



# General Terms and Conditions of Sale, Supply and Assembly

**Schunk Sonosystems GmbH, Wettenberg**

## **1. General Terms and Conditions**

1.1 Our supplies shall be subject to the following terms and conditions at all times.

1.2 Deviations from these terms and conditions of supply and payment shall only be valid if they have been expressly confirmed by us in writing.

1.3 A buyer's terms and conditions of supply and payment differing from our own shall not apply. Instead, an order placed with us shall be regarded as unconditional acceptance of our terms and conditions of supply and payment.

1.4 In case of new duties, taxes, customs or similar additional costs due to the withdrawal of the United Kingdom from the European Union, those additional expenses will be solely paid by the Customer of Schunk.

1.5 In addition, Schunk is entitled to terminate this agreement with formal notice to the other party if a modification of applicable laws in connection with the withdrawal of the United Kingdom from the European Union changes the circumstances of the agreement significantly. Significant changes shall include but are not limited to:

I. The contractually obliged provision or receipt of goods or services is rendered impossible.

II. If the continuation of the contract would place a substantial and significant financial burden on Schunk.

1.6 The Buyer's claims against us cannot be assigned to a third party without our written consent.

## **1. Offer and entering into a contract**

1.1 Our offers are non-binding and subject to change without notice, unless an agreement is made to the contrary.

1.2 Orders shall only be accepted in those cases in which they have been confirmed by us in writing. Amendments to our order confirmation and other arrangements and verbal agreements shall likewise be confirmed by us in writing.

1.3 The information and descriptions in our catalogues and leaflets shall only be valid if attention is not expressly drawn to deviations. Should modifications be made to the dimensions, weights or drawings or illustrations for production or other reasons, the Buyer's attention shall consequently be drawn to the relevant changes in a binding offer. If he accepts this offer by means of making a written statement, it will be the amended performance specifications (and not the original ones) which shall count. No further written order confirmation shall be required in accordance with Clause 2.2. If the Buyer does not make a written statement rejecting the amended offer within two weeks of

receiving it, this offer shall be regarded as having been accepted. Minor differences from the performance specifications are to be accepted as being in compliance with the contract, provided that they are not detrimental to the use of the product as provided for in the contract. These differences shall not have to be notified.

1.4 Manifest errors, printing mistakes, arithmetical errors and spelling mistakes and costing miscalculations shall not be binding for us and shall not substantiate entitlement to fulfilment.

1.5 The Buyer shall assume full liability for the binding nature of the documents to be supplied by him such as drawings, advice, specimens or such like. Verbal statements about dimensions, tolerances or such like must be confirmed in writing. Specimens shall only be supplied on an invoiced basis.

1.6 We shall reserve the title and copyright to specimens, cost estimates, diagrams, models, templates and similar information, be it tangible or intangible, and also including such information in electronic form. Third parties must not be allowed access to it. Copies or other reproductions may only be made for the agreed purpose. Neither originals nor reproductions may be handed out to third parties nor may they be made accessible by other means.

1.7 We are obliged to allow third parties only information and documents designated by the Buyer as being confidential and with his consent.

1.8 Provided that our supply schedule includes software, we shall grant the Buyer a non-exclusive right to use the software supplied including the documentation. It shall be handed over for use on the delivered item for which it is intended. It is forbidden to use the software on more than one system.

1.9 The Buyer may only reproduce, revise, translate or convert the target code into the source code to the extent provided for by law (§ 96 a UWG et seq of the German Copyright Act). The Buyer shall undertake not to remove information provided by the manufacturer – in particular references to copyright – or to change them without our express consent in advance. The Buyer may make two back-up copies.

1.10 We, or the software supplier, shall retain all other rights to the software and to the documentation including copies. Sub-licences may not be granted.

## 2. Scope of supply

2.1 The scope of supply shall be defined by our written order confirmation or the binding offer accepted in accordance with Clause 2.3.

2.2 Protective devices shall also be delivered provided that this has been agreed.

2.3 The general regulations EN 292-1, EN 292-2, EN 294 and EN811 for electrotechnical appliances (Engines etc.) shall apply in so far as they concern the model and performance.

2.4 We shall reserve the right to carry out modifications to design or shape based on improvements in technology and / or legal requirements during the delivery period, provided that the delivered item is not subject to considerable modification and the Buyer can be expected to accept the modification.

## 3. Prices

3.1 Our prices shall be in Euro, ex works Wettenberg excluding packing and insurance as well as



plus the rate of value added tax in force on the date the invoice is raised.

3.2 Prices or surcharges for consignments sent franco domicile, FOB-, C&F-, CIF etc. are non binding and may possibly be increased in response to increases introduced in customs tariffs.

3.3 If the Buyer is a registered business, price increases will be allowed if more than four months elapse between the contract being signed and the agreed delivery date. If there is an increase in wages, the cost of materials or cost prices normal in the market after the contract has been signed we shall consequently be entitled to to increase the price in accordance with the increase in costs.

#### **4. Terms and conditions of payment**

4.1 Provided that nothing has been stipulated to the contrary in accordance with Clause 2.3 in the order confirmation or in the binding offer, the following terms and conditions shall apply.

4.2 Our invoices are payable in full within 30 days from the date of invoice.

4.3 Any terms of payment differing from the above for special machinery shall be laid down in writing on a case by case basis.

4.4 Cheques shall only be accepted for payment. Drafts shall not be accepted.

4.5 In the event of a delay in payment – without a separate payment reminder being required for this – subject to the assertion of damages over and above this, interest amounting to 5% points above the base rate as may be set from time to time shall be invoiced. If the Buyer is a registered business, the rate of interest to be charged will be 8% points above the base rate as may be set from time to time.

4.6 We shall be entitled to charge 10.00 Euro for each payment reminder.

4.7 The Buyer may offset counter claims which are uncontested or have been declared final and absolute in a court of law. If the Buyer is a registered business, a legal entity or a public law special entity, the Buyer shall not be allowed to withhold payments on account of counter claims not recognised by us or to offset against our accounts with such counter claims.

4.8 If after a contract has been signed we become aware the the financial or asset status of the Buyer is poor, we shall be entitled to demand immediate payment or adequate securities or else withdraw from the contract without being obliged to pay compensation for damages or to fulfil outstanding orders.

4.9 In the event that the Buyer stops making his payments or becomes insolvent, the purchase price shall become payable in full immediately. At the same time all the discounts, bonuses etc allowed shall be regarded as having lapsed so that the Buyer shall consequently have to pay the gross prices invoiced.

#### **5. Delivery period**

5.1 The delivery period shall only start once all the preconditions for carrying out the order have been satisfied, in particular all the details concerning how the order is to be carried out have been clarified (we have, inter alia plans or specimens for the devices of the order machinery and appliances) and both parties are in agreement about all the terms and conditions of the contract. They refer to completion in the works.

5.2 The delivery period shall only start once all the Buyer's obligations have been fulfilled, in particular after the agreed down payment has been received.

5.3 Unforeseen events such as breakdowns, strike, lock-outs, rejection of a part not immediately replacable in our products or at our supplier's factory as well as delay by our supplier, or necessary modifications as a result of new findings shall extend the delivery period accordingly, and to be more precise, even in those cases in which they occur while we are already in delay with delivery. The same shall apply if official approvals or other approvals required to carry out the supply or third party documents are not received by us on time, and likewise if the order is amended subsequently. The Buyer shall be notified of such extensions in the delivery time.

5.4 Part-performances are allowed provided that the Buyer is a registered business. The terms and conditions of payment in accordance with Section 5 shall apply for registered businesses accordingly.

5.5 If we fall into arrears the Buyer may, in the event that he suffers damages, consequently claim compensation for a maximum of 0.5% of the delivery in arrears for each full month of delivery, but this compensation must not, under any circumstances, exceed more than 5% of the value of the delivery in arrears.

5.6 If dispatch is delayed at the Buyer's request, we shall consequently be entitled to invoice the costs we incur as a result of the consignment being put into storage from two weeks after notifying the Buyer that the consignment is ready for dispatch. We shall invoice at least 0.5% of the invoiced amount for each month the goods are in store in our premises or the actual storage costs incurred.

## 6. Passing of risk

6.1 Risk shall pass over to the Buyer when the goods leave our works, provided that the Buyer is a registered business.

6.2 If dispatch is delayed as a result of circumstances for which we are not to blame, risk shall consequently be passed over to the Buyer on the very same day as shipping is ready for dispatch, provided that the Buyer is a registered business.

6.3 We shall take out insurance against damage in transit at the Buyer's expense, unless he is a registered business and can prove that he has already taken out insurance.

## 7. Packing and dispatch

7.1 The goods shall be packed and dispatched as normal in the trade at our discretion.

7.2 Packing shall be charged at cost.

7.3 The method of transport and transport route shall be selected at our discretion unless a specific instruction has been issued by the Buyer. We shall not be liable at all for not selecting a cheaper method of carriage or shorter freight route.

7.4 If goods ready for dispatch cannot be dispatched at the intended point in time for reasons for which we are not not blame, they shall be put into storage on our premises or at a third partie's premises at the Buyer's expense.

7.5 We shall use reusable packaging. Special packaging consists of untreated wood.

## 8. Reservation of export licence

Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargos or any other restrictions.

The contract partners shall obligate themselves to provide all information and documentation needed for the export/domestic shipment/import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated.

If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

## **9. Assembly, Start-up**

In so far as assembly and / or start-up is included in the scope of supply and services performance, the following terms and conditions shall apply as a supplement:

### **9.1 Price**

Provided that nothing has been agreed to the contrary, the services shall be invoiced on a timebasis at our assembly rates valid at that time. The cost of materials will also have to be reimbursed, as will the travelling expenses incurred by our fitters for the outward and homeward journey plus overnight expenses for accommodation of a reasonable standard, the transportation costs, customs duty, customs fees and transport insurance for luggage and tools, the costs for obtaining identification papers and passports as well as other cash expenses such as for making telephone calls etc.

### **9.2 Invoicing**

The Buyer shall confirm that he will pay the Seller`s personell for their time at work, travelling time and waiting time as well as for the work they carry out on work sheets presented by the Seller. If the Buyer refuses to confirm the above, or if it is not possible for the Seller to obtain confirmation for other reasons, the Buyer will be invoiced on the basis of the worksheets filled out by the personell of the Seller.

All secondary work (for example, bricklaying, plastering, carpentry, electrical connections, earthworks and painting) is not included in the offer unless they have been included in separate items stating volume and price. Work not included in the order which is carried out by us is to be paid at our rates in addition to the offer price. The same shall apply for additional costs we incur if work is interrupted for reasons for which we are not to blame.

### **9.3 The provision of assistance by the Buyer**

The Buyer shall be obliged to assist us in carrying out the work at his own expense. In particular he shall have to

- a) provide a necessary number of assistants (bricklayers, carpenters, fitters and other skilled workers and assistants) for the assembly work over the necessary period of time;
- b) carry out all groundwork, building work and scaffolding work including the procurement of the building materials required, laying the electricity and cold water connections and non-pressure waste water pipes and the sanitary work, electrical work, installation work, brickwork and joinery work on time;



- c) provide suitable access for the delivery of assembly parts and for mobile cranes;
- d) provide the necessary information about the concealed power lines, gas and water pipes or similar systems on site as well as the necessary statics information without being asked to do so;
- e) provide heating, lighting, power and water including the necessary connections;
- f) provide the necessary dry lockable theft-proof rooms for keeping the tools in safe-keeping as well as rest rooms for the personell;
- g) to protect the assembly site and materials from damage of all types;
- h) to draw attention to any hazards which could possibly arise (for example from fire in rooms or from materials) in connection with cutting work, welding, thawing or rivetting and take all the safety measures (for example setting up a fire watch and providing fire extinguishing materials);
- i) to provide special workwear for difficult working conditions such as dangerous vapours, gases, acids, dust etc. The same shall apply for protective clothing or protective equipment necessary as a result of specific circumstances at the assembly site which are not normal in our line of work. In addition to this, the fitters are to be made aware of the important safety regulations applicable for fitting work;
- j) if our personell become ill or suffer an accident the Buyer shall have to ensure that medical care is provided immediately and to notify us without delay;
- k) if the place of assignment is outside the Federal Republic of Germany, the Buyer must obtain the necessary permits enabling our personell to enter the country concerned and any work permits which may be required, plus obtain all the official and other prescribed permits required to set up equipment and plant on time and to instruct our fitters of all their obligations (registration etc.) with the local authorities as well as notify them of the safety regulations in force. The Buyer must provide our personell with assistance in their dealings with the authorities and help them to obtain all the paper work they need to ensure that they have complete mobility in the country and may return to Germany at any time together with their property.

#### **9.4 Acceptance**

The Buyer is obliged to conduct an acceptance test on the assembly as soon as he has been notified that it has been completed. The plant shall be regarded as having been accepted once a start-up has been completed successfully on a test basis, even if the Buyer has not co-operated in spite of being requested to do so.

Upon request, self-contained parts of the performance are to undergo an acceptance test separately. If all or part of the plant has been used or if acceptance has been delayed without us being to blame, acceptance shall consequently be regarded as having been granted once two weeks from notification of completion have elapsed.

The plant may only be used prior to acceptance without express consent. The integrated parts of the plant shall be regarded as having been accepted if they have been used.

#### **10. Warranty, Liability for defects in supply, Wear and tear**

10.1 If parts are exposed to increased wear and tear, such as being used up to 40 hours a week or on a two shift operation, become unusable or their fitness for use is considerably impaired within 6 months or within 3 months with a double shift operation, it shall consequently be assumed that the damage is attributable to wear and tear, unless this assumption is irreconcilable with the nature of the product or with the nature of the damage.

10.2 Defects are to be notified straight away in writing. The additional costs incurred as a result of a defect being notified late are to be borne by the Buyer. § 377 of the German Commercial Code [HGB] shall not be affected as a result. The notification of manifest defects must be notified by a business straight away. For other defects, notification will be regarded as having been made straight away if it is made after discovery within two weeks from delivery at the latest. Damage in transit can only be recognised after receipt of damage.

10.3 If the Buyer is a registered business and there is a delay in dispatch, setting up or start-up as a result of circumstances for which we are not to blame, our liability shall consequently expire no later than 12 months from the passing of risk.

10.4 We shall not be liable for damage as the result of improper or unsuitable use, faulty assembly or start-up by the Buyer or a third party, natural wear and tear, incorrect or negligent treatment, excessive loads, unsuitable machinery materials, penetration by foreign materials, defective work on products supplied by third parties or external factors.

10.5 We shall only be liable for third party products as provided for and during the period of time provided for by the warranty granted to us by our supplier.

10.6 The Buyer has to allow us adequate time and the opportunity to carry out subsequent repairs and to supply replacements, since otherwise we shall be exempted from liability for defects. We shall bear the costs incurred as a result of carrying out a subsequent repair or supplying a replacement – provided that the complaint is justified – for transportation, travelling expenses, labour and materials.

10.7 We shall bear the costs incurred directly as a result of a subsequent repair or supplying a replacement ex works – provided that the repair is justified. All other costs including travelling and assembly costs shall be borne by the Buyer.

10.8 The claim under warranty shall expire as soon as the Buyer or third party appointed by him carries out modifications or repair work - even if this is part of the start-up – on his own authority without our written consent.

The Buyer shall not be entitled to a right to compensation for damages not incurred by the delivered item itself, if the damage has not been covered by the warranty.

## **11. Limitations of liability (Limitation of and exemption from liability)**

11.1 With the exception of a breach of an important contractual obligation or cardinal duty such that it jeopardises the objective of the contract or in the event of furnishing a warranty we shall not be liable for damage caused by ordinary negligence.

11.2 In the following cases our liability shall be limited to foreseeable damage typical for the contract:

- a) In the event of an ordinary negligent breach of important contractual obligations or cardinal duties in such a way which jeopardises the objective of the contract,

- b) In the event of a grossly negligent breach of duty by ordinary assistants (that is persons who are not senior staff or members of an executive body staff) or
- c) In the event that we furnish a warranty provided that we have not expressly furnished a warranty as Seller to the Buyer for the condition of the goods.

11.3 In the cases stated in Number 12.2) our liability shall be limited to a maximum of three times the price of the goods concerned up to a maximum of € 200,000.00, or if the damage is simply pecuniary loss, up to twice the value of the order up to a maximum of € 150,000.00.

11.4 The Buyer's compensation claims for damages shall become time-barred in cases stated in Number 12.2 no later than two years from the point in time at which the Buyer becomes aware of the damage or not taking his awareness of the damage into consideration no later than three years from the point in time at which the damaging event occurs. The period of limitation in Number 11.3 shall continue to apply for claims based on defective goods.

11.5 The Numbers 12.1 to 12.4 shall also apply even if goods have only been specified by type.

11.6 Except in cases of liability under the German Product Liability Act, loss of life, personal injury and physical harm, the above limitations of liability shall apply for all compensation claims for damages irrespective of their legal justification including claims asserted on the basis of a civil offence if a warranty is furnished for the condition of goods or if defects are maliciously concealed.

11.7 The above limitations of liability shall also apply in the event that the Buyer should assert any compensation claims for damages against our staff or sub-contractors.

## **12. Withdrawal from the contract, Reduction in purchase price, and compensation for damages**

12.1 The Buyer shall be entitled to withdraw from the contract and to reduce the purchase price,

- if we have allowed a reasonable period we have been set to rectify a defect for which we are to blame elapse without rectifying the defect,
- if it is not possible to repair or obtain a replacement for the defective part,
- if we refuse to rectify a proven defect caused by us,

12.2 The Buyer shall not be entitled to a claim under warranty for compensation for damages instead of performance.

## **13. The Supplier's right to withdraw from the contract**

13.1 In the event that it should subsequently turn out to be impossible to fulfil the contract, we shall likewise be entitled to withdraw from part or all of the contract.

13.2 The Buyer shall not be entitled to assert compensation claims for damages on account of such a withdrawal from the contract.

## **14. Reservation of title**

14.1 We shall reserve the title to the delivered item until all the accounts accruing to us from the business relationship between ourselves and the Buyer have been repaid. If the Buyer is a registered business, a legal entity established under public law or a special fund created under public law, we



shall consequently reserve the title to the delivered item until all the accounts which have accrued to us or which have yet to accrue to us under the business relationship or any other legal basis between us and the Buyer have been repaid in full.

14.2 In so far as the validity of this reservation of title is tied to specific preconditions or formalities in the Buyer's country, the Buyer shall be obliged to be responsible for fulfilling them at his expense.

14.3 The Buyer may only dispose of the delivered item in the course of a proper business transaction; other disposals, in particular pledges, assignment as a security, as not allowed. In the event of levy of execution as well as confiscation or other disposals by third parties, the Buyer shall have to notify us of this straight away and furnish us with all the information and documents necessary for protecting our rights. It is to be pointed out to enforcement officials or a third party that the delivered items belong to us.

14.4 The delivered items shall be processed for us without us having to undertake obligations as a result. In the event that our goods are processed, blended or combined with other goods not belonging to us by the Buyer, we shall be entitled to co-ownership to new thing in proportion to the value of the goods subject to reservation of title to the other goods at the point in time of processing, blending or combining. If the Buyer acquires sole-ownership of the new thing, we shall agree with him that he shall grant us co-ownership to the new thing in proportion to the value of the processed, blended or combined goods subject to the retention of title to the value of the new thing and shall keep our co-ownership in safekeeping for us free of charge.

14.5 The account created by the resale of the goods subject to a reservation of title, and to be more precise, regardless of whether the sale takes place with or without the goods having been processed, blended or merged, shall be assigned to us by the Buyer here and now. We accept the assignment. If the goods subject to our reservation of title. If the goods are sold after they have been processed, blended or merged with other goods not belonging to us, the assignment of the account shall be for the amount of the value of our goods subject to reservation of title. The Buyer shall be entitled to collect accounts created by the resale for as long as he fulfils his obligations under this contract. Measures or circumstances jeopardising our rights are to be notified to us straight away stating all the details.

14.6 We are entitled to insure the delivered item against damage caused by fire, water and other damage at the Buyer's expense unless the Buyer can prove that he has already taken out such insurance.

14.7 The Buyer is obliged to notify us straight away of third party seizures of the supplied goods subject to our reservation of title and to notify the third parties that the rights to the goods have been assigned to us. If we take back the goods supplied by us subject to the reservation of title, taking back the goods shall only be regarded as a withdrawal from the contract in those cases in which we have expressly notified the Buyer of this in writing.

## 15. Force Majeure

15.1 Neither Party can be held responsible for non-fulfillment of a Contract, provided the non-fulfilling Party proves that this is caused by force majeure, including but not limited to labour conflict involving other than Supplier's employees unless an involvement of Supplier's employees is due to national labour conflicts, a general shortage of the required raw materials, terrorism, fire, pandemics, epidemics, floods, lock-out, theft, export and import prohibitions, currency restrictions

or other obstructions beyond its control, which could not reasonably have been avoided, foreseen or limited.

15.2 The Party intending to claim relief due to force majeure shall, in writing, without delay inform the other Party of the obstruction(s) and the implication of this for the fulfillment of the Contract. This Party is furthermore obligated loyally to co-operate in mitigating the consequences of a force majeure situation.

15.3 In case the force majeure situation is not be brought to a termination within three (3) months, the other Party is entitled to cancel the Contract by written notice with immediate effect.

## **16. Place of fulfillment and place of jurisdiction**

16.1 The place of fulfillment for delivery and payment shall be our factory in Wettenberg.

16.2 If the Buyer is a registered businessman, a legal entity under public law or a public law special fund, legal action in the event of any disputes arising from the contractual relationship shall be taken at the courts having jurisdiction where our company headquarters are based. We shall also be entitled to take legal action at the courts having jurisdiction where the Buyer has his company headquarters.

16.3 Only German law shall apply. The laws on the International Sale of Goods shall not apply, even if the Buyer's company headquarters is based in a country other than Germany.

## **17. Cancellation costs**

If the Buyer withdraws from an order placed by him and is not justified in doing so, we can consequently claim the costs incurred as a result of handling the order as well as the lost profit. The Buyer shall reserve the right to prove that the loss we have suffered is less than that claimed by us.

## **18. Miscellaneous**

18.1 The assignment of the Buyer's rights and duties under the contract he has entered into with us shall be subject to our written consent to be valid.

18.2 We are are customer who decides not to take out transport insurance (because we have our own).

18.3 Should a provision be or become void, the other provisions shall consequently continue to be valid.

18.4 In accordance with the German Federal Data Protection Regulations [BDSG] we would point out that we shall save and process relevant information about you.