

# **General Terms and Conditions for Supplies and Services to Customers of Schomandl GmbH & Co. KG**

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## 1. Scope

- 1.1 The present terms and conditions (hereafter: the "**Terms and Conditions**") apply to all business relationships between SCHOMANDL GmbH & Co. KG (hereafter: „**SCHOMANDL**“) and its customers with respect to supplies of products and services of SCHOMANDL (collectively hereafter: the "**Supplies**").
- 1.2 The Supplies of SCHOMANDL are provided exclusively on the basis of the present Terms and Conditions, unless expressly agreed otherwise between SCHOMANDL and the Customer. Any standard terms and conditions of the customer are excluded as part of the agreement with the customer, even if SCHOMANDL does not expressly object to these standard terms and conditions.
- 1.3 To the extent that the customer is a business enterprise, these Terms and Conditions apply to all present and future business relationships between SCHOMANDL and the customer. For purposes of the present Terms and Conditions, all natural or legal entities acting in exercise of their trade, business or profession shall be considered as business enterprises.

## 2. Offers and Orders

- 2.1 Unless expressly provided otherwise by SCHOMANDL, all offers of SCHOMANDL regarding Supplies are non-binding. Oral side agreements shall not be binding upon SCHOMANDL.
- 2.2 Agreements regarding Supplies between the customer and SCHOMANDL shall be entered into by means of written orders of the customer on the basis of offers issued by SCHOMANDL and subsequent written order confirmation by SCHOMANDL.

## 3. Scope of Supplies, Changes

- 3.1 The scope of the Supplies is set forth in SCHOMANDL's offers and/or the respective statement of work agreed with the customer. In as far as no specification has been made in such offer or statement of work, the scope of SCHOMANDL's Supplies shall conform to

industry practice taking into account reasonable interests of the customer.

- 3.2 To the extent reasonable, each party may request a change to the Supplies. Any such change request shall be submitted to the other party in writing or per email.
- 3.3 Upon receipt of a change request of the customer, SCHOMANDL will within a reasonable period of time check whether the requested change is feasible from a technical perspective and/or with reasonable allocation of resources, and whether implementation of the requested change will cause additional costs or - in the event of a reduction of scope - a deficit. To the extent that implementation of the requested change will cause additional costs to SCHOMANDL or a deficit, SCHOMANDL will submit to the customer a supplementary offer for modification of the agreed remuneration in conformance with the requested change of scope of the Supplies. SCHOMANDL shall not be obliged to implement any change request of the customer until after the Parties shall have agreed upon the modification; SCHOMANDL's claims for payment of the remuneration shall remain unaffected.
- 3.4 If SCHOMANDL issues a change request to the customer pursuant to clause 3.2 above, the customer undertakes to check within a reasonable period of time whether the customer's reasonable interests are affected by the requested change. The result of the customer's review shall be submitted to SCHOMANDL without undue delay. Consent to implementation of the requested change shall not be unreasonably withheld by the customer.

## 4. Terms of Supply

- 4.1 For purposes of performing the Supplies, the customer shall upon request of SCHOMANDL nominate one or several central contact persons. The central contact persons shall be authorized by the customer to issue and receive declarations regarding technical aspects of performance of the agreement, including, without limitation :

- (a) determination of requirements regarding the Supplies;



- (b) changes of agreed statements of work, including, without limitation, the cancellation, postponement or modification of agreed deadlines for completion of the Supplies by SCHOMANDL;
- (c) declaration of change requests from the side of the customer and response to change requests issued by SCHOMANDL;
- (d) to the extent applicable: Acceptance of Supplies.

Each change or departure of a central contact person shall be notified to SCHOMANDL in due time and in advance. In the event of unforeseeable changes, the notification shall be made with undue delay after the event.

- 4.2 SCHOMANDL will perform the Supplies by itself or through third party sub-contractors. To the extent SCHOMANDL engages third party sub-contractors SCHOMANDL shall be liable for the behavior of such sub-contractors in accordance with the present Terms and Conditions in the same way as for its own behavior.

## 5. Deadlines and Execution Periods, Liability for Delay and Default

- 5.1 All deadlines and execution periods provided in SCHOMANDL's offers and/or in a statement of work agreed with the customer are agreed as lead times and do not represent an agreement on time-of-essence delivery terms.
- 5.2 Compliance of SCHOMANDL with deadlines and execution periods for the Supplies is conditioned upon timely receipt of all documents to be delivered by the customer, issuance of required permits and authorizations as well as full compliance of the customer with agreed payment terms and other customer obligations under the agreement. If the customer has not complied with the foregoing, the deadline or execution period shall be prolonged as reasonably required.
- 5.3 SCHOMANDL shall in no event be liable for delayed Supplies or default in Supply to the extent that agreed deadlines or execution

periods have not been met for reasons beyond the control of SCHOMANDL. This shall apply in particular in the event of force majeure and other events beyond the control of SCHOMANDL such as problems of operations of any type, problems in procurement of materials and energy, delays of transports, labor disputes and / or missing permits by governmental authorities. The deadlines and execution periods are prolonged or postponed in such events as reasonably necessary taking into account the customer's reasonable interests.

- 5.4 Except in the event that the parties shall have agreed on time-of-essence delivery terms, or if performance of Supplies is rejected by SCHOMANDL without reason, SCHOMANDL shall only be in default with its Supplies after the customer has submitted to SCHOMANDL a warning notice and granted SCHOMANDL a reasonable grace period to perform the Supplies. In the event of default in performance, the customer is entitled – to the extent he can show that he has suffered damage as a result of the delay – a lump sum damage for each completed week of delay of 0.5% of the price of the concerned part of the Supplies, but in no event more than a maximum equivalent to 5% of the price of the part of the Supplies that is delayed and which cannot be put into operation. Claims of the customer for a damages due to default in performance as well as claims of the customer for reimbursement of costs are limited to 5% of the price of the part of the Supplies that is delayed and which cannot be put into operation. The right of the customer to claim damages pursuant to article 10 below shall remain unaffected.

## 6. Prices and Payment Terms

- 6.1 Except if expressly agreed otherwise, all prices for the Supplies shall be understood as net prices. In the event of delivery of products, the customer will be charged for costs of transportation and individual packaging and in addition VAT in the then current amount separately.
- 6.2 SCHOMANDL shall have the right to modify the prices in the event that the period between the date of conclusion of the individual agreement with the customer and the date of

delivery of products exceeds four months. If in such period there is an increase of wages and or prices on the purchase market, SCHOMANDL shall have the right to increase the price for the products in accordance with the increase of the purchase costs incurred by SCHOMANDL.

- 6.3 Payments by the customer shall be made without deduction within 14 days from receipt of a corresponding invoice of SCHOMANDL.
- 6.4 In the event of late payment by the customer, SCHOMANDL shall have the right to lump-sum damages in an amount of 10 percentage points over the base rate in Germany (section 247 of the German Civil Code [Bürgerliches Gesetzbuch – BGB]). The Customer is entitled to prove that SCHOMANDL has suffered no damage or a damage of lesser amount; in such event, the lump sum amount shall be reduced accordingly or be excluded as applicable. The right of SCHOMANDL to request payment of additional damage suffered due to delayed payment, if any, shall remain unaffected.

## 7. Terms of Delivery for Products

- 7.1 All supplies of products of SCHOMANDL are delivered “ex works” SCHOMANDL’s production facilities in accordance with INCOTERMS 2010 to the place of destination specified in the customer’s order.
- 7.2 To the extent reasonable, the customer shall accept partial delivery of Supplies.
- 7.3 Supplies of products are subject to correct and punctual delivery of required materials from third party suppliers. SCHOMANDL shall promptly notify the customer of any unavailability of products and will in such event reimburse promptly any remuneration received in the event that the agreement is rescinded by the customer.

## 8. Security

- 8.1 The property in products supplied by SCHOMANDL to the customer shall not pass to the customer until SCHOMANDL has received full payment of all amounts owed by the customer to SCHOMANDL under in the

business relationship between SCHOMANDL and the customer (hereafter: the “**Products with Security Interest**”).

- 8.2 The customer shall be entitled in the ordinary course of business to issue, resell and to transfer the property in the Products with Security Interest to its third party customers. However, in order to secure its liabilities for all payments to SCHOMANDL under the individual purchase agreements, the customer herewith assigns to SCHOMANDL all present and/or future receivables due from a resale of the Products with Security Interest to its third party customers in the invoiced amount, value added tax included. The customer shall be authorized to collect the receivables as fiduciary agent of SCHOMANDL. SCHOMANDL’s right to collect the receivables itself shall remain unaffected, provided that SCHOMANDL will not collect any receivables vis-à-vis the customer’s third party customers as long as the customer performs his payment obligations.
- 8.3 Any processing and/or manufacturing of Products with Security Interest by the customer shall always be made on behalf of SCHOMANDL. If the Products with Security Interest are processed or manufactured together with goods belonging to third parties, SCHOMANDL shall acquire co-ownership rights with respect to the processed or manufactured goods with a co-ownership share equal to the value of the Products with Security Interest in proportion to the value of the processed or manufactured goods. In addition, the provisions of clause 8.2 above shall apply.
- 8.4 As security, the customer furthermore assigns to SCHOMANDL all claims of Customer arising from the fact that Products with Security Interest have been combined with immovables belonging to third persons.
- 8.5 SCHOMANDL shall release any of the securities mentioned in this clause 8, if the total value of the securities exceeds the value of payments due by Customer by 10 percent or more.
- 8.6 In the event that any security provided under clauses 8.1 to 8.5 should be invalid and/or unenforceable in any territory of destination to which the Products with Security Interest are supplied by SCHOMANDL, the customer, upon SCHOMANDL’s written request, shall be obliged to provide to SCHOMANDL a bank

guarantee or other equivalent security to secure obligations undertaken in connection with the individual purchase agreement concluded between the parties.

- (c) issuing a credit to the customer equal to the purchase value of the defective product or work.

## 9. Quality of Supplies and Defects Liability

- 9.1 With respect to the Supplies, SCHOMANDL exclusively accepts defects liability as provided by law subject to the terms set forth below. SCHOMANDL does not guarantee any specific characteristics of the Supplies. In particular, any descriptions of the Supplies provided by SCHOMANDL shall not constitute guarantees of a specific characteristic.
- 9.2 With respect to the Supply of products and work, SCHOMANDL warrants that such products and work are free from defects. Warranty claims are excluded in the event that products or work do not deviate from agreed characteristics or if use of such products or work is not impaired in any relevant aspect.
- 9.3 The customer shall inspect and check all Supplies of products upon receipt as to whether or not such products have any apparent product defects, and to promptly report to SCHOMANDL any such product defects detected upon delivery inspection. In the event that the customer (either by itself or through third party customers or other third parties) becomes aware of a hidden product defect (i.e. a product defect not to be detected as apparent upon delivery inspection), the customer shall promptly notify SCHOMANDL of such hidden product defect upon the customer's receiving knowledge of such defect. SCHOMANDL shall not be under any warranty liability for product defects hereunder (and the products shall be deemed accepted as defects-free) to the extent that the customer has failed to provide prompt notice of a product defect in accordance with the foregoing.
- 9.4 If a product Supply or a Supply of work has a defect attributable to SCHOMANDL pursuant to clauses 9.2 and (to the extent applicable) 9.3 above, SCHOMANDL – at its sole discretion – shall remedy such defect by either
  - (a) replacing or repairing the defective product or work;
  - (b) reducing the purchase price for the defective product or work; or

- 9.5 If SCHOMANDL fails to remedy a defect in accordance with clause 9.4 above or refuses to remedy such defect within reasonable time after having received a written notice by the customer requesting such remedy, the customer shall be entitled to rescind the individual purchase agreement with respect to the defective product or work or to demand a reduction of the purchase price for such defective product or work.
- 9.6 The warranty period for warranty claims of the customer is one year from the date of commencement of the legal warranty period.
- 9.7 For any event covered by this article 9, the customer shall only have a claim for damages or reimbursement of costs as provided and subject to the terms of article 10 below.

## 10. Limitation of Liability

- 10.1 Except as expressly set forth in these Terms and Conditions or as agreed otherwise between the parties, SCHOMANDL shall not be held liable for any damages vis-à-vis the customer, whether in contract, in tort (including negligence or strict liability) or otherwise, and SCHOMANDL shall not be held liable for loss of profits or revenue, loss of use of products, costs of capital, claims of third party customers of the customer or any special, indirect, incidental or consequential damages whatsoever.
- 10.2 The exclusions of liability pursuant to clause 10.1 above shall not apply
  - (a) in cases of intentional and/or gross negligent behavior of SCHOMANDL and/or its employees or agents;
  - (b) in cases of death or damage to the body or health of a person; and/or
  - (c) to the extent that SCHOMANDL is liable for damage to persons or private property in accordance with mandatory provisions of applicable product liability; and/or



(d) to the extent that by exception SCHOMANDL should have assumed guarantee liability for specific qualities of the Supplies.

10.3 Furthermore, the exclusions of liability pursuant to clause 10.1 above shall not apply in the event of a material breach of essential contract obligations by SCHOMANDL. In the event of such material breach, however, all liability of SCHOMANDL shall be reduced to the amount of damage foreseeable and typical to the contract. SCHOMANDL's unrestricted liability pursuant to clause 10.2 above shall remain unaffected.

#### **11. Set-Off, Rights of Retention and Defense of Unperformed Contract**

11.1 The customer may only set off his claim against a claim of SCHOMANDL if the customer's claim is undisputed or evidenced by final court decision.

11.2 Any right of the customer to claim the defense of unperformed contract is excluded, except if the Supplies are evidently defective or if the customer has an evident right to claim the defense of unperformed contract. In any such event the customer shall only have the right to retention for a reasonable amount, in particular in taking into account the defects and the estimated cost of performance (in particular for remedying defects).

#### **12. Confidentiality**

12.1 SCHOMANDL and the customer each undertake to maintain in strict confidence any business secrets and other technical or business information received from the other party, to impose equivalent confidentiality obligations on its their respective employees and agents and to use any such confidential information exclusively for purposes of performing their respective obligations under the respective agreement between the parties.

12.2 No confidentiality obligation shall exist with respect to information, which

(a) is proven to have been in the public

domain at the time of disclosure;

(b) is released for disclosure with the other party's express written consent;

(c) is necessary for disclosure in order to perform obligations under the agreement between the parties; or

(d) have to be disclosed in order to comply with applicable laws and regulations or orders issued by governmental authorities.

12.3 The confidentiality obligations pursuant to this article 12 shall survive any termination or expiration of the agreement with the customer as long as and to the extent that the conditions of clause 12.2 are not met.

#### **13. Non-Solicitation**

13.1 The customer undertakes for the duration of the agreement and for a period of one year after termination or completion of the agreement not to solicit the employment of any employee of SCHOMANDL except with SCHOMANDL's prior written consent (with the exception only of events in which employment is prescribed by mandatory laws and regulations).

13.2 In the event of negligent or intentional breach of the obligations pursuant to clause 13.1 the customer shall within 30 days from the date of employment (regardless, whether the respective person is employed as an employee of the customer or engaged as an independent service provider) an amount equal to the gross salary of the employee paid at the last day of employment with SCHOMANDL for a period of six months. For purposes of the present article 13 the term "customer" shall include affiliated companies of the customer as defined in section 15 et seq. of the German Act on Joint Stock Companies [Aktiengesetz – AktG].

#### **14. Publications**

14.1 The customer hereby authorizes SCHOMANDL to make reference to the customer and to the co-operation between the



parties in the framework of marketing media as reference customer for purposes of promoting the sale of SCHOMANDL's products, in particular in presentations of SCHOMANDL's products for third party customers.

- 14.2 Otherwise, SCHOMANDL will not disclose the co-operation between the parties to third parties, unless prior written consent of the customer has been obtained.

## 15. Applicable Law and Jurisdiction

- 15.1 These Terms and Conditions and the agreement with the customer shall be construed and governed by the laws of Germany excluding the application of the UN-Convention on the International Purchase and Sale of Goods.
- 15.2 The forum for any dispute related to or in connection with these Terms and Conditions and the agreement between the customer and

SCHOMANDL shall be the courts in Munich, Federal Republic of Germany. However, each party in its sole discretion shall be free to commence legal proceedings against the other party at the competent courts of the other party's registered office or domicile. Except for preliminary injunctions, the aforementioned choice(s) of forum shall be exclusive.

## 16. Miscellaneous Provisions

- 16.1 No supplement, modification, waiver or extension of these Terms and Conditions will be binding unless executed in writing by the party to be bound thereby.
- 16.2 If any provision of these Terms and Conditions should be held invalid under any existing or future law, the remainder of the Terms and Conditions will not be affected thereby.