

# **GENERAL CONDITIONS OF SALE AND DELIVERY Of LÖSOMAT – Schraubtechnik Neef GmbH**

## **§ 1 Applicability**

1. Our deliveries, services and offers are exclusively rendered on the basis of these General Conditions of Sale and Delivery. Consequently, they apply to all future business relations even if reference to these conditions is not expressly stated. These General Conditions of Sale and Delivery shall be considered acknowledged unless agreed otherwise in writing. Deviations from these General Conditions of Sale and Delivery have effect only if they have been confirmed by us in writing. The applicability of terms and conditions of the purchaser is herewith denied. The same will also apply if the purchaser by way of a counter-confirmation makes reference to his own General Terms and Conditions.
2. The purchaser accepts that we store his personal data in the course of business transactions within the legal framework of the Data Protection Act.

## **§ 2 Offer/Offer documents/Contract**

1. Our offers are subject to confirmation and are not binding. On the basis of our General Conditions of Sale and Delivery shall any delivery contract become binding only if confirmed by us in writing or if we have started with the execution of the contract or delivery. All orders require our written confirmation in order to be legally effective. Side agreements must also be confirmed by us in writing to become binding.
2. Drawings, illustrations, measures, weights or other specifications are only binding if this has been specifically agreed in writing.

## **§ 3 Prices**

1. Our prices do not include the relevant statutory value added tax, are deemed to be not binding and apply ex works plus any packing, transport and transport insurance costs as well as the relevant statutory value added tax.
2. The prices stated in our confirmation shall apply plus the relevant statutory value added tax. Any additional deliveries and services shall be charged extra.

**§ 4**  
**Dates of Delivery and Service**

1. Delivery dates and deadlines are only binding if expressly confirmed by us in writing. The delivery deadline begins with the dispatch of the confirmation of the offer. Compliance with agreed delivery dates is subject to timely receipt of all delivery documentation, necessary authorization and release notes to be submitted on the part of the purchaser, in addition to observance of agreed payment conditions by the purchaser, for example not before any agreed advance payment has been received.
2. The delivery deadline shall be considered as observed if the goods have been dispatched or the notification of the goods being ready for dispatch given by the day of expiry.
3. The delivery deadline shall be extended commensurately in case of unforeseen and unavoidable events in the production or other obstacles such as labour disputes, especially strikes and lockouts, or other disruptions in our own business, such as fire, water or alike which considerably affect the production and dispatch of the goods. This also applies even if these circumstances occur to our pre-suppliers or their sub-suppliers. The aforementioned circumstances are also beyond our responsibility if they happen during an existing delay.

We shall be free from the obligation to deliver in the event of definite impossibility or inability of performance caused by the aforementioned circumstances.

4. To the extent we are in default and the purchaser incurs damages as a result thereof the purchaser may demand to the exclusion of further claims a default compensation. This will be 0.5 % for every week of delay, maximum 5 % of the value of the part of the total delivery which could not be used as anticipated by the contract as a result of the delay. These restrictions only apply in case of light negligence on our part. We shall not be made liable if the damage would have occurred on due delivery.
5. If the dispatch is delayed on request of the purchaser, we will charge the purchaser one month after notification of the goods being ready for dispatch the costs incurred to us for storing, i.e. at least 0.5 % of the invoice amount for every month. However we are entitled to dispose of the goods otherwise and to deliver the goods to the purchaser in a reasonable prolonged time after setting the purchaser a time limit and expiry of the time limit.
6. Adherence to our delivery obligation is dependent upon the purchaser properly honouring his obligations on time.

**§ 5**  
**Transfer of Risk/Dispatch**

1. The risk passes to the purchaser upon dispatch or as soon as the goods have been turned over to the carrier. This applies also in case of partial deliveries.
2. If the dispatch proves impossible without our fault or delays for reasons the purchaser is responsible for, the risk will pass to the purchaser upon the day of notification of the goods being ready for dispatch.
3. A transport insurance shall be taken out upon the request of the purchaser and at his own costs.
4. The purchaser is obliged to accept the delivered goods, even if they show minor defect, notwithstanding the rights pursuant to § 7.
5. Partial deliveries are permissible provided the purchaser proves that such partial deliveries are burdensome for the purchaser.
6. Transport packaging as well as other packing will not be taken back according to the packaging regulations. The purchaser is responsible for disposal of the packaging at his own cost.

**§ 6**  
**Retention of Title**

1. We retain title to all goods delivered until all claims resulting from the business relationship with the purchaser have been satisfied. If the purchaser acts in breach of contract – in particular in case of payment default – we are entitled to take possession of the retained goods after the purchaser has been reminded. In this case the purchaser is obliged to return the goods. Our demand for taking possession or attachment of the goods shall not be deemed as a withdrawal from the contract, unless the Consumer Credit Act applies or we confirm expressly in writing. The purchaser must notify us without undue delay in writing if the goods subject to retention of title are attached or if our rights are adversely affected by third parties in any other way.
2. The purchaser is entitled to sell the goods in the due course of his business. Pledging, assignment of security, leasing or any other kind of transfer of the delivered goods to our disadvantage are inadmissible.

In case of sale of the retained goods the purchaser herewith assigns to us all claims resulting from the resale, including all ancillary rights to us or third parties against the purchaser for security. The assignment shall not exceed an amount that equals the value of the goods invoiced by us (including value added tax) regardless if the retained goods have been sold with or without being processed. We empower the purchaser to collect the assigned trade receivables for our account in his own name. Our right to collection remains hereby unaffected. However, we agree not to collect the claims as long as the purchaser meets his payment obligations in an orderly manner.

Upon our request the purchaser is obliged to notify us of the assignment, to disclose to us all information needed to assert the claims assigned to us, to deliver the necessary documents and notify the customer of the assignment.

If the goods are sold together with the goods that are not owned by us, then the purchaser assigns to us such part of the claim resulting from the sale that is equal to the invoiced amount of the goods.

3. Processing, remodeling and combining of the retained goods are carried out for us. In case of processing, remodeling or combining with other items which do not belong to the customer, we shall be entitled to co-ownership of the new object at a share calculated on the basis of the value ratio between the processed, remodeled or combined retained goods and the new object.
4. The purchaser shall be obliged to insure adequately the delivered goods under retention of title against theft, breakage, fire, water or any other damage and shall produce proof of insurance. If the purchaser fails to comply with the demand we shall be entitled to insure the delivered goods itself at the purchaser's expense.
5. In case of attachment or any other interference by third parties the purchaser has to inform us immediately in writing so we can take legal action pursuant to § 771 of the Code of Civil Procedure. The purchaser shall bear any judicial or extra-judicial costs in the course of a legal action pursuant to § 771 of the Code of Civil Procedure if the costs cannot be claimed from a third party.

## **§ 7 Liability for defects**

1. Warranty claims by the purchaser require that he has duly complied with the inspection obligation and requirement to give notice of defects in accordance with § 377 of the German Commercial Code.
2. If there is a defect in the purchased product, we are entitled to opt to remedy the defect or to deliver a new product free of defects. In case of remedy we will bear the expenses amounting to only half of the purchase price. If subsequent performance fails twice, then the purchaser is entitled to request a cancellation of the contract or a reduction in payment.

A remedy is only considered as failed if the purchaser allows us the necessary time and opportunity to implement such action without the desired result, if the remedy or replacement delivery is impossible, has been refused or unreasonably delayed, if there are considerable doubts about the chance of success or they are unreasonable for some other reasons.

3. In accordance with the statutory provisions we are liable if the purchaser asserts claims for damages which are due to intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents or employees. If we are not held liable for intentional breach of contract, then the liability for damages is limited to the damages typically foreseeable. This applies also in the case of a culpable breach of contract.

Incidentally, liability shall be excluded, especially in the case of liability regardless of fault or slight negligence.

4. The liability for damages arising from injury to life, body or health due to gross or wilful negligence on our side or on the side of our vicarious agents and/or employees remains unaffected. This applies also to the compulsory liability as defined in the German Product Liability Act.
5. In the event instructions for use or maintenance are not observed, parts need to be exchanged or material was used, which does not comply with the original specifications or repairs have been made on ones own, the claim for defects fails.
6. The period of limitation for claims is 12 months from the transfer of risk.

## **§ 8 Payment**

1. Unless agreed otherwise, our invoices are due for payment within 10 days from the date of invoice with 2 % cash discount or within 30 days without discount.
2. A payment is only considered as having been made when we can dispose of the amount. In case of cheques, the payment is only deemed as having been made once the cheque has been irrevocable cashed.
3. If the purchaser defaults in payment we are entitled – even without any reminder – to charge interest at the rate of 8 % above the respective base rate of the European Central Bank from the date of default onward. We reserve the right to claim further damage.
4. If the purchaser does not comply with our terms of payment or if we become aware of circumstances which question the purchaser's credit worthiness, our claims become due immediately. This applies in particular in case of stoppage of payment, the opening of insolvency proceedings or statutory declaration of insolvency.

In such an event we are further entitled to request advance payments or the rendering of security.

5. The purchaser is only entitled to set off, retention or reduction, even if complaints for defects have been lodged or counterclaims have been asserted, if the counterclaim drawn up for offset is undisputed or has been legally ascertained.

## **§ 9 Construction changes**

We reserve the right to carry out construction changes at any time. We are not obliged, however, to carry out such changes on products already delivered.

**§ 10**  
**Costs of waste disposal**

The purchaser is obliged to take back the delivered goods at the appropriate time as defined by the Disposal of Electrical and Electronic Waste Act and is responsible for proper disposal of electrical and electronic waste. The seller is thus discharged from this obligation.

**§ 11**  
**Applicable law/Place of performance/Severability**

1. German law shall be applicable to these General Conditions of Sale and Delivery and to the entire legal relations between us and the purchaser. The application of the Convention for the International Sales of Goods (CISG) is expressly excluded.
2. Only the German version of these General Conditions of Sale and Delivery is binding in case of doubts.
3. The place of performance is Vaihingen/Enz. For all disputes arising out of the business relationship, if the purchaser is a full merchant, a public legal entity or special assets under public law, lawsuits shall be filed at the court having regional and factual jurisdiction for us.
4. In the event that a condition of these General Conditions of Sale and Delivery or a provision under the structure of other agreements is or will become invalid, this does not affect the validity of all other conditions or agreements. The invalid provision is to be replaced by a valid provision that comes close as possible to the intended objectives.