

GENERAL CONDITIONS OF PURCHASE (“GCP”) of SCHRAML Glastechnik GmbH



Unless expressly agreed otherwise in writing, all supplies and services by Seller to SCHRAML shall be subject to the conditions set forth below.

1. ORDER

- 1.1. All orders as well as all modifications thereof and supplements thereto will be binding on SCHRAML only if placed in writing, including faxes and emails, by the authorized purchase department of SCHRAML. The Seller may rely on statements by other persons only if it promptly informs the purchase department thereof and if the latter has sent an order confirmation to the Seller. These GCP of SCHRAML shall be deemed accepted, at the latest, upon the Seller beginning to execute the order. Any conditions of the Seller (e.g. bids, sales conditions) shall be applicable only if expressly accepted by SCHRAML in writing. Orders as well as amendments and changes to existing orders placed by telephone or otherwise verbally do not become binding for SCHRAML until confirmed by SCHRAML in writing.
- 1.2. The order date shall be the date the order was sent, and in the event of a verbal order the date the confirmation was sent by SCHRAML.
- 1.3. The order shall be immediately confirmed or rejected by the Seller in writing. In the event the Seller does not reject the order within five days of the order date, the contract shall become effective with the content of the order. As long as the contract has not been accepted by means of a confirmation, in which the entire content of the order is accepted, SCHRAML shall have the right to withdraw the order without any liability and without mention of reason. The withdrawal is in time if it is sent prior to receipt of the confirmation of acceptance.
- 1.4. Deviations from orders shall be reported in detail and require for their effectiveness the explicit written approval of SCHRAML. The unconditional acceptance of goods shall not be deemed as such approval.

2. PRICES

- 2.1. All prices are considered fixed prices including all other taxes, charges etc. but exclusive of Value Added Tax.
- 2.2. Unless otherwise provided in the order, prices are quoted Delivered Duty Paid (DDP) named place of factory SCHRAML (INCOTERMS 2010).
- 2.3. The price shall include the costs of documentation, technical tests, painting, corrosion protection measures, marking, stamping, etc., unless otherwise agreed in the order. If the Seller is not located in Austria, the Seller's services shall include the customs export formalities (customs clearance formalities with the Seller's own documents, including payment of all costs and duties connected therewith).

3. PAYMENT

- 3.1. Unless otherwise provided and unless otherwise agreed in the following paragraph, payment will be made within a period of 30 days after receipt of the invoice and after all conditions for payment specified in the order, including, without being limited to, the due submission of documents, have been met, with 3% discount or within 60 days net. The assignment of the Seller's claims shall not be permitted without the explicit written approval of SCHRAML.
- 3.2. Currently all payments are made twice a week, on Tuesdays and Thursdays, by SCHRAML. If payments in time are not possible with the weekly payment run, all payments will be in time, when they are effected with the next weekly payment run. Nevertheless, the grace period and the right of discount shall be preserved. The assignment of the amounts due from SCHRAML shall be permissible only with SCHRAML's express written consent.
- 3.3. Payment shall not be deemed to be acknowledgment by SCHRAML of proper delivery or performance and shall therefore not constitute a waiver by SCHRAML of its rights to performance, warranty and damages. If SCHRAML has complaints about any deliveries/services, SCHRAML shall be entitled to withhold any payments due.
- 3.4. Payment terms shall be suspended during SCHRAML's Christmas holiday and the annual plant shutdown.

4. INVOICING

- 4.1. Supplies shall be executed and invoices prepared separately for every order. Invoices shall be submitted in the same structure as the order, sent to the address named in the order. The invoices shall also include a copy of the delivery note or work report.
- 4.2. In domestic transactions the invoice shall show the percentage of VAT and the total VAT amount generally, even if the invoiced amount is below EUR 100.

- 4.3. SCHRAML shall be entitled to set off from any payment to the Seller any claims which SCHRAML or any affiliated company of SCHRAML might have against the Seller.
- 4.4. The Seller is not entitled to set off claims with any demands of SCHRAML, irrespective of the legal basis.

5. PACKING AND DISPATCH

- 5.1. The Seller shall submit a valid proof of preferential treatment (such as a movement certificate, a certificate of origin and the like). Separate instructions by SCHRAML shall be complied with. Unless otherwise provided in the shipping instructions of SCHRAML, no declaration of value shall appear in the shipping documents accompanying the goods.
- 5.2. Costs of transport insurance will be borne by SCHRAML only if expressly so agreed in the order.
- 5.3. In the event of non-compliance with SCHRAML's shipping, packing, customs clearance and/or documentation instructions, any and all risks, damage and costs resulting therefrom shall be for the account of the Seller and the due date for payment of the invoice will be postponed correspondingly until all deficiencies have been remedied and/or the missing documents have been submitted.
- 5.4. Products subject to special product stipulations such as guidelines for hazardous materials shall be classified, packaged and labelled according to legal requirements; the safety data sheets prescribed by law shall be attached in the required language.

6. DELIVERY DATES

- 6.1. Delivery dates shall be strictly met. Deliveries before the specified date of delivery shall be permitted only after written approval by SCHRAML and shall not entitle the Seller to early payment.
- 6.2. If the Seller realizes that it will not be able to keep the agreed time periods and deadlines, it shall be obligated to promptly inform SCHRAML thereof in writing, stating the reasons and the expected duration of the delay. The date of delivery of supplies and services shall be the date when the Seller has completely met its obligations under the order, which includes the submission of the complete and correct documentation.
- 6.3. Should the Seller not meet the periods, intermediate or final dates set out in the contract, to the Seller shall pay 0.5% for each day of delay, up to a maximum of 10 % of the total contract value as a penalty until the actual date of delivery. Such penalties may also be deducted from the Seller's accounts receivable or open invoices if any. Penalties shall become due to SCHRAML with the occurrence of the delay. Acceptance by SCHRAML of a delayed delivery without immediate notification to the Seller of a penalty claim shall not prejudice SCHRAML's right to claim penalties at a later date in respect of that delivery. Furthermore, SCHRAML shall be entitled to claim damages exceeding the amount of penalties.

7. GUARANTEE

- 7.1. Apart from the characteristics expressly specified and/or promised, the Seller guarantees that its deliveries and services are complete and fit for SCHRAML's particular purposes. The Seller guarantees that its deliveries and services will be free from defects for a period of 24 months as from the acceptance of the entire plant by the Final Customer, however latest 36 months from the date of final delivery according to the contract.
- 7.2. The Seller shall carry out, within the shortest possible time, the necessary repair at site or shall replace the defective item at site as per SCHRAML's instruction. All related services and any additional cost e.g. for transport, customs, dismantling and erection shall be carried out by the Seller or at the Seller's expense.
- 7.3. Notwithstanding any other rights SCHRAML may have, SCHRAML shall be entitled, in case the Seller does not meet its obligations within the period deemed necessary by SCHRAML, to remedy or cause to have remedied defects or damage at the Seller's expense. This shall not affect the Seller's obligations.
- 7.4. SCHRAML is not obliged in any form whatsoever to inspect the Seller's deliveries and services before putting them into operation or using them. The Seller waives any objection due to delayed notice of defects (that means that Par. 377 of the Austrian Commercial Code is expressly excluded.). In case of replacement or repair the guarantee period shall begin to start again.

8. ABILITY TO DELIVER

- 8.1. If production of the agreed delivery items is ceased, the Seller undertakes to remain in a position to deliver these items from stock at its own cost and for a period of 10 years. The delivery items shall

- be in accordance with the latest state of science and technology as well as with any additional specifications agreed on before actual end of production.
- 8.2. The cessation of production shall be in accordance with the contractual agreements with SCHRAML. Unless otherwise agreed, the Seller shall notify SCHRAML in writing of the cessation of production at least six months before cessation is planned.
 - 8.3. If production is ceased, SCHRAML shall have a pre-emption right for all stocks of the agreed delivery items and/or production capacities of these items, in accordance with the agreed terms. SCHRAML shall have the non-obligatory right to make use of this option within a reasonable period of time (at least one month from notification or, if no notification is given, from obtaining knowledge).
 - 8.4. These provisions shall apply correspondingly to any services associated with the agreed delivery items.
- 9. CHANGES**
- 9.1. The Seller shall be obliged to notify SCHRAML in writing of any changes to the agreed delivery items (e.g. sub-suppliers, materials, manufacturing processes, production machinery), as well as of any production site changes or changes to ownership structures three months before the changes occur, always provided that such changes shall have no impact on the specification or quality of the delivered good.
 - 9.2. This obligation shall apply correspondingly to any services associated with the agreed delivery items, if these are significantly changed.
- 10. LIABILITY**
- 10.1. Unless expressly stipulated otherwise in these GCP, the liability of the Seller shall be in accordance with the applicable law. In the event the delivered goods are defective with respect to the applicable product liability law, the Seller shall completely save harmless and indemnify SCHRAML.
 - 10.2. The Seller shall be obligated to provide a complete user's manual in the required language, to keep on file all necessary documentation and to precisely monitor the product.
- 11. EXPORT LICENCES**
- 11.1. The Seller guarantees that the delivered goods are not subject to any export restrictions, according to Austrian, European and US-export- and customs provisions (especially the EG-Dual-Use regulation). In case any export licenses are required the Seller shall be obliged to inform SCHRAML about these regulations as well as of the export and customs provisions of the country of origin and shall indemnify and hold harmless SCHRAML from and against all damages resulting out of a breach of such obligation.
- 12. RIGHTS IN THE SUBJECT MATTER OF THE CONTRACT**
- 12.1. The Seller undertakes to safeguard that SCHRAML will in no way be impaired in its use of the Seller's deliveries or services by the enforcement of any rights of third parties (trademarks, designs, patents, territorial protection, etc.) and that such use does not infringe upon existing boycott clauses and black lists.
 - 12.2. The Seller shall immediately inform SCHRAML of any injury of third-party rights or boycotts and black lists, which may come to its attention at a later date. Should such impairments or injuries of rights occur, the Seller shall completely indemnify SCHRAML and the Final Customer without limitation concerning claims by third parties.
- 13. CONFIDENTIALITY**
- 13.1. The Seller shall keep confidential any information related to the contract or to the project or any other information obtained directly or indirectly from SCHRAML or the Final Customer including all information developed by the Seller on the basis thereof, shall not disclose such information to any third party and shall not use any such information for any purpose other than for executing the respective contract.
- 14. COPYRIGHT**
- 14.1. The property and the exclusive right of use of all drawings, information and know-how made available by SCHRAML to the Seller remains with SCHRAML. The Seller acknowledges SCHRAML's exclusive copyright thereof.
- 15. TERMINATION**
- 15.1. In the event of a violation of the contract SCHRAML may, after having allowed a reasonable grace period, entirely or partly terminate the contract. A reminder to the Seller to comply with the provisions of the contract will also be deemed as the beginning of a reasonable grace period. Violations of the contract shall include, without being limited to, non- observance of intermediate or final deadlines and defects that might hinder SCHRAML from meeting its obligations towards any of its contracting parties.
 - 15.2. The assignment of claims without any written approval entitles SCHRAML to termination without notice.
 - 15.3. In such cases SCHRAML shall have the right to render the omitted and/or deficient deliveries and services either personally or through third parties at the expense of the Seller. The costs incurred in connection therewith may be either invoiced by SCHRAML directly, it being understood and agreed that payment must be made within 7 days after invoicing, or deducted from the next payments due to the Seller from SCHRAML.
 - 15.4. If the enforcement of the right to substitute performance necessitates access to industrial or intellectual property rights, documents (such as workshop drawings, calculations) or other information, the Seller shall be obligated to furnish SCHRAML with the necessary rights, documents, information.
 - 15.5. SCHRAML shall have the right to entirely or partly terminate the contract even without the Seller's fault. In such a case SCHRAML is obligated to pay to the Seller the contract price in proportion to the deliveries and services already made and, in addition, to refund to the Seller the documented direct costs of deliveries and services which are being executed or, as the case may be, the costs incurred due to the cancellation of sub-contracts. The Seller shall be obligated to minimize the costs to be refunded by SCHRAML.
 - 15.6. In any case of termination of the contract, SCHRAML shall be entitled to use the deliveries ordered until acceptance of an alternative solution.
- 16. MISCELLANEOUS**
- 16.1. SCHRAML reserves the right to check at any reasonable times that the time schedules are met and to make intermediate and final technical tests (this includes inspection of packaging) in the Seller's and its sub-suppliers' offices, production plants and storage facilities and to reject faulty documentation and defective material. These tests, checks and inspections do not release the Seller from its full responsibility.
 - 16.2. The Seller shall inform SCHRAML in time of, and obtain SCHRAML's prior written approval for, any sub-suppliers, except for standard parts.
 - 16.3. All deliveries made to SCHRAML shall be free of any liens, encumbrances, title retention and free of any third-party rights. Such reservations shall not be effective even in the event they are not contested by SCHRAML. Title and risk shall pass to SCHRAML simultaneously.
 - 16.4. Persons who make declarations for the Seller towards SCHRAML will be deemed to have unlimited power to do so.
 - 16.5. Unless expressly stipulated otherwise in the contract, any ancillary costs incurred in connection with the implementation and fulfillment of the contract shall be borne by the Seller.
 - 16.6. SCHRAML will not grant any remuneration for the preparation of bids. By submitting a bid, the Seller agrees that any and all technical information and documents contained therein may be made available, to third parties (engineering partners, customers, etc.), without this giving rise to any claims by the Seller towards SCHRAML. Bid documents will not be returned. Documents pertaining to invitations for bids shall be returned to SCHRAML without further request either together with the bid or after execution of the order.
 - 16.7. Should the delivery dates set out in the contract be changed for reasons outside the Seller's responsibility, the Seller shall arrange for adequate storage of the goods at its own risk and at no cost to SCHRAML for a period of up to one month.
 - 16.8. The Seller shall ensure and shall be liable for compliance with these GCP by its sub-suppliers.
 - 16.9. Nothing contained in these GCP shall in any way diminish SCHRAML's rights and remedies under law.
- 17. JURISDICTION/ APPLICABLE LAW**
- 17.1. All disputes arising out of or in connection with the contract or related to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these Rules. The arbitration shall be held in Vienna. The arbitration proceedings shall be held in the English language.
 - 17.2. Notwithstanding the above, SCHRAML reserves the right to refer a case to the court competent according to the applicable law of civil procedure for Vienna – 1st district.
 - 17.3. The contract shall be governed by Austrian substantive law under exclusion of the laws of collision and the UN Convention on Contracts for the International Sale of Goods.