

**GENERAL CONDITIONS OF SALE, DELIVERY AND PAYMENT OF  
Schmidt international B.V.  
Established in Ootmarsum (hereafter: Schmidt international)**

**Article 1  
GENERAL**

- a. All agreements between the parties only enter into force after written confirmation by Schmidt international. The relationship between the contracting party of Schmidt international (hereafter: 'contracting party') and Schmidt international entirely and exclusively governed by these conditions, unless explicitly agreed otherwise in writing. General conditions drawn up by the contracting party are not applicable in so far as they are in conflict with these conditions, unless explicitly agreed in writing. Undertakings given or agreements made by representatives or other personnel employed by Schmidt international which differ from these conditions or other agreements concluded are not binding for Schmidt international, unless they have been confirmed by Schmidt international in writing. The contracting party may not derive any rights from any agreed deviations to these conditions for future transactions.
- b. All offers made by Schmidt international, regardless as to whether these have been made in a separate offer or in official lists or inventories, are without obligation, with the proviso that each offer only results in a binding agreement after written confirmation as referred to in Article 1a, unless explicitly stated otherwise in the offer; in that case the offer is valid for one month. If no agreement is concluded, Schmidt international is entitled to receive compensation from the party who has requested the offer for all costs incurred in preparing the offer. All prices offered are exclusive of turnover tax, unless explicitly stated or agreed otherwise.
- c. The drawings, models, designs, descriptions, calculations, samples and suchlike made available by or on behalf of Schmidt international remain the property of Schmidt international and must be returned immediately by the contracting party if the agreement is not concluded. Schmidt international reserves all intellectual property rights in respect of these items. The documents issued by or on behalf of Schmidt international may not be reproduced, publicized or made available in any way to third parties or used in any other way either in their entirety or in part without the explicit written permission of Schmidt international. The drawings, models, designs, samples, calculations and suchlike made available by the contracting party will be kept by Schmidt international for six months thereafter for the benefit of the contracting party.
- d. The contracting party guarantees the accuracy of the information, specifications, calculations etc. made available by it. The contracting party indemnifies Schmidt international against all claims from third parties that may be made against Schmidt international based on infringement of intellectual property rights arising from the information, models, images, etc. made available by the contracting party. The contracting party guarantees the accuracy of the information provided. Schmidt international may assume the correctness of it. Schmidt international is not accountable for shortcomings in the goods of Schmidt international as a result of incorrect or incomplete information etc. from the contracting party. The contracting party is liable for damage resulting from the fact that the information provided by the contracting party was incorrect or incomplete.
- e. Possible deviations of these conditions need to be confirmed explicitly in writing. Such deviations cannot be relied on by later legal relations.
- f. In case of incompatibility between the provisions of the agreement and the text of these conditions, the provisions of the agreement prevail.
- g. When certain provisions of the agreement and/or these conditions are invalid or not binding due to incompatibility with mandatory law, all other provisions in the contract besides this provision will stay in force, and parties will in good communication replace the invalid or not binding provision by a provision which is valid and binding, of which the juridical consequences of the invalid and not binding provision, taking into consideration the nature and scope of this agreement in regards with these conditions, as approximate as possible.

**Article 2:  
DELIVERY**

- a. Delivery will be made at the place and time stated in the offer or confirmation of the order. If no place or time of delivery has been stated in the confirmation of the order, or if there is no confirmation of the order, delivery will be made ex works within 60 days of concluding the agreement. Delivery is Ex Works (Incoterms 2012). Delivery will be made in any case immediately prior to the moment at which a start is made in loading the goods in a mode of transport made available by or on behalf of the contracting party or by Schmidt international.
- b. The term of delivery will commence on the latest of the following dates:
  - a. the day on which the agreement is concluded;
  - b. the day of receipt by Schmidt international of documents, information and suchlike that are necessary for the performance of the assignment, such as the necessary working drawings approved by Schmidt international;
  - c. the day of receipt by Schmidt international of that which must be paid in advance under the terms of the agreement before work commences.The delivery deadline is based on the working conditions applicable at the time of concluding the agreement. If any delay occurs as a consequence of changes in the above-mentioned working conditions, the delivery deadline will be extended for as long as is reasonable, taking all circumstances into account.
- c. Unless explicitly agreed otherwise, Schmidt international is entitled to deliver the goods it is required to deliver in phases. Each delivery will then be invoiced separately. Schmidt international reserves the right to deliver some or all of the goods it is required to deliver before the agreed delivery time.
- d. If the contracting party does not take delivery of the goods, or does not take delivery of them in time or at the agreed place because the contracting party does not lend the necessary cooperation or prevents delivery in some other way, the contracting party will be in default by operation of law and Schmidt international will be entitled to transport the goods from the place where and from the time when the delivery should take place and to store them at a place designated by Schmidt international at the expense and risk of the contracting party. In that case Schmidt international is entitled to compensation for the loss it incurred. This compensation will amount to at least 10% of the net invoice amount, without prejudice to the right to demand further compensation relating to storage of the goods. If the party has not taken delivery of the goods within two months of the goods being presented for delivery, Schmidt international will be entitled without judicial intervention to dissolve the agreement on the basis of which the delivery takes place and to sell or take back the goods. In that case the contracting party will owe compensation amounting to the lost profit and all costs incurred in this respect. This compensation will amount to at least 20% of the net invoice amount, without prejudice to the right to demand by Schmidt international for further compensation.
- e. The risk of loss, damage or the total or partial destruction of the goods to be delivered will be at the expense of the contracting party from the moment of delivery or from the moment at which and the place where the delivery must be made under the terms of the agreement.
- f. Schmidt international makes the greatest possible effort to comply with the delivery time, however exceeding the delivery time will never result in liability on the part of Schmidt international for the direct or indirect consequences of a late delivery.
- g. The costs relating to the delivery of goods, including at any rate the costs of transport, insurance, obtaining the necessary documents and licenses as well as packaging, hoisting, loading and unloading work, will be at the expense of the contracting party.
- h. Trade terms like CIF, C&F, FOB etc. will be interpreted according to the rules of Incoterms 2012 of the International Chamber of Commerce.

**Article 3:  
PRICE CHANGES**

Schmidt international reserves the right to increase the agreed prices if, after the agreement has been concluded but before the moment the agreement is performed, changes to one or more cost price factors give rise to such increases. Schmidt international will inform the contracting party promptly in writing if and to what extent it will exercise the above-mentioned right to make price changes. If the price changes lead to a price that differs by more than fifteen per cent (15%) from the agreed price, the contracting party has the competence to dissolve the agreement in writing. This has to be done promptly and in writing.

**Article 4:  
GUARANTEE**

- a. Apart from the fact that the goods sold will comply with the standards applicable at Schmidt international for these products, Schmidt international will only provide a guarantee for a period of up to 12 months from the date of delivery if this has been agreed in writing with the sale.
- b. A guarantee given only covers defects to the goods delivered, caused by incorrect processing, construction or manufacture of the goods delivered, or through the use of defective materials, raw and ancillary materials by Schmidt international. Defects that are entirely or partially the consequence of a manner of processing, construction or manufacture stipulated by the contracting party or entirely or partially caused by a supplier, adviser, subcontractor or assistant stipulated by the contracting party are not covered by the guarantee.

- c. Defects that are entirely or partially the consequence of:
  - a. improper handling by the contracting party;
  - b. improper storage by the contracting party, causing the delivered goods to be exposed to the effect of dampness, soiling, high and low temperatures, shocks and vibrations or excessively prolonged storage;
  - c. wear and tear unless considered excessive in view of the use made of the delivered goods that is foreseeable by Schmidt international;
  - d. the use, processing or treatment of the goods delivered other than in accordance with the guidelines and specifications issued with the delivered goods or other than in accordance with the purpose for which the goods have been delivered;
  - e. non-compliance with any government regulation; are not covered by the guarantee.
- d. If and in so far as in respect of the goods delivered a supplier is bound to any form of guarantee towards Schmidt international, the guarantee provided by Schmidt international will never extend further than the guarantee provided by this supplier.
- e. Schmidt international is entitled to remedy the defect to the goods delivered, by choice of Schmidt international:
  - a. repairing it free of charge or replacing the goods at its discretion; or
  - b. refunding the purchase price at its own discretion, after which Schmidt international is entitled to retrieve the goods.
 If Schmidt international decides to replace all or part of the goods delivered or to refund all or part of the purchase price, Schmidt international may deduct the benefit of the temporary use by the contracting party. Under no circumstances does this guarantee extend further than the delivery of new parts and the labour costs of the particular mechanic(s). Travel and subsistence expenses of the mechanic are explicitly not covered by this guarantee. If Schmidt international replaces parts to comply with its guarantee obligations, the replaced parts will be taken back or become Schmidt international property.
- f. The agreed guarantee term is not extended as a result of the replacement or repair of the goods delivered under the terms of these guarantee provisions. During the period in which the contracting party fails to comply with any of its obligations under the terms of this agreement or any other agreement relating to it, Schmidt international is not obliged to provide any guarantee.
- g. All liability towards the contracting party in respect of a defective delivery is limited at all times to the above-mentioned guarantee obligations.

Article 5:

LIABILITY AND INDEMNITY

- a. Schmidt international can never be held liable for damage caused by incorrect and improper use of the goods. Incorrect use means at least the use for other purposes than where the delivered product is produced for.
- b. Schmidt international can never be held liable for damage, caused by whatever reason, except so far as the law or these conditions provide otherwise and except where there is no not legally excludable intent or gross negligence. This concerns direct and indirect damage, consequential damage, wasted profits, other loss of profit of the contracting party and damage caused by liability of the contracting party towards third parties. If intent or gross negligence is involved the burden of proof is on the contracting party.
- c. Schmidt international will make experts available for making recommendations and providing technical advice concerning the use of its goods by the contracting party, however without Schmidt international giving any guarantee for specific results or accepting liability for loss of any nature whatsoever and of any extent which might arise directly or indirectly from recommendations, technical support or the use of the goods delivered. The contracting party must therefore establish by means of its own investigation beforehand whether the goods delivered by Schmidt international are suitable under all circumstances and also in the longer term for the purpose for which it wishes to use them.
- d. If Schmidt international can be held liable despite the requirements in the preceding provisions, this liability is at all times, by choice of Schmidt international, limited to:
  - a. the net invoice amount in respect of the transaction concerned; or
  - b. at most the amount for which Schmidt international has taken out insurance for such a loss-causing occurrence and for which actual cover is provided minus the deductible own risk.
- e. The contracting party indemnifies Schmidt international against any claims that third parties may make against Schmidt international regarding the execution of agreements between Schmidt international and contracting party, whether these claims arise from law or under any agreement.

Article 6:

COMPLAINTS, COMPENSATION

- a. Complaints must be submitted immediately in writing direct to Schmidt international, however no later than fourteen days after receipt of the goods, enclosing documentary evidence, samples, a list of production- and invoice numbers etc. The period stated in this article counts as an expiry period.
- b. In the case of well-founded complaints, Schmidt international is only obliged to replace the goods delivered. Under no circumstances whatsoever will Schmidt international be obliged to pay compensation, either to the contracting party or to third parties.
- c. Under no circumstances does the contracting party have the right, by virtue of the complaint submitted to Schmidt international, to postpone any payment or apply a discount on the purchase price payable by it. Returned goods will only be accepted by Schmidt international after it has given written approval and such return of goods will be at the expense and risk of the contracting party. This approval is without prejudice to the rights of Schmidt international.

Article 7:

PAYMENT

- a. all agreed prices are exclusive of any turnover tax payable thereon. All settled prices are excluding transportation costs. If payment is made by means of negotiable instruments, the payment will only be deemed to have been made once the amount to be paid has been transferred to Schmidt international's bank account or has been paid in cash.
- b. The contracting party is obliged to execute agreed payments within 14 days after the invoice date.
- c. Unless explicitly agreed otherwise, all prices are quoted in Euro's and payment is due in Euro's.
- d. If the contracting party fails to fulfil its payment obligations on the agreed due date, contracting party is considered to be by that very fact in default, without Schmidt international having to send any notice or warning, in which case any outstanding payment by the contracting party is immediately payable.
- e. Payment of the purchase price must be made no later than on the agreed due date. If the payment term is exceeded the contracting party will owe interest of 1% per month on the outstanding amounts due, counting from the due date, where a part of a month is considered a whole month, without prejudice to the other rights accruing to Schmidt international.
- f. Furthermore, all debt collection and other costs incurred by Schmidt international due to late payment, both judicial and extrajudicial, will be at the expense of the contracting party.
- g. In the case that the contracting party fails to make payment or if there is serious doubt about its creditworthiness, Schmidt international is entitled at its discretion to:
  - a. to refrain from making any further deliveries; or
  - b. postpone any further deliveries until the amount due has been paid in full, and also sufficient security for the payment of future deliveries has been provided by the contracting party.
 Refusal by the contracting party to provide the requested security will entitle Schmidt international to consider the agreement dissolved, without prejudice to its rights to compensation for costs such as loss of profit.
- h. Setoff by the contracting party is never allowed.
- i. The full purchase price or contract sum is in any case immediately payable if payment of an agreed instalment has not been made promptly on the agreed due date, if the contracting party goes into liquidation, applies for a moratorium or application is made for it to be placed under guardianship, if any attachment is levied on goods or claims of the contracting party and when this contracting party dies, is wound up or is dissolved.
- j. If after the agreement has been concluded new working drawings, construction calculations, etc. need to be drawn up by Schmidt international as a result of changes in the building plans and construction drawings notified by the contracting party, the costs arising from this will be charged in full to the contracting party.
- k. The costs of making copies or extra prints of technical specifications, drawings, etc. requested by the contracting party are at the expense of the contracting party. The contracting party guarantees that no information concerning the manufacturing or construction methods used by Schmidt international will be used, copied, shown or disclosed to third parties without Schmidt international's prior explicit permission.
- l. All costs associated with payment, also including foreign exchange risk and providing security, are borne by the contracting party.

Article 8:

TRANSFER OF OWNERSHIP

- a. The right of ownership only passes to the contracting party once it has fulfilled the relevant financial obligations to Schmidt international in full. However, the contracting party is entitled to take possession of the goods as part of its normal business operations. It is obliged to inform Schmidt international immediately if third parties assert rights in respect of goods still in Schmidt international's ownership. In the cases referred to in the last sentence of Article 9, Schmidt international is furthermore irrevocably authorized, without notice of default being required, to remove the goods that have remained in its ownership or have them removed from the place where they are located. Costs for this be borne by the contracting party and the contracting party is obliged to lend its cooperation with this. Schmidt international is entitled either to retain the goods until the amount due, including interest, costs and compensation, has been paid in full, or to sell the goods to third parties, in which case the net proceeds will be deducted from the total amount payable by the contracting party.
- b. If Schmidt international can assert claims against the contracting party in respect of which a retention of title is relied on, as well as claims against the contracting party in respect of which no retention of title is claimed, a payment by the contracting party will be used first to settle the claim in respect of which no retention of title has been claimed.  
If the claims in respect of which the ownership is subject to retention of title have been paid in full by the contracting party, Schmidt international will retain at its discretion a no possessory pledge at the moment it transfers the ownership of the goods delivered, to serve as security for the current and the future claims of Schmidt international against the contracting party.  
The contracting party is obliged to lend its cooperation in establishing this no possessory pledge, non-cooperation by the contracting party with this will subject it to an immediately due and payable fine that is not susceptible for discount or setoff, of 50% of the net invoice amount for the delivered goods of which the ownership is retained.

Article 9:

FORCE MAJEURE

- a. If Schmidt international is unable for reasons of force majeure to deliver the goods within the agreed delivery period, Schmidt international is entitled at its discretion, depending on whether or not a part of the assignment has already been performed, to suspend performance of all or part of the agreement or to cancel all or part of the agreement, merely by giving notice to the contracting party and without judicial intervention. In all these cases Schmidt international is not bound to pay any compensation, whereas the contracting party is obliged to pay for any part already delivered to it, and furthermore to take delivery of and pay for any part that is ready for delivery but not yet delivered. In the case of suspension of the performance of the agreement, the contracting party will remain obliged to take delivery of and pay for the goods yet to be delivered to it.
- b. Force majeure is understood to mean in these general conditions: mobilization, war, threat of war, riots, the imposition of quotas, export prohibitions, requisitions and other obstructive measures by both this country's and foreign governments, fire, explosion, strikes, traffic congestion, a lack of means of transport, flooding, natural disasters, exclusion of Schmidt international or its employees and unforeseen circumstances or other cases of force majeure, both in this country and abroad, as a consequence of which compliance with the agreement can no longer reasonably be demanded of Schmidt international. Force majeure also exists for Schmidt international if as a consequence of the above-mentioned circumstances or for any other reason the suppliers of Schmidt international have not delivered the above-mentioned goods, materials, parts, raw materials or auxiliary materials ordered in time by Schmidt international, or not within the agreed period of time, or the relevant agreement has been cancelled for whatever reason.

Article 10:

DISSOLUTION

Cancellation by the contracting party, other than through termination as referred to in Book 6, Section 265 of the Civil Code, is only possible if Schmidt international gives its permission. If Schmidt international gives its permission for cancellation, the contracting party will owe compensation of 20% of the contract sum/purchase sum, unless the actual costs incurred plus the loss of profit exceed the amount calculated in this manner, in which case a higher percentage must be paid.

Article 11:

APPLICABLE LAW AND COMPETENT COURT

All agreements, regardless of the place of conclusion or delivery, will be governed exclusively by Dutch law.  
All disputes in connection with the agreement and subsequent commitments will be brought before the competent court in Almelo.  
For translations of the general conditions, the original Dutch text is binding.