

General Terms and Conditions (Sale)

Schulte - Elektrotechnik GmbH & Co. KG

1. Scope of application

These General Terms and Conditions of Sale (GTC) form the basis of all our contracts for the delivery of goods. They apply to entrepreneurs, legal entities under public law and special funds under public law.

Our GTC apply exclusively. Conflicting or deviating terms and conditions shall only be binding if we expressly recognise them in writing.

2. Conclusion of the contract

Our offers as well as our details and information are subject to change and non-binding.

If an order confirmation is issued, this alone shall be decisive for the scope of our services. If no written order confirmation is issued, our quotation shall be authoritative. Custom-made products, i.e. goods procured at the customer's request or manufactured in accordance with the customer's request, can no longer be cancelled after receipt of the order confirmation and are excluded from exchange and/or credit. Verbal collateral agreements shall only become an effective part of the contract if they are confirmed by us in writing.

3. Prices

Our prices are quoted net in EUR ex works Lüdenscheid, excluding packaging, insurance, and shipping. Prices are charged in accordance with the price list applicable to each product group. For custom-made products, the agreed price shall apply. Our invoices are payable within ten days from the invoice date, unless otherwise agreed. This also applies to partial deliveries. If our performance is to be rendered more than eight weeks after the conclusion of the contract, we are entitled to make a reasonable price adjustment of up to 10% in the event of a significant change in our processing costs, in particular due to changes in the cost of raw materials, wages, freight rates, energy costs, taxes, customs duties, etc. If the change involves a price adjustment of more than 10%, the purchaser is obliged to negotiate an appropriate price adjustment with us. If no agreement on a price adjustment is reached or if negotiations fail, we are entitled to withdraw from the contract. Set-off is only permitted with claims that are undisputed or have been legally established. The prohibition of set-off does not apply if the counterclaim used for set-off concerns costs for remedying defects or completion.

4. Default of payment

We shall be entitled to demand interest on arrears from the due date at the statutory rate in accordance with Section 288 (2) of the German Civil Code. The assertion of further damages remains unaffected by this.

5. Delivery

Our deliveries are subject to change or after consultation with the customer. Delivery periods shall not commence until all details of execution have been clarified. We shall choose the mode of despatch and packaging. This shall not apply if the customer has issued express instructions. Deviating agreements in text or written form are possible. Partial deliveries are permissible and will be invoiced separately. Our delivery obligation is subject to timely and correct delivery to us. This shall not apply if we are responsible for the non-delivery. If it is foreseeable that the delivery cannot be made on time, we shall inform the customer of this in writing or text form and inform him of the reasons and the expected delivery time, insofar as this is possible for us. We shall only be in default of delivery if we have been unsuccessfully set a reasonable deadline for delivery, we are responsible for the reasons for non-delivery and the customer has rendered his performance in full. The delivery period begins with the notification of readiness for dispatch or collection by us and is subject to the condition that the consideration has been provided. If acceptance is required, the notification of readiness for acceptance or the acceptance date shall be decisive. If delivery cannot be completed due to circumstances for which the customer is responsible (e.g. incorrect address details, inability to contact the customer, lack of access to the delivery address, or refusal to accept the delivery), the customer shall be charged for the costs of the unsuccessful delivery attempt as well as any additional costs that may arise.

6. Packaging

We reserve the right to choose the packaging unless expressly instructed to do so by the customer.

Transport packaging must be returned to us in accordance with the German Packaging Ordinance. If the packaging is not returned within three months of delivery of the goods, we will charge for it at cost price. Packaging that is not transport packaging will not be taken back.

7. Transfer of risk

The goods must be accepted immediately upon notification to the customer that they are ready for dispatch or collection. At this moment the risk is transferred to the customer. In the case of self-collection, we are entitled, in the event that the customer has not collected the goods within three days of notification of readiness for collection, to dispatch or store the goods at our discretion at the customer's expense.

8. Gewährleistungsansprüche

The prerequisite for warranty claims against us is that the customer fulfils his obligations under § 377 HGB (German Commercial Code), so-called notice of defects. A notice of defects shall be deemed to have been made in good time if it is made within a period of five working days, calculated from receipt of the delivery by the customer or, in the case of hidden defects, from discovery. If the goods have been accepted by the customer or if a preliminary inspection has taken place, the notification of defects is excluded if the defect could have already been detected at this time. If the notice of defect is not justified according to our inspection and the customer was aware of the non-existence of the defect at the time of the notice of defect or was mistaken about this due to negligence, the customer shall compensate us for the damage incurred. We shall charge a lump sum of EUR 100.00 in this respect. We reserve the right to claim further damages. The customer is entitled to prove to us that the reported defect does exist and/or that we have incurred lower inspection costs than the lump sum. If the notice of defects is justified, we shall, at our discretion, either rectify the defect or supply a replacement. If the rectification of defects fails after the customer has set a reasonable deadline, the customer may, at his discretion, demand a reduction in price or cancellation of the contract. Cancellation is not possible in the case of only minor defects. Warranty claims expire 24 months after the transfer of risk. They are not transferable.

9. Exclusion of warranty

Our warranty is excluded in cases of further processing, unsuitable or improper use, incorrect or improper assembly or commissioning by the customer or third parties, natural wear and tear, incorrect or negligent handling, the use of unsuitable equipment, the effects of chemical, electrochemical or electrical influences, unless we are responsible for these. Furthermore, the warranty is excluded if the order does not correspond to the state of the art and/or has been declared or discussed as risky by us or our vicarious agents on the basis of technical information. The exclusion of warranty shall not apply if we, our legal representatives or our vicarious agents cause the damage or defect wilfully or through gross negligence.

10. Liability

We shall not be liable for slightly negligent breaches of insignificant contractual obligations. In the case of other slightly negligent breaches of duty, our liability shall be limited to the foreseeable, contractually typical, direct average damage according to the type of goods. This also applies if our legal representatives or vicarious agents act with slight negligence. Claims for damages expire 12 months after the transfer of risk. This shall not apply in cases in which claims are asserted against us in accordance with the German Product Liability Act (ProdHaftG) or due to injury to life, limb or health.

11. Retention of title

We shall retain title to the delivered goods until all our claims against the customer arising from the business relationship have been fulfilled. The customer is authorised to process or install the delivered goods. The processing shall be carried out for us. However, if the value of the goods belonging to us is less than the value of the goods not belonging to us and/or the processing, we shall acquire co-ownership of the new goods in the ratio of the value (gross invoice value) of the processed goods to the value of the other processed goods and/or the processing at the time of processing. Insofar as we do not acquire ownership of the new goods in accordance with the above, the customer shall grant us co-ownership of the new goods in the ratio of the value (gross invoice value) of the new goods belonging to the customer to that of the other processed goods at the time of processing. The above sentence shall apply accordingly in the event of inseparable mixing or combination. Insofar as we acquire ownership or co-ownership, the customer shall store the goods for us with the care of a prudent businessman. In the event that the goods or the new goods are sold, the purchaser hereby assigns to us by way of security his claim against his customer arising from the resale, together with all ancillary rights, without the need for any further special declarations. The assignment shall apply including any balance claims. However, the assignment shall only apply to the amount corresponding to the price of the goods invoiced by us. The portion of the claim assigned to us shall be satisfied with priority. Until revoked, the customer is authorised to collect the assigned claims. The customer shall immediately forward to us any payments made on the assigned claims up to the amount of the secured claim. In the event of justified interests, in particular in the event of default of payment, suspension of payment, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the customer, we shall be entitled to revoke the customer's authorisation to collect. In addition, we may, after prior warning and subject to a reasonable period of notice, disclose the assignment by way of security, realise the assigned claims and demand that the customer disclose the assignment by way of security to its customers. If a legitimate interest can be substantiated, the customer must provide us with the information required to assert its rights against the customer and hand over the necessary documents. For the duration of the retention of title, the customer is prohibited from pledging the goods or assigning them as security. In the event of seizure, confiscation or other dispositions or interventions by third parties, the customer must inform us immediately. The resale of the goods or new goods is only permitted to resellers in the ordinary course of business and only under the conditions that payment of the equivalent value of the goods or new goods is made to the customer. The purchaser must also agree with the customer that the customer only acquires ownership upon this payment. In the event of breaches of duty by the customer, in particular default in payment, we shall be entitled, even without setting a deadline, to demand the return of the goods or the new goods and/or - if necessary after setting a deadline - to withdraw from the contract; the customer shall be obliged to return the goods. The demand for the return of the goods or the new goods does not constitute a declaration of cancellation unless this is expressly declared by us.

12. Property rights & copyrights

The customer shall ensure that the customised products commissioned by him do not infringe the industrial property rights of third parties. If claims are asserted against us by third parties on the basis of the manufacture or delivery of the goods with the assertion of an infringement of property rights, the customer shall indemnify us against all claims. In such cases, we shall only conduct defence proceedings if the customer requests us to do so with a binding declaration of assumption of costs. We are entitled to demand security for the legal costs.

13. Force Majeure

In the event of force majeure, we are exempt from the obligation to perform for the duration and to the extent of the impact. Force majeure is any event beyond our control that hinders us, either partially or fully, from fulfilling our obligations. This includes, in particular, fire damage, flooding, and operational disruptions not caused by us, including labor disputes and strikes, as well as governmental administrative actions, supply difficulties, and other performance disturbances for which we are not responsible. We will promptly inform the other party about the occurrence and cessation of the force majeure and will make every effort to remedy the situation and limit its effects, insofar as this is possible for us. The information will be provided in written or text form, and in urgent cases, by phone. Together with the other party, we will coordinate the further course of action.

14. Insolvency

If the customer ceases to fulfill their obligations to deliver or pay, or if an application for the opening of insolvency proceedings is filed over their assets or rejected due to insufficient assets, or if insolvency proceedings are opened, we are entitled to withdraw from the contract for the portion that has not yet been fulfilled at that time.

15. Data Protection & IT Processing

The customer agrees that, for the purpose of processing the contractual relationship, the necessary data will be stored by us in electronic files, taking into account the requirements of statutory data protection.

16. Confidentiality

The customer agrees to keep confidential all business documents, financial and technical data, including samples or models (information), that become known to them during the term of the contract. We also agree to maintain confidentiality to the same extent. The obligation begins upon first knowledge and lasts for 36 months after the end of the business relationship. The obligation does not apply if the information becomes publicly known or generally accessible, or if the information was already known to the third party by verifiable means. Additionally, the obligation is lifted if a party is required to disclose the information due to legal regulations or an official administrative order.

17. Final Provisions

Verbal side agreements are only valid if they are confirmed by us in writing or in text form. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Lüdenscheid. Should any provision in these terms and conditions be or become invalid, the validity and enforceability of the remaining clauses shall remain unaffected. The customer agrees to collaborate with us to find a substitute provision that is valid, enforceable, and suitable for the purpose of the order and for the protection of both parties' interests. § 139 of the German Civil Code (BGB) does not apply.