

General Terms and Conditions of Sale and Delivery ("GTC") of the SCHRAML Group, Austria



Version of June 2019

I. GENERAL SECTION

1. SCOPE

- 1.1. These GTC shall apply to all contractual agreements or deliveries and services in respect of machines, software licences and other services of SCHRAML Glastechnik GmbH (hereinafter "SCHRAML" or the "Contractor") and the buyer (hereinafter the "Customer").
- 1.2. Conflicting or divergent conditions of the Customer shall be applicable only insofar as SCHRAML shall have expressly approved them in writing.
- 1.3. In the instance of an ongoing business relationship, the GTC shall apply even if not specifically referenced.

2. CONTRACTUAL CONCLUSION

- 2.1. A contractual agreement shall be established only upon written confirmation of the order or quotation that is countersigned by the Customer.
- 2.2. Amendments and supplements to a contractual agreement shall be required to be confirmed in writing by SCHRAML if they are to assume validity.
- 2.3. Cancellations and suspensions of contractual agreements are possible only when effected consensually. Any costs incurred shall be borne by the Customer.

3. TERMS OF DELIVERY AND PACKAGING

- 3.1. Unless otherwise covenanted, the equipment shall be deemed sold "Free Carrier" (FCA) Peter Lisec Straße 1, 3353 Seitenstetten (Incoterms 2010). Partial deliveries are allowed.
- 3.2. In the absence of any agreement to the contrary packaging is effected in line with standard trading norms so as to avoid damage to the equipment en route to the stipulated destination point under normal transportation conditions. Packaging is taken back only if this is covenanted in writing. The cancellation fee will be in general 20 %, after notification that the goods are ready for dispatch 50 % of the purchase price. The same applies, if the agreed advance payment has not been received by SCHRAML within 4 weeks after signing of the order confirmation. Custom-made products may not be cancelled.

4. DELIVERY PERIOD AND DELIVERY

- 4.1. In the absence of any deviating written provisions, the delivery period shall commence upon occurrence of the last of the following dates:
 - a) the date upon which the confirmation of the order is signed by the Customer and SCHRAML;
 - b) the date upon which the technical, commercial, financial and other obligations incumbent upon the Customer are fulfilled;
 - c) the date upon which SCHRAML receives an advance payment due and/or a payment security instrument favouring SCHRAML and to be rendered by the Customer is issued.
- 4.2. In the event that the Customer fails to accept the equipment provided in accordance with the terms of the contractual agreement at the place or time covenanted, and if the delay is not attributable to an action or a failure to take action on the part of SCHRAML, SCHRAML may either demand performance or, after setting a grace period, may wholly or partially withdraw from the contractual agreement and demand compensation for damages.
- 4.3. In case of delay in delivery the Customer is not allowed to cancel the contract or ask for any indemnification.
- 4.4. The Customer shall provide adequate lifting tools and means of transport for the unloading and for the on-site transport of the Equipment to the place of installation and assembly and is fully responsible in this regard.

5. PRICES

Unless otherwise covenanted in writing, prices shall be Ex Works (EXW) of SCHRAML (in accordance with Incoterms 2010) exclusive of loading charges, taxes, customs duties, fees and levies; costs of dispatch, packaging and delivery, assembly, training, travel and customer services shall be calculated separately.

6. PAYMENT

- 6.1. Payment shall be deemed to have been remitted on the day on which SCHRAML can dispose of the purchase price or portions thereof.
- 6.2. The place of performance for delivery and payment shall be the location of the registered office of SCHRAML even if handover is effected at a different location under the terms of the contractual agreement.
- 6.3. The Contractor shall nevertheless remain entitled to restrict the performance of the equipment for the period of delay and to suspend the provision of spare parts and of servicing and maintenance services to the Customer.

7. RETENTION OF TITLE

- 7.1. The delivery item shall remain in the ownership of SCHRAML until full payment has been effected of all presently existing and outstanding claims arising from the business relationship. Default of payment shall entitle SCHRAML to collect or to refrain from delivering the delivery item.
- 7.2. If the delivery item is sold by the Customer to a third party, the Customer herewith already now assigns all claims against such third party to SCHRAML. The Contractor herewith accepts the assignment.
- 7.3. The Customer shall be required to store and use the delivery item in a proper fashion, to carry out all scheduled maintenance tasks and to insure it against theft, breakage, fire damage, water damage and other damage in accordance with handling practices customary among companies. Insurance claims shall be deemed to have been ceded to SCHRAML in the amount equating to the value of the equipment.

8. WARRANTY

- 8.1. Notification of any defects has to be effected by the Customer without delay in writing, and in any case within seven (7) days following delivery. In the event that the Customer omits to do this, the equipment shall be deemed to have been accepted. This also applies for hidden defects unless the Customer provides notification in writing within seven (7) days following identification thereof.
- 8.2. Parts subject to wear and tear, and insignificant defects that have no immediate and notable effect on the functioning of the equipment, e.g. visual defects such as paint damages, are excluded from the warranty. Improper handling, ignorance of the common and necessary machine care do not fall under this warranty provisions.
- 8.3. The warranty period shall be twelve (12) months or 2000 hours of operation, whichever occurs first, and shall commence upon delivery (upon completion of installation/notice of completion of SCHRAML, if delivery plus installation has been agreed), unless otherwise agreed in writing. Defective parts will be – at SCHRAML's sole discretion – either repaired, replaced with new parts or refunded (original price). All freights, customs, transport and installation costs accrued in this regard will be charged to the Customer. In case that installation of the equipment is delayed for longer than three (3) months vis-à-vis the scheduled time for reasons that are not attributable to SCHRAML, the warranty shall conclude no later than twelve (12) months after the transfer of risk.
- 8.4. No warranty is given to any used machinery or Equipment.
- 8.5. The legal presumption of Section 924 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) is excluded.
- 8.6. SCHRAML shall furthermore not be obligated to undertake a warranty if there is a default of payment.

9. LIABILITY

- 9.1. With regard to liability the reversal of burden of proof set forth in Section 1298 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) is expressly excluded.
- 9.2. Under no circumstances shall SCHRAML be liable for lost profit, production downtime, stoppages, loss of earnings, loss of orders, data loss and other indirect and/or consequential damage, irrespective of their legal substantiation.
- 9.3. The total liability of SCHRAML arising from or in connection with the contractual agreement or deliveries and services relating to

machinery, software and services amounts to an aggregate limited to 10% of the contractual price.

- 9.4. The total liability of SCHRAML arising from or in connection with servicing and maintenance is limited to 10% of the annual maintenance fee.
- 9.5. All claims of the Customer against SCHRAML are definitely regulated in this contractual agreement. Claims on the part of the Customer in excess of this are excluded.
- 9.6. The liability provisions specified shall also apply in favour of affiliated SCHRAML companies, sub-contractors, licensors and vicarious agents of SCHRAML.
- 9.7. All exclusions and restrictions of liability are effective and to be interpreted to the maximum extent legally allowed.

10. INDIVIDUAL RESPONSIBILITY AND OBLIGATIONS OF COOPERATION

- 10.1. All services or the scope thereof that are/is not expressly covenanted in writing between SCHRAML and the Customer, are not included in the contract and the Customer shall not be entitled to demand these and shall itself be responsible for them.
- 10.2. In the event that SCHRAML renders services which require the cooperation of the Customer, the Customer expresses its consent to meet his obligation of cooperation. In the event that the Customer shall fail to cooperate (e.g. by way of training, split-scope obligations), the Customer shall be deemed to be in culpable breach and shall indemnify SCHRAML and hold SCHRAML harmless, and the services rendered and provided by SCHRAML shall be deemed to have been accepted.

11. FORCE MAJEURE

- 11.1. The Parties shall be released from effecting performance in accordance with contractually covenanted timelines if they are hindered from doing so by occurrences of events that are unforeseeable by the Parties and which the Parties cannot avoid ("Force Majeure").
- 11.2. Deadlines or timelines that cannot be observed on grounds of Force Majeure shall be extended by the duration of the ramifications of the occurrence of Force Majeure.
- 11.3. If an instance of Force Majeure spans a period in more than four (4) weeks, the Customer and SCHRAML shall endeavour to regulate the processing-specific and technical ramifications. In the event that this is not possible, SCHRAML may withdraw from the contractual agreement in whole or in part.

12. DATA PROTECTION AND CONFIDENTIALITY

- 12.1. SCHRAML and its affiliated companies of the LiSEC Group shall be entitled to process and store personal data of the Customer in accordance with the Austrian and European laws in force. Details can be found in our Privacy Policy under the following link: <https://www.lisec.com/meta/privacy-policy/>.
- 12.2. The Customer shall be obligated to maintain secrecy in respect of all data and information received from SCHRAML or to which it is provided access, to use them solely for purposes that are contractually covenanted and to refrain from sharing them with third parties without the prior, written consent of SCHRAML.

13. STATUTE OF LIMITATIONS

- 13.1. Insofar as no shorter period of limitations is statutorily defined, all claims of the Customer shall come under the statute of limitations twelve (12) months after the transfer of risk. This shall not apply insofar as the law mandatorily prescribes longer timelines.

14. SEVERABILITY CLAUSE

In the event that a provision within these Terms and Conditions or within this contractual agreement shall be or shall become invalid, impracticable, ineffective or void, the validity of the remaining provisions shall remain unaffected thereby.

15. PLACE OF JURISDICTION AND APPLICABLE LAW

- 15.1. All disputes arising from or relating to the contractual agreement concluded under these Terms and Conditions are to be definitively decided in accordance with the Rules of Arbitration and Conciliation of the International Arbitral Tribunal of the Austrian Chamber of Commerce in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these Rules. The seat of the Arbitral Tribunal is Vienna. The language of the arbitration proceedings is German. However, SCHRAML is also, at its own dis-

cretion, entitled to take (legal) action at the locally and materially competent state courts.

- 15.2. The contractual agreement shall be subject to Austrian law, to the exclusion of conflict rules and the CISG.

II. MACHINERY

1. PLANS, DOCUMENTS AND PROPERTY RIGHTS

- 1.1. Plans, sketches, presentations, cost estimates and other technical documents shall consistently remain the intellectual property of SCHRAML, as shall samples, catalogues, brochures, illustrations and the like. Any utilisation, duplication, reproduction, dissemination and issuance to third parties, publishing and demonstration may only be effected with written consent of SCHRAML.
- 1.2. All rights in tools, drawings, drafts and plans, sketches, presentations, etc. prepared by SCHRAML, in particular patent rights, copyrights and originator rights, shall be exclusively at the disposal of SCHRAML.
- 1.3. Plan-specific / layout-specific / technical drawing designs, specifications, information, metrics, details and values of SCHRAML are essential pre-conditions for security, installation, commissioning and functionality, for which reason the Customer is required, under all circumstances, to accordingly prepare these and comply with them.

2. INSTALLATION AND ACCEPTANCE

If installation and acceptance of the equipment has been agreed:

- 2.1. Assembly of the delivery item may be effected, to the exclusion of any liability of SCHRAML, solely in the presence of specialist staff or by technicians authorized by SCHRAML. The Customer shall take all precautions to ensure smooth assembly. This also includes the preparation of the hall for proper operation. The Customer shall ensure that the Equipment can be brought into its premises and that it can be installed there (dimensions, connected values)
- 2.2. The Customer's employees responsible for operating the equipment supplied shall be required, to the exclusion of any other liability, to undergo machine induction and training which is to be carried out by SCHRAML who issues a certificate thereof.
- 2.3. In the event that the Customer shall fail to provide inputs, technical facilities, energy supply facilities and services, or shall fail to provide these in a timely manner, or shall fail to provide them as qualitatively and quantitatively required, and in the event that SCHRAML shall, as a result, incur additional costs – e.g. for waiting times – the Customer shall be required to reimburse these at its own expense.
- 2.4. After completion of installation of the Equipment and handover to the Customer an acceptance testing is to be carried out, and an acceptance protocol is to be compiled in this regard. The appending of a signature to the acceptance protocol may not be withheld unjustifiably, i.e. owing to inconsequential or smaller deviations from the contractual agreement. Defects shall be noted in the protocol, if known or apparent at this time. If not noted in this protocol, the Equipment will be deemed accepted.
- 2.5. The Equipment shall under all circumstances, be deemed to have been approved, accepted and the assembly shall be deemed to have positively finished, if the delivered parts are put into operation without reservations, irrespective of the fact that SCHRAML was still obliged to make deliveries or provide services (especially installation). The same applies and assembly shall be deemed ten (10) days after delivery in the instance that assembly or acceptance shall not have been effected or effected successfully for reasons that are not attributable to SCHRAML.

III. SOFTWARE

- 1.1. Insofar as software is incorporated within the scope of delivery, the Customer is awarded the non-exclusive, temporally unlimited right to use the delivered software or its individual components, including the associated documentation, in unmodified form on the equipment designated for this purpose. Any use of the Software on more than one system is forbidden.
- 1.2. The Customer is not allowed to copy, edit, translate or make available the Software to any third party. All other rights of SCHRAML to the Software and all documentation including copies and the source code remain with SCHRAML or the software supplier.
- 1.3. The granting of sub-licences is not admissible.