



General Terms and Conditions of Sale, Delivery and Payment

We, Schake GmbH, process the orders placed by companies, legal persons under public law and public special assets based on the following written conditions only. These conditions also apply to all future business transactions with you, our customer.

Our conditions are also applicable in the event that you stipulate conditions which differ from our conditions. These only apply in the event that we expressly confirm in writing your differing conditions.

1. Offer and conclusion of the contract

Our offers are conditional. Any drawings, samples or other documentation handed over to you or otherwise sent to you in conjunction with the offers and/or other explanations as part of the preparation of the conclusion of the contract remain our property, and are subject only to our disposition by virtue of our copyright and/or patent right. They may only be made available to third parties with our express approval.

The contract is formed following clarification of all technical and commercial conditions by accepting your order in the form of our written confirmation of order: this also applies if your order is transmitted via our representatives. If you are supplied from our stocks and we cannot, for organisational reasons, cannot send you a separate confirmation of order, the invoice also counts as the confirmation of order. Our confirmation of order and the description contained therein of the services we are obliged to perform, which is also possible by reference to our catalogues, alone determines the scope of our obligation to perform and the details of the nature of our services to be performed.

This also applies if the services we are obliged to perform are to be performed according to your specifications, in particular according to a drawing of yours. Provided no special manufacturing specifications have been stipulated in the drawing, we are entitled to manufacture the product within the framework of DIN or ISO or the draft standards applicable at the time of commencement of manufacture. In agreeing the production of samples with test reports, the VDA processes usual in the industry apply: it is only following express written release of the manufacturer by you that the values in the samples are to be considered as a contractual quality of the services we are to perform.

The explanations on the quality of the subjects of the contract contained in confirmations of order, catalogues and/or other documents and operating instructions exchanged between us are not a guarantee as defined by § 276 paragraph 1 of the German Civil Code:

unless we had expressly agreed to such in our written confirmation of order and also specified the success we guarantee.

Should the goods be manufactured and delivered in the quality specified by you (according to drawing, sample or other specific information), you guarantee that the design presents no violations to the rights of third parties, especially with regard to patents, utility models and other protective and copyright laws. You are obliged to release us from any claims made by third parties arising from such a violation.

2. Tools

Should we manufacture any tools and/or equipment required for the manufacture of products according to your drawings/other designs, we claim participation in the manufacturing costs (proportion of the costs of the tools): we inform you of these costs during the contract negotiations and charge you for it following acceptance of the tool. The proportions of the costs of the tools are payable upon release of the reference pattern:

upon delivery of the first contractually agreed delivery of this tool at the latest, however. Despite your share of the costs, we remain the owner of the tool which we use exclusively for supplies made to you: unless, at our request, you allow us in writing to use it for other customers.

We are obliged to keep the tools for three years following our final delivery to you. Should you inform us before expiry of this date that you will be placing further orders within a year, we are obliged to keep the tools for the period you specify. Otherwise, we are entitled to dispose of the tools as we wish.

3. Prices

Our prices quoted in offers and confirmations of offer are expressed in EURO. The list prices applicable on the day of delivery are charged plus VAT at the statutory rate ex works plus costs of packaging.

The minimum order value is □ 20 net. Later reduction of the order quantities and/or reduction to the number of agreed on-call purchases entitle us to increase the agreed unit prices accordingly and any agreed tool cost proportions.

Our prices are based on the current standard calculation factors. Should these change for on-call purchases over the long term, we are entitled to use our reasonable discretion to adapt the agreed unit prices in line with these changes.

4. Delivery time

The delivery date is quoted according to the best of our knowledge: however, it is subject to change. Agreed delivery deadlines commence on the day of accepting our order, and clarification of all commercial and technical details. They refer to completion in the factory. The delivery deadline is considered met if the parts we are obliged to produce leave our factory within the agreed time, or if the parts are made available in our delivery system should you be late with the acceptance.

We are not late if the delivery is ceased or postponed due to a circumstance not under our control. We hereby agree that circumstances not under our control are force majeure, strikes and lockouts, accidents and all other causes which require partial or complete stoppage of work, such as a lack of materials, lack of supplies, transport difficulties, problems with the energy supply, all types of interruption of operation in our own or our suppliers' factories. In all these cases, we are entitled to postpone our delivery to you for the duration of the obstruction. However, in all such cases, we will inform you immediately of the start and the anticipated end of such an obstacle.

If an agreed delivery date has passed you are, in the form of a withdrawal for non-performance, to extend the deadline appropriately by at least 15 working days. Should this extended delivery date pass without delivery, you can assert your right to rescind the contract or to claim damages only to the extent of the part of the contract not fulfilled by us. However, you are not entitled to claim frustration of interest.

In the event of on-call orders, the delivery time for each individual on-call order must be redefined each time.

Should you experience considerable worsening of your assets following conclusion of the contract or should such worsening of your assets only become known following conclusion of the contract, we are entitled to refuse performance and are further entitled to request that you dispel the risk of the purpose of the contract by means of an adequate security. Should you not comply with our request for the payment of a security within a reasonable period stipulated by us, we are entitled to withdraw from the contract and/or to claim damages.

Items you have ordered and which are not in stock upon acceptance of the order and which can be delivered within the delivery period you envisage are kept on order, and will be delivered as soon as possible. We rule out any prepaid deliveries in the event of partial delivery.

5. Delivery, dispatch, passing of risk

The ordered goods are delivered ex works. Unless you specify otherwise, the method of dispatch is chosen at our discretion, without us assuming responsibility for the most economical carriage of goods. Upon leaving the factory, all costs and risks associated with dispatch are passed on to you. This also applies if carriage prepaid has been agreed. If the goods are ready for dispatch and the dispatch or acceptance is delayed for reasons not caused by us, the risk is passed on to you upon receipt of the information.

6. Terms of payment

Our invoices are payable within 8 days of receipt with a 2% cash discount provided there are no debts outstanding, or within 30 days of the date of the invoice net, without any deductions.

We expressly reserve the right to accept bills of exchange or cheques. They are only accepted on account of payment and only once they have been cleared are they valid as payment with a discharging effect. Any discount and bank charges are to be borne by you.

Should a bill of exchange or cheque not be cleared by the due date, all claims we have on you are immediately due.

In the event of non-payment by the due date, we will charge you interest on arrears amounting to 8% above the base interest rate. Should we agree to the return of delivered goods for reasons caused by you, we are entitled to claim reimbursement of lost profits, expenditure and an appropriate processing fee amounting to 10% of the selling price of the returned goods: amounting, however, to □ 20 minimum.

You are only entitled to exercise your right of retention or offset against our claims those counterclaims which are indisputable or which have been legally ascertained.

7. Guarantee and liability

With reference to the fact that none of our explanations presents a guarantee as defined by § 276 para. 1 of the German Civil Code, we provide a guarantee and accept liability for our deliveries and services according to the following agreements which supplement laws:

you are obliged – even if you have previously been sent samples or specimens – to immediately and carefully carry out a random check of the products delivered by us upon arrival at your premises for completeness and correctness, which includes the presence of the contractual quality. The delivery is considered approved should you not assert a written notice of defect within two weeks of receipt of the goods. If the defect is not discernible during an inspection carried out according to the rules, we must be informed in writing or by fax of such a defect within seven days of its discovery.

However, you are obliged to inspect the material parameters necessary for your planned processing before processing materials.

You are obliged to immediately inform the haulier or freight carrier upon delivery of any transport damage and, in the event of such damage, to not issue him with a clean acknowledgement of receipt.

In this respect, the obligation to inform as defined by the General Conditions for German Hauliers (ADSp) applies.

In the event of a justified notice of a defect, we are obliged, at our discretion, to carry out subsequent performance by means of improvements or to provide a replacement. However, we are further entitled to credit you with the value of selected parts in the event of partial complaint. However, you can only demand improvements or the provision of a replacement if the delivered parts are still in their as-delivered condition and the goods about which there have been complaints made are returned to us free of charge at our request.

We are responsible for the costs of the correction of defects, provided these costs have not been increased by the goods delivered by us having been taken by you to a different place to the delivery address specified by you.

If the end customer of the goods in the delivery chain is a consumer, you – under the further conditions of § 377 of the Commercial Code – are entitled to recourse according to the laws defined in §§ 478, 479 of the German Civil Code: however, you are only entitled to claims for damages and reimbursement of expenses according to the following regulations pertaining to liability.

We are only liable for any damages – including any claims for reimbursement of expenses – irrespective of the legal basis, in the event of intent, in the event of gross negligence, also in the event of gross negligence by managerial employees or the bodies of our company, in the event of culpable injury to life, body or health of third parties, in the event of deficits about which we have maintained malicious secrecy or the absence of which we have guaranteed in writing, in the event of flaws to our service, in so far as we are liable according to the product liability law for people and property damage to privately used objects.

In the event of culpable violation of essential contractual obligations, we are also liable for gross negligence by non-managerial employees and in the event of ordinary negligence: in the latter case, however, our liability is limited to damage typical of the contract, which is reasonably foreseeable.

It is agreed that, if you have carried out or instigated modifications or repairs to the objects delivered by us without having first obtained our prior approval to do so, any guarantee and liability provided by us is nullified.

It is also your responsibility to observe and monitor compliance with occupational regulations when using objects delivered by us.

All guarantee, damages and/or reimbursement of expenses claims become statute-barred one year after hand-over of the subjects of the contract.

8. Reservation of ownership

The goods delivered by us remain our property until such time as full payment of all debts from the business relationship between you and us has been made. The property is only transferred to you once you have paid off all liabilities associated with our deliveries. Only the receipt of the countervalue is effective as payment. You are entitled to the resale of the conditional commodities in the ordinary course of business: however, you are not entitled to pawn or assign as collateral the conditional commodities. You are obliged to safeguard our rights when reselling the conditional commodities on credit, in particular to reveal to and impose upon your customers our reservation of ownership.

In the event of a compulsory execution measure or any other restriction to our rights, you are obliged to inform us immediately.

Furthermore, you already assign to us your claims from the resale of the conditional commodities to your customers. We hereby accept this assignment. At our request, you are to provide us with information necessary for collecting these claims and to inform the debtor of this assignment.

In the event of suspension of payment as part of the filing for or opening of insolvency proceedings or of an out-of-court settlement proceedings, you lose your right to resell the conditional commodities.

You carry out any processing or further processing of the conditional commodities for us without there arising any obligations on our part. In the event of the processing, the compounding, the mixing or the blending of the conditional commodities with other goods not belonging to us, we are entitled to a co-ownership share of the new object proportional to the value of our conditional commodity over the other processed product at the time of the processing, the compounding, the mixing or the blending. Should you obtain the sole ownership of the new product, you grant us co-ownership of the new product proportional to the value of our conditional commodity. You are then obliged to keep this for us free of charge.

Should the conditional commodity be resold along with other goods, irrespective of their condition, the aforementioned anticipatory assignment is only applicable to the value of the conditional commodity which, along with the other goods, is the subject of the contract.

Should the securities we are entitled to according to the aforementioned regulations exceed the claims to be secured by 25%, upon your request we will fully release fully paid deliveries at our discretion on an individual case basis.

9. Concluding remark

Place of performance for all reciprocal claims is Hagen. Any legal cases arising from this contract will be heard in Hagen.

German law only applies, excluding the law on the international sale of moveables (United Nations Convention on Contracts for the International Sale of Goods, CISG).

The aforementioned conditions also apply if one or several of them should become invalid.

01/04, SCHAKE GMBH 58089 HAGEN