

# General Terms and Conditions of Sale and Delivery

In case of differences between the German and English version of these General Terms and Conditions of Sale and Delivery or in other cases of doubt, the German version shall prevail.

## § 1 Scope of application, form

(1) All products and services, including customer specific all-in-one solutions/control systems and the configuration of hard- and software components, are provided by Schwab Maschinenbau Technik GmbH (hereinafter referred to as Schwab Maschinenbau) exclusively on the basis of these General Terms and Conditions of Sale and Delivery (hereinafter referred to as sales conditions). These sales conditions shall only apply, if the buyer is entrepreneur (§ 14 BGB - German Civil Code), a legal entity under public law or a special fund governed by public law.

(2) The sales conditions shall apply in particular to contracts for the sale and/or delivery of movable goods, regardless of the fact whether Schwab Maschinenbau produces the goods itself or purchases from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the sales conditions shall also apply as framework agreement for similar, future contracts, in the version valid at the time of order placement of the buyer or in the most recently transmitted version in text form, without Schwab Maschinenbau having to refer to them again in each individual case.

(3) The Sales conditions of Schwab Maschinenbau shall apply exclusively. Deviating, conflicting or supplementary terms and conditions of the buyer shall only become an integral part of the contract, if Schwab Maschinenbau explicitly confirms their validity in writing. This consent requirement shall apply in any case, for example also, if Schwab Maschinenbau being aware of the terms and conditions of the buyer executes delivery without any reservation.

(4) On case-by-case basis, individual agreements made with the buyer (including collateral agreements, amendments and changes) shall in any case take precedence over these sales conditions. Subject to evidence to the contrary, a written contract or rather the written confirmation from Schwab Maschinenbau is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications of the buyer regarding the contract (e.g. setting a deadline, complaint, contract withdrawal or reduction) must be made in writing i.e. in written or text form (e.g. letter, email or telefax). Statutory provisions on form and further evidences, in particular, in case of doubt concerning the legitimation of the person giving a declaration, remain unaffected.

(6) References to the validity of statutory provisions shall only have clarifying significance. Even in the absence of such clarification, the statutory provisions shall apply, unless they are directly modified or expressly excluded in these sales conditions.

## § 2 Conclusion of the contract

(1) The offers of Schwab Maschinenbau are subject to confirmation and non-binding. This shall also apply when Schwab Maschinenbau provides the buyer with catalogues, technical documentation (e.g. technical drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which Schwab Maschinenbau reserves ownership and copyright. Those and other information must not be made accessible or forwarded to third parties.

(2) The order of goods placed by the buyer constitutes a binding offer of contract. Unless otherwise stated in the order, Schwab Maschinenbau is entitled to accept this contractual offer within 14 days after its receipt.

(3) Contractual basis and stipulation for the Schwab Maschinenbau scope of delivery and service is solely the written order confirmation of Schwab Maschinenbau. The order confirmation contains the conclusive and comprehensive description of the Schwab Maschinenbau services. In particular it is the basis for the technical performance features, the technical and commercial details as well as the regulations on use and safety.

## § 3 Delivery period and delay

(1) The delivery period begins with the dispatch of the order confirmation, but only after having received all documentation, permits, releases, clarification of all technical issues required from the buyer and after receipt of the agreed advance payment.

(2) The delivery period is met when the object of delivery has left the plant prior to expiry of the delivery period or when readiness for dispatch has been conveyed.

(3) The delivery period shall be agreed individually or shall be stated by Schwab Maschinenbau upon order confirmation. If this is not the case, the delivery period is approximately 4 weeks after conclusion of the contract.

(4) In the event that Schwab Maschinenbau cannot meet binding delivery periods for reasons for which Schwab Maschinenbau is not responsible (e.g. non-availability of services, labor disputes, in particular strikes and lockouts as well as occurrence of unforeseeable obstacles which are beyond the control of Schwab Maschinenbau), Schwab Maschinenbau shall inform the buyer immediately about

it and simultaneously convey the estimated new delivery period. If the goods or service are also not available within the new delivery period, Schwab Maschinenbau shall be entitled to withdraw from the contract partially or in full; an already rendered consideration of the buyer will be reimbursed immediately. Deemed as case of non-availability of goods or services within the meaning of this clause is in particular if a supplier fails to deliver in time to Schwab Maschinenbau, provided Schwab Maschinenbau has concluded a congruent covering transaction, neither Schwab Maschinenbau nor the supplier are at fault or Schwab Maschinenbau is not obliged to procure on a case-by-case basis.

(5) The occurrence of delay of delivery is determined in accordance with statutory provisions. However, in any case, a reminder is required from the buyer. If Schwab Maschinenbau fails to deliver in time, the buyer can demand a lump-sum compensation for the damage caused by the delivery delay. The lump-sum compensation amounts to 0.5% of the value of the delayed delivery for every completed calendar week of delay. Schwab Maschinenbau retains the right to prove that the buyer did not suffer any damage or much less damage than the lump-sum mentioned before.

(6) If the dispatch of the goods is delayed at the buyer's request, the cost resulting from storage shall be charged to the buyer for every month starting one month after notification of readiness for dispatch, in case of storage in the plant of Schwab Maschinenbau, at least 50 % of the invoice value. However, after setting and unsuccessful expiration of an adequate deadline, Schwab Maschinenbau is entitled to otherwise dispose of the delivery item and supply the buyer with reasonably extended delivery periods.

(7) The rights of the buyer according to § 8 of this sales conditions and the statutory rights of Schwab Maschinenbau, in particular in case of an exclusion of the obligation to perform (e.g. because of impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected.

## § 4 Delivery, transfer of risk, acceptance and default of acceptance

(1) Delivery shall be ex warehouse and this is also the place of performance for deliveries and possible supplementary performance. Upon request and at the expense of the buyer, the goods are sent to another place of destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, Schwab Maschinenbau is entitled to determine the delivery method (in particular the transport company, route and packaging).

(2) The risk of accidental loss or accidental deterioration of the goods shall be transferred to the buyer at the latest upon handover. In the event of sales by dispatch to a place other than the place of performance, the risk of accidental loss or accidental deterioration of the goods as well as the risk of delay shall already be transferred with the handing over of the goods to the freight forwarder, the carrier or any other person or institution charged with execution of the shipment. If acceptance has been agreed, then this acceptance is decisive for the transfer of risk. Furthermore the statutory provisions of the law on the contract for work and services shall also apply correspondingly to an agreed acceptance. It is deemed equivalent to the handover or acceptance, if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to perform an act of cooperation or if Schwab Maschinenbau's delivery is delayed for other reasons for which the buyer is responsible, then Schwab Maschinenbau shall be entitled to demand compensation for herefrom resulting damages including any additional expenditure (e.g. storage costs). Schwab Maschinenbau shall charge a lump sum compensation for this, amounting to 0.5 % of the agreed purchase price per calendar week, starting with the delivery deadline or - in absence of a delivery deadline - with the notification of the readiness for dispatch.

The proof of a higher damage and the statutory claims for Schwab Maschinenbau (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set-off against any further monetary claims. The buyer remains entitled to prove that Schwab Maschinenbau did not suffer any damages at all or only a considerably lower damage than the aforementioned lump sum.

## § 5 Price and terms of payment

(1) Unless otherwise agreed in a particular case, the current prices of Schwab Maschinenbau, valid at the time of contract conclusion shall apply, namely ex warehouse, plus the statutory value added tax. The value added tax at the statutory rate applicable on the date of invoicing shall be stated separately in the invoice.

(2) In case of sale by delivery to a place other than the place of performance the buyer shall bear the transportation costs ex warehouse and the costs of transport insurance, if requested by the buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) Any necessary machine and software adaptations, additional requests and other modifications upon request by the buyer during the commissioning on site

shall be invoiced separately according to actual expenditure on the basis of the charge rate for the provision of technicians and engineers.

Any idle times of the Schwab Maschinenbau technician during the commissioning, for which the buyer is responsible, in particular if preparatory work of the buyer or of another third party participating in the project has not been completed or not fully completed and is not the responsibility of Schwab Maschinenbau, shall be invoiced separately.

(4) The purchase price is due and payable within 14 days from date of invoicing and delivery respectively acceptance of the goods. However, at any time Schwab Maschinenbau is entitled to only carry out the delivery in full or partially against advance payment, even within the scope of an ongoing business relationship. A corresponding reservation shall be stated by Schwab Maschinenbau at the time of order confirmation at the latest.

(5) Upon the expiry of the above mentioned payment deadline, the buyer will be in default. During the payment default, the applicable statutory default interest rate shall be charged on the purchase price. Schwab Maschinenbau reserves the right to enforce any claim for any further damages caused by default. The claim for the commercial maturity interest (§ 353 HGB) against merchants remains unaffected.

(6) The buyer only has right of offset or retention, if his claim has been legally determined, is undisputed or recognized by Schwab Maschinenbau. Furthermore the buyer is only authorized to exercise his right of retention, if and insofar as his counterclaim is based on the same contractual relationship.

(7) If, after conclusion of the contract, it becomes apparent that the claim of Schwab Maschinenbau to the purchase price is at risk because of lack of performance of the buyer (e.g. due to application for the opening of insolvency proceedings), then, Schwab Maschinenbau is entitled to refuse performance according to the statutory provisions, and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In case of contracts for the production of specific items (custom made items), Schwab Maschinenbau can declare its withdrawal immediately; the statutory regulations concerning the dispensability of setting a deadline shall remain unaffected.

#### § 6 Retention of title

(1) Schwab Maschinenbau retains title of ownership to the delivered goods until full payment of all current and future claims of Schwab Maschinenbau resulting from the purchase contract and an ongoing business relationship (secured claim) has been made.

(2) The goods subject to retention of title may neither be pledged to third parties nor be assigned to third parties as security prior to full payment of the secured claims. The buyer has to inform Schwab Maschinenbau immediately in writing, when an application for start of insolvency proceedings is filed or in so far as there are any accesses of third parties (e.g. seizures) to the goods which belong to Schwab Maschinenbau.

(3) If the buyer's behavior is contrary to contract, in particular in case of non-payment of the due purchase price, according to the statutory provisions, Schwab Maschinenbau is entitled to withdraw from the contract and/or to demand the return of goods on the basis of the retention of title. The request for returning the goods does not simultaneously include the declaration of withdrawal from the contract; rather, Schwab Maschinenbau is entitled to only claim the return of the goods and reserve the right of withdrawal. If the buyer does not pay the purchase price due, Schwab Maschinenbau may only assert these rights after having set a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) Until revocation, according to (c) the buyer is entitled to resell the goods subject to retention of title in the proper course of business and/or to process them. In this case the following provisions shall additionally apply:

(a) The retention of title covers the products resulting from processing, mixing or combining the goods at their full value, whereby Schwab Maschinenbau shall be considered to be the manufacturer. If third parties retain ownership rights during the processing, mixing or combining with their goods, then Schwab Maschinenbau shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Otherwise the same shall apply to the new products as applies to the goods delivered subject to retention of title.

(b) Already today, the buyer assigns the claims against third parties resulting from resale of the goods or new product completely or in the amount of the possible co-ownership share of Schwab Maschinenbau, as described in the preceding paragraph, to Schwab Maschinenbau as security. Schwab Maschinenbau accepts the assignment. The obligations of the buyer stated in paragraph 2 shall also apply in view of the assigned claims.

(c) In addition to Schwab Maschinenbau, the buyer remains authorized to collect the claims. Schwab Maschinenbau undertakes not to collect the claim, provided the buyer meets its payment obligations towards Schwab Maschinenbau, there is no deficiency in its capability and that Schwab Maschinenbau does not assert retention of title by exercising a right according to paragraph 3.

However, if this is the case, Schwab Maschinenbau can demand that the buyer discloses the assigned claims and their debtors, provides all details necessary for the collection, hands over the related documents and notifies its debtors (third

party) about the assignment. Furthermore, in this case, Schwab Maschinenbau is entitled to revoke the authorization of the buyer to resell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds the claims of Schwab Maschinenbau by more than 100%, Schwab Maschinenbau shall release securities at its discretion if requested by the buyer.

#### § 7 Buyer's claims due to defects

(1) If not subsequently specified otherwise, the statutory regulations shall apply for the rights of the buyer regarding material defects and defects of title (including wrong and short shipment as well as improper installation or deficient installation instruction). In all cases, the special statutory provisions in case of final delivery of unprocessed goods to a consumer, even if the consumer further processed them (recourse against supplier according to § 478 BGB), shall remain unaffected. Claims regarding recourse against suppliers are excluded, if the defective goods were further processed by the buyer or another contractor e.g. by incorporation into another product.

(2) Basis for the liability for defects of Schwab Maschinenbau is first and foremost the concluded agreement regarding the condition and characteristics of the goods. All product descriptions and manufacturer specifications which are the subject matter of the individual agreement or which have been publicized by Schwab Maschinenbau at the time of contract conclusion represent the agreement about the condition of the goods.

Liability is excluded for defects caused by programs occurring only when used for the application intended by the buyer, especially for those, about which Schwab Maschinenbau did not know at the time of creation/acceptance or which were not tested.

(3) In the absence of any agreed characteristics and quality of the goods, the existence or non-existence of a defect shall be determined according to the statutory regulations (§ 434, (1), 2 and 3 BGB). Schwab Maschinenbau does not assume any liability for any public statements made by the manufacturer or other third parties, which the buyer did not point out to Schwab Maschinenbau as deciding factors for a purchase.

(4) Under no circumstances shall Schwab Maschinenbau be liable for damages, resulting from any of the following reasons: unsuitable and improper use, incorrect assembly and/or start-up by the buyer or a third party, normal wear and tear, incorrect or inappropriate handling, unsuitable operating material, substitute material, deficient construction work, chemical, electrochemical or electrical influences, provided they are not attributable to the fault of Schwab Maschinenbau.

(5) The buyer's defect claims presuppose that the buyer has fulfilled his statutory obligations for inspection and notification of defects (§§377, 381 HGB). In case of building material and other goods destined for incorporation or further processing, the inspection always has to take place directly before processing. Should a defect become apparent upon delivery, during the inspection or at any later time, Schwab Maschinenbau has to be notified about it immediately in writing. In any case, obvious defects have to be reported in writing within five working days after delivery and in case of defects that have not been detected during inspection the same period of time shall apply calculated from the time of detection. If the buyer fails to properly inspect and/or to report the defect, the liability of Schwab Maschinenbau for the defect which was not at all, respectively not in a timely manner or not properly reported is excluded according to the statutory provisions.

(6) If the delivered item is defective, Schwab Maschinenbau may initially choose whether to provide supplementary performance by removal of the defect (rectification) or by delivering an item which is free from defects (replacement delivery). The right to refuse the supplementary performance under statutory requirements remains unaffected.

(7) Schwab Maschinenbau is entitled to make the owed supplementary performance dependent on the payment of the due purchase price by the buyer. However, the buyer is entitled to withhold a reasonable part of the purchase price in proportion to the defect.

(8) The buyer has to give Schwab Maschinenbau the opportunity and time required for the owed supplementary performance, in particular to hand over the rejected goods for inspection purposes. In case of a replacement delivery, the buyer has to return the defective items to Schwab Maschinenbau according to the statutory provisions. The supplementary performance neither includes the disassembling of the defective item nor the re-assembling, provided Schwab Maschinenbau was not initially obliged to install.

(9) The expenses required for the purpose of inspection and supplementary performance, in particular transportation, travel, labor and material costs as well as disassembly and re-assembly costs, where applicable, are borne or reimbursed by Schwab Maschinenbau in accordance with the statutory provisions, if there is an actual defect. Otherwise Schwab Maschinenbau can request that the buyer reimburses the costs resulting from the unjustified request for corrective action (in particular inspection and transportation costs), unless it was not recognizable for the buyer that there was no defect.

(10) In urgent cases e.g. in case of endangerment of operational safety or to avert disproportional damages, the buyer is entitled to remedy defects itself and

demand reimbursement from Schwab Maschinenbau for the expenses objectively necessary for this.

Schwab Maschinenbau shall be informed about this self-remedy immediately, if possible in advance. The right of self-remedy shall not apply, if Schwab Maschinenbau is entitled to refuse the supplementary performance according to statutory provisions.

(11) If the supplementary performance is unsuccessful or a reasonable deadline set by the buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the buyer can withdraw from the contract or reduce the purchase price. However, the right of withdrawal does not exist with an insignificant defect.

(12) Claims of the buyer for damage compensation or reimbursement of futile expenses also only exist for defects according to § 8 and shall otherwise be excluded.

#### **§ 8 Other liability**

(1) Unless otherwise stipulated in these sales conditions including the subsequent provisions, Schwab Maschinenbau is liable in case of any breach of contractual or non-contractual obligations in accordance with the statutory provisions.

(2) Schwab Maschinenbau is liable to compensate damages - irrespective of the legal grounds - within the scope of fault-based liability in case of intent and gross negligence. In the event of simple negligence Schwab Maschinenbau is only liable, subject to statutory limitations of liability (e.g. care exercised in its own business, insignificant breach of duty):

(a) for damages resulting from injury to life, body or health

(b) for damages resulting from the breach of an essential contractual obligation (obligation, whose fulfillment enables the proper accomplishment of the contract in the first place and the observance of which the contracting party regularly trusts and is entitled to expect); however, in this case the liability of Schwab Maschinenbau is limited to the reimbursement of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 above also apply in case of breach of duty by or in favor of people whose faults Schwab Maschinenbau shall be responsible for according to statutory provisions. They do not apply, if Schwab Maschinenbau has concealed a defect fraudulently or provided a guarantee as to the quality and characteristics of the goods and for claims of the buyer according to the product liability act.

(4) In the event of a breach of duty that is not attributable to a defect, the buyer can only withdraw or give notice, if Schwab Maschinenbau is responsible for the

breach of duty. A free right of cancellation of the buyer (in particular according to §§ 650, 648 BGB) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

#### **§ 9 Statute of limitation**

(1) By way of derogation from § 438, (1) No. 3 BGB, the general limitation period for claims arising from defects in quality and title shall be one year as of delivery. If an acceptance is agreed, the limitation period shall begin with the acceptance.

(2) However, if the goods are a building or an object which has been used for a building in accordance with its usual use and which caused its defectiveness (building material), the limitation period shall be five years from delivery in accordance with the statutory provisions (§ 438, (1) No. 2 BGB). Other statutory special provision regarding the limitation (in particular § 438, (1) No.1 sec.3, §§ 444, 445b BGB) remain unaffected.

(3) The above-mentioned limitation periods of the sales convention shall also apply to the buyers contractual and non-contractual damage claims, which are based on a defect of the goods, except if the use of the standard legal limitation period (§§ 195, 199 BGB) will result in a shorter limitation period in the individual case. However, damage claims of the buyer according to § 8, (2), 1 and 2a as well as per the product liability law shall exclusively fall under the statute of limitation according to the statutory limitation periods.

#### **§ 10 Choice of law and legal venue**

(1) For these sales conditions and the contractual relationship between Schwab Maschinenbau and the buyer the law of the Federal Republic of Germany shall apply excluding international uniform law, in particular UN sales law.

(2) If the buyer is merchandiser in the sense of the German "Handelsgesetzbuch" ("Code of Commercial Law") or a legal entity under public law or a special fund governed by public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Schwab Maschinenbau's place of business. The same applies, if the buyer is entrepreneur in the sense of § 14 BGB. However, Schwab Maschinenbau shall in all cases be entitled to file a suit at the place of performance of the delivery obligation according to these sales conditions or an overriding, individually negotiated term or at the general place of jurisdiction of the buyer. Overriding statutory provisions, in particular about exclusive jurisdiction remain unaffected.