

GENERAL CONDITIONS OF SALE AND DELIVERY FOR BUSINESS CUSTOMERS SWIFTRADE GMBH

July 2020 - Copyright Swiftrade GmbH

1. SCOPE OF APPLICATION, OFFERS

- 1.1. These General Conditions of Sale and Delivery shall apply to all purchase and delivery agreements concluded between Swiftrade GmbH (hereinafter referred to as «seller», «us», «we») and its business customers (hereinafter referred to as «buyer»), except where otherwise agreed. They shall in all cases take precedence over all alternatively worded conditions supplied by the customer or included in the latter's documents. Private buyers that accept the conditions of sale and delivery for business customers and proceed to make purchases must accept that no claims under consumer protection and distance selling regulations may be asserted.
- 1.2. Offers made by the seller are subject to alteration. We reserve the right to make changes for construction and/or sales-related reasons. Agreements, in particular verbal collateral agreements, promises, warranties and other representations made by our salespersons shall not be binding unless confirmed by us in writing.
- 1.3. Documents forming part of the offer, such as drawings, illustrations, technical data, references to standards as well as statements in advertising media shall not be construed to be information as to quality, representations as to characteristics or warranties, unless explicitly indicated as such in writing.
- 1.4. Discrepancies between the items supplied and offers, samples, test deliveries and advance deliveries shall be permitted as allowed for in the stipulations of the applicable DIN/EN standards or other pertinent technical standards.
- 1.5. Confirmed orders are always non-cancelable and are non-refundable. All confirmed orders are final.

2. PRICES

- 2.1 The prices set out shall be subject to alteration and without obligation on our part. They may be changed at any time without prior notice, except where otherwise agreed. Except where otherwise indicated, the prices shall be exclusive of value-added tax, freight, postage and packaging. In case of deliveries to destinations outside of the Swiss Confederation, any customs duties and fees shall be borne by the buyer.

3. PAYMENTS

- 3.1 Invoices shall be payable within thirty days after the invoice date net without any deductions of any kind, except where otherwise agreed in writing. Those terms are subject to a positive credit information.

- 3.2 Any discount agreed upon shall always relate only to the invoiced value excluding value-added tax, freight, postage and packaging, and requires that all sums due from the buyer have been paid at the time when the discount is granted.
- 3.3 If payment is not effected within the period laid down in clause 3.1, the seller shall, upon expiry of this period, be entitled to issue written notice of arrears to the buyer and to charge 5% default interest plus reminder fees as from the date on which the reminder is received by the buyer. The goods supplied by us shall remain the property of the seller until the purchase price agreed upon has been received in full.
- 3.4 Failure to comply with our conditions of payment shall release us from the obligation to deliver, but it shall not free the buyer from his obligation to accept. If the buyer is in arrears with his payments, the seller shall, after previous reminder, be entitled to request advance payment for further orders and shall be entitled to hold back deliveries not yet carried out.
- 3.5 Counterclaims by the buyer that are contested by us or that have not been legally confirmed shall not entitle the buyer to withhold or offset payments.
- 3.6 The seller may discontinue performance of his obligations if after conclusion of the agreement it emerges that the buyer will not perform a material part of his obligations or the seller becomes aware of circumstances which reduce the creditworthiness of the buyer. The seller shall be entitled to perform his services against cash on delivery or may withhold such services until consideration is secured. If no security is provided within a reasonable period of time set by the seller, the seller shall be entitled to withdraw from the agreement. If the seller has already shipped the goods before it emerges that the buyer will not perform a material part of his obligations, the seller may refuse to hand over the goods to the buyer.
- 3.7 In case of default in payment, the legal expedients set out in Articles 107 to 109 of the Swiss Code of Obligations shall apply.

4. DELIVERIES

- 4.1 Delivery periods and dates shall be considered to have been complied with if the item to be supplied has been handed over to the shipping agent / carrier within that period.
- 4.2 Delivery periods shall be extended for an appropriate time in the event of actions caused by industrial disputes, in particular strikes and lock-outs, by force majored as well as other unforeseeable obstacles which are outside of our influence, provided such obstacles have a demonstrable and material influence on the production and supply of the items to be supplied. This shall also apply if the circumstances occur at upstream suppliers. We shall notify the buyer of such circumstances without delay. These rules shall also apply to delivery dates, mutatis mutandis. If performance of the agreement should become unreasonable for either of the two parties for the reasons mentioned hereinbefore, the party may withdraw from the agreement.
- 4.3 The benefits and risks shall pass to the buyer when the goods are handed over to a shipping agent or carrier. The same shall apply for partial deliveries, even if pre-paid and free on delivery has been agreed. The duty and costs of unloading shall be borne by the buyer. We shall provide insurance coverage only upon the instructions and at the costs of the buyer.

- 4.4 We shall be permitted to carry out partial deliveries to a reasonable degree.
- 4.5 In case of make-and-hold orders we shall be entitled to manufacture the whole amount ordered in one process or arrange for it to be so manufactured. After the order has been placed, no further requests for changes can be considered, unless explicitly agreed. Unless a firm agreement has been concluded, the make-and-hold delivery dates and quantities can be complied with only to the extent of our delivery or manufacturing capabilities. If the goods are not called off as stipulated in the agreement, we shall be entitled to invoice them as having been delivered after a reasonable period of time has elapsed.
- 4.6 An order supplement shall be charged for orders of small quantities which cannot be handled at our commercial cost.
- 4.7 For returns for which we are not responsible an amount of 20% of the gross return amount shall be claimed by way of credits.
- 4.8 The buyer shall be obligated to notify the seller of any wrong or incomplete deliveries in writing and within a period of eight days, except where any missing parts are indicated on the delivery note. Otherwise the delivery shall be considered to be correct. The above shall be read subject to the provisions concerning warranty.

5. RESERVATION OF TITLE

- 5.1 All goods supplied shall remain our property until complete fulfilment of all claims in conjunction with these goods..
- 5.2 The seller reserves the right to have the reservation of title entered in the register of reservations of title at the registered office and/or domicile of the buyer if payment has not been effected. The costs of such registration shall be borne by the buyer. The buyer shall be obligated to immediately notify the seller of any changes in domicile and/or registered office.

6. WARRANTY

- 6.1 The goods supplied shall be inspected immediately after receipt. Complaints regarding any identifiable defects shall be reported to the seller in writing immediately after receipt of the goods, but at the latest within eight days, the alleged defect being indicated and described in as much detail as possible. The same shall apply for any hidden defects; such defects shall be reported immediately after discovery, but at the latest within eight days. If the complaint has not been filed in due time, all warranty claims shall become void. The seller's warranty shall be limited to manufacturer terms. Terms are subject to each manufacturer and may vary.
- 6.2 The seller shall not be bound by any other or more extensive material or title warranty. In particular, the seller shall not warrant that the delivery is suitable for the intended use and does not infringe the rights of third parties. Claims of the buyer for damages, cancellation or reduction of the purchase price shall be explicitly excluded. If we should not be able to rework or replace the goods after attempting to do so, or should we refuse to do so, we shall reimburse the purchase price (cancellation) against return of the goods in case of proven wrong delivery.

6.3 The seller shall not be held liable for any loss or damage during shipment of the goods. Any claims for such loss or damage shall be addressed direct to the delivering post office or carrier.

7. RESTRICTION OF LIABILITY, LIMITATION OF CLAIMS

7.1 The seller shall not be liable for breach of contractual and extra-contractual obligations by himself or his employees other and assistants, in particular due to impossibility, delay, fault in contract formation and impermissible action, except in case of intent and gross negligence restricted to loss or damage that was foreseeable at the time when the agreement was concluded. Liability for indirect and consequential loss or damage (including lost profit), as well as for assistants, shall be excluded to the extent permitted by law.

7.2 these restrictions shall not apply in cases of strict liability pursuant to the Swiss Product Liability Act, or in case of injury to life, body or health or if and to the extent that we have maliciously concealed defects or explicitly guaranteed the absence of any defects. The rules on the burden of proof shall remain unaffected.

8. COPYRIGHTS, PATENT RIGHTS, DESIGN AND TRADEMARK RIGHTS

8.1 Offers, drafts, drawings and other documents are the property of the respective manufacturer; he latter shall be made accessible to third parties only with our agreement. Drawings and other documents forming part of offers shall be returned upon request.

8.2 If we have delivered goods or provided other services in accordance with drawings, models, samples or other documents supplied by the buyer, the buyer shall warrant that these do not infringe the intellectual property rights and other rights of third parties. If, claiming superior rights, a third party forbids us in particular to manufacture and deliver such objects, we shall be entitled - without being obligated to verify the legal position - to discontinue any further activity in this regard and to claim damages if the buyer is at fault. In addition, the buyer undertakes to indemnify the seller and hold him harmless in respect of any claims by third parties in connection with an infringement of their rights.

8.3 Copyrights, patent rights, design and trademark rights as well as know-how and practical experience, including as expressed in drawings and projects, shall remain property of the respective manufacturer. It shall not be permitted to reproduce, use or forward the same to third parties without our explicit approval. All intellectual property inclusive of trademark rights, copyrights, design and patent rights in or in connection with the goods supplied and other materials of the seller shall remain with the latter exclusively.

9. CONCLUDING PROVISIONS

9.1 No variation of or amendment to these stipulations shall be valid unless made in writing. The same shall also apply to any waiver of the requirement for the written form. However, the seller reserves the right to vary or add to these stipulations as well as other stipulations governing the relationship between seller and buyer (such as on data protection, utilization of the website) at any time. The seller undertakes to inform the buyer in writing of such variations or additions by e-mail or in any other suitable manner. Unless contested by the buyer within the period stated, they shall be considered as being implicitly accepted. The seller shall be entitled to assume that e-mails sent to the e-mail address supplied by the buyer have been duly delivered.

- 9.2 Purchase and delivery agreements as well as individual rights and obligations resulting there from may be transferred only subject to the written approval of the other contracting party. However, the seller shall be permitted to transfer agreements as well as rights and obligations arising there from to other companies within the seller's group of companies without the approval of the buyer.
- 9.3 These General Conditions of Sale and Delivery are available in German and English. In case of contradictions, the German version shall take precedence.
- 9.4 If one or more stipulations of these General Conditions of Sale and Delivery are or become ineffective either in whole or in part, the other stipulations shall remain in effect unchanged. The contracting parties undertake to agree on replacement stipulations which come as close as possible to the content of the ineffective stipulations.
- 9.5 All agreements shall be governed by and construed in accordance with Swiss law only, excluding the United Nations Convention on Contracts for the International Sale of Goods as amended on 11th April 1980 and the Convention on the Law Applicable to International Sales of Goods as amended on 15th June 1955.
- 9.6 The ordinary courts of Zug, Switzerland, shall have exclusive competence to decide on all litigation arising out of or in connection with the individual purchase or delivery agreements. Swiftrade GmbH reserves the right to take action against the buyer at his registered office and/or domicile.