

General Terms and Conditions of Sales and Delivery

Jos. Schneider Optische Werke GmbH



1. General - Scope

1.1 Subject to deviating provisions of individual contracts these Terms and Conditions for Sales and Delivery (hereinafter referred to as „the Terms and Conditions“) shall apply to all contracts concerning deliveries and other performances (hereinafter referred to as „the Delivery“) that we, Jos. Schneider Optische Werke GmbH, as the performing party conclude with a company as contemplated by Section 310 para. 1 of the German Civil Code as a customer (hereinafter referred to as „the Customer“). For any further contracts with the same Customer, these Terms and Conditions shall also be valid even if they are not expressly referred to.

1.2 Deviating or supplemental terms and conditions of a Customer are hereby rejected; such terms and conditions will not be binding upon us unless we expressly agreed to them in writing.

1.3 Our Terms and Conditions shall also prevail even if we are aware of terms and conditions of the Customer opposing or deviating from our Terms and Conditions but carry out an unreserved Delivery to the Customer.

2. Offer - Conclusion of Contract

2.1 Information contained in brochures and similar advertising material is not of a binding nature and may be changed by us. Only the details/prices given in our written offers shall be authoritative.

2.2 Our offers are subject to confirmation. Contracts are only concluded by our written confirmation of the order, any supplements or additions that were not made in writing will only become binding upon our written confirmation of such supplements or additions.

2.3 With respect to orders acknowledged and accepted by us, we may not accept requests by the Customer to (i) cancel an order, or (ii) delay or re-schedule delivery of products. Exceptions to this prohibition must be in writing and approved by our managing director or by the controlling department. No other employee or agent of ours is authorized to approve a cancellation or permit a delay or rescheduling of delivery.

2.4 We reserve any property rights and copyrights vested in all offers and other documents including those existing in an electronic form. These must neither be reproduced nor made available to third parties without our consent and must be returned to us after the execution of the contract or in case of a failure of the contractual negotiations without any requests from our side to do so being required.

3. Delivery terms - Passage of Risk

3.1 Delivery deadlines are only binding if they have been expressly agreed in writing. Our obligation to perform is subject to ourselves obtaining correct and timely delivery. Delays in delivery because of events of force majeure or other circumstances that cannot be influenced by us will lead to an appropriate extension of the delivery deadlines. Partial deliveries are allowed unless these are recognisably not of interest or even unacceptable for the Customer. In case of a partial delivery, we are entitled to the contractual consideration attributable to the performed part of the delivery.

3.2 If delivery periods have not been expressly designated as binding, we come into default with delivery six (6) weeks after expiration of the delivery period by means of a written demand issued by the Customer at the earliest.

3.3 We are liable for damages resulting from delayed delivery in accordance with Section 7. Moreover, in case of delayed delivery, we are liable, for each full week, for a lump-sum compensation up to 0.5% of the value of the delivery whereas the maximum amount shall not exceed 5% of the value of the delivery.

3.4 The delivery shall occur „ex works“ as per Incoterms 2010, if no other agreements have been made, at the Customer's expense and risk. The choice of route of shipment and means of transportation shall be at our reasonable discretion. The risk passes to the

Customer upon the delivery of goods to the shipping agent, carrier or other person or entity charged with the shipment; this shall also be valid for partial deliveries and even in those cases where goods are delivered by ourselves. Should the delivery be delayed for reasons within the Customer's responsibility the risk will pass to the Customer upon the notification of the readiness for shipment being received by the Customer.

3.5 Deliveries of a maximum of 10% above the ordered quantity is allowed and cause corresponding compensation claims as long as the delivered good it is not a standard product.

4. Prices - Payment

4.1 Subject to other agreements on prices and payment terms, the prices indicated in the current price list at the time of delivery shall be applicable. All prices are ex works exclusive of packaging, delivery and insurance costs plus the respective statutory value added tax. Invoice amounts are payable within 30 days from the date of the invoice without any deductions; payment to be deemed effected at the time of the receipt of the outstanding amount or the unreserved credit entry. In the case of the Customer being in default with payment we are entitled to demand interest at the rate of 8 percentage points above the respective applicable basis interest rate as published by the Central Bank of Germany from time to time without prejudice to our other or further rights. Repairs and spare parts are generally payable cash on delivery, net terms only.

4.2 If we find it necessary to refer an open account to an attorney or a collection agent, the Customer shall pay all costs of collection including, without limitation, reasonable attorneys' fees.

4.3 Payment by bills of exchange or cheques must be specially agreed upon. Bills of exchange and cheques shall be credited to the Customer by us on account of performance and free of charges. Discount charges and incidental charges customary in banking are to be compensated by the Customer in cash as soon as they occur. Sections 4.1. sentence 3 shall apply accordingly.

4.4 If, after the conclusion of the contract, the Customer's financial standing or solvency considerably declines or we learn about such declining at an earlier point in time or the Customer does not meet his payments due to us, in particular if he does not cash a cheque or bill, we reserve the right to claim payments before the agreed due date, to make the delivery of unpaid goods contingent upon the provision of reasonable securities or advance payment and, in case of discounted bills, to claim premature payment. If within a reasonable period of grace granted by us the Customer neither makes advance payments nor provides securities, we are entitled to rescind the contract in accordance with the applicable statutory regulations.

4.5 The Customer is only entitled to a possibly existing statutory set-off right with respect to outstanding accounts receivable which are undisputed, final and binding or ripe-for-judgement. The Customer is only entitled to possibly existing statutory rights of retention or to refuse performance, e.g., because of defective goods, with respect to those accounts receivable resulting from the same contractual relationship with us which are undisputed, final and binding or ripe-for-judgement.

5. Liability for Defects

5.1 Warranty claims of the Customer are subject to the condition that the property fulfilled his investigation and complaint obligations under Section 377 of the German Commercial Code. Apparent defects must be reported in writing within one week after receipt of the respective goods at the latest, other defects within one week after their discovery at the latest. If the Customer fails to give such notice, the products shall be deemed accepted and to conform to the terms of the contract of sale.

5.2 Upon our request, the rejected goods or the rejected parts thereof must be returned to us for examination on our account. If the underlying notice of defects proves to be unjustified we are entitled to an according compensation claim.

5.3 Replaced parts will become our property and are to be handed over to us; additional claims, e.g. compensation for lost value, remain untouched.

5.4 Any claims of the Customer which might arise because of a defect shall be limited to the right of subsequent performance. Subsequent performance will be done, at our own discretion, by elimination of the defect or delivery of goods free from defects. If subsequent performance should fail the Customer has, at his own discretion, the right to rescind the purchase contract or reduce the purchase price.

5.5 Claims of the Customer because of defects become statute-barred after one year beginning from the passing of the risk to the Customer of the respective goods. This shall not be valid (1) in case of intent or malicious silence with regard to a defect, (2) in case of deviating content of a warranty furnished by us in accordance with Section 443 of the German Civil Code, and (3) in case of goods which were used for a building in line with its usual manner of use and caused the defectiveness of such building.

5.6 The period of limitation of one year stipulated in 5.5. does not apply to claims for damages because of defects if such defects result from acts of gross negligence by our legal representatives or executive employees. This period of limitation is also not applicable in cases of personal injury or where we are liable for unlawful acts. The one-year period of limitation for claims because of defects does also not apply to defects concerning a right in rem or another third-party right entered in the land register; in these cases, the period of limitation shall be three years. The statutory provisions concerning the statutory limitation of possible claims under a right of recourse in accordance with Section 479 of the German Civil Code and the limitation and preclusive periods under the German Product Liability Act shall remain unaffected.

5.7 As far as statutory regulations - for whatever legal reason - require us to compensate damages because of a defect this liability to pay compensation for damages shall be limited in accordance with Section 7.

5.8 The passing of the risk shall constitute the relevant moment for the existence of a warranty defect causing warranty claims based on Section 5 hereof.. Liability for defects does not cover loss, damage, or defects resulting from: improper or inadequate maintenance by the Customer; customer-supplied software or interfacing; unauthorized modification or misuse, operation outside of the physical operating conditions for the products; or improper site preparation or maintenance.

No liability is accepted for defects caused by unsuitable or improper handling and/or defective installation or commissioning by the Customer or by third parties not instructed or authorized by us (also in reference to software interferences), natural wear and tear, false or careless treatment, unsuitable equipment, replacement materials, faulty construction, creation of chemical, electromechanical or electrical influences. Also excluded from claims for defects are changes to the products or unskilled repairs to the products which are attributable to the Customer or third parties authorized by the Customer.

5.9 The subsequent performance is carried out without acceptance of a legal obligation and does not cause the limitation period to start anew. This also applies when spare parts have been installed in the course of rectification of defects.

5.10 If used objects (including demonstration units) are subject of the contract, except as provided in Section 7, any an all liability for defects is excluded as far as we are not guilty of fraudulent behaviour or have accepted a deviating guarantee.

6. Retention of title

6.1 The goods delivered by us (hereinafter also referred to as „goods subject to our title of ownership“) remain our property until any and all accounts receivable against the Customer (including future accounts and possibly existing balances due on open account) have been paid.

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6.2 The Customer has the revocable right to process or sell the goods subject to our title of ownership within the ordinary course of business and in accordance with the following provisions.

6.3 The processing or transformation of the goods subject to our title of ownership by the Customer is always accomplished for us without any obligations resulting for us thereof. If the goods subject to our title of ownership are processed together with other goods that were not delivered by us, we are entitled to co-ownership in the new object in a way that equals the partial amount in the final invoice for the new object attributable to the goods subject to our title of ownership as computed on the basis of the purchase price of the other processed or transformed goods at the time of processing.

In the event that the goods subject to our title of ownership are connected, mixed or blended with moveable goods of the Customer in a way that makes the object of the Customer the principal thing, the Customer hereby transfers to us, already by now, his ownership in the whole object at a share corresponding to the relation of the value of the goods subject to our title of ownership and that of the other connected, mixed or blended goods. If goods subject to our title of ownership are connected, mixed or blended with moveable goods of a third party in a way that makes the object of the third party the principal thing, the Customer hereby transfers to us, already by now, his right to compensation against such third party at a share corresponding to the share of the goods subject to our title of ownership in the final invoice amount.

The object resulting from processing, transformation, connection or blending (hereinafter referred to as „the new object“) or, respectively, the rights of (co)ownership in the new object we are entitled to or that shall be transferred to us in accordance with this Section 6.3. as well as the rights to compensation assigned to us in accordance with this Section 6.3. serve to provide security for our accounts receivable in the same way as the goods subject to our title of ownership themselves as described under Section 6.1

In each case, the Customer shall hold the sole and/ or co-ownership we are entitled to in safe custody.

6.4 We undertake to release securities we are entitled to upon request of the Customer if the realisable value of the securities exceeds the outstanding account to be secured by more than 20 percent; we have the right to choose the securities to be released.

6.5 Goods subject to our title of ownership or new goods may only be resold within the ordinary course of business and only under retention of title. The Customer is obliged to make sure that the accounts receivable resulting from such resale business can be transferred to us in accordance with Section 6.6. and 6.7.

6.6 The Customer's accounts receivable resulting from reselling the goods subject to our title of ownership are assigned to us already by now. They serve to secure our outstanding accounts to the same extent as the goods subject to our title of ownership. If the Customer sells the goods subject to our title of ownership together with other goods that were not delivered by us the assignment of the accounts receivable shall apply only to that part of the final invoice amount which is attributable to the resale of the goods subject to our title of ownership. In the event of a resale of goods co-owned by us in accordance with Section 6.3. or the applicable statutory provisions concerning the connection, mixing or blending of goods, the assignment shall apply in an amount corresponding to our co-ownership share.

6.7 If the Customer includes accounts receivable from the resale of goods subject to our title of ownership in a current account with his Customers, he assigns to us, already by now, a resulting balance or a final balance to his favour corresponding to the total amount of the accounts receivable resulting from the resale of goods subject to our title of ownership included in the current account. Sections 6.3. sentences 5 and 6 shall apply accordingly.

6.8 The Customer is authorised to collect the accounts receivable from the resale of the goods subject to our title of ownership or the new objects assigned

to us. Our authorisation to collect the accounts receivable ourselves remains unaffected. However, we undertake not to collect the accounts receivable as long as the Customer duly meets his payment obligations with respect to the collected proceeds. The Customer is not allowed — not even in the framework of a genuine factoring agreement — to assign the accounts receivable resulting from the resale to third parties.

6.9 The authorisation to resell the goods subject to our title of ownership or the new objects in accordance with Section 65. and the authorisation to collect the accounts receivable assigned to us in accordance with Section 6.8. may be revoked by us in the event of a delay or default in payment or stoppage of payments by the Customer or when an application to initiate insolvency proceedings has been filed or in other cases of an impaired credit standing or trustworthiness of the Customer. In the event of a revocation of the authorisation to resell goods and collect accounts receivable, the Customer is obliged to immediately inform his customers about the assignment of accounts receivable to us and to submit to us any information and documents required for collection. In this case, he is furthermore obliged to hand over or transfer to us possibly existing securities he is entitled to with respect to accounts receivable against his customers.

6.10 The Customer is obliged to inform us immediately about attachments or other legal or factual impairments to or risks for the goods subject to our title of ownership or the other securities we are entitled to. In case of deliveries to countries with other legal systems where the aforementioned provisions concerning retention of title do not have the same securing effect as in Germany, the Customer will use his best endeavours to immediately furnish corresponding security rights. The Customer shall assist in the performance of all measures, e.g., registration, publication etc., necessary and appropriate for the effectiveness and enforceability of such security rights.

6.11 The Customer undertakes to handle the goods subject to our title of ownership with care; the Customer shall perform maintenance and inspection work on his own account and in a timely manner. We are entitled to sufficiently insure the goods subject to our title of ownership against damages through fire, water and theft at their reinstatement value on the Customer's expense.

6.12 In case of a violation of the agreement by the Customer, in particular in case of a default in payment, we are entitled to take back the goods subject to our title of ownership upon the expiry of a reasonable deadline set by us. The taking back of the goods subject to our title of ownership does not constitute a rescission of the contract unless we explicitly gave notice of such rescission in writing. After taking back the goods subject to our title of ownership, we are entitled to realise the same; the realisation proceeds are to be credited against the accounts receivable from the Customer net of reasonable realisation costs.

6.13 To facilitate these measures as well as a general inspection of the goods subject to our title of ownership or the new objects the Customer has to grant our agents access at any time.

7. Liability

7.1 We are liable in accordance with the statutory provisions if the Customer asserts claims for damages resulting from intention and gross negligence including acts of intention and gross negligence by our legal representatives or agents employed in the performance of our obligations. As far as we did not deliberately violate the contract, the liability remains limited to foreseeable, usually occurring damages.

We are liable in accordance with the statutory provisions if we culpably violate a material contractual obligation, in this case, the liability remains limited to foreseeable, usually occurring damages.

7.2 The liability because of a culpable injury to the life, body or health of a person remains unaffected; this shall also be valid for the liability because of the lack of a quality guaranteed by us and for the mandatory liability under the German Product Liability Act.

7.3 As far as not otherwise laid down above, any liability shall be excluded.

7.4 The liability limitations stipulated in this Section 7 shall also apply to a possible liability of our legal representatives, executive employees and other agents employed in the performance of our obligations towards the Customer.

8. Export

8.1 In case of exporting or re-exporting the goods, the Customer shall be responsible to fully comply with the pertinent export regulations.

8.2 Upon request of the Seller, the Customer shall inform about the final use and the end-user.

8.3 The Seller has the right to claim compensation if the Customer's statement on the final use and the end-user is incorrect.

8.4 The previous provisions do not constitute a contractual obligation for us to control the fulfilment of export regulations.

8.5 The Seller may refuse the fulfilment of the obligations assumed in accordance with the order confirmation if and for as long as fulfilment violates German or European export regulations.

9. Place of Performance - Legal Venue - Applicable Law

9.1 The place of performance for the delivery and payment as well as the legal venue for all disputes directly and indirectly arising from the contractual relationship — also for legal proceedings related to bills of exchange or cheques — shall be Bad Kreuznach, Germany.

9.2 German law applies with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

9.3 We will submit confidential information in association with contracts based on Section 1.1 of these General Terms and Conditions on the basis of a non-disclosure agreement following our standard format furnished by us only. Confidential information in this context shall not mean information which is not already generally known or which has legitimately come to the recipient's knowledge but which has been qualified as confidential by us using our equitable discretion taking the interests of the recipient appropriately into account. We may only accept confidential information from your side based on a written non-disclosure agreement bindingly concluded between representatives of both parties.

9.4 Rights and claims resulting from contracts with us are only allowed to be transferred with our explicit consent.

9.5 Where individual provisions are invalid, the invalidity shall be limited to such provision. The parties are obligated to replace the invalid provision by one that comes, in a valid manner, closest to the economic meaning and purpose of the invalid provision; the same applies to eventual gaps in the contract.

9.6 The English version of these general terms and conditions is provided for convenience only. In case of a conflict, the German version shall prevail.

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www.schneiderkreuznach.com/pdf/div/agb_e_2011.pdf