

**Heinz Schirmacher GmbH**  
**- General Terms and Conditions -**

**1. General**

The following General Terms and Conditions (hereinafter referred to as 'GTC') are applicable to all transactions between Heinz Schirmacher GmbH and other companies (hereinafter referred to as the 'Customer'). Terms and conditions of the Customer are only valid where they are expressly approved by Heinz Schirmacher GmbH in writing. The provision of supplies, services and offers is based on these GTC. In all cases, offers are subject to change. Should any part of these GTC be invalid, this shall not affect the validity of the remaining GTC.

**2. Description of Services and Offers**

- a) The properties detailed in the service descriptions and offers of Heinz Schirmacher GmbH provide a full and exclusive definition of the characteristics of the goods to be supplied. Any oral statements of the vendor, the manufacturer, their employees or vicarious agents shall not contain any additional or amended descriptions of the service to be provided. Illustrations and plans, together with any specifications of weight and size, are only intended as approximate guidelines, except where they are specifically described as binding.
- b) Amendments and additions may only be made by management and must be made in writing. Oral agreements or declarations of other persons without specific authorisation are only valid if they have been expressly confirmed in writing by management.
- c) Subsidiary oral agreements are not valid.
- d) Heinz Schirmacher GmbH retains the ownership and copyright with respect to all cost estimates, plans and other documentation; the Customer may not make them accessible to third parties.

**3. Prices and Payment**

- a) In the absence of any specific agreement, prices are ex-factory (Trittau) including loading in the factory but excluding any other ancillary costs payable such as packaging, insurance and the costs of payment transactions. All prices quoted are net, exclusive of VAT. VAT is payable additionally by the Customer at the current rate.
- b) Payment is due in full on delivery or formal acceptance. In the absence of any specific agreement, payment should be made by transfer without discount or other charges ex Heinz Schirmacher GmbH paying agent. If payment is not made, the Customer will be held to be in default of payment, without any further declaration from Heinz Schirmacher GmbH, 14 days after the due date. Should faults be detected, the Customer is not entitled to retain payment, unless the delivery is obviously faulty or the Customer has a clear right to reject the delivery. In this case, the Customer may only retain payment where the amount withheld is proportionate to the faults and the anticipated costs of rectification (in particular the remedying of any fault). The Customer is not entitled to assert claims and rights relating to faults where the Customer has failed to make outstanding payments and the amount due (including any payments already made) is proportionate to the value of the faulty delivery or work.
- c) Cash payment or the receipt of cheques and bills of exchange must be expressly approved by Heinz Schirmacher GmbH. Any such receipt of cheques and bills is conditional and subject to full performance. Discount and exchange costs are payable by the Customer and are due immediately. The Customer shall bear the full risk of timely presentation and protest.
- d) If the Customer defaults on a payment, Heinz Schirmacher GmbH is entitled to apply default payment interest of 8 % above the current base rate as per § 247 BGB (German Civil Code). Heinz Schirmacher GmbH may demand higher default interest payments from the Customer if it is itself charged a higher interest rate.
- e) The legal right to withdraw from the contract following default is not affected. In the case of withdrawal, the Customer is obliged to pay compensation of 1/24th of the price of the goods/service for each month of use commenced, this amount to be set against any part payments already made. Compensation may be increased or decreased where HS is able to demonstrate a greater level of damages or where the Customer can provide evidence of lower damages or of a lower reduction in value.
- f) Payment for transactions with overseas customers must be made in advance. In other respects, the same terms apply as for national customers.

**4. Delivery**

Goods are supplied ex-factory (Trittau) and are transported at the risk of the recipient. HS accepts no liability for damages and losses which may occur during transport. With respect to the scope of supply, the written order confirmation produced by Heinz Schirmacher GmbH is definitive. If there is no written order confirmation, the definitive specifications are those of the Heinz Schirmacher GmbH offer where the latter has been accepted by the Customer within the correct period.

## 5. Delivery period

- a) The delivery period begins with the sending of the order confirmation but not before the Customer has submitted any documentation, permits, specimens or releases or before receipt by Heinz Schirmacher GmbH of the agreed down-payment or pre-payment.
- b) The delivery period shall be regarded as fulfilled where the goods being supplied have left the factory before expiry of the period or where notification is given of readiness to ship the goods.
- c) The delivery period shall be extended for a reasonable length of time in cases of action related to industrial unrest, in particular strikes and lock-outs, or in the case of unforeseen obstacles outside the control of Heinz Schirmacher GmbH where these obstacles are proven to affect the manufacture or delivery of the goods. This provision shall also apply where such circumstances affect the own suppliers of Heinz Schirmacher GmbH. Equally, Heinz Schirmacher GmbH shall not be held responsible for the circumstances described above where they arise during an existing delay. In significant cases, Heinz Schirmacher GmbH shall notify the Customer of the commencement and ending of such obstacles as soon as possible.
- d) Where the delivery of goods / services is delayed as a result of intent or gross negligence on the part of Heinz Schirmacher GmbH or of intent or gross negligence on the part of a representative or a vicarious agent of Heinz Schirmacher GmbH, the latter shall be liable in accordance with the provisions of the law. However, in cases of gross negligence, the liability of Heinz Schirmacher GmbH shall be limited to the foreseeable damages typical of such contracts except as provided for in the fifth sentence of this provision. Otherwise, liability for delay in the supply of goods/services for compensation in addition to supply of the goods/services shall be limited to 0.5% of the value of that part of the goods/service affected by the delay, this amount being payable for each full week of delay, up to a maximum of 5% of the value of the goods/service affected by the delay; compensation in lieu of the goods/services shall be limited to 5% of the value of that part of the goods/service affected by the delay. The Customer may not assert any claims beyond these amounts – even following the expiry of a deadline set by the Customer for Heinz Schirmacher GmbH to supply the goods/services. The above restrictions do not apply in cases of liability as a result of injury to life, limb or health. A change in the burden of proof to the detriment of the Customer shall not be linked to the above provisions.
- e) If supply is delayed at the request of the Customer, the latter shall be charged for the storage costs, at least 0.5% of the invoice amount per month where the goods are stored in the Heinz Schirmacher GmbH factory, commencing one month from notification of readiness to ship the goods. The Customer is entitled to provide evidence that Heinz Schirmacher GmbH has not incurred any damage or that any such damage was significantly less. Heinz Schirmacher GmbH may equally provide evidence of greater damages incurred.
- f) The obligation of Heinz Schirmacher GmbH to supply the goods within the designated period is conditional upon the fulfilment of contractual obligations by the Customer.
- g) The obligation of Heinz Schirmacher GmbH to supply the goods is conditional upon the Customer's absolute creditworthiness. If Heinz Schirmacher GmbH receives information following the signing of the agreement that a writ of execution or compulsory auction or insolvency proceedings have been or are likely to be opened against the Customer, then Heinz Schirmacher GmbH is entitled to demand payment in advance or sureties and to withdraw from the contract or claim damages for non-performance if the Customer fails to present the payments or sureties requested within 14 days.

## 6. Transfer of risk and acceptance

- a) If the Customer fails to appear to take formal acceptance of the goods, Heinz Schirmacher GmbH shall be entitled to give the Customer 7 days' notice to formally accept the goods/services with the proviso that the goods/services shall be regarded as accepted if the Customer fails to make formal acceptance thereof within the set period. On expiry of the 7 days, the goods/services shall be held to be accepted.
- b) The risk is transferred no later than the point of dispatch of the goods to the Customer. This applies equally in the case of part deliveries or where Heinz Schirmacher GmbH has agreed to provide other services and where the parties have agreed carriage paid delivery. When haulage companies are contracted through Heinz Schirmacher GmbH, the consignment is always insured against theft, breakage, transport, fire and / or water damage as well as against other insurable risks at the customer's expense.
- c) Where dispatch of the goods is delayed as a result of circumstances attributable to the Customer, the risk is transferred to the Customer no later than the date on which the goods are ready for dispatch; Heinz Schirmacher GmbH is, however, obliged to put in place the insurance required by the Customer at the latter's request and cost.
- d) Items delivered must be accepted by the Customer even where they display immaterial faults, without prejudice to the rights provided for in Number 8.
- e) Part deliveries are admissible.

## 7. Reservation of Title

- a) The goods remain the property of Heinz Schirmacher GmbH up to payment by the Customer of all the amounts to which Heinz Schirmacher GmbH is entitled under the terms of the transaction.
- b) During the period of reserved title, the Customer may not use the goods as a pledge or surety. Resale of the item is only permitted to resellers in the ordinary course of business and under the condition that payment of consideration for the goods is made to the Customer. The Customer must agree with its buyer that the latter shall only acquire title following this payment.
- c) The Customer may process the goods supplied or merge or combine them with other items. The processing, merging or combination (hereinafter jointly referred to as 'processing' and with reference to the goods as 'processed') shall be carried out for Heinz Schirmacher GmbH; the item resulting from this processing shall be known as the 'new goods'. The Customer shall store the new goods on behalf of Heinz Schirmacher GmbH with normal commercial prudence.

In the case of processing with other items which do not belong to Heinz Schirmacher GmbH, the latter shall nonetheless be entitled to co-ownership of the new goods to the extent of the ratio between the value of the goods supplied and subsequently processed and the value of the other processed goods at the time of processing. Where the Customer acquires sole title to the new goods, both Heinz Schirmacher GmbH and the Customer agree that the latter shall grant Heinz Schirmacher GmbH co-title to the new goods in the ratio of the value of the goods supplied and subsequently processed and the other processed goods at the time of their processing.

- d) In the case of resale of the goods supplied or of the new goods, the Customer hereby assigns to Heinz Schirmacher GmbH, by way of surety, its claims against its buyer from the resale, together with all ancillary rights, and without the requirement for any further specific declarations. This assignment shall be taken to include any balance claims but shall be limited to the amount corresponding to the price of the goods supplied as invoiced by HS. The share of the claim to which HS is entitled must take precedence in settlement.
- e) Where the Customer combines the goods supplied or the new goods with land or moveable objects, it shall, without the requirement for any further specific declarations, assign to HS by way of surety the claim to which it is entitled by way of payment for the said combination, together with all ancillary rights, in the ratio of the value of the goods supplied or of the new goods to the other combined goods at the time of their combination.
- f) Until such time as its authorisation is revoked, the Customer may collect payment of the claims assigned in this section of the GTC. The Customer shall immediately forward to HS any payments made in respect of the claims assigned to the extent of the secured claim. Where there is just cause, in particular in cases of delayed payment, cessation of payment, the institution of insolvency proceedings, bill protest or a justifiable suspicion of excessive debt or of the likely inability to pay of the Customer, HS is entitled to revoke the authority of the Customer to collect these sums. Furthermore, HS may, following the issue of a warning with a suitable period of notice, disclose the transfer of the surety, realise the amounts assigned and require the disclosure of the transferred surety by the Customer to the latter's buyer.
- g) Where there is credible evidence of a justifiable interest, the Customer must provide HS with the information and documentation required to enable it to assert its rights against its buyer.
- h) The Customer must inform HS immediately of any judicial attachments, seizures or other disposal or use of the goods by third parties.
- i) If the realisable value of all the surety rights to which HS is entitled exceeds the sum of all the secured claims by more than 10%, HS shall, at the request of the Customer, release a corresponding part of the security rights; in such cases HS may choose between different security rights.
- j) In the case of the infringement of contractual obligations by the Customer, in particular any delay in payment, HS is entitled, without setting a specific period for compliance, to demand the return of the goods supplied or of the new goods and/or to withdraw from the agreement; the Customer is obliged to return the goods. The demand for return of the goods supplied/new goods does not constitute a declaration of withdrawal by HS unless this is specifically stated.

## **8. Guarantee/Liability**

- a) The Customer is obliged to notify HS in writing of any material and legal faults within one month of the date on which it identified the fault. Faults should be described as fully as possible. This provision does not represent a time limit upon the rights of the Customer in respect of any faults.
- b) HS shall be liable in cases of intent or gross negligence in accordance with the provisions of the law. In other respects, HS shall only be liable under the terms of the Product Liability Law, for injury to life, limb or health, for the culpable breach of basic contractual obligations or where it has maliciously concealed a fault or has offered a warranty for specific properties of the goods supplied. Claims for damages arising from the breach of basic contractual obligations are, however, limited to the foreseeable damages typical of such contracts. Liability for damages caused by the goods supplied to the legal assets of the buyer, for example damage to other items, is excluded. The provisions of Sentences 3 and 4 are not applicable in cases of intent or gross negligence, where there is a liability for injury to life, limb or health, where a fault has been maliciously concealed or where a warranty has been offered for the specific properties of the goods supplied. HS' liability is limited to 1.5 million euros for personal damages and 500,000 euros

for material damage. Where HS' liability is excluded or limited, this shall also apply to the personal liability of HS' salaried staff, other employees, colleagues, representatives, vicarious agents and assistants.

The provision of the above paragraph covers compensation for damages in addition to performance and compensation for damages in lieu of performance, whatever the legal grounds therefor, in particular as a result of faults, the infringement of obligations arising from the contractual relationship or from unauthorised actions. It also applies to any claim for compensation in respect of wasted expenditure. Liability for default is determined under 3 f) and 5; liability for impossibility is determined under 8d. A change in the burden of proof to the detriment of the Customer shall not be linked to the above provisions.

- c) Where the supply of goods / services is rendered impossible in cases of intent or gross negligence on the part of HS or of intent or gross negligence on the part of a representative or a vicarious agent of HS, the latter shall be liable in accordance with the provisions of the law. However, in cases of gross negligence, HS' liability shall be limited to the foreseeable damages typical of such contracts except as provided for in the fifth sentence of this provision. Otherwise, HS' liability as a result of impossibility shall be limited to compensation for damages and compensation for wasted expenditure to a total of 10% of the value of the goods/services, this amount not to exceed 1.5 million euros for personal damages and 500,000 euros for material damages. The Customer may not assert any claims arising from impossibility beyond these amounts. The above restrictions do not apply in cases of liability as a result of intent or injury to life, limb or health. This shall not affect the Customer's right to withdraw from the agreement. A change in the burden of proof to the detriment of the Customer shall not be linked to the above provisions. Where HS' liability is excluded or limited, this shall also apply to the personal liability of HS' salaried staff, other employees, colleagues, representatives, vicarious agents and assistants.
- d) Claims resulting from the supply of faulty goods do not arise where the fault represents an immaterial deviation from the agreed properties or an immaterial reduction in their usefulness.
- e) In all cases, HS may choose between remedying the fault and supplying new goods. Where rectification fails, the customer is entitled to a reduction in price or, should it choose, to withdraw from the contract. This shall not affect the Customer's right to request compensation in lieu of performance subject to these terms and conditions.
- f) Rectification of the fault is deemed to have failed following the second unsuccessful attempt. This shall not affect those circumstances under which, by law, a time limit is not necessary.
- g) Expenses incurred for the purpose of rectification are payable by the Customer if the latter's site is overseas or if such costs are increased where the deliveries/services are conveyed to a location other than the Customer's site, unless the conveyance of goods corresponds to the use thereof provided for in the agreement. Where new goods or replacement parts are supplied during the process of rectification, Heinz Schirmacher GmbH shall be free to determine both the dispatch method and the route.
- h) Claims by the Customer against HS under a right of recourse as per § 478 BGB only arise where the Customer has not concluded any agreement with its buyer beyond the claims for the rectification of faults provided for by law.

## **9. Time Limits for Claims**

- a) The time limit for claims and rights of the Customer as a result of faults in goods supplied/services – for whatever legal reason – is, unless otherwise regulated by law, 1 year. This limit does not apply, however, in the cases provided for under § 438 para. 1 no. 1 BGB, § 438 para. 1 no. 2 BGB, § 479 para. 2 BGB or § 634 a para. 1 no. 2 BGB, where the time limit is 3 years.
- b) The time limits under a) also apply to any claims for damages against HS in connection with the fault – irrespective of the legal basis of the claim. Where claims for damages are made against HS that are not connected to a fault, the time limit shall be as for a) sentence 1.

- c) The above time limits are subject to the following conditions:
- In general, time limits are not applicable in the case of intent.
  - Time limits do not apply where HS has maliciously concealed a fault.
  - In respect of claims for damages, time limits do not apply in cases of injury to life, limb, health or freedom, claims under the Product Liability Law, grossly negligent infringement of obligations or the breach of basic contractual obligations.
- d) For all claims, the time limit shall begin with delivery; for work carried out, the time limit shall begin on formal acceptance.
- e) In the absence of any other specific provision, the legal provisions relating to the commencement of the time limit and the delay, suspension or recommencement thereof are not affected.
- f) A change in the burden of proof to the detriment of the Customer shall not be linked to the above provisions.

#### **10. Accessory obligations**

Where, through the fault of HS, the goods delivered cannot be used as envisaged by the contract as a result of a failure to implement or the incorrect implementation of suggestions or advice made before or after conclusion of the agreement or of other contractual accessory obligations, in particular instructions for operation and servicing of the goods delivered, then the provisions of 8 and 11 shall apply under the exclusion of any other claims of the Customer.

#### **11. Right of withdrawal of the Customer**

- a) In all cases, the existence of a right of withdrawal of the Customer is conditional upon HS being responsible for the breach of contract; in the case of faults, however, the preconditions provided for under law shall be applicable. Following a breach of contract, the Customer must, within a reasonable period, after it has been requested to do so by HS, state whether it intends to withdraw from the contract on account of the breach or whether it intends to insist on delivery.
- b) The Customer may withdraw from the agreement where the entire delivery of goods/service is definitively rendered impossible to HS prior to the transfer of risk. If a partial delivery/partial service is definitively rendered impossible before the transfer of risk, the Customer may only withdraw from the contract where it has a justifiable interest in rejecting the partial delivery/partial service; where this is not the case, the Customer may pay a reduced amount for the goods/service. Where impossibility arises during a delay in acceptance by the Customer or through a fault of the Customer, the latter shall remain obliged to provide consideration for the goods/service.

#### **12. Right of withdrawal of Heinz Schirmacher GmbH**

- a) HS does not accept any procurement risk. It is entitled to withdraw from the contract if it does not itself receive the goods to be supplied regardless of the prior conclusion of a corresponding purchase agreement; the responsibility of HS for intent or negligence is not affected. HS shall notify the Customer immediately if the goods will not be available on the agreed date and, if it wishes to withdraw, it will exercise its right of withdrawal immediately; in the case of its withdrawal, HS shall immediately refund the corresponding payment to the Customer.
- b) In the case of unforeseen events in the sense of number 5 of these GTC, where they significantly change the economic purpose or the content of the goods delivered/service or where they have a significant effect on HS' operations, the agreement shall be adjusted accordingly. Where this is not reasonable for economic reasons, HS is entitled to withdraw either wholly or partially from the agreement. Claims for compensation by the Customer following such a withdrawal are not admissible. If HS wishes to exercise its right of withdrawal, it must notify the Customer thereof as soon as it becomes aware of the ramifications of the event, even where an extension of the supply period had initially been agreed with the Customer.

#### **13. Place of Fulfilment and Jurisdiction**

- a) The place of fulfilment shall be the registered office of HS.
- b) The sole place of jurisdiction for all disputes arising out of this agreement shall be the registered office of HS.

#### **14. The English version of these General Terms and Conditions is provided merely for your convenience. The German text is the legally definitive version.**