

Parts and Standard Parts of Schumag AG, Nerscheider Weg 170, D-52076 Aachen

1. Scope of application

- 1.1 These General Terms of Delivery are an integral part of all contracts concluded between Schumag AG (hereinafter referred to as Schumag) and the customer.
- 1.2 In the case of an ongoing business relationship, these General Terms of Delivery will also apply to future business with the customer even if not expressly referred to provided that they have already been applied in connection with a previous contract and the business conducted was of a similar nature.
- 1.3 Any terms and conditions of the customer deviating from or conflicting with these terms will not be recognized by Schumag unless explicit consent has been given to their application.
- 1.4 If individual agreements between Schumag and the customer are conflicting with these General Terms of Delivery, the individual agreement shall apply. In other respects the agreement of the General Terms of Delivery remains unaffected by this.
- 1.5 These General Terms of Delivery will apply only to undertakings within the meaning of § 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), legal persons governed by public law or special funds governed by public law.

2. Offer - Conclusion of contract

- 2.1 Offers of Schumag are subject to change and not binding unless they are explicitly designated as a binding offer.
- 2.2 For the type and scope of the order only the written order confirmation by Schumag is authoritative. Objections by the customer to the contents of the order confirmation are to be immediately filed in writing to Schumag. In addition, Schumag shall be free to accept orders from the customer by delivery if the order is executed immediately.
- 2.3 With regard to items manufactured to order Schumag reserves the right to deviate from the ordered quantity by +/- 10%, unless expressly agreed otherwise in individual cases.
- 2.4 Side agreements, amendments and/or changes of the order confirmation are subject to the written confirmation of Schumag in order to take effect.

3. Documents ceded for use

- 3.1 Schumag is entitled to the exclusive ownership and any applicable proprietary rights to all documents ceded to the customer in connection with the placing of orders (e.g. calculations, drawings, etc.), as well as contents of our Website. The documents may be made accessible to third parties only with the explicit written consent of Schumag. The same goes for any other utilization by the customer. This shall even apply if a protection of copyright in terms of the German Copyright Act is not constituted.
- 3.2 If objects are manufactured as per drawings, models, samples or other documentation of the customer, the customer warrants that proprietary rights of third parties will not be infringed. The customer will hold Schumag harmless from any and all claims of third parties brought against the Schumag by reason of any failure to comply with the provision contained in the preceding sentence. This will apply in particular as regards any trademark infringements or competition-law violations.

4. Prices and payment

- 4.1 Only the prices mentioned in the order confirmation are authoritative. These prices are quoted ex works Aachen if no other individual agreement has been made. Packaging, freight, postage, insurance, customs duty, other expenses and statutory value added tax are not included in the price and are separately payable by the customer.
- 4.2 A deduction of a cash discount is allowed only if this has been previously agreed in writing.
- 4.3 Unless agreed otherwise, invoices of Schumag are issued and payable in Euro and are due for payment within 14 days of

invoicing. Payment shall be deemed as made not until Schumag can dispose of the amount.

- 4.4 If the customer is in arrears with its payment it owes default interest amounting to 9 percentage points above the respective base rate per annum. We reserve the right to claim higher default damages.

5. Retention and set-off

- 5.1 The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by Schumag. This shall not apply to counterclaims of the customer from the same contractual relationship. The customer may exercise a right of retention only in respect of claims arising from the same contract.

6. Retention of title

- 6.1 Schumag reserves the right of ownership to all goods supplied by it until all claims from previous contracts have been fully settled. Such claims also include claims arising from open accounts.
- 6.2 If the customer acts in breach of contract, in particular in case of default of payment, Schumag shall be entitled to repossess the goods. Repossession of the goods shall constitute a rescission of the contract. After repossession, Schumag shall be entitled to sell the goods and credit the proceeds of such sale, less reasonable costs of disposal, towards the outstanding balance due by the customer.
- 6.3 The customer will treat the goods with good care and will in particular insure them at its own expense against fire, water damage and theft at replacement value. The customer will have any necessary maintenance and inspections carried out at its own expense on a timely basis.
- 6.4 In the case of attachment or other process undertaken by third parties, the customer will notify Schumag accordingly in writing without delay so that Schumag can bring action pursuant to § 771 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO). If the third party is not able to reimburse Schumag for judicial and non-judicial expenses incurred in connection with an action pursuant to § 771 of the Code of Civil Procedure, the customer will be liable for any loss incurred by Schumag.
- 6.5 The customer may resell the goods subject to the retention of title claim in the ordinary course of business provided that it indicates that they are subject to a retention of title claim. The customer is not permitted to otherwise dispose of the goods subject to the retention of title claim, in particular it is not permitted to pledge them or create security interests over them. The customer herewith assigns to Schumag all of its claims in the amount of Schumag's final invoice (including value-added tax) against its purchasers or third parties which arise from the resale. This will apply regardless of whether or not the goods are processed before they are resold. The customer remains authorized to enforce the above-mentioned claims even after they have been assigned. Schumag's authority to enforce the claims itself will remain unaffected hereby. Schumag undertakes, however, not to enforce the claims provided that the customer meets its payment obligations from the sale proceeds that it receives, does not default in payment and, in particular, that no composition or insolvency proceedings are instituted against it and it does not cease payment. If, however, the foregoing occurs, Schumag may request the customer to inform it regarding the details of the assigned claims and the identity of its debtors, to provide it with all details necessary for enforcing the claims, to hand over all related documents and to inform the debtors (third parties) of the assignment.
- 6.6 Any processing or transformation of the deliverables by the customer after delivery will be considered to have been carried out on behalf of Schumag. If the deliverables are processed with other items that do not belong to Schumag, Schumag will acquire co-ownership rights in the newly

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- 6.7 created items in the ratio of the value of the deliverables (final invoice amount, including VAT) to the value of the other items processed at the time of processing. The physical object resulting from processing will otherwise be subject to the same conditions as the deliverables to which Schumag retains title.
- 6.8 If the deliverables are inseparably combined with other physical objects that are not the property of Schumag, Schumag will acquire rights of joint ownership in the new object in proportion to that share of the value of the new object accounted for by the deliverables in which Schumag has an ownership interest as of the time of such combination. If the physical object resulting from the process of combination is considered the primary object, the customer will assign Schumag a proportionate ownership interest. The item so created in which Schumag has sole or co-ownership rights will be held in safe custody by the customer on Schumag's behalf.
- 6.9 At the request of the customer, Schumag undertakes to release the collateral due to it at its choice, if the realizable value of the collateral exceeds the receivables to be secured by more than 10%.
- 6.10 If the reservation of title or the assignment of claims are ineffective or not enforceable due to non-negotiable foreign legal provisions, the collateral corresponding to the reservation of title or to the assignment of claims in this area is deemed as agreed. If the cooperation of the customer is required in this respect, it is to take all measures required to constitute and maintain the collateral.
- 7. Delivery**
- 7.1 The agreed delivery dates and periods are estimates only and are completely non-binding unless there is an express agreement to the contrary in a particular case. Commencement of performance will be contingent upon resolution of all (technical) issues and timely receipt of all documents to be supplied by the customer. In the event that advance payments have been agreed with the customer, performance will commence upon receipt of payment. The defence of non-performance of the contract remains reserved.
- 7.2 The customer may request Schumag to deliver four (4) weeks after a non-binding date or period of time has been exceeded. Schumag will be considered to be in default upon receipt of such notice. In the event that a binding date or period of time elapses, Schumag will be considered to be in default of performance immediately when the date or period of time elapses. Liability for any loss or damage suffered by the customer due to lateness will be governed by the provisions contained in cipher 11.
- 7.3 The delivery period is deemed to be observed if the goods have left the factory or notification of readiness for shipment has been provided before its expiry.
- 7.4 Any requests for changes by the customer lead to a reasonable extension of the delivery period.
- 7.5 Schumag shall not be responsible for any delays in delivery and performance which are based on Force Majeure or events which were not foreseeable and not caused by Schumag and which make delivery or performance significantly more difficult or impossible, even if binding periods and dates have been agreed. These events entitle Schumag to extend its delivery and/or performance by the period of the obstruction plus a reasonable start-up period. If the obstruction continues for more than 3 months, the customer shall be entitled after granting a reasonable period of grace to withdraw from the contract. In this case any claims for damages on the part of the customer are excluded.
- 7.6 Schumag is entitled to make partial deliveries provided that the remaining items are delivered within the agreed delivery period and that this is not unreasonable for the customer.
- 8. Passing of risk**
- 8.1 Shipment and transport of the goods are carried out at the cost and risk of the customer.
- 8.2 The risk of loss passes to the customer upon the dispatch of the goods ex works. This shall also apply if delivery with freight paid by Schumag has been agreed in the individual case.
- 8.3 If shipment is delayed due to circumstances for which Schumag is not responsible, the risk passes to the customer from the date of notification of readiness for dispatch.
- 9. Notice of defects**
- 9.1 The customer is to check each delivery upon acceptance or receipt for completeness and defects of the packaging. Complaints are to be immediately reported to Schumag in writing.
- 9.2 The customer is obligated to examine the goods immediately in the ordinary course of business and to immediately complain in writing about identifiable defects to Schumag. Hidden defects must be reported in writing immediately after their discovery. Otherwise the delivery is deemed as being approved to be free from defects.
- 10. Warranty**
- 10.1 Schumag warrants that, based on the current state-of-the-art, its goods are free from defects. If Schumag supplies goods on the basis of samples provided to it, its warranty includes only the qualitative and dimensional properties of the sample released by the customer.
- 10.2 In the event of a material defect, Schumag is entitled to subsequent performance by choosing at its discretion between removing the defect or delivering a faultless replacement. If subsequent performance is refused by Schumag, if it has failed or if it is unacceptable to the customer, the customer may claim its further legal rights. An insignificant reduction of the value or of the aptitude is not taken into consideration. With regard to claims for compensation due to defects the provisions in cipher 11 are applicable.
- 10.3 The customer is to grant Schumag the required time and opportunity to carry out any remedying of defects and replacement deliveries that Schumag deems to be necessary; failing this Schumag shall be released from its liability for the resulting consequences. Only in urgent cases where operating safety is at risk or in order to avert disproportionate damage shall the customer – if possible after notification to Schumag - be entitled to remove the defect by itself or have it removed by third parties and to request compensation from Schumag for the expenses incurred.
- 10.4 The warranty period is twelve (12) months from the transfer of risk. The shortening of the limitation period shall not apply to claims for damages arising from liability for material defects (e.g. in the event of a breach of the obligation of subsequent performance), which are based on a grossly negligent or intentional breach of duty by Schumag, its legal representative or its vicarious agent as well as in the event of injury to life, body or health. The statutory warranty periods shall apply to these claims. Likewise, mandatory legal periods of limitation shall remain unaffected, e.g. in the case of an item that has been used for a building in accordance with its usual purpose, or in the case of a delivery recourse.
- 10.5 Liability for express warranties in respect of characteristics or durability (Beschaffenheits- oder Haltbarkeitsgarantien) and liability for concealment of defects will not be affected by the above provisions.
- 11. Liability**
- 11.1 Liability will be governed by and subject to applicable provisions of law unless agreed otherwise below.
- 11.2 The liability of Schumag will be limited in the event that Schumag is required by law to make good a loss or damage incurred under the contract through slight negligence. Schumag will be liable only in the case of a breach of material contractual obligations and such liability will be limited in such cases to typical loss or damage foreseeable as of the time of execution of the agreement. Material obligations will be considered to mean such obligations as must be fulfilled

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- 11.3 to permit proper performance of the contract and upon which the respective other party may regularly rely.
- 11.4 The limitation of liability pursuant to 11.2 will not apply in the case of claims arising from physical injury, illness or loss of life, fraudulent acts, assumption of any express warranty ("Garantie") or claims under the German Product Liability Act (Produkthaftungsgesetz – ProdHaftG).
- 11.5 Liability for defects is excluded if these defects are based on improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, use of unsuitable resources, chemical, electro-chemical or electrical effects unless Schumag is responsible for these.

12. Language of the contract, venue, place of performance, governing law

- 12.1 The language of the contract is German.
- 12.2 The place of jurisdiction for any disputes arising from or in connection with the contractual relationship between the parties will be the registered office of Schumag, insofar as the customer is a merchant, legal person governed by public law or a special fund governed by public law. Schumag may,

- 12.3 however, bring action against the customer before the courts of general jurisdiction over the customer.

- 12.4 To all legal relations between Schumag and the customer as well as to these General Terms of Delivery the law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

- 12.5 In the event that any provision of these General Terms & Conditions should be or become void, invalid or unenforceable in part or in its entirety or any provision that would otherwise have been necessary has been omitted, the validity and enforceability of all remaining provisions of this contract will not be affected.

Disclaimer

This General Terms of Delivery is a translation of the original Allgemeine Lieferbedingungen (ALB) prepared in the german language. Please note, that only the german original version is definitive and recognized as authentic. Schumag AG disclaims responsibility for any misunderstanding or misinterpretation due to this translation. In case of any inconsistency or divergence in the english translation, the german version shall prevail.

Status: February 2020