

# General terms and conditions of supply of Gebrüder Schmidt KG

(As of May 2014)

## § 1 Applicability

(1) All of our deliveries, services and offers shall take place exclusively on the basis of these general terms and conditions of supply. These form the basis of all contracts and legal relationships which we conclude or substantiate with our customers. They also apply to all future deliveries, services or offers to the customer, even if they are not separately agreed again. Should we assume the role of principle, buyer or customer, our separate general terms and conditions of purchase shall apply.

(2) Terms and conditions of business of the customer or third parties shall not apply, even if we do not separately apply to their applicability in individual cases or refer to correspondence which contains terms and conditions of business of the customer or a third party or makes reference to such.

(3) The most up-to-date version of our general terms and conditions of supply shall always apply. These can be downloaded at <http://www.gebruederschmidt.de/>

## § 2 Offer and conclusion of the contract

(1) All of our offers shall be subject to confirmation and non-binding, unless they are expressly stated as being binding or contain a specific acceptance deadline. Orders or jobs addressed to us can be accepted by us within two weeks of acceptance, subject to an acceptance declaration deadline set by the customer initially or subsequently.

(2) Details concerning the subject of the delivery or service (for example weight, dimensions, use value, durability, tolerances and technical details) as well as our representations of the same (for example drawings and images) shall only be approximately decisive, unless the usability for the contractually intended purpose requires an exact agreement. These are not guaranteed quality characteristics, rather they are descriptions or identifications of the delivery or service. Deviations which are customary in the trade or deviations which are due to legal regulations or represent technical improvements, as well as the replacement of components by parts of the same value, shall be permitted, provided that this does not impair the usability for the contractually intended purpose.

(3) We shall retain the ownership and all copyright in respect of all offers and quotations submitted by us, as well as concerning the drawings, images, calculations, prospectuses, catalogues, models, work tools and other documents and resources which we make available to the customer. The customer shall not be permitted to either make the above objects accessible to third parties either as such or in terms of contents, make them known, use them or duplicate them themselves or through third parties without our express consent. On our request, the customer shall return the said objects in full and destroy any copies which may have been made, unless the customer is subject to a statutory retention obligation.

## § 3 Prices and payment

(1) The prices shall apply to the service and delivery scope listed in the offers or order confirmations. Additional or special services shall be charged separately. The prices shall be in EUR plus packaging, statutory value added tax, customs duties (in case of export deliveries), as well as fees and public duties.

(2) Should our list prices form the basis of the agreed prices and should it be intended that the delivery will not take place until more than four months after conclusion of the contract or be able to take place due to reasons from the sphere of our customer, we shall be entitled to adjust the agreed price in accordance with § 315 of the German Civil Code (BGB) if the index of the manufacturing price of commercial plastic products of the German Federal Statistics Office has increased by more than 2.75% in relation to the price level at the time of conclusion of the contract. In such a case, regardless of § 315 Paragraph 3 BGB, the customer shall have the right to rescind the contract or terminate the agreement, if the price adjustment impacts on the customer unreasonably.

(3) Invoice amounts shall be paid within thirty days without a discount. The date of receipt by the seller shall be decisive for the date of payment. Should the customer fail to make payment on the due date, interest of 5% per annum shall be accrued on the outstanding amount from the due date; the assertion of higher interest and further damages claims in case of default shall not be affected.

(4) We shall be entitled to make invoice amounts due for payment immediately should circumstances become known which significantly impact on the creditworthiness of the customer (in particular enforcement measures, the submission of an insolvency application) or if the customer pledges or provides as security to third parties, claims or goods which extend to our reservation of ownership.

(5) Should the payment of the open claim under the respective contractual relationship be endangered due to the circumstances stated above, we shall also be entitled to only provide deliveries which are still outstanding in consideration of an advance payment, to demand the provision of security for our open claims and to prohibit our customer from selling the delivered goods which are subject to reservation of ownership.

(6) The assertion of rights of retention by the customer shall be excluded, unless the right of retention refers to an asserted non-fulfilment or unsatisfactory fulfilment of our principal contractual obligations under the same contractual relationship.

(7) The setting off with counterclaims of the customer shall only be permitted if the counterclaims which are directed to payment refer to non-fulfilment or unsatisfactory fulfilment of our principal contractual obligations under the same contractual relationship, are undisputed or have been recognised by a court of law.

## § 4 Delivery and delivery times

(1) Delivery shall take place ex-factory (EXW) in accordance with the respectively valid version of the Incoterms code at the time of the order.

(2) Deadlines and dates which are proposed by us shall always only be approximate, unless a fixed deadline or fixed date has been expressly agreed or arranged. Binding deadlines and dates shall be deemed to have been complied with if we have notified readiness for dispatch to our customer within the deadline. In case of an agreed dispatch, delivery deadlines and delivery dates shall refer to the time of handover to the shipping agent, carrier or other parties who are engaged in respect of the transportation. The same shall apply in case of delivery by our employees.

(3) Binding delivery deadlines and dates shall be extended by the period of time accordingly in which the customer fails to comply with its contractual obligations and responsibilities in relation to us at all or properly. This shall apply regardless of our other rights in relation to default on the part of the customer and in particular in case that documents, permits or approvals to be provided and/or obtained by the customer are not made available at all or on time.

(4) We shall not assume liability for impossibility of the delivery or for delivery delays should these have been caused by force majeure or other events which are unforeseeable at the time of conclusion of the contract (for example all types of operational disruptions, difficulties concerning material or energy procurement, transportation delays, strikes, lawful blockades, shortage of manpower, energy or raw materials, difficulties obtaining the necessary official permits, official measures or lack of delivery, incorrect delivery or non-timely delivery by suppliers in case of the presence of a congruent cover transaction). The above shall not apply should we be responsible for the said circumstances. Should events stated in Sentence 1 make the delivery or service significantly difficult or impossible and should the hindrance not just be for a temporary duration, we shall be entitled to rescind the contract. In case of temporary hindrances, the delivery or service deadlines shall be extended or postponed by the length of time of the hindrance, plus a reasonable start-up period. Should it not be reasonably expected of our customer that it accepts the delivery or service due to the delay, the customer shall be entitled to rescind the contract by means of an immediate written declaration. We shall immediately notify the customer in case of hindrances to service becoming apparent and in case of rescission, we shall immediately refund any payments which have already been made.

(5) Should the circumstances listed in Paragraph 3 arise without fault on our part whilst we are in default, this shall exclude further consequences of delay to our detriment.

(6) We shall endeavour to make the goods fully available or make them ready for dispatch. However, we shall be entitled to carry out partial deliveries should the partial delivery be usable within the framework of the contractually intended purpose, the delivery of the rest of the ordered goods can be ensured and the customer does not incur any significant extra expenses or additional costs, unless we declare our willingness to assume the costs.

## § 5 Shipping, packaging, transfer of risk, acceptance

(1) The type of shipping and the packaging shall be subject to our best discretion in the absence of a separate agreement concerning delivery. Goods which are notified as ready for dispatch must be collected immediately, however at the latest within 8 days. In case of exceeding of the collection deadline, we shall be entitled, regardless of other rights, to store the goods at the expense and risk of the customer, to take all measures which are considered suitable for maintenance of the goods, and to charge the goods as having been delivered. When storing the goods at our premises, the storage costs shall amount to 8.00 EUR per used europallet for each commenced week. The proof of higher self-storage costs shall be reserved.

(2) Should we deliver the goods at the request of the customer, the shipping shall take place at the expense and risk of the customer. In such a case, the risk shall be transferred on delivery or handover of the goods to the shipping agent, carrier or other persons involved in carrying out the delivery. This shall also apply to transportation by our own employees, in case of partial deliveries and/or if we have carried out other services, such as the shipping costs and/or installation.

(3) In case of delivery, the customer shall, as a rule, insure the goods itself against theft, breakage, transportation damage, fire damage and water damage. Should we have taken out insurance for the customer by means of an express agreement, the customer shall also be obliged to settle with the insurance company in case of a loss event, alongside our release from insurance premiums.

## § 6 Warranty, material defects

(1) The warranty period shall amount to one year following delivery, or, should an acceptance and approval be necessary, from this time.

(2) The delivered objects must be carefully inspected immediately following delivery to the customer or a third party nominated by it. The goods shall be deemed to have been approved if we have not received, within one week of delivery of the goods or otherwise within one week of discovery of the defect

or any earlier time in which the defect was recognisable to the customer in case of normal use of the object of delivery without closer inspection, a defect complaint in text form (§ 126b BGB) in respect of obvious defects or other defects which were recognisable in case of an immediate and careful inspection. The customer shall describe the defect to us in as concrete terms as possible and shall give us the opportunity to check the defect which is being asserted or to have this inspected by a third party.

(3) The type and method of supplementary performance shall be at our discretion. Should we be responsible for a defect, the customer shall be entitled to bring damages claims, subject to the requirements stated in § 8.

(4) In case of defects of component parts of other manufacturers which we cannot correct due to licensing law related or objective reasons, we shall be permitted to choose between asserting our warranty claims against the manufacturer and supplier on the account of the customer or assigning the said claims to the customer. Such warranty claims in case of such defects under the other requirements in accordance with these general terms and conditions of supply shall only exist if the assertion of the claims named above against the manufacturer and supplier before a court was unsuccessful or is unlikely to succeed, for example due to insolvency. For the duration of the legal dispute, the statute of limitation of the respective warranty claims of the customer against us shall be suspended.

(6) The warranty shall lapse if the customer changes the object of delivery without our agreement or has the object of delivery amended by third parties and the dealing with the defects becomes impossible or unreasonably difficult as a result. In all cases, the customer shall bear all additional costs connected with the correction of the defect due to the change.

(7) A delivery of second-hand goods which is agreed with the customer in individual cases shall take place to the exclusion of any warranty for material defects.

### § 7 Property Rights

(1) We guarantee in accordance with this § 7 that the object of delivery is free of any commercial property rights or copyright of third parties. Each contracting partner shall immediately inform the other in writing should claims be asserted against it due to infringement of such rights.

(2) In case that the object of delivery infringes a commercial property right or copyright of a third party, we shall, according to our choice and at our expense, amend or exchange the object of delivery in such a way that third party rights are no longer infringed but we shall also ensure, at the same time, that the object of delivery continues to fulfil the contractually agreed functions or we shall provide the customer with a right of use by means of conclusion of a licence agreement. Should we be unable to do so within a reasonable period of time, the customer shall be entitled to rescind the contract or to reduce the purchase price by a reasonable amount. Any damages claims of the customer shall be subject to the restriction in § 8 of these general terms and conditions of supply.

(3) In case of breaches of rights by (partial) products of other manufacturers delivered by us, we shall be entitled to choose between asserting the claims against the manufacturer and supplier on the account of the customer or assigning the said claims to the customer. Such claims shall only exist against us in such cases in accordance with this § 7 if the assertion of the above-mentioned claims against the manufacturer and supplier before a court was unsuccessful or is unlikely to succeed, for example due to insolvency. Any damages claims of the customer shall be subject to the restriction in § 8 of these general terms and conditions of supply.

### § 8 Liability to pay damages due to fault

(1) Regardless of legal reason, we shall only pay damages as outlined below:

1. The liability for damages due to injury to life, body or health and in accordance with the German Product Liability Act (Produkthaftungsgesetz) shall not be affected by reason or amount. The same shall apply in respect of damages claims related to a guarantee or which are due to intentional or gross negligent fault on the part of our legal representatives and/or management employees.
2. In addition, we shall only be liable to pay damages in case of breach of essential contractual obligations or in case of intentional or gross negligent behaviour on the part of simple vicarious agents. In such cases in accordance with § 8 Paragraph 1 Number 2, we shall, however, only incur liability in respect of typical and foreseeable losses to a maximum amount of 1 million EUR per incidence of loss in case of damage to property and pecuniary losses. Significant contractual obligations as stated above are those whose fulfilment makes the proper fulfilment of the contract possible and on whose compliance the customer relies and may rely, in particular the contractual principal obligations and assumed guarantees; however excess risks and unusual loss constellations are not typical and foreseeable losses.

(2) We shall not incur liability to pay damages in cases which go beyond those listed in § 8 Paragraph 1.

### § 9 Reservation of ownership

(1) We shall reserve ownership in respect of all goods delivered by us until full payment of all our claims and settlement of any current account balance at the expense of the customer to which we are entitled to now and in the future, to the extent that this is necessary for fulfilment of the contract.

regardless of legal reason. This shall also apply if the fee for certain deliveries of goods designated by the customer is paid.

(2) The customer shall be entitled to process and resell the goods delivered in proper business transactions until such time as a claim is made against them. Pledging and transferring the goods by way of security shall not be permitted.

(3) The claims of the customer against third parties which accrue from a resale of our goods subject to reservation of ownership (also those in accordance with § 9 Paragraph 5) shall be assigned to us by the customer until payment of all of our claims under the business relationship and settlement of any existing current account balance at its expense has taken place - in case of co-ownership accrued by us, this all take place on a pro-rata basis in accordance with the co-ownership share. The installation in land or buildings or use of the goods subject to reservation of ownership to fulfil other work contracts or work supply contracts by the customer shall be equivalent to resale. The assignment shall also extend to other claims which take the place of the good which are subject to reservation of ownership, in particular damages claims against third parties or claims against insurance companies in case of loss or destruction. We shall accept the assignment.

(4) The customer is also authorised to collect the claims in its own name following assignment until revocation. We shall only be entitled to revoke this collection authority in case of provision of security. In case of provision of security, the customer shall be obliged, on our request, to make written notification of the assignment in relation to the debtors.

(5) The treatment and processing of the goods subject to reservation of ownership shall take place for us as a manufacturer in accordance with § 950 BGB.. The processed goods shall be deemed to be goods subject to reservation of ownership as defined in Number 1. It is hereby agreed that the processing takes place on behalf of us and on our account and that we acquire direct ownership of the newly processed item or - in case that the processing takes place using materials of several owners or the value of the processed item is higher than that of the goods which are subject to reservation of ownership - joint ownership (fractional ownership) in respect of the newly created item according to the relationship of the value of the goods which are subject to reservation of ownership to the value of the newly created item. In case that we do not acquire ownership in the newly created item despite the clause above, the customer hereby now assigns its future ownership to us or - in the proportion above - co-ownership in the newly created item. If the goods which are subject to reservation of ownership are combined with other unified items or inseparably mixed and should one of the other items be deemed to be the principal item, the customer shall assign co-ownership of the unified item to us on pro-rata basis in the proportion stated in Sentence 3 to the extent that the principal item belongs to it.

(6) Should the value of the securities existing for us exceed our claims by more than 50% not only temporarily, we shall, on request, return securities to the corresponding amount according to our choice.

(7) In case of third party enforcement measures against our security rights, the customer shall point out our rights and inform us immediately. The customer shall be obliged to bear the costs of dealing with such attacks, in particular the expenses of intervention processes, unless these can be collected from the opposing side.

### § 10 Non-disclosure

(1) The customer shall be obliged to maintain secrecy in respect of the terms and conditions of the order and our offers, as well as all information and documents made available for this purpose (with the exception of information which is publicly accessible). Following the completion of orders or non-occurrence of a transaction, these shall be immediately returned to us on request.

(2) Without our prior written agreement, the customer shall not be permitted to refer to the business relationship with us in advertising materials and brochures etc.

(3) The customer shall ensure that it also places the said obligation on its own customers, suppliers and contracting partners as defined in the paragraphs above.

### § 11 Closing provisions

(1) The place of performance for all obligations under this contract shall be Idar-Oberstein, Germany. The place of jurisdiction for any disputes connected to the business relationship between the seller and the customer shall be Idar-Oberstein or the place of business of the customer, depending on the choice of the seller. Idar-Oberstein shall be the exclusive place of jurisdiction for lawsuits against the seller. Mandatory statutory provisions concerning exclusive places of jurisdiction shall not be affected by this provision.

(2) The relationships between the seller and the customer shall be subject exclusively to the laws of the Federal Republic of Germany. The United Nations Convention concerning Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Should the contract or these general terms and conditions of supply contain loopholes, those legally effective provisions which the contracting partners would have agreed in accordance with the economic purposes of the contract and the objective of these general terms and conditions of supply if they had been aware of the loopholes shall apply in order to fill the said loopholes.

(4) The customer is aware that the seller saves data connected to the contractual relationship for the purpose of data processing in accordance with § 28 of the German Federal Data Protection Act (Bundesdatenschutzgesetz) and reserves the right to forward the data on to third parties.