

General Conditions of Sale and Delivery SCHIESS MOWEG GMBH

1. **General:** All deliveries and performances are made exclusively according to our general conditions of sale and delivery. Our conditions of sale and delivery are thus valid for all future business relations as well, even if not expressly agreed again. Our conditions of sale and delivery shall be deemed accepted by the customer on placing the order, but at the latest on receiving the goods or performance. We do not recognize general business conditions, in particular conditions of purchase, of the customer. They are binding on us only if expressly approved by us in writing. The contracting party's conditions of purchase to the contrary shall not become an element of the contract by way of accepting the order either.
2. **Offer and order:** offers made by us are calls for tenders for contracts (orders) and non-binding until confirmed by us. We reserve the right to make prior sales unless we have reserved the object in writing. All orders are ineffective unless confirmed by us in writing or by telex. The same applies to additions; amendments or ancillary agreements made by cable, telephone or orally. The scope of delivery and performance embraces only the items expressly stated in our order confirmation. Orders cannot be revoked once received by us. Claims for compensation arising from non-acceptance of orders cannot be asserted unless damage is caused by intent or gross negligence.
3. **Supplier and customer protection (used machines):** Each interested party assures us of supplier and customer protection insofar as we provide such party with evidence of an object for purchase or sale in another place, and such interested party undertakes not to conduct price and contract negotiations on any object available for sale and purchase in such other place without our separate written approval either directly, indirectly or through third parties, but exclusively through us. Orders, contracts of purchase and deliveries that arise subsequent to evidence being provided of objects for purchase or sale and the business contacts established thereby shall be deemed solicited by us and subject to the present preconditions. Information we furnish on machine locations and parties with an interest in purchase is intended only for the recipient and is not to be passed on to third parties without our written consent. We shall be entitled to compensation if the forenamed conditions are infringed.
4. **Prices:** Our prices apply ex works or store. They are stated without packing, carriage, postal charges, insurance and other expenses. Our list prices are non-binding. The price charged is that valid on the date of performance or delivery. Packing is charged at cost and cannot be returned. Prices are stated in EURO. The appropriate amount of value-added tax is charged separately. The Buyer is only entitled to withhold payments or set off counterclaims insofar as its counterclaims are undisputed or have become *res judicata*.
5. **Delivery:** All information concerning delivery periods and dates is non-binding unless otherwise expressly agreed by us in writing. The delivery period starts with the sending of the order confirmation save as delayed by the customer furnishing the requisite documents, licenses and approvals, and not before receipt of an agreed payment. The delivery shall be deemed to have been made within the delivery period if the merchandise has left the works or notice of its readiness for dispatch has been served before said period expires. The delivery period is extended - even if binding periods and dates have been agreed and during delivery delays appropriately in case of force majeure. Strikes, lock-outs and other circumstances that substantially inhibit or rule out delivery by us shall be equivalent to force majeure irrespective of whether the circumstances affect us or our suppliers. In particular, our suppliers' failure to deliver or failure to deliver sufficiently shall be equivalent to force majeure. Breakdown, breakage or destruction of or damage to the merchandise release us wholly or in part from our delivery obligation and exclude the customer deriving compensation claims therefrom.
The risk transfers to the customer with the dispatch of the merchandise from the works or store even in case of part deliveries, if carriage-free delivery has been agreed, or if the party delivering has undertaken other performances, such as cost of carriage or transportation and erection. Loading at the place of handover forms part of dispatch. We are not liable for shipping damage even if caused by the type of packing or lashing to the means of transportation. The customer is entitled to examine the packing and lashing before the goods are dispatched and/or to execute this work itself. If we offer or sell "free loaded", we shall bear the cost of loading excluding special packing materials, but not the risk, to be borne by the customer and as included in normal transport insurance policies, of loading as regards breakage or other damage to the purchased object. At the customer's request and expense, the party delivering will insure the consignment against theft, breakage, transport loss, fire and water damage and other insurable risks. If dispatch is delayed by circumstances for which the customer is responsible, the risk passes to the customer on the date of dispatch readiness, but the party delivering is obliged, at the request and expense of the customer, to effect the insurance cover requested by the customer. Part deliveries are allowed. If the shipping or acceptance of the delivery item is delayed for reasons that are the Buyer's responsibility, the Buyer shall be charged for the costs incurred because of the delay starting with the month following notification of readiness for dispatch or acceptance.
6. **Terms of payment:** Our invoices for new machines are payable in cash within the agreed period and without any deductions irrespective of whether the merchandise has arrived at the destination or any complaints are pending. Unless special agreement has been reached in the case of used machines, invoice amounts are always due for payment before loading of the goods, but no later than 14 days after being made ready for dispatch if, for any reason that is not our responsibility, the goods have not been collected and thus paid for during said period. Checks and bills are accepted only by special agreement and on account of payment, not in place of performance. All collection expenses will be charged. Negotiation and renewal shall similarly not be deemed as performance. Discount expenses shall be charged to the buyer. In case of late or deferred payment, interest shall be charged from the due date in the amount of 2% above the current discount rate of the European central bank. In case of default of a payment obligation, if a bill or check is not honored or cashed, or if circumstances become known that call into question the customer's solvency and creditworthiness, all our claims for payment shall fall due in full immediately irrespective of earlier deferral commitments or the term of any accepted bills or post-dated checks. If the customer is in default of payment, we are entitled to make outstanding deliveries dependent on advance payments and the provision of security by the customer. In such cases we are further entitled to have the delivered goods collected from the customer at its expense without requiring withdrawal from the contract or setting a deadline in compliance with § 326 BGB (German Civil Code). Taking back goods shall not be deemed withdrawal from the contract. The customer now agrees that goods can be taken back and now authorizes us to take away the goods from its premises. The customer is entitled to offset, to reservation or to reduction of the purchase price in respect of our due payment claims, including if notice of defects is given or counter-claims are asserted, only if the counter-claims are non-appealable or not disputed.
7. **Retention of title:** Delivery shall be made exclusively with title retained. The merchandise or goods remain our property until all our claims for payment arising from the business relationship with the customer, irrespective of their cause in law, have been settled, and all bills and checks given to us in payment have been cashed and honored, even if the purchase *price/payment* relates to specified payables. In case of continuous settlement, the reserved title is deemed to be security for the balance of our claim. If the supplier's (co-)ownership lapses because of union, it is now agreed that the customer's (co-) ownership of the joined object shall pass to the party delivering in the amount of the pro rata value (invoice value). Claims for payment of the party delivering arising from the resale of goods to which title is retained are now assigned to the party delivering as security for all claims for payment of the party delivering arising from the business relationship irrespective of whether the goods to which title is retained are sold without or after processing and whether they are sold to one or several buyers.
During the period of retained title the customer must maintain the merchandise in proper condition and have made repairs that become necessary. It must insure the merchandise against fire, water, theft and housebreaking with the proviso that the rights arising from the insurance are due to the party delivering. Insofar as evidence of insurance is not furnished at the request of the party delivering, said party is entitled to insure the merchandise at the customer's expense.
If the merchandise is seized by third parties, the customer must notify the party delivering without delay, sending the record of seizure, and must give both the execution creditor and the party delivering written confirmation of the retention of title by the party delivering. The buyer is responsible for the consequences that arise from non-compliance with this provision and for the costs incurred by the party delivering in pursuit of ~s claims.
- 8a. **Liability for defects (new machines):** The statutory provisions apply to defects in delivery or performance concerning brand new machines insofar as purchased by us direct from the manufacturer.
- 8b. **Liability for defects (used machines):** The liability for defects in used machines is governed by the following provisions: We sell used machines and new machines with a previous owner only in their current condition and with the existing accessories. The merchandise is deemed as accepted and approved on inspection, collection or loading. Any warranty for obvious and concealed defects is excluded hereby, as is compensation for damage of all kind, including damage other than to the merchandise. The buyer is entitled to inspect or examine the goods before concluding the contract. If it exercises this right, for whatever reason, only in part or does not exercise said right at all, it recognizes the condition of the goods unseem. In case of undertakings *and/or* guarantees as regards freedom from breaks and cracks, these shall refer only to defects that exclude the machine's ability to operate. Welded machines and machines repaired by the metallock method are deemed to be free from breaks and cracks. Unfulfilled undertakings and guarantees entitle the buyer only to withdraw from the contract, but not to demand reduction of the purchase price or compensation. Unless otherwise agreed, the buyer must give written notice to our address of defects that are the subject of a guarantee or undertaking by us with 14 days of receiving the machine or goods from our store or the location. Damage in the form of breakage, crack or destruction that arises as a result of incorrect commissioning at the buyer's premises is not covered by a guarantee of freedom from cracks and breaks given by us. If we take back the merchandise because of justified guarantee claims, we shall refund the full purchase price, provided that the machine is in unchanged condition, against carriage-free return delivery to our address in Germany.
The buyer does not have any more extensive claims, in particular not any compensation claims for damage other than to the merchandise, except in case of intent and gross negligence.
9. **Place of performance:** Mönchengladbach is, at all times, deemed the place of performance.
10. **Binding contract:** These conditions are an integral part of the purchase. The contract shall retain its binding force in the event that 1 individual provisions prove to be invalid.
11. **Applicable law:** 1. Solely the law of the Federal Republic of Germany that is authoritative for the legal relations between domestic parties amongst themselves applies to all legal relations between Schiess Moweg GmbH and the contracting party. 2. The court with jurisdiction for the registered office of Schiess Moweg GmbH is deemed the place of jurisdiction. However, Schiess Moweg GmbH is entitled to bring an action at the court with jurisdiction for the contracting party's headquarters.