

## **Standard Contract Terms (hereinafter referred to as "Terms of Sale") of Armaturenfabrik Franz Schneider GmbH + Co. KG**

### **1. General Provisions**

(1) All transactions shall exclusively be governed by our Terms of Sale. We repudiate any differently worded terms used by the Orderer unless we explicitly assent to their applicability in writing. Our Terms of Sale shall even apply if we have made unconditional delivery in awareness of inconsistent terms of purchase.

### **2. Offers:**

(1) Our offers are not binding on us. They do not constitute an offer in terms of BGB<sup>1</sup> section 145. The offer in terms of BGB section 145 is constituted by the Orderer's order.

(2) We retain our ownership rights and copyrights to all data and documents including without limitation all drawings, calculations, etc. They shall neither be copied nor be made accessible to any third party without our permission unless our written agreement has been obtained.

### **3. Prices and Payments**

(1) Our prices generally apply "ex works" unless otherwise agreed.

(2) The prices do not include the cost of packaging. Packaging charges will be invoiced separately.

(3) Nor do the prices include any shipping charges. Those charges will be separately shown on the invoice. If the Orderer wants the shipment insured, we will buy shipment insurance on the Orderer's behalf and charge the expenses incurred to the Orderer.

(4) The statutory value added tax is not included in our prices; that tax will be separately shown on the invoice in the amount applicable on the day the invoice is made.

(5) Our invoices for deliveries of goods are payable within 10 days of the invoice date with a 2% cash discount or within 30 days without discount, regardless of the receipt of the goods. Our invoices for costs of tools are generally payable strictly net immediately following the delivery of the first model or of the first serial delivery, as the case may be. The above cash discount provision shall not apply.

(6) Payment can be made either by check or by cashless transfer. The statutory provisions on the consequences of payment default shall apply.

(7) The Orderer shall have no set-off rights unless its counterclaims are unappealably declared to be meritorious or if they are acknowledged by us in writing. Moreover, the Orderer shall not exercise any possessory lien unless its counterclaim is based on the same contractual relationship.

### **4. Time Limits for Delivery**

(1) The delivery dates offered by us have been specified to the best of our knowledge; those delivery dates are not guaranteed, however, unless time is the essence of any agreement (cf. 4.4).

(2) The beginning of the delivery period specified by us is subject to the prior clarification of all technical and logistical details.

(3) If the Orderer delays taking delivery of the goods or if it culpably breaches any other obligations to cooperate, then we shall be entitled to claim compensation of any damages caused thereby including any additional expenditures. Any additional rights of recourse are reserved by us.

(4) Our liability is based on the provisions of statutory law if time is the essence of the sales contract entered into in terms of BGB section 286 subsection 2 item 4 or of HGB<sup>2</sup> section 376.

(5) We are just as well liable as provided by statutory law if the delay of the delivery is caused by any intentionally or grossly negligently committed breach of contract we are responsible for. Any fault of our agents or of our representatives shall be imputed to us.

(6) If any delivery is delayed through any intentionally or grossly negligently committed breach of contract we are responsible for, then the damages to be compensated by us shall be limited to the foreseeable, typically occurring damages.

(7) The limitation to the foreseeable and typically occurring damages shall also apply to any breach of material contractual duties. Material contractual duties are such duties imposed by the agreement between the parties the breach of which will

<sup>1</sup> Bürgerliches Gesetzbuch = German Civil Code

<sup>2</sup> Handelsgesetzbuch = German Commercial Code

jeopardize the achievement of the objective of that agreement, such as serious delay, not only immaterial breach of any duty to provide cooperation or information or if any not only immaterial duty is breached on which the agreement stands or falls.

### **5. Passing of Risk**

The risk of accidental destruction or accidental deterioration of any purchased item shall pass to the Orderer when that purchased item is handed over to the forwarding agent.

### **6. Shipping:**

(1) The route and the means for shipping purchased items are chosen by us at our best discretion. This does not ensue in a right to having the cheapest shipping method chosen.

(2) Packaging is chosen by us according to the standards of our industry unless explicitly agreed otherwise.

(3) Upon the Orderer's request, we will buy shipment insurance at the Orderer's expense and behalf. (see 3.3)

(4) Damages caused in transit and damages to packaging materials shall be made known to us and to the forwarding agent making the delivery without culpable delay.

(5) Claims for damages caused in transit shall be made against the respective carrier.

(6) We have the right to make delivery by installments in commercial business dealings.

### **7. Liability for Defects:**

(1) The Orderer shall not have any warranty claims unless the Orderer's obligations to examine the goods and give notice of defects provided under HGB section 377 have been duly met.

(2) The goods shall be deemed to be nondefective and approved if eight days following the receipt of the goods have passed without any complaint by the Orderer.

(3) In case of a defect, we may request to remedy the defective condition at our choice either by providing a new nondefective item or by curing the defect.

(4) If the defective condition is not remedied, the Orderer may choose between demanding that the agreement be rescinded and demanding that the purchase price be reduced.

(5) The liability for any culpable injury to life, body, or health shall remain unaffected; the same shall apply to the mandatory provisions of the Produkthaftungsgesetz<sup>3</sup>.

(6) Any liability is disclaimed unless provisions to the contrary have been made above.

(7) The period of limitation for warranty claims shall be 12 months following the passing of risk.

### **8. Entire Liability:**

(1) We do not assume any liability for damages in excess of the provisions included in these Terms of Sale regardless of the legal nature of the asserted claim.

(2) This shall particularly apply to claims for damages based on a breach of duty during contract negotiations, on breaches of other duties, or on claims under tort law for the compensation of property damages according to BGB section 823.

(3) The limitation shall also apply to the extent that the Orderer demands compensation of wasted expenses instead of claiming damages in lieu of performance.

(4) To the extent our liability for damages is disclaimed or limited, that disclaimer or limitation shall also cover the personal liability of our salaried employees, wage earners, staff members, representatives and vicarious agents.

### **9. Retention of Title:**

(1) We retain title to the purchased item until we have received all payments due under the supply agreement. We are entitled to repossess the purchased item if the Orderer commits a breach of contract, including without limitation default in any payment. Repossession of the purchased item by us includes a rescission of the contract. After having repossessed the purchased item we are entitled to sell that item; the proceeds from such a sale minus reasonable costs of such a sale shall be credited against the Orderer's debt.

(2) The Orderer shall treat the purchased item with care; above all, the Orderer shall at its own expense sufficiently insure the purchased item against damage caused by fire, water, and theft on the basis of its original value. If any maintenance and inspection service work is necessary, the Customer shall have such work performed in time and at its own expense.

(3) The Orderer shall immediately inform us in writing of any attachments or other interventions by third parties so that we can file suit pursuant to ZPO<sup>4</sup> section 771. To the extent any such third party is not capable of reimbursing us for the court fees and out of court expenses for an action pursuant to ZPO section 771, the Orderer shall be liable to compensate us for the loss incurred.

(4) The Orderer may resell the purchased item in the ordinary course of the Orderer's business; the Orderer is, however, now already assigning all claims in the amount of the invoice total (including value

---

<sup>3</sup> German Product Liability Code

---

<sup>4</sup> Zivilprozessordnung = German Rules of Civil Procedure

added tax) of our receivable accruing to the buyer from such resale against the buyer's customer or any third party regardless if the purchased item was resold without being processed or after having been processed. Even subsequently to their assignment, the Orderer remains authorized to collect such claims. Our right to collect the claim ourselves remains unaffected thereof. We agree, however, not to collect the claim while the Orderer duly meets its payment obligations by using the proceeds to pay us and does not default any payment, and in particular while no composition proceedings or insolvency proceedings are filed for or while payments on the buyer's debts are not suspended. Should that be the case, however, we may demand that the Orderer make the assigned claims and their debtors known to us, inform us of all the details required for collection of those claims, surrender the pertaining documents and disclose the assignment to the debtors (third parties).

(5) Any processing or transforming of the purchased item by the Orderer shall always be deemed to be made on our behalf. If any purchased item is processed jointly with other items not owned by us, then we shall acquire a joint ownership interest in any newly created item equivalent to the value of the respective purchase item (invoice total including value added tax) in proportion to the value of those other jointly processed items at the time of such processing. Aside from the above, items created through the processing process are governed by the same provisions as items title to which is retained.

(6) We agree to release any collateral we are entitled to upon the Orderer's request insofar as the achievable sales value of our collateral exceeds the value of the claims to be secured by more than 10%; it is up to us to choose the collateral to be released.

(7) Tools generally remain our property even if a share of the cost of those tools has been paid by the Orderer.

(8) If property rights cannot be validly retained in a foreign country or state, provided that the laws of such country or state are applicable, then the Orderer shall cooperate in all measures; above all, the Orderer shall make all declarations required from its side for providing the Supplier with collaterals equivalent to a retention of property rights.

#### **10. Choice of Law, Place of Venue, Place of Performance:**

(1) Any agreement between the parties is governed by the substantive laws of the Federal Republic of Germany; the conflicts of law provisions governing the applicable law and the United Convention on Contracts for the International Sale of Goods shall be inapplicable, however.

(2) In each case, 74226 Nordheim, Germany, shall be the place of performance for the delivery and for the payment.

74072 Heilbronn on the Neckar is the place of venue for any litigation, we may, however, bring an action against the Orderer at the court within the jurisdiction of which the Orderer is domiciled.

#### **11. Safeguarding Clause**

If any individual provision of these Terms of Sale is entirely or partially invalid, then that invalidity does not affect the validity of the other provisions. The parties agree to replace any invalid provision by a valid provision achieving the financial purpose of the invalid provision to the highest possible degree. This shall not apply if the invalidity is caused by a violation of BGB sections 305 through 310. In that case, the statutory provision shall govern the supplemental interpretation of any respective agreement to the extent such supplemental interpretation is required for the purpose of gap filling.

**ARMATURENFABRIK FRANZ  
SCHNEIDER GMBH + Co. KG**