

General Terms and Conditions of Sale and Delivery of Swecon Baumaschinen GmbH

Section 1 Scope

1. All of our deliveries, services and quotations to businesspersons that relate to the sale or delivery of goods by us shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery (referred to in the following as "GTCS D"). These GTCS D shall not apply to consumers in the meaning of Section 13 of the German Civil Code (BGB). Terms and conditions of the customer that contradict or deviate from our GTCS D shall not apply, unless we explicitly agree to their application in writing. Our GTCS D shall also apply if we make the delivery to the customer without reservation, in knowledge of contradictory or deviating terms and conditions of the customer.
2. The legal relations between us and the customer shall be subject exclusively to the purchase contract concluded in writing, including the GTCS D. This shall reflect in full all agreements reached between the contracting parties in relation to the subject matter of the contract. Verbal commitments made by us before the conclusion of the contract shall be legally non-binding, and verbal agreements between the contracting parties shall be replaced by the written contract, unless they explicitly entail that they shall continue to apply as binding.
3. Supplements and amendments of the agreements made, including these GTCS D, shall require the written form to be effective. With the exception of managing directors or authorised representatives, our employees shall not be entitled to make deviating verbal agreements. Telecommunication shall be sufficient for purposes of maintaining the written form, and in particular fax or email, provided that the copy of the signed statement is transmitted.
4. Our GTCS D (in their respectively applicable version) shall apply to all future purchase contracts and contracts for labour and materials with the customer, even if these are not again explicitly agreed; we shall inform the customer immediately in such cases.

Section 2 Subject matter of the service

1. The subject matter of the service shall be the machinery, equipment or parts thereof, as described in detail in the order, and the respective operating instructions required (referred to in the following as "Goods").
2. We hereby retain the title and copyrights to all quotations and cost estimates, images, drawings and calculations, brochures, models and other documents submitted by us. This shall also apply to any written documents that are marked "confidential". Without explicit approval by ourselves the customer shall not be permitted to make either these objects themselves or their contents accessible to third parties, to publish them, to use or duplicate them, or to permit third parties to do the same.
3. The specifications contained in the catalogues, brochures, newsletters, advertisements, images and price lists regarding weights, dimensions, performance and the like shall only be approximate values as customary in the industry, unless explicitly described in the order confirmation as binding, or where precise compliance is a prerequisite of use for the contractually agreed purpose. The design and shape of the delivery item shall remain subject to modification in the event of further technical developments, provided that the modifications do not impair the use of the Goods as intended by the customer.

Section 3 Conclusion of Contract

1. All of our quotations shall be subject to alteration and non-binding, unless they are explicitly identified as binding or contain a specific acceptance deadline.
2. The order signed by the customer shall constitute a binding offer. We shall be entitled to accept this offer within 2 weeks by sending an order confirmation, or to send the customer the Goods ordered within this period, with the result that the contract is concluded in accordance with the terms and conditions.
3. We shall not be responsible for the correctness of the specifications made by the customer in the order, particularly as regards the number, types, dimensions and colours. If deviations result in an increase in price, this shall be borne by the customer.

Section 4 Transfer of risk, delivery dates and periods, delay

1. Unless otherwise agreed in the order confirmation, the place of fulfilment shall be our registered office, and the delivery shall be agreed "ex works". Periods and dates proposed by us for deliveries and services shall only be considered approximate, unless a fixed period or fixed date is explicitly confirmed or agreed. If only dispatch was agreed, the delivery periods and delivery dates shall refer only to the time of handover to the shipping company, freight carrier, or other third party assigned to perform the transportation.
2. The start of the delivery period specified by us, and compliance with the delivery obligation, shall be conditional on the clarification and communication by the customer of all technical requirements that come from the customer's side and are necessary for the proper implementation of the contract (e.g. compatibility of the equipment ordered with equipment owned by the customer, the provision of the documents to be procured by the customer, the communication of information required for the performance, and clarification of technical issues, in each case where this must come from the customer's side).
3. If the customer defaults on acceptance, or violates other obligations of cooperation, we shall be entitled to demand compensation of the losses we incur as a result, including any additional expenses. The right to assert further statutory claims shall be reserved. In particular, in this case the risk of accidental loss or impairment of the items purchased shall be transferred to the customer at the time when the customer defaults on acceptance.
4. Our delivery obligation shall be conditional on us receiving correct and punctual deliveries from our own suppliers. We shall be entitled to withdraw from the contract if, despite previously concluding a covering transaction and through no fault of our own, we do not receive the items to be delivered. We shall inform the customer immediately if the items purchased are not available punctually and, if we intend to withdraw, shall exercise the right to withdraw immediately. In the event of withdrawal, we shall immediately reimburse the customer for the corresponding payments, where these have already been made.
5. Delays in deliveries and services resulting from force majeure and events that significantly impede or render impossible our performance of the delivery or service through no fault of our own - including strikes, lockout, administrative orders etc., including where these affect suppliers or sub-suppliers - shall not be our responsibility, even where delivery periods and dates have been agreed as binding. Such events shall entitle us to postpone the delivery by the duration of the disruption, plus an appropriate lead time, or to withdraw from the contract wholly or in part for the unfulfilled components.

Section 5 Transport

1. In accordance with the German Packaging Ordinance, returned transport packaging and other packaging shall not be accepted, with the exception of pallets. The customer shall be obliged to ensure the disposal of the packaging at their own expense.
2. We shall only cover the delivery with transport insurance upon explicit request from the customer; any costs thus incurred shall be borne by the customer. If the customer subsequently gives delivery instructions that deviate from the purchase contract, the additional costs shall be borne by the customer.

Section 6 Invoices, prices, payments, right of retention, offsetting

1. The prices shall apply to the scope of service and delivery listed in the order confirmation. Additional or special services shall be invoiced separately. Unless otherwise specified in the order confirmation, our prices shall apply "ex works", excluding packaging, which shall be invoiced separately.
2. The statutory value-added tax shall not be included in our prices; it shall be indicated separately in the invoice at the statutory level applicable on the date of invoicing.
3. Amounts invoiced shall be payable within 10 days. The decisive factor for the date of payment shall be the receipt of any such payment in our business account. The deduction of discounts shall require a specific written agreement. The granting of any discount shall be subject to the requirement that all payment obligations from previous deliveries have been fulfilled in full.
4. If the customer defaults on payment, we shall be entitled to demand default interest in the amount of 9% above the base interest rate p.a. Furthermore, we shall reserve the right to assert claims for higher interest and additional compensation for the default.
5. If the customer is culpably in default of payment with two payment instalments for Goods that have already been delivered, all payment obligations relating to the business relationship shall immediately become due and payable. In this case, and irrespective of more extensive statutory rights, we shall likewise be entitled to only perform outstanding deliveries upon advance payment, or to demand corresponding securities.
6. The customer shall only be entitled to offset against the claim for payment where the opposing claim is undisputed, legally established as final, or recognised by us. The customer shall have rights of retention, provided that the underlying claims are undisputed, legally established as final, or based on the same contractual relationship. In the events of defects with the delivery, the opposing rights of the customer shall be unaffected.
7. We shall be entitled to perform deliveries or services only upon advance payment or provision of securities, where after conclusion of the contract circumstances become known to us that significantly reduce the apparent creditworthiness of the customer, and which jeopardise the payment of our outstanding receivables by the customer in relation to this contractual relationship (including from other individual orders subject to the same framework contract). The right to refuse performance shall lapse when the corresponding payment or security is provided.

Section 7 Warranty

1. The items delivered must be examined carefully by the customer immediately after delivery to the customer or to the third party designated by the customer. As regards obvious defects or other defects that would have been identifiable in the event of an immediate, careful examination, the items shall be considered approved by the customer if we do not receive a written notification of defects within 2 working days after delivery. As regards other defects, the items delivered shall be considered approved by the customer if we do not receive a notification of defects within 7 working days after the defect becomes apparent; if the defect was already identifiable to the customer at an earlier stage in the course of normal use, however, that specific point in time shall be decisive for the start of the period for notification of defects. The items delivered shall be returned to us freight-paid upon our request.
2. Within the framework of the following provisions, we hereby warrant that the items delivered and any items still to be manufactured (labour and materials) shall be free from material defects and defects of title. In all cases, the statutory special provisions for the final delivery of the Goods to a consumer shall remain unaffected (supplier regress under Sections 478, 479 of the German Civil Code).
3. Claims of the customer regarding defects shall be subject to statutory limitation one year after delivery or - where an acceptance inspection is required - after the acceptance inspection. This provision shall not apply to claims arising from culpable injury to life, limb or health, from malicious non-disclosure of defects on our part, from intentional or grossly negligent conduct on the part of us, our legal representatives or vicarious agents, from the acceptance of a warranty or a procurement risk, or under the German Product Liability Act, or to claims arising from culpable violation of a major contractual obligation. As such, the statutory provisions regarding limitation periods shall apply.
4. In the event of any material defects with the items delivered or manufactured, we shall be obliged and entitled at our discretion either to rework or replace the defective items within a reasonable period. In the event of failure of the reworking or replacement, i.e. if it is impossible, unreasonable, refused, or inappropriately delayed, the customer shall be entitled to withdraw from the contract or reduce the price appropriately.
5. If the costs of reworking are increased as a result of the delivery being brought to a location other than that agreed in the contract, the customer shall bear the correspondingly increased expenses.
6. The delivery of used items shall be subject to the exclusion of any warranty for material defects.
7. The warranty shall lapse if the customer modifies the items delivered without our approval, or has them modified by third parties, and where the elimination of the defect is thereby rendered impossible or unreasonable. In any case, the customer shall bear the additional costs for the elimination of the defect that are incurred as a result of the modification.

Section 8 Liability for compensation on grounds of negligence

1. We shall be liable for compensation without restriction - irrespective of legal grounds - in the event of intent or gross negligence, and for claims under the German Product Liability Act, or where we maliciously fail to disclose a defect, or where we have accepted a warranty for the quality of the Goods or accepted a procurement risk, or for culpable injury to life, limb or health.
2. In the case of simple negligence - and unless one of the aforementioned exceptions applies - we shall be liable only for losses resulting from the culpable violation of a major contractual obligation (an obligation, the fulfilment of which is required to make the proper implementation of the contract possible, and which the contracting partner can and should be entitled to expect); in this case, our liability shall however be limited to compensating the foreseeable, typical losses.

Section 9 Retention of title

1. We shall retain the title to the items purchased until the settlement of all of our claims arising from the business relationship with the customer.
2. The customer shall be entitled to sell on the items purchased in the course of ordinary business transactions; however, the customer hereby assigns to us all receivables in the amount of the final invoice total of our claim (including value-added tax), to which the customer shall be entitled as a result of further sale to buyers or third parties, irrespective of whether the items purchased have been sold on without or after further processing. We hereby accept the assignment. The customer shall remain authorised to collect these receivables, even after the assignment. Our authorisation to collect the receivables ourselves shall remain unaffected by this. We hereby undertake not to collect the receivables, however, provided that the customer fulfils its payment obligations utilising the revenues received, does not default on payments, and in particular does not apply for the opening of insolvency proceedings or suspension of payments. If this occurs, we shall be entitled to demand that the customer discloses to us the assigned claims and the debtors, provides us all information necessary for collection, hands over the associated documents, and informs the debtors (third parties) of the assignment.
3. The processing or transformation by the customer of the items purchased shall always be performed on our behalf. If the items purchased are processed together with other items that do not belong to us, we shall receive joint title to the new product in proportion to the value of the items purchased (final invoice total including VAT) relative to the other items processed at the time of processing. The product resulting from the processing shall otherwise be subject to the same conditions as the items purchased under retention of title.
4. If the items purchased are inseparably mixed with other items that do not belong to us, we shall receive joint title to the new product in proportion to the value of the items purchased (final invoice total including VAT) relative to the other items mixed at the time of mixing. If the mixing process takes place in such a manner that the items of the customer must be viewed as the main item, it shall be considered agreed that the customer shall assign us a pro rata title. The customer shall thus hold the sole title or joint title in safekeeping for us.
5. As security for our claims against the customer, the customer hereby also assigns to us such receivables from a third party as result for the customer from the combination of the items purchased with a plot of land.
6. We hereby undertake upon request from the customer to release the securities assigned to us, where the realisable value of our securities exceeds the value of the claims secured by more than 10%; the selection of the securities to be released shall be at our discretion.
7. The customer shall be obliged to treat the items purchased carefully and exercising due commercial care until the purchase price has been paid in full; the customer shall in particular be obliged to adequately insure these items at its own expense against loss by fire, water and theft. Where maintenance and inspection work is required, the customer shall be obliged to perform this work punctually and at its own expense.
8. In the event of seizure or other interference by third parties, the customer shall be obliged immediately to inform us in writing, so that we can file a challenge under Section 771 of the German Civil Practice Code (ZPO). The customer shall be liable for the costs of interventions. Furthermore, the customer shall immediately inform the third parties of our title. Where the third party is not capable of reimbursing legal costs and out-of-court costs in this context (e.g. a successful challenge under Section 771 ZPO), the customer shall be liable to the loss that we incur.

Section 10 Closing provisions

1. If the customer is a businessperson, a legal entity under public law, or a special public fund, the jurisdiction for any and all disputes arising from or in relation to the business relationship between us and the customer shall be our registered office. We shall however be entitled to file a case against the customer at the domicile of the latter. Mandatory statutory provisions regarding exclusive jurisdictions shall remain unaffected.
2. The law of the Federal Republic of Germany shall apply exclusively. If a provision or a part of this agreement is invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect. The contracting parties undertake to replace the invalid or unenforceable provision with a valid and enforceable provision which comes closest to the economic intention of the invalid or unenforceable provision. The same shall apply in case the agreement contains a regulatory gap.

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