

General Conditions of Sale and Delivery

Version 1. September 2015

1. General

- 1.1. The contract shall be deemed to have been entered into upon receipt of Schleuniger's written acknowledgement stating its acceptance of the order (order confirmation). Tenders which do not stipulate an acceptance shall not be binding.
- 1.2. These general conditions of sale and delivery shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of sale and delivery shall only be valid if expressly acknowledged by Schleuniger and in writing.
- 1.3. All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.
- 1.4. Should a provision of these conditions of sale and delivery prove to be wholly or partly invalid, the parties to the contract shall jointly seek a new arrangement having a legal and economic effect which will be as similar as possible to the original version.

2. Scope of supplies and services

- 2.1. The supplies and services are exclusively specified in the order acknowledgement and in appendices thereto. Schleuniger shall be entitled to make any changes which lead to improvements.

3. Plans and technical documents

- 3.1. Unless otherwise agreed upon, all marketing material such as brochures and datasheets are not binding. Data provided in technical documents are only binding in so far as having been expressly stipulated as such.
- 3.2. Schleuniger retains all rights to plans and technical documents provided to the other party. The party receiving such documents recognizes these rights and shall – without previous written consent of Schleuniger – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Regulations in the country of destination and safety devices

- 4.1. The purchaser shall, at the latest when placing the order, draw the attention of Schleuniger to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2. Additional or other safety devices are only supplied if specified in writing and expressly agreed upon.

5. Prices

- 5.1. All our prices are quoted – unless otherwise agreed - net FCA, Thun, Incoterms 2010, excluding packaging, in Swiss Franc, without any deduction. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to Schleuniger against adequate evidence in case Schleuniger is liable for them.
- 5.2. Schleuniger reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In addition, an appropriate price adjustment may apply in case
 - the delivery time has been subsequently extended due to any reason stated in Clause 9.3, or
 - the nature or the scope of the agreed supplies and services has changed, or
 - the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete.

5.3. Minimum invoice amount of a shipment must exceed at least CHF 100.00.

6. Terms of payment

- 6.1. Payments shall be made by the customer according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like. Unless otherwise agreed upon, the full price shall be paid within 30 days after the date of issue of the invoice. Payment shall be deemed to be effective as far as Swiss francs have been made freely available to Schleuniger.
- 6.2. The dates of payment shall also be observed if transport, delivery, installing, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond Schleuniger's control, or if unimportant parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.
- 6.3. If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, Schleuniger shall be entitled to adhere to or terminate the contract, and shall in both cases be entitled to claim damages. If the customer, for any reason whatsoever, is in delay with a further payment, or if Schleuniger is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, Schleuniger, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch.
- 6.4. If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 1.5 per cent per month. The right to claim further damages is reserved.

7. Retention of title

- 7.1. The customer shall cooperate in any measures necessary for the protection of Schleuniger's title. In particular upon entering into the contract it authorizes Schleuniger to enter or notify the retention of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at customer's cost. During the period of the retention of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of Schleuniger against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that Schleuniger's title is in no way prejudiced or repealed.

8. Incorrect orders / returns

- 8.1. Incorrectly ordered supplies can only be returned within 30 days and are only accepted in their original state and original packing. Clearing will be done in form of a credit note. Only parts with a value of more than 100 Swiss francs per article are applicable for a credit note. Schleuniger reserves the right to charge a restocking fee of 25 per cent of the purchasing price, respectively at least 100 Swiss francs, for returned orders. Return of customer-specific machines or parts can be declined at any time without declaration of reasons. Before returning any material, Schleuniger has to be contacted and asked for authorization to return items.. Schleuniger will not accept received materials without authorization and return it to the account of the sender.

9. Delivery time

- 9.1. The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled and recorded in written form. The delivery time shall be deemed to be observed of by that time Schleuniger has sent a notice to the customer informing that the supplies are ready for dispatch.
- 9.2. Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligation.
- 9.3. The delivery time is reasonably extended:
- if the information and/or testing material required by Schleuniger for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
 - if hindrances occur which Schleuniger cannot prevent despite using the required care, regardless of whether they affect Schleuniger or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilization, war, revolution, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors or raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes;

- if the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

9.4. The customer is not entitled to claim any damages for delay in delivery of the supplies or services. Any further liability shall be excluded.

10. Packing

10.1. Packing shall be charged for separately by Schleuniger and shall not be returnable. However, if it is declared as Schleuniger's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

11. Passing of benefit and risk

11.1. The benefit and the risk of the supplies shall pass to the customer not later than by handover to the 1. freight carrier (FCA, Thun, Incoterms 2010).

11.2. If dispatch is delayed at the request of the customer or due to reasons beyond Schleuniger's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

12. Forwarding, transport and insurance

12.1. Schleuniger shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

12.2. The customer shall be responsible for taking insurance against risks of any kind.

13. Inspection and acceptance of the supplies and services

13.1. As far as being normal practice, Schleuniger shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specifically agreed upon and paid for by the customer.

13.2. The customer shall inspect the supplies and services within 5 work days and shall immediately notify Schleuniger in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been approved.

13.3. Having been notified of any deficiencies according to Clause 13.2, Schleuniger shall as soon as possible remedy them, and the customer shall give Schleuniger the possibility of doing so.

13.4. The carrying out of an acceptance test as well as laying down the conditions related hereto need a special agreement. In absence of such agreement the following shall apply:

- An acceptance report shall be prepared which shall be signed by both, the customer and Schleuniger, or by their authorized representatives. Such report shall either state that the acceptance has taken place, or that it has taken place under reservations, or that the customer has refused the acceptance. In the last two cases, the claimed deficiencies shall be listed individually in the report.
- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse the acceptance of the supplies or services and the signature of the acceptance report.
- In case of important deviations from the contract or of serious deficiencies the customer shall give Schleuniger the possibility of remedying these within a reasonable time. Thereafter, a further acceptance test shall take place.

13.5. Acceptance shall also be deemed completed:

- if the acceptance test cannot be carried out on the day provided for due to reasons beyond Schleuniger's control;
- if the customer refuses the acceptance without being entitled to do so;
- as soon as the customer uses the supplies or services of Schleuniger.

13.6. Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 13.4 and 14 (guarantee, liability for defects).

14. Guarantee, liability for defects

14.1. *Guarantee period*

The guarantee period for by Schleuniger newly produced machines, components and parts is 12 months, respectively a maximum of 2'000 operating hours. It starts when the supplies leave the works or at acceptance of the supplies and services should such an acceptance have been agreed upon before, or, if Schleuniger undertakes the installation, upon completion thereof.

If dispatch, or acceptance, or installation, are delayed due to reasons beyond Schleuniger's control, the guarantee period shall end not later than 18 months after Schleuniger's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair or acceptance.

All wearable parts are expressly exempt from the general guarantee period of 12 months, respectively of a maximum of 2'000 operating hours.

The guarantee period expires prematurely

- if the customer or a third party undertakes inappropriate modifications or repairs;
- if parts are mounted which are not Schleuniger original parts;
- if the customer, in case of defect, does not immediately take all appropriate steps to mitigate the damage and give Schleuniger the possibility of remedying such defect.

14.2. *Liability for defects in material, design and workmanship*

Upon written request of the customer, Schleuniger undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become Schleuniger's property. Schleuniger shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in Schleuniger's works, the customer shall bear the related costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

Any return of supplies within the scope of a guarantee claim requires consultation with Schleuniger prior to shipping. All cases are to be handled individually and it remains up to Schleuniger to specify the measures with regards to repair or replacement. All costs incurred to Schleuniger by returned machines without prior return material authorization will be fully at the customer's expense.

14.3. *Liability for specific warranties*

Specific warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. A specific warranty is valid until the expiry of the guarantee period at the latest. If an acceptance test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove to relevant quality or capacity.

If the specific warranty is not or only partially achieved, the customer may require Schleuniger to carry out the improvements immediately. The customer shall give Schleuniger the necessary time and possibility of doing so.

Any further liability is excluded.

14.4. *Exclusions from the liability for defects*

Excluded from Schleuniger's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by Schleuniger, or resulting from other reasons beyond Schleuniger's control.

14.5. *Supplies and services of subcontractors*

Schleuniger doesn't assume any guarantee and liability for supplies and services of subcontractors.

14.6. *Exclusivity for guarantee claims*

With respect to any defective material, design or workmanship as well as to any failure to fulfill specific warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 14.1 to 14.5.

14.7. *Liability for additional obligations*

Schleuniger is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.

15. Termination of the contract by Schleuniger

15.1. The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of Schleuniger, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, Schleuniger shall be entitled to terminate the contract or the parts affected thereby.

If Schleuniger wishes to terminate the contract it shall – after having recognized the consequences of the event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract Schleuniger shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

16. Order cancellation by the customer

16.1. Cancellation of the order after more than 60 days after the date of issue of the order acknowledgement is not possible.

In case of order cancellation in writing by the customer within 60 days, Schleuniger is entitled to reimbursement of all expenses incurred on a time and material basis till then, with a minimum of:

- 20% of the total order value in case of order cancellation within the first 30 days after date of issue of the order acknowledgement;
- 30% of the total order value in case of order cancellation within 30 to 60 days after date of issue of the order acknowledgement.

Advance payments exceeding the cancellation fee, will be reimbursed to the customer.

Existing advance payments are cleared with the cancellation fee. If the cancellation fee exceeds the pre-payment, the difference will be billed to the customer.

17. Exclusion of further liability

17.1. All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of sale and delivery. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract is excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect consequential damage. This exclusion of liability explicitly also applies to unlawful intent or gross negligence of persons employed or appointed by Schleuniger to perform any of its obligations.

17.2. Schleuniger does not assume liability for the delivered goods to be free of patent claims or other legal claims.

18. Right of recourse of Schleuniger

18.1. If, through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against Schleuniger, then Schleuniger shall be entitled to take recourse against the customer.

19. Jurisdiction and applicable law

19.1. The place of jurisdiction for both the customer and Schleuniger is Thun, Switzerland. Schleuniger shall, however, be entitled to sue the customer at the customer's registered address.

19.2. The contract shall be governed by Swiss substantive law.