

**SCAPA (Schweiz) AG**  
**TERMS AND CONDITIONS OF SALE – 2015 EDITION**

**1 INTRODUCTION**

- 1.1 These Conditions apply to all contracts for the sale of goods or services by Scapa (Schweiz) AG, Feldmühlestrasse 37, 9400 Rorschach ("Seller") exclusively. Differing or contrary terms shall not apply except if this has expressly been agreed in writing or the individual contracts according to Section 2.1 et seqq. (in particular Section 2.4) so provide. These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
- 1.2 Individual agreements with the Purchaser according to Section 2.1 et seqq. (in particular Section 2.4) (including collateral agreements, supplements and amendments) shall always take precedence over these Conditions in case of discrepancy. .

**2 CONTRACTS**

- 2.1 Each contract for the sale of Goods by the Seller is subject to these Conditions. "Goods" means those goods including any raw materials, component parts and finished products which the Seller supplies to the Purchaser in accordance with these Conditions as further specified in this or any relevant purchase order or any amendment thereto, which were accepted by the Seller in accordance with the following provisions .
- 2.2 Our offers are non-binding. The Purchaser shall provide the Seller with an order for each delivery of Goods required ("Order"). The Order shall stipulate the type and quantity of Goods required, the delivery address, details of technical requirements of the Purchaser ("Purchaser's Specification"), if any, and any other information required by the Seller from time to time.
- 2.3 Insofar as the Order constitutes an offer (*Angebot*) within the meaning of art. 3 et seqq. CO (Swiss Code of Obligations) we are entitled to accept the offer within two weeks.
- 2.4 The acceptance can be made by means of an explicit order confirmation in writing or by fax, e-mail or other means of electronic transmission. The acceptance may however also be made by merely delivering the Goods to the Purchaser, thereby concluding the contract ("Contract").
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

**3 SUPPLY OF GOODS**

- 3.1 The Goods are described in the Seller's specification of technical requirements and/or description ("Specification").
- 3.2 If the Seller agrees that the Goods are to be manufactured in accordance with the Purchaser's Specification, the Seller shall use reasonable endeavours to comply with the Purchaser's specification, but the Seller accepts no liability for the appropriateness or fitness for purpose of the Purchaser's Specification. The Purchaser's Specification shall be viewed as a guide only.
- 3.3 The Seller reserves the right in its sole discretion to make any changes in Specification of the Goods which are required to conform with all and any applicable safety or other requirements or which do not materially affect their quality or performance.

**4 PRICE AND PAYMENT**

- 4.1 The price of the Goods shall be the price set out in the Contract or, if not specified, the price quoted by the Seller or, if not specified and no price has been quoted, the price listed in the Seller's published price list current at the date of the Contract.
- 4.2 The Seller may increase the price of Goods with prior notice to the Purchaser in the event of any increases in payable taxes.
- 4.3 The terms of payment specified in the Contract are to be strictly and punctually adhered to.
- 4.4 Unless otherwise stated in the Contract or under the terms of any quotation or in any price list of the Seller, all prices are quoted by the Seller on an ex-works basis and the Purchaser shall be liable for the cost of carriage, packaging and insurance in full together with any additional expenses, licence fees or duties paid or incurred by the Seller as a result of the delivery of the Goods. If no terms relating to the carriage charges to be charged to the Purchaser are stated in the Contract, such carriage charges will be invoiced to the Purchaser at the Seller's prevailing rate at the time of dispatch.
- 4.5 The price is exclusive of any applicable value added tax, which the Purchaser shall be additionally liable to pay the Seller.
- 4.6 The Purchaser shall make payment to the Seller in respect of all invoices in full at such time and in such currency as referred to in the Contract. If the Contract lacks such specification, the purchase price is due and payable net within 14 days from the date of delivery.

- 4.7 From the due date default interest in the amount of 8% p. a. shall accrue. We reserve all rights to claim further damages for delay.
- 4.8 If it becomes apparent after performance of the Contract on our part that our claim is at risk due to lack of capacity (*mangelnde Leistungsfähigkeit*) of the Purchaser (e.g. insolvency) and/or the Purchaser is late in performing its duties, we are, to the extent permitted by law, entitled to withdraw immediately, without prior warning nor compensation, from the Contract (Art. 214 par. 3 CO). In case of a contract for the production of custom made things (*unvertretbare Sache*), we can declare withdrawal (*Rücktritt*) immediately, at any time and without prior warning nor compensation; .
- 4.9 The Purchaser shall be entitled to offset only insofar as the Purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

**5 DELIVERY**

- 5.1 Delivery shall be ex-works unless stated otherwise on the order acknowledgement and/or invoice.
- 5.2 Delivery is conditional upon timely and proper performance of all duties of the Purchaser. Defences based on non-performance of the Contract are reserved.
- 5.3 The delivery period is agreed upon individually or specified by us in accepting the order.
- 5.4 If we cannot comply with binding delivery dates for reasons that we are not responsible for (*nicht zu vertreten haben*), we will inform the Purchaser of this immediately and simultaneously inform about the expected new delivery date. If the performance is not even possible within the new delivery period, we are entitled to withdraw (*zurücktreten*) from all or part of the Contract. Payments made by the Purchaser will be refunded immediately. Number 13 below remains reserved.
- 5.5 In case of default in acceptance (*Annahmeverzug*) or other breach of duties to cooperate by the Purchaser we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Purchaser at the time of such default or breach of duty to cooperate.
- 5.6 The Seller shall be entitled to deliver the Goods in instalments if this is reasonable (*zumutbar*) for the Purchaser. Failure to make one delivery shall not vitiate the Contract as to other subsequent deliveries.
- 5.7 Goods delivered to the Purchaser which were delivered in accordance with the Contract may at the Seller's sole discretion be accepted for return to the Seller if the Seller is notified by the Purchaser of the proposed return within 30 days of the Goods being delivered. In that event, the Purchaser shall be liable to pay 50% of the invoice price plus the applicable VAT, packaging costs, restocking charges and the costs of carriage to the Purchaser (if any). The costs of returning the Goods to the Seller shall also be borne by the Purchaser.

**6 WARRANTY**

- 6.1 For the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery and improper installation or faulty assembly instructions), the statutory provisions shall apply, unless otherwise specified in the following.
- 6.2 Basis of our liability for defects is primarily our agreement about the quality (*Vereinbarung über die Beschaffenheit*) of the Goods. Descriptions of the Goods that are designated as such (including the manufacturer's descriptions) and that are submitted to the Purchaser or otherwise incorporated in the Contract shall be deemed such an agreement.
- 6.3 If there was no explicit agreement on the quality the statutory provisions shall apply. We assume no liability for public statements made by any manufacturer or other third parties (eg advertising statements).
- 6.4 Precondition for any warranty claim of the Purchaser is the Purchaser's full compliance with all requirements regarding inspection and objection established by art. 201 CO.
- 6.5 If the delivered Goods are defective, the Purchaser may require, at its option, removal of the defect (rectification) or delivery of Goods free from defects (replacement, (*Ersatzlieferung*)). If the Purchaser does not explain as to which of the two rights he chooses, we may set a reasonable time-limit. If the Purchaser remains silent within such time-limit, the right to choose shall be with us.
- 6.6 We are entitled to make subsequent performance or substitute delivery owed conditional on Purchaser paying the purchase price due. The Purchaser however is entitled to withhold an appropriate part of the purchase price relating to the value of the defect.

6.7 Claims of the Purchaser for damages or reimbursement of expenses shall be subject to Sec. 9 and are otherwise excluded.

## **7 OWNERSHIP AND RISK**

7.1 If the Purchaser demands shipment of the Goods the risk of loss or damage to the Goods passes to the Purchaser upon dispatch.

7.2 Unless stated to the contrary, insurance of such Goods shall be the responsibility of the Purchaser as from the date risk passes to the Purchaser.

## **8 RETENTION OF TITLE**

8.1 Until receipt of all payments in full, we are entitled to retain title to the Goods and to take all necessary measures to that effect. In such case, the Purchaser is obliged to cooperate without reservation. Retention of title gives us, in case of breach of contract by the Purchaser including, without limitation, default in payment, the right to take possession of the Goods.

## **9 LIABILITY**

9.1 Where damages of the Purchaser have been caused by the Seller or its representatives with intent or gross negligence (*grobe Fahrlässigkeit*), the statutory provisions shall apply. The same applies for damages from injury to life, body or health due to Seller's or its representative's negligent breach of duty.

9.2 For damages to property (*Sachschäden*) or financial damages (*Vermögensschäden*) caused negligently by Seller or its representatives/auxiliaries (outside the scope of 9.1), Seller shall only be liable in case of a breach of an essential contractual obligation (*wesentliche Vertragspflicht*), but limited to the foreseeable damage that is typical for these kinds of contracts, and in the event of default to 5% of the value of the order.

9.3 In any event, liability rules of the Swiss Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

9.4 To the extent that the Seller is liable only in the amount of typically foreseeable damage pursuant to section 9.2, it shall not be liable for indirect damage, consequential damage caused by a defect, or lost profit.

9.5 The liability of the Seller – independent of the legal grounds – shall be excluded in cases other than those specified above.

9.6 Exclusion of the liability of the Seller shall also apply to the personal liability of salary earners, workers, employees, representatives, auxiliaries and agents of the Seller.

## **10 STATUTE OF LIMITATIONS**

10.1 To the extent permitted by law (Art. 201 par. 4 CO), the general limitation period for claims arising from material defects and defects in title shall be 180 days from delivery.

10.2 However, where the Goods are a thing that has been used in its intended use for a building and caused defects (building materials), the limitation period shall be, in accordance with the statutory provisions, 5 years from delivery (Art. 210 par. 2 CO).

## **11 INSTRUCTIONS AND HEALTH AND SAFETY**

The Purchaser shall comply (and ensure that its employees and agents comply) strictly with all instructions, warnings, data sheets and other material (including without limitation those regarding health and safety) supplied by the Seller with, or in connection with, the Goods and shall, when supplying the Goods, ensure that they are accompanied by the same.

## **12 ASSIGNMENT**

12.1 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

12.2 The Seller may assign the Contract or any part of it to any person, firm or company.

## **13 FORCE MAJEUR**

13.1 **The Seller reserves the right without the assumption of any liabilities to defer the date of delivery or to resign or to withdraw the Contract or to reduce the volume of the ordered goods if, for reasons which are beyond its control, the purchaser is prevented from or delayed in the carrying on of its business or it is unreasonable for the Purchaser to perform its contractual duties. Such reasons include without limitation: Acts of god, governmental actions (including decisions from the national bank with increasing impacts on the purchaser's costs of more than 5%), war or national emergency, acts of terrorism, protests, riots, environmental disasters (fire, flood, storms, etc.), explosions, epidemics, lock-outs, strikes or other labour disputes, any restraints which affect inability or delay in obtaining supplies of adequate or suitable materials, etc.**

13.2 If the event according to no 13.1 above continues for a period in excess of ninety days, the Purchaser shall be entitled to terminate the contract by giving notice to the Seller. Such notice has to be in written form.

## **14 GENERAL**

14.1 Should specific provisions or parts of the contract prove to be invalid or ineffective, the validity of the rest of the contract shall remain unaffected. In such case, the Seller and the Purchaser shall amend the contract in such a manner that the purpose of the invalid or ineffective part is reached to the largest extent possible.

14.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Purchaser will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

14.3 The Contract shall be governed by Swiss material law with the exclusion of the CISG. Exclusive place of jurisdiction shall be Rorschach. The Seller however shall also be entitled to file a lawsuit at the Purchaser's seat/place of residence.

14.4 All confidential information relating to the Seller's business and processes which may come or have come into the possession of the Purchaser in connection with the Contract shall be kept secret and confidential by the Purchaser and shall not be disclosed to any third party without the prior written consent of the Seller.

14.5 Nothing in these Terms and Conditions, where express or implied, shall be deemed to confer any rights on the Purchaser to apply any trade mark, design, patent, copyright or other intellectual property rights owned or licensed by the Seller or any of the Seller's associated companies to any Goods.

## **15 COMMUNICATIONS**

Relevant statements and notifications that are submitted by the Purchaser after conclusion of the Contract (e.g. the setting of deadlines, notifications of defects, notices of withdrawal (Rücktritt) or reduction) need to be in writing.

Status as of March 2015