

Valid from: March 2019

1. Scope of application

These terms of supply and payment apply to all business transactions with the customer, even if reference is no longer made to them in subsequent transactions. The customer's terms and conditions of purchase are hereby expressly rejected. They will only apply if we have agreed to them in writing; acceptance of an order or supply of goods by us does not constitute consent. These terms of supply and payment do not apply to private consumers.

2. Conclusion of contract, condition of goods

Our offers are subject to confirmation. Contracts are only concluded through our written order confirmation, which is decisive for the content of the contract. If we do not issue an order confirmation, the supply contract will come into existence with the delivery of the goods by us.

Descriptions and illustrations of our goods are only approximate. We reserve the right to make changes to our goods until delivery, in particular technical changes within the scope of our product maintenance, which, however, may not unreasonably impair the interests of the customer.

3. Exclusion from cancellation and return

The cancellation or amendment of concluded contracts requires our express consent. The return of delivered goods is only permitted with our prior written consent.

4. Transfer of risk, transport

Delivery is ex works or ex warehouse. The risk passes to the customer as soon as we have handed over the goods to the carrier, at the latest, however, upon their leaving the factory or warehouse.

We are entitled to take out transport insurance, but are not obliged to do so - even in the case of deliveries abroad. In the event of damage to or loss of the goods during transport, the customer must immediately arrange for the carrier to record the facts.

Unless the customer has given instructions to the contrary in writing, we will determine the means of transport, the transport route and the transport insurance without being responsible for choosing the fastest or cheapest option.

5. Partial deliveries

We are entitled to fulfil orders in the form of partial deliveries, which are treated as independent deliveries and must be paid for separately in each case within the periods specified in No. 7. If the payment of a partial delivery is delayed, we can suspend the further completion of the order.

6. Price

The customer must pay the list price applicable on the day of order confirmation, unless otherwise agreed in individual cases. If the delivery period is more than 4 months from the date of our order confirmation, we may charge the list price valid on the day of delivery. The customer is entitled to withdraw from the contract within 14 days after notification of the price increase by written declaration to us.

Our prices are quoted in euros ex works or ex warehouse, as the case may be.

The number of items or the weight determined by us will be decisive for the invoice. Proof that the calculation was incorrect is admissible.

Value added tax and shipping costs, in particular freight, transport insurance, customs duties and handling costs as well as packaging costs will be borne by the customer, even if they are not shown separately.

7. Payment

Unless otherwise agreed in writing, our invoices are to be paid net within 30 days of the invoice date.

Payments are always used to pay off the oldest invoice. We are not obliged to accept bills of exchange. If we accept other means of payment than cash and bank transfers, this is only for the purpose of payment. All payments are to be made free of charges for us. Bank, discount and collection charges will be borne by the customer even without express agreement.

If the net payment deadline is exceeded, we will be entitled to charge interest at the rate of 8% above the base interest rate of the European Central Bank from no later than 31 days after receipt of the invoice or equivalent request for payment, even without sending a reminder.

If a significant deterioration of the customer's financial circumstances occurs after conclusion of the contract or if we only become aware of a previously occurring deterioration in the financial circumstances after conclusion of the contract, we will be entitled, at our discretion, to demand either advance payment or the provision of security. If this demand is not fulfilled, we will also have the right to refuse performance of the contract after expiry of a reasonable grace period. The customer may not offset or exercise a right of retention on account of a counterclaim disputed by us which has not been determined to be legally valid.

Payment to our representatives and employees is only effective upon presentation of a written power of attorney for collection.

8. Goods made to specification

In the case of goods which we manufacture in accordance with the requirements, specifications etc. of the customer, the customer will bear sole responsibility for their correctness. The customer must indemnify us against all claims asserted by third parties against us or a company commissioned by us on the basis of industrial property rights or copyrights. In the case of custom-made products, an excess or short delivery of up to 10 % is in accordance with the contract. Our price will increase or decrease accordingly. Details are to be agreed separately.

9. Retention of title

The supplied goods will remain our property until the customer has paid all claims which we have against it now and in the future.

The customer may process the goods in which we have reserved title in the ordinary course of business, unless it is in default of payment or has suspended payments. In the event of processing, it is already agreed at this point that we are entitled to a co-ownership share in the new goods resulting from the processing, which corresponds to the value of our reserved goods in proportion to the value of the other processed objects. The customer will keep the new item created by processing in safe custody for us. The same will apply if the customer mixes, combines or incorporates the goods in which we have reserved ownership with other goods.

The customer may sell the goods to which we have reserved title or to which we are entitled to co-ownership within the framework of ordinary business operations, unless it is in default of payment or has suspended payments. The customer may not pledge the goods or assign them by way of security. A sale abroad is only permissible with our prior consent. If the customer sells reserved goods, it hereby assigns to us the rights to which it is entitled from the sale towards its customers with all ancillary rights, securities and retention of title until all our claims have been settled. We can demand that the customer informs its customers of the assignment and provides us with all information and documents necessary for collection. However, the customer may collect the claims assigned to us as long as it is not in default of payment or has not suspended payments. If the customer's claims from the resale of our reserved goods are included in a current account, it hereby assigns to us its claim to payment from the respective or recognised balance in the amount of the claims from the resale of our reserved goods. If we are only entitled to co-ownership of the sold goods, the above assignment will only apply to the amount of the value of our co-ownership. If goods to which we have reserved title or to which we are entitled to co-ownership have been sold together with other goods at a total price, the above assignment will apply only to the amount of the invoice value of our reserved goods or to the amount of the value of our co-ownership.

If the value of the reserved goods together with the securities otherwise granted to us exceeds our claims against the customer by more than 20 %, we will be obliged to release them to this extent at the customer's request.

If the customer is in default of payment or stops payments, we have the right to demand the return of our reserved goods. A withdrawal from the contract only takes place if we expressly declare this in writing.

10. Defects

In the case of defects in our goods, we will only be liable for warranty if the customer notifies us in writing without delay, at the latest within 10 days of receipt of the goods. We will not be liable for defects not notified in due time.

Our liability will be limited to remedying defects or supplying a faultless replacement free of charge for the defective goods. Upon request, the defective goods or a sample must be sent to us beforehand for inspection. If the replacement delivery is unsuccessful, if it is refused by us or if special circumstances exist which justify the immediate assertion of further legal remedies under consideration of the interests of both parties, or if a reasonable period set by the customer for subsequent performance has expired, the customer will be entitled to withdraw from the contract or to reduce the purchase price.

The warranty claims of the customer due to material defects will expire after one year. The limitation period begins with the delivery of the goods.

11. Claims for damages

Claims for damages on the part of the customer due to breach of duty, tort or other reasons are excluded, unless intent, gross negligence, breach of a primary obligation to perform, assumption of a procurement risk or a guarantee exists or we are liable according to the provisions of the Product Liability Act or we have culpably caused damage to life, limb or health. In all cases, claims for damages will be limited to the foreseeable damage typically occurring.

As far as the liability of Ferd. SCHMETZ is excluded or limited according to this regulation, this also applies to the employees, representatives and vicarious agents of Ferd. SCHMETZ.

12. Choice of law, place of performance, place of jurisdiction

The legal relations between the customer and ourselves are subject exclusively to the laws of the Federal Republic of Germany. The place of performance for the services of both contracting parties is Herzogenrath.

The exclusive place of jurisdiction for all disputes will be Herzogenrath, provided that the customer is an enterprise, legal entity under public law or special fund under public law or has no general place of jurisdiction in Germany. However, we will also be entitled to file suit at the customer's registered place of business instead.