonable period of time. In case of failure of the rectification or replacement delivery, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the contracting party may withdraw from the contract or reduce the purchase price appropriately.

(2) SCHWIHAG shall not be liable for defects based on materials provided by the contracting party (or third parties) or a construction specified and defined by the contracting party (or third parties).

(3) In the event of defects in the components of other manufacturers which SCHWIHAG cannot remedy for licensing or factual reasons, SCHWIHAG shall, at its option, assert claims for defects against the manufacturers and suppliers for the account of the contracting party or assign them to the contracting party. Claims for liability for defects against SCHWIHAG shall exist in the case of such defects under the other conditions and in accordance with these General Terms and Conditions only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant defect claims of the customer against SCHWIHAG is suspended.

(4) The liability for defects shall lapse if the contracting party modifies the delivery item or has it modified by third parties without the consent of SCHWIHAG and the rectification of defects is thereby made impossible or unreasonably difficult. In any case, the contracting party shall bear the additional costs of the defect removal resulting from the modification. SCHWIHAG shall neither be liable for normal wear and tear nor for improper use.

(5) A delivery of used items by SCHWIHAG agreed with the customer in individual cases shall be made under exclusion of any liability for material defects.

(6) The contracting party shall not be entitled to further rights and claims. In particular, SCHWIHAG shall not be liable to the contracting party for damages due to non-performance or defective performance, unless the delivered goods lack an expressly warranted characteristic or SCHWIHAG has acted with intent or gross negligence.

(7) The limitation period for claims for defects shall be one year from delivery or, if acceptance is required, from acceptance.

§ 8 Liability for damages due to fault; limitation of liability

(1) SCHWIHAG's liability for damages, regardless of the legal reason, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with the provisions of this § 8, insofar as fault is relevant in each case.

(2) SCHWIHAG shall not be liable in case of simple negligence of its corporate bodies, legal representatives, employees or other vicarious agents, unless it is a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in due time, the absence of defects that impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations that are intended to enable the contracting party to use the delivery item in accordance with the contract or are intended to protect the life or limb of the customer's personnel or to protect the customer's property from significant damage.

(3) Insofar as SCHWIHAG is liable for damages on the merits pursuant to § 8 (2), this liability shall be limited to damages which SCHWIHAG foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen by exercising due care. Indirect damages and consequential damages which are the consequence of defects of the delivery item are furthermore only compensable insofar as such damages are typically to be expected with the intended use of the delivery item.

(4) In the event of liability for simple negligence, SCHWIHAG's obligation to pay compensation for property damage and further financial losses resulting therefrom shall be limited to an amount of CHF 10 million per case of damage, even if a breach of material contractual obligations is involved.

(5) The above exclusions and limitations of liability shall apply to the same extent in favor of SCHWIHAG's corporate bodies, legal representatives, employees and other vicarious agents.

(6) Insofar as SCHWIHAG provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by SCHWIHAG, this shall be done free of charge and under exclusion of any liability.

(7) The limitations of this § 8 shall not apply to SCHWIHAG's liability for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act.

§ 9 Payment

(1) The remuneration agreed upon between SCHWIHAG and the contracting party is in principle "net cash" and due for payment without any deduction immediately upon receipt of the invoice, unless another payment agreement is made in writing.

(2) SCHWIHAG accepts bills of exchange or checks only upon special agreement and always only on account of payment. Discount and bill charges shall be borne by the contracting party and are due immediately.

(3) If the invoice amount is not settled within a maximum of 10 calendar days from the invoice date or on the other due date agreed in the individual case, SCHWIHAG is entitled to charge interest on arrears in the proven amount, but at least in the amount of 9 percentage points above the base interest rate of the ECB, without requiring a special reminder.

(4) If the contracting party's business is no longer conducted in an orderly manner, in particular in the event of seizure, if a check or bill of exchange is protested, if payments are delayed or suspended, if the contracting party files for judicial or extrajudicial composition proceedings, or if insolvency proceedings affecting the contracting party are filed, SCHWIHAG shall be entitled to declare all claims arising from the business relationship immediately due and payable, even if bills of exchange or checks have been accepted. The same shall apply if the contracting party defaults on its payments or if other circumstances become known which make its creditworthiness appear doubtful. In addition, SCHWIHAG is entitled in such a case to demand advance payments or the provision of security or to withdraw from the contract.

(5) The contracting party shall only be entitled to setoff, retention or reduction if the counterclaims asserted by it in this regard have been legally established or expressly recognized by SCHWIHAG.

(6) SCHWIHAG shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, circumstances become known to SCHWIHAG which are likely to substantially reduce the creditworthiness of the contracting party and by which the payment of its outstanding claims by the contracting party from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is jeopardized.

§ 10 Retention of title

(1) Delivered goods shall remain the property of SCHWIHAG until all claims from all contractual relationships with the contracting party - including balance claims from current account as well as from refinancing or reverse bills of exchange - have been satisfied.

(2) The contracting party is entitled to sell the goods delivered by SCHWIHAG in the ordinary course of business. The authorization granted hereunder expires in particular in the cases mentioned above in § 9 (4). In addition, SCHWIHAG is entitled to revoke the contracting party's authority to sell by written declaration if the contracting party is in default with the fulfillment of its obligations towards SCHWIHAG and in particular with its payments, or if other circumstances become known which make its creditworthiness appear doubtful.

(3) For the contracting party's right to process the delivered goods, the restrictions of the above paragraph (2) shall apply accordingly. By processing, the contracting party does not acquire ownership of the wholly or partially manufactured items; the processing is carried out free of charge exclusively for SCHWIHAG as manufacturer. Should the retention of title of SCHWIHAG nevertheless expire due to any circumstances, the contracting party and SCHWIHAG agree already now that the ownership of the items shall pass to SCHWIHAG upon processing, that SCHWIHAG accepts the transfer of ownership and that the contracting party shall remain the custodian of the items free of charge.

(4) If the goods subject to retention of title are processed or inseparably mixed with goods still owned by third parties, SCHWIHAG shall acquire co-ownership of the new items or the mixed stock. The extent of the co-ownership results from the ratio of the invoice value of the goods subject to retention of title delivered by SCHWIHAG to the invoice value of the other goods.

(5) Goods in which SCHWIHAG acquires ownership or co-ownership pursuant to the above paragraphs (3) and (4) shall be deemed to be goods subject to retention of title within the meaning of the following provisions, just as the goods delivered by SCHWIHAG under retention of title pursuant to the above paragraph (1).

(6) Upon conclusion of the contract, the contracting party already assigns to SCHWIHAG the claims from a resale of the goods subject to retention of title. The claims from a resale also include the claim against the bank which has opened or confirmed a letter of credit in favor of the contracting party (= reseller) within the scope of the resale. SCHWIHAG accepts this assignment upon conclusion of the contract. If the goods subject to retention of title are a processed product or a mixed stock in which, in addition to the goods delivered by SCHWIHAG, only such items are included which either belonged to the contracting party or were delivered to it by third parties only under simple retention of title, the contracting party shall assign the entire claim from resale of the goods to SCHWIHAG. In the event of a concurrence of advance assignments to SCHWIHAG and other suppliers, SCHWIHAG shall be entitled to the fraction of the proceeds from the sale corresponding to the ratio of the invoice value of the goods of SCHWIHAG to the invoice value of the other processed or mixed goods.

(7) Insofar as the claims of SCHWIHAG as a whole are secured beyond doubt by more than 125% by the assignments or reservations declared above, the excess of the outstanding receivables or the reserved goods shall be released upon request of the contracting party at the discretion of SCHWIHAG.

(8) The contracting party shall be authorized to collect the outstanding debts arising from the resale of the goods. This collection authorization shall cease to apply if the contracting party is no longer in the proper course of business within the meaning of the provision in § 8 (4). In addition, SCHWIHAG may revoke the contracting party's collection authorization if the contracting party is in default with the fulfillment of its obligations, in particular with its payments, or if other circumstances become known which make its creditworthiness appear doubtful. If the collection authorization ceases to exist or is revoked, the contracting party shall, upon request of SCHWIHAG, immediately notify the debtors of the assigned claims and provide SCHWIHAG with the information and documents required for collection.

(9) In the event of access by third parties to the goods subject to retention of title or the assigned receivables, the contracting party is obligated to point out the ownership / right of SCHWIHAG and to notify SCHWIHAG immediately. The contracting party shall bear the costs of the intervention.

(10) In the event of conduct in breach of the contract, in particular default of payment, the contracting party is furthermore obligated to surrender to SCHWIHAG upon SCHWIHAG's first request the goods subject to retention of title still located with it and to assign to SCHWIHAG any claims for surrender existing against third parties due to the goods subject to retention of title. The taking back as well as the seizure of goods subject to retention of title by SCHWIHAG does not constitute a withdrawal from the contract.

(11) In the cases of § 9 (4), SCHWIHAG may demand that the contracting party disclose the claims arising from resale and assigned pursuant to § 10 (6) and their debtors. SCHWIHAG shall be entitled to disclose the assignment at its discretion.

§ 11 Property rights

(1) Each contracting party shall notify the other contracting party in writing without undue delay if claims are asserted against it for infringement of industrial property rights.

(2) In the event that the delivery item infringes an industrial property right or copyright of a third party, SCHWIHAG shall, at its option and at its expense, modify or replace the delivery item in such a way that no rights of third parties are infringed any more, but the delivery item continues to fulfill the contractually agreed functions or procure the right of use for the contracting party by concluding a license agreement. If SCHWIHAG does not succeed in doing so within a reasonable period of time, the contracting party shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages of the contracting party are subject to the limitations of § 8 of these General Terms and Conditions.

(3) In the event of infringements of rights by products of other manufacturers delivered to SCHWIHAG, SCHWIHAG shall, at its option, assert its claims against the manufacturers and upstream suppliers for the account of the contracting party or assign them to the contracting party. Claims against SCHWIHAG exist in these cases in accordance with this § 7 only if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

§ 12 Empties

The contracting party is obligated to return empties (boxes, pallets, etc.) to SCHWIHAG in the same type, quality, quantity and value as it received them for the purpose of delivery. The empties must be returned in a cleaned condition. If it is not possible for the contracting party to return the goods upon delivery, it must immediately and at its own expense ensure that the empties account is balanced (debt to be discharged at creditor's domicile). If the contracting party is in default with the return of the empties, SCHWIHAG may refuse to take back the empties after setting a reasonable grace period and demand monetary damages from the buyer.

§ 13 Final provisions

(1) The legal relationship between SCHWIHAG and the contracting party shall be governed solely by the contract concluded in writing or by the order confirmation of SCHWIHAG, including these General Terms and Conditions. This fully reflects all agreements between the contracting parties regarding the subject matter of the contract. Verbal collateral agreements do not apply. Supplements and amendments to the agreements made, including these General Terms and Conditions, must be in writing in order to be effective. This also applies to the cancellation of the written form requirement. Transmission by means of telecommunication, in particular by email, shall be sufficient to comply with the written form requirement, provided that a copy of the signed declaration is transmitted.

(2) All disputes arising in connection with the contract and these General Terms and Conditions or concerning its/their validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) under exclusion of ordinary legal proceedings. The place of arbitration shall be Cologne, the number of arbitrators shall be three, and the language of arbitration shall be German, unless a contracting party is domiciled in another language area. In such case, the language of the arbitration shall be English. The applicable substantive law shall be the law of the Federal Republic of Germany.

(3) The invalidity of individual provisions of these General Terms and Conditions shall not affect the validity of the remaining provisions. Ineffective provisions shall be deemed to be replaced by such effective provisions that are suitable to realize the economic purpose of the omitted provision as far as possible.