

# **General Terms and Conditions of Trade**

of SCHULLER Consulting GmbH, Gewerbestraße 2, A-4063 Hoersching

## **1. Validity of Terms and Conditions of Trade**

Deliveries, services and offers by SCHULLER Consulting GmbH are made exclusively on the basis of these General Terms and Conditions of Trade, which are either requested over the office or able to be called up over the Website [www.diplomat.at](http://www.diplomat.at) at any time. Consequently, they will also be applicable to all future trade relations even if not expressly agreed upon once again. At the latest upon receipt/acceptance of the goods or services, these Terms and Conditions will be deemed as accepted. Differently reading conditions of the customer, which are not expressly in writing recognized are always not binding for SCHULLER Consulting GmbH. Verbal, telegraphic, telephone or other electronic declarations are effective only after written confirmation.

## **2. Offers and Conclusion of Agreements**

2.1. Our offers are without obligation and not binding.

2.2. Customer will be bound to his order for 3 weeks. In order to be legally valid, orders require performance of the delivery by us or written confirmation by us, which will be deemed as granted unless we refuse acceptance within 3 weeks after receipt of order at Hoersching.

2.3. Subsidiary agreements, modifications and amendments will be valid only if confirmed by us in writing. The same will be applicable to the warranty of qualities.

## **3. Prices**

All prices are net prices exclusive of VAT, which will have to be paid additionally by Customer in the respective statutory amount. Prices are ex works Hoersching, exclusive of freight, packing, insurance and installation.

## **4. Delivery Time**

4.1 Agreements regarding delivery dates or -periods require written form. Unless agreed otherwise, delivery dates or -periods will not be binding.

4.2 Even with binding agreed deadlines and dates, we will not be responsible for delays in deliveries and services due to force major and due to events making delivery considerably more difficult or impossible for us including, among other things, difficulties regarding procurement of materials occurred later, operating troubles, strike, lockout, staff shortage, shortage in means of transport, official orders, etc. even if these circumstances occur with our suppliers, their sub-suppliers or transport agents. Such delays will entitle us to postpone delivery and/or performance for the duration of the hindrance plus an appropriate starting time, or to wholly or partially cancel the agreement due to the part not yet performed.

4.3 Should such hindrance last for more than 3 months, then Customer will, after having granted an appropriate extension of the original period, be entitled to cancel the agreement with regard to the part not yet performed. Should the delivery period be prolonged or should we become free of its obligation, then Customer will not be able to derive any damage claims out of this.

4.4 We will at any time be entitled to make partial deliveries and part performances.

## **5. Dispatch and Passing of Risk**

5.1 Packing and dispatch will be effected at Customer's expense. Upon Customer's express request and at his expense, the delivery will be insured against breakage-, transport- and fire damage.

5.2 The risk will pass to Customer upon conclusion of the agreement.

## **6. Warranty and Liability**

6.1 Seller will have to be informed in writing about defects of new pieces of equipment delivered by us no later than within 8 days after receipts of the goods.

6.2 In case of hidden defects, complaints may only be made immediately after detection thereof, but no later than three months after receipt of the goods.

6.3 Should a third party have repaired, or tried to repair, the delivered goods, then any complaint will be excluded. The same will be applicable should Customer make incompetent interventions to the delivered goods.

6.4 Complaints will have to be made in writing. Should we not be informed in good time in accordance with the above paragraphs about possible defects of the goods, then all and any warranty claims will be excluded.

6.5 Should goods delivered by us be defective or should faults be discovered within the warranty period, then Purchaser will only have a claim to correction or replacement free of charge within an appropriate period, whereby SCHULLER Consulting GmbH will in any case be entitled to deliver a replacement instead of correction. There will be no other or further claims, in particular to diminution of price, on whatever legal grounds, unless separately agreed upon with us. Compensation of possible consequential damages will be limited to direct damages up to half of the respective order's invoice value; Customer will only be entitled to this if our or its employees can be blamed for gross negligence or wrongful intent.

6.6. In case of most careful and most extensive examination, a complete absence of defects can not be guaranteed by software programs according to the contemporary state of technology. In this respect overtakes SCHULLER Consulting GmbH no liability for the completely correctness and faultless by the customer acquired software programs. Conventionally sticks SCHULLER Consulting GmbH neither for escaped profit no for expected, but not occurred economies, damages and claims this against the customer, indirect damages and consequential damages as well damages of recording facts. Claim for compensation in may fell negligence are excluded, equally a liability for damages, through unauthorized operations third may result.

6.7 Damage claims will only exist in case of wrongful intent or gross negligence and will be limited as to their amount by the invoiced amount.

6.8 Sale of used pieces of equipment will be effected subject to exclusion of any warranty- and liability claims of Customer's.

6.9 Possible recourse claims pursuant to Section 12 PHG (Product Liability Act), as well as any exclusion of liability in accordance with Section 8 No. 3 PHG, are excluded.

6.10 All warranty- and liability claims resulting from this contractual relationship are finally settled in Item 6. Over and above that, Customer will not be entitled to any claims whatsoever.

## **7. Reservation of Proprietary Rights**

7.1 Until complete payment of the purchase price, we will reserve ownership of the delivered goods.

7.2 Pawning or transfer of ownership by way of security of the conditional goods will not be admissible. In case of seizure of the conditional goods by third parties, in particular in case of levy of execution, Purchaser will immediately have to inform us in writing and to inform the third party of our reservation of title. Purchaser will be obligated to bear all costs expended for defense against the seizure and for recovery of the delivered item as far as such costs may not be attained from the third party.

7.3 Up to complete performance of Customer's obligations towards us, Customer will assign for security to us his claim resulting from resale of goods delivered by us. Upon our request, Customer will have to inform us about the debtors of the assigned claims, to inform debtors of such assignment, and to keep the proceeds from sale of the conditional goods separate and in our name. Provided that our total claims from such assignments are secured beyond all doubt at more than 120%, we undertakes to release the surplus receivables upon Customer's request by our choice.

7.4 By processing of the conditional goods, Customer will not acquire ownership of the new goods; processing will be effected by Customer for SCHULLER Consulting GmbH. Customer undertakes to keep these goods free of charge. In case of processing or mingling with goods owned by a third party, we will acquire co-ownership of the new goods in proportion of the invoice value of goods delivered by us to the invoice value of the remaining goods.

7.5 In case of Customer's acting in violation of the Agreement, in particular in case of default in payment, SCHULLER Consulting GmbH will be entitled to reclaim the provisional goods at customer's expense. Such recovery claim, as well as levy of execution of the goods by SCHULLER Consulting GmbH, will not constitute a cancellation of the Agreement.

7.6 As soon as he has stopped payments, in fact immediately after announcement of the cessation of payments, Customer will be obligated to send to SCHULLER Consulting GmbH a list of the still existing provisional goods, even if processed, and a list of claims towards third party debtors plus copies of invoices. Amounts received from assigned claims will have to be kept separately until bank transfer.

## **8. Transfer Prohibition**

All claims of Customer's resulting from this Agreement will be unassignable.

## **9. Payment, Default, Set-Off**

9.1 Unless agreed otherwise, all payments will have to be made immediately upon receipt of invoice without deductions.

9.2 Acceptance of cheques or bills of exchange will only be effected for payment purposes. Discount- and bank costs as well as costs of bills of exchange will have to be borne by Customer.

9.3 In case of default in payment, refund of all reminder- and collecting charges, as well as interest in the amount of 2% above the Austrian National Bank's respective discount rate, will be deemed as agreed upon. Incoming payments will be set-off first against the costs, then against the interest and last against the main obligation to be performed.

9.4 Non-compliance with payment conditions or circumstances suitable to impair Purchaser's credit worthiness will result in maturity of all of Seller's claims. It will furthermore entitle Seller to perform outstanding deliveries against advance payment only or to cancel the Agreement, and/or to demand compensation for damage due to non-performance.

9.5 Customer will not be entitled to withhold payment or a part thereof for counterclaim reasons or to set-off counterclaims, including such resulting from complaints.

## **10. Exchange Equipment/Trade-In**

Should used pieces of equipment be traded in by SCHULLER Consulting GmbH for complete or partial covering of the purchase price, then Purchaser will be obligated to inform us of any defects of the pieces of equipment traded in. Purchaser guarantees that the pieces of equipment only have such defects as expressly announced.

Should it turn out within a six-month-period that the pieces of equipment have defects not announced to us, then we will be entitled to return such pieces of equipment and to invoice Customer the trade-in value thereof.

## **11. Applicable Law, Place of Jurisdiction, Severability**

11.1 The laws of the Republic of Austria will be applicable to all legal relationships of the parties; application of international agreements, in particular of the UN Purchase Law Agreement of 14.4.1980, is excluded.

11.2 The respective court having jurisdiction over the subject-matter in Linz, Austria, is agreed upon as exclusive place of jurisdiction.

11.3 Should one or several of the above provisions be or become invalid or impracticable, then the validity of the remaining provisions will remain unaffected. Rather, the invalid and/or impracticable provision will have to be replaced by such valid or practicable provision as will realize to the widest possible extent the economic purpose pursued by the former.