

# General Delivery and Payment Conditions of Schaufler Tooling GmbH & Co. KG

(Last changed May 2022)

## Section 1 General, Scope of Application

- These general delivery and payment conditions (hereinafter referred to as: "delivery and payment conditions") apply to all of our transactions, contracts, deliveries, and other services. Our Delivery and Payment Conditions apply exclusively; we will not recognize any contrary provisions or conditions of any customers deviating from our Delivery and Payment Conditions, unless we have expressly recognized their validity in writing. Because of this, additional or supplementary regulations included in customer General Terms and Conditions are not considered part of the content of this contract, if they are not included in our Delivery and Payment Conditions. Our Delivery and Payment Conditions also apply even if we complete the delivery to the customer without reservation and if we are aware of customer conditions that deviate from our Delivery and Payment Conditions.
- All agreements concluded between us and the customer for the purpose of carrying out this Agreement are included in this Agreement in writing.
- Our Delivery and Payment Conditions apply only to companies engaged in a commercial or independent professional activity at the time the contract is concluded, legal persons under public law, and special funds under public law in the sense of Sec. 310 para. 1 BGB (German Civil Code).
- Our Delivery and Payment Conditions also apply to all future transactions with the customer.

## Section 2 Offer, offer documents

- If the order is qualified as an offer in accordance with Sec. 145 BGB, we can accept it within 2 weeks. This term shall begin upon our receipt of the order. Offers made by us are always non-binding. Agreements shall only come into being following written confirmation by us.
- We reserve rights of ownership and copyright to images, offers, drawings, calculations, and other documents (hereinafter jointly referred to as "documents"). This also applies to written documents designated as "confidential." Customers must have our express written consent before providing such documents to third parties, publishing them, duplicating them, and/or using them for any purpose beside the agreed purpose. If an order is not made, they must be returned to us promptly upon request at any time. Documents delivered by us as part of a good or product (such as operating manuals, etc.) are excepted from the regulations of this paragraph.

## Section 3 Prices, payment conditions

- If not otherwise stated in the order confirmation, our prices are considered "ex works" and do not include packaging. Packaging is invoiced separately based on actual expenses.
- The agreed prices are based on our prices valid on the date the Agreement is concluded. We reserve the right to change our prices accordingly if costs increase after the Agreement is concluded, in particular due to collective bargaining agreements or changes to material prices. We are obligated to follow the same principle if costs drop. We will provide proof of both cost drops and cost increases to the customer upon request if and insofar as they occur and will take them into consideration in both cost increases and cost drops. We will provide proof of any cost increases to the customer upon request.
- Statutory VAT is not included in our prices, and will be listed separately on the invoice in the applicable statutory amount on the date the invoice is issued. Any other ancillary costs, contributions, and other duties shall also be charged to the customer if not otherwise agreed. This also applies to fees which may be established or charged in the future for individual solutions, even retroactively.
- We will only accept payment orders, checks, and bills of exchange following special agreement and only on account of performance, charging all discount and collection expenses.
- If not otherwise indicated on the order confirmation, payments must be made immediately and without discounts. The customer must have a specific written agreement to deduct discounts. Bills of exchange and checks shall only be considered payment after they are cashed and are accepted without any obligation of timely presentation and protestation.
- The customer shall fall into default if they do not make payment within 30 days after receipt of an invoice or equivalent payment request. Legal regulations on the consequences of default apply.
- If we have agreed to partial payments with the customer, the total remaining debt, including any agreed interest accrued up to the due date, is due if
  - the customer is in default with at least 2 subsequent partial payments, either in whole or in part, and the unpaid amount is at least 10%, at a partial payment term of over 3 years at least 5% of the partial payment price, and
  - we have given the customer a 2-week deadline to pay the remaining amount without success, with an explanation that we will demand the entire remaining amount if it is not paid within this term.The entire remaining debt will also be due if the customer ceases all of his or her payments, or if we become aware of any circumstances that would impact the customer's credit-worthiness. The same applies if insolvency proceedings are opened against the customer's assets.

## Section 4 Offsetting and right of retention

The customer shall only have a right of retention if his or her counter-claims have been determined by a court of law, are undisputed, or have been acknowledged by us. In addition, they are only entitled to exercise a right of retention if his or her counter-claims are based on the same contractual relationship.

## Section 5 Assignment, performance of services by third parties

- Customer rights under this Agreement may not be assigned without our written approval.
- If not otherwise agreed, we are entitled to have third parties (subcontractors) perform the services in whole or in part without prior announcement to the customer and without obtaining the customer's permission. We are also entitled to take advantage of support in carrying out services and handling tasks of any kind.

## Section 6 Delivery time

- All technical and commercial details must be clarified before our indicated delivery term begins. The delivery terms indicated are not fixed terms unless we have expressly agreed to such terms as fixed and binding.
- The customer must also fulfill their obligations promptly and properly in order for us to perform our delivery obligations. We reserve the right to object that the agreement has not been fulfilled. Delivery delays caused by the customer making requests for changes from the original order after the Agreement is concluded will lead to the delivery term being extended appropriately. The same applies if the customer does not fulfill their duties of cooperation, or does not do so in a timely fashion.
- The delivery term will be considered fulfilled if the delivery object has left our factory by the end of this term, or we have informed the customer that the object is ready for delivery. If acceptance is required, the acceptance deadline will be decisive, or alternatively a notification that the item is ready for acceptance - except in cases where acceptance is justly refused.
- If a non-binding delivery deadline or non-binding delivery date has been agreed, we can only be considered in default if we have received a warning and if a reasonable delivery term has expired (cf. Sec. 286 para. 1 BGB).
- In case of labor disputes, or if unforeseeable obstacles occur which are outside of our sphere of influence, or in cases of force majeure or any other unforeseeable or extraordinary circumstances for which we are not at fault (in cases of Pandemics such as the Corona pandemic, epidemics, war, difficulty in obtaining materials, operating disruptions, strikes, lockouts, natural disasters, defects in transportation materials, official actions, energy supply disruptions, etc.) the delivery deadline or delivery term will be extended by the delivery delay caused by these circumstances. The same applies even if these obstacles occur during an existing delivery delay.
- The customer also declares their willingness to accept partial deliveries and services, even without providing their prior approval. This only applies if partial deliveries and services would be reasonable for the customer.
- If the customer falls into default of acceptance or violates their other duties of cooperation in a culpable manner, we are entitled to demand reimbursement for any damages we have suffered, including any additional expenses. We reserve the right to make further claims or assert further rights.
- If the requirements of para. 7 apply, the danger of accidental deterioration or accidental destruction of the delivery object will be transferred to the customer at the time that they fall into default of acceptance or payment.
- We are liable under the law if the underlying Delivery Contract is a fixed transaction in the sense of Sec. 286 para. 2 no. 4 BGB or Sec. 376 HGB (Commercial Code). We are also liable under the law if the customer is entitled to assert that it can no longer fulfill its portion of the Agreement due to a default of delivery for which we are responsible.
- We are furthermore liable under the law if the default of delivery is caused by an intentional or grossly negligent contractual violation by us; any fault on the part of our representatives or agents shall be attributed to us. If the default of delivery is caused by a grossly negligent contractual violation for which we are responsible, our liability for damages shall be restricted to foreseeable and typical damages.
- We are also liable under the law if the default of delivery for which we are responsible is based on the culpable violation of a cardinal contractual obligation; however, in such cases the liability for damages shall be limited to foreseeable and typical damages.
- Furthermore, in case of default of delivery we are liable for a flat-rate default charge of 0.5% of the delivery value, and a maximum of 5% of the delivery value, for each full week of delay.
- The customer reserves the right to assert further statutory claims and rights.

## Section 7 On call contracts

All on call orders must be accepted at the latest within 3 months after the contractual term expires, if not otherwise agreed, without requiring any request for acceptance. If this term has expired, we are entitled to ship and invoice the goods at any time or to withdraw from the Agreement immediately. If no contractual term has been agreed, we are entitled to these rights one year after the Agreement has been concluded.

## Section 8 Acceptance, transfer of risk

- If services to be performed by us under the Agreement have the character of contract work, the customer must accept our service (product) through a declaration after completion. The same applies if acceptance has been contractually agreed-upon. Self-contained partial deliveries must be accepted separately upon request by us.
- Acceptance of our service (delivery) will be considered completed if the customer does not assert a written complaint with grounds within two weeks from the time of delivery to the place of fulfillment. Acceptance shall furthermore be considered completed if the customer declines to participate in the agreed joint acceptance inspection, announced by us with a reasonable deadline, even though the goods are ready for acceptance or does not sign an acceptance protocol.
- If the customer falls into default with acceptance, risk shall be transferred to the customer when they fall into default. The same applies if agreed assembly is interrupted for reasons for which the customer is responsible, or if we have mutually agreed to transfer services already performed to the customer's charge.
- Independent of the above para. 3, risk shall also be transferred to the customer if the customer does not provide us a form for the purpose of removing the old contoured parts and installing new contoured parts already produced by us in due time. If the customer delays providing this form to us by more than two months, the customer is obligated to divide the overall contractual relationship into two individual contractual relationships, in order to bill the services for

producing the contoured parts and the services for installing the new contoured parts separately on the form. In this case, the purchase price or compensation claim for producing the contoured parts will be due for payment if the invoice is issued early.

- Risk is transferred to the customer upon acceptance. If no acceptance is required or agreed under para. 1, and if not otherwise indicated in the order confirmation, the delivery is agreed as "ex works." In this case, risk shall be transferred to the customer when the delivery object is provided to the freight forwarder, shipping company, or pick-up service, and at the latest when it leaves our company or producing factory. This also applies if we transport the delivery object.
- Regardless of their rights under Sec. 11 of these Delivery and Payment Conditions, the customer must receive delivered objects even if they have minor defects.
- If requested by the customer, we will take out transportation insurance to cover the delivery; the customer shall bear any costs incurred in this respect.

## Section 9 Packaging, assembly

- Separate agreements apply to taking back packaging. If not otherwise agreed, packaging shall not be accepted.
- If not otherwise agreed, the customer is responsible for assembling and commissioning the delivery objects.

## Section 10 Warranties, technical advising, and deviation from performance specifications

- We will only accept warranties by separate agreement. References to DIN standards, material sheets, factory inspection certificates, etc. serve only to describe the delivered object and do not represent a warranty. Information on the scope of delivery, dimensions, weights, materials, appearance, and services is given to describe the delivery objects and is not a guarantee of any properties or service life.
- We will provide technical advice to the best of our knowledge and ability. However, such advice is non-binding and does not release the customer from completing its own inspections and testing. The customer is responsible for observing statutory and official regulations in using our goods.
- Minor common deviations, or deviations caused by technical improvements, from our dimension, weight, and performance data are permitted.

## Section 11 Warranty and liability for defects

- In order for the customer to make claims for damages, it must have properly fulfilled its duties of inspection and complaint properly in accordance with Sec. 377 of the Commercial Code.
- If we complete production in accordance with the customer's technical specifications, our warranty shall be restricted to production of goods in accordance with the drawing. If the customer provides us materials for use in producing the delivery objects, we are not liable for any resulting defects or damages either in or on our product or which lead to defects in the products to be produced.
- If there is a defect in the delivery object, the customer is entitled to supplementary performance in the form of a correction of defects, or the delivery of a new object free from defects. We are entitled to choose one of these two types of supplementary performance. In cases of correction of defects or replacement deliveries, we are obligated to bear all necessary expenses for the purpose of supplementary performance, in particular transportation, travel, work, and material costs, if these are not increased by the delivery object being brought to some other location besides the place of fulfillment.
- If reasonable supplementary performance fails, the customer is entitled to withdraw or demand a cost reduction at its own discretion.
- We are liable under the law if the customer asserts claims for damages due to international action or gross negligence, including intentional action or gross negligence by one of our representatives or agents. Unless we are accused of intentional contractual violations, our liability for damages shall be restricted to typical and foreseeable damages.
- We are liable under the law if we culpably violate a cardinal contractual obligation; however, in this case the compensation for damages shall also be limited to the foreseeable and typical damages. If the violation relates to an obligation which the customer should expect to be fulfilled and should be able to trust in being fulfilled, this is considered a cardinal obligation.
- If the customer is also entitled to repayment of damages in lieu of service due to a negligent violation of duties, our liability is limited to reimbursing the foreseeable and typical damages.
- Liability due to culpable injuries to life, body, or health shall remain unaffected; this also applies to mandatory liability under the Product Liability Act.
- If not otherwise regulated above, all liability is excluded.
- The statute of limitations for claims for damages is 24 months, calculated from the transfer of risk. This shall not apply if the delivery object is typically used in a building and has caused the damage.
- The statute of limitations in case of delivery recourse under Sections 478, 479 BGB shall remain unaffected; it shall be five years calculated from delivery of the defective object.
- The customer cannot derive any rights for other partial deliveries from one partial delivery.

## Section 12 Overall liability

- Any further liability for compensation for damages except that indicated in Sec. 11 shall be excluded, regardless of the legal nature of the asserted claim. This applies in particular to claims for damages related to culpability upon conclusion of the contract, other violations, or tortious claims for compensation in accordance with Sec. 823 BGB.
- The limits of para. 1 shall also apply even if the customer requests a reimbursement for fruitless expenses in place of damage claims or the service.
  - If claims for damages against us are excluded or restricted, this shall also apply in relation to the personal liability of our employees, staff, workforce, representatives, and agents.

## Section 13 Third party property rights, rights to tools, copyrights

- If third party property rights are violated in production and delivery according to drawings or other customer information, the customer shall indemnify us against all claims. Our drawings and documents provided to the customer, as well as our suggestions for producing workpieces, may not be provided to third parties. We may request that such documents be returned to us at any time.
- If the customer provides us with models or production equipment, these must be delivered or installed free of charge. We may request that the customer takes back such equipment at any time. If it does not fulfill such a request within three months, we are entitled to send the equipment back to it at its own cost. The customer shall bear costs for maintenance and any desired changes. The customer shall be liable for correct technical construction and designing the equipment in such a way as to ensure the production purpose is fulfilled; however, we are entitled to make changes for the purpose of carrying out production.
- If we produce or purchase workpiece models or production equipment upon request by the customer, the customer must compensate us for costs incurred. The customer shall not obtain any rights to the tools themselves through full or partial compensation of tool costs. We will retain ownership to tools.
- We will retain ownership and copyright to design drawings, 3D tool data, CAM data, electrodes, technology data, and all services subject to copyright which we perform for the customer. The customer shall receive printed design drawings and a simple right of use for the contractually agreed-upon or provided purpose. The customer may also obtain further licenses and rights of use through separate agreement.

## Section 14 Retention of ownership

- We reserve ownership to the delivery object until all payments under the delivery contract are received. The retention of ownership also applies to all of our other claims from the business relationship with the customer. In case of open billing, the reserved ownership shall be considered security for our claims (current account reservation); the reservation shall then apply to the recognized balance.
- If the customer engages in behavior violating the agreement, in particular falling into default of payment, we are entitled to take back the delivery object. The customer may not assert any right of retention against our request for surrender. If the customer does not provide delivery objects owned by us within 2 weeks from the request for surrender, we are entitled to pick up the delivery objects ourselves. The customer recognizes that our behavior to obtain direct ownership of the delivery objects shall not represent either a violation of domiciliary rights nor unlawful interference. If we take back delivery objects, this shall not be considered withdrawal from the agreement. We are entitled to sell or use the delivery objects after taking it back; the proceeds of the sale must be offset against customer liabilities - minus reasonable sales costs.
- The customer is obligated to treat the delivery object with care; in particular, it is obligated to insure the object sufficiently and at its own value at its own cost against fire, water, and theft damages. If maintenance or repair work is required, the customer must carry out such work promptly and at its own cost.
- The customer must inform us promptly in case of seizure or other actions by third parties so that we can assert complaints under Sec. 771 ZPO (Code of Civil Procedure). If the third party is not able to reimburse us for the judicial and extra-judicial costs of the complaint under Sec. 771 ZPO, the customer shall be liable for any costs not reimbursed.
- The customer is entitled to re-sell the delivery objects within its normal course of business; however, if hereby already assigns all receivables received from its purchasers or third parties to us in the amount of the final invoice (including VAT) of our claims, independent of whether the delivery objects were re-sold after or without any processing. Claims assigned to us by the customer in advance relate to the recognized balance and, in case the purchaser becomes insolvent, to any existing "causal" balance. The customer is also entitled to collect such claims after assignment. Our power to collect such claims ourselves shall remain unaffected. However, we hereby undertake not to collect the claims if the customer fulfills its payment obligations from profits received, does not fall into default of payment and, in particular if no application is lodged to open a settlement or insolvency proceedings against it, or if it does not cease payment. However, if one of these cases occur, we may demand that the customer informs us of the assigned claims and their debtors, providing us all information necessary for collection, submitting associated debtor to us, and informing us of debtors (third parties).
- All processing or refurbishment of delivery objects by the customer is always performed on our behalf. If the delivery objects are processed with other objects not belonging to us we shall obtain co-ownership to the new objects in relation to the value of the delivered goods (final invoiced amount, including VAT) to the other processed objects at the time of their processing. Furthermore, the same regulations apply to goods produced through processing as for delivery objects delivered with reservation.
- If the delivery objects are inseparably mixed with other objects not belonging to us we shall obtain co-ownership to the new objects in relation to the value of the delivered goods (final invoiced amount, including VAT) to the other mixed objects at the time of their mixing. If goods are mixed such that the supplier's objects are considered the primary objects, the customer shall transfer proportional ownership to us. The customer shall retain sole or co-ownership so obtained on our behalf.
- The customer shall also assign claims to secure our claims against it, which it incurs against third parties through connecting the delivery objects with a property.
- We hereby undertake to release any securities to which we are entitled upon request by the customer insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%; we are entitled to select the securities to be released.

## Section 15 Confidentiality

- The contractual partners hereby undertake to keep information on the other respective contractual partner secret. Confidential information includes information designated as such upon transmission, expressly indicated as

confidential upon oral transmission, and information whose confidentiality is confirmed in writing by the customer within three weeks after its transmission.

- 2) We may provide confidential information to third parties and sub-contractors if this is reasonable and necessary for us to perform our services. In such cases, we will obligate sub-contractors to confidentiality in accordance with our own obligations.
- 3) The confidentiality obligation shall not apply to the contractual partners if the confidential information becomes public without any violation of the confidentiality obligation by a contractual partner or third parties, is separately discovered or developed by a contractual partner independent of the confidential information, or must be disclosed under the law.

**Section 16 Place of jurisdiction, place of fulfillment, severability clause**

- 1) If the customer is a merchant, our headquarters is considered the place of jurisdiction; however, we are also entitled to bring claims against the customer at their headquarters.
- 2) The law of the Federal Republic of Germany applies exclusively; the UN Sales Convention shall not apply.
- 3) If not otherwise stated in the order confirmation, our headquarters shall be the place of fulfillment.
- 4) The customer automatically declares their consent to have personal data saved as part of our business relationship. The provision and/or disclosure of these conditions is considered notification in the sense of the Federal Data Protection Act.
- 5) If a provision of these Delivery and Payment Conditions is or becomes invalid, this shall not affect the validity of the remaining provisions. A valid provision coming as close as possible to the economic purpose of the invalid provision shall be considered agreed-upon in place of the invalid provision.