

## Sales and Delivery Terms and Conditions of Schlemmer GmbH

### 1. Scope

- 1.1 These sales and delivery terms and conditions are legally valid for all companies, legal persons under public law and special public funds associating with Schlemmer GmbH.
- 1.2 Quotations, deliveries and services of Schlemmer GmbH shall be made exclusively on the basis of these sales and delivery terms and conditions. Any counter-statements made by the buyer with reference to his own terms and conditions of business or purchase are hereby contradicted, unless an agreement is made to the contrary.
- 1.3 Verbal subsidiary statements are hereby contradicted.

### 2. Quotation and conclusion of contracts

- 2.1 The quotations submitted by Schlemmer GmbH are subject to change and non-binding. Technical and design deviations of performance data in leaflets, catalogues and documents as well as change of models, construction and material are always subject to technical improvements and progress in the scope of reasonability. Our samples are inspection samples of general nature without obligation and in no way binding for any kind of certain specifications.
- 2.2 The buyer declares to conclude a binding contract when placing an order. Schlemmer GmbH is entitled to accept the contract within **two (2) weeks after receipt**, if no longer term is mentioned in the order. The acceptance can be declared either in written form or by delivering the ordered goods to the buyer. A contract is only concluded when Schlemmer GmbH accepts the contract quotation.
- 2.3 The contract is concluded providing that Schlemmer GmbH is being correctly delivered and on time by its own suppliers. This is valid only in case that there is no fault attributable to Schlemmer GmbH, especially in the case of having a congruent cover business with the supplier. The buyer shall be informed immediately about the non-availability of such obligation. A fulfilled counter-performance shall be reimbursed immediately.
- 2.4 The quotations and all its enclosures (incl. plans, drawings, illustrations, technical specifications, pricelists) are always to be considered as confidential. Any transfer to third parties must be expressly authorised in written form by Schlemmer GmbH. The obligation to maintain secrecy does not pertain to, respectively is not applicable for information which is already known to the buyer or publicly available, without the buyer having causally contradicted the contract.

### 3. Delivery time, transfer of risk and dispatch

- 3.1 The specification of delivery times is always non-binding unless the contrary has been agreed. The beginning of a delivery time expressed by Schlemmer GmbH provides for the complete co-operation from the buyer.
- 3.2 The specification of delivery times is given providing that the Schlemmer GmbH itself is being correctly delivered with supplies and on time from its own suppliers. Clause 2.3 of these sales and delivery terms and conditions apply accordingly.
- 3.3 Contracts designated with continuous delivery must be indicated by on call and with approximate equal monthly delivery amounts at least four weeks in advance the actual month of delivery by the buyer. Should there be no on-time call or amount indicated, then Schlemmer GmbH authorises itself after a reasonable extension of time to opt for an actual amount and offer the actual delivery. Should the buyer not accept the goods, then this is considered as a break of contract through the buyer. Schlemmer GmbH is then entitled to exert its rights for dereliction of duty.
- 3.4 The risk of accidental damage or loss of goods shall be transferred to the buyer as soon as the shipment is completely handed over to the person responsible for transportation.
- 3.5 Should the shipment be delayed for reasons attributable to the buyer, then the transfer of risk is passed on to the buyer with notification to the buyer that it is ready for dispatch. Costs incurred for storage as of notification are charged to the buyer.
- 3.6 Should the buyer become default outside of clause 3.3 in accepting the delivery of goods, then Schlemmer GmbH is entitled to reimbursement of incurred damage including additional costs. In this case the risk of accidental damage or loss of subject matter of contract is transferred to the buyer at that time that the buyer becomes default in accepting the delivery of goods.
- 3.7.1 At the request of the buyer, the shipment will be ensured at the expense of the latter against transit, breakage, fire and accidental damage.
- 3.7.2 Dispatch form and packaging are at sole judgement of Schlemmer GmbH if not expressly indicated otherwise.
- 3.7.3 Delivery is ex works if not otherwise agreed.
- 3.7.4 Incoterms 2010 shall apply as for the rest.
- 3.8 Schlemmer GmbH authorises itself to partial deliveries at reasonable quantities. A delay of a partial delivery in this respect does not entitle to non-acceptance of other partial deliveries.
- 3.9.1 Return of goods at buyers order can only be accepted if Schlemmer GmbH gives a written approval and the goods are in original package and the goods are of current design.
- 3.9.2 In this case a service fee of 20 % of the invoiced value of the goods, yet although at least 125 EURO shall be charged.
- 3.9.3 Return consignments without written approval from Schlemmer GmbH shall be refused and returned freight forward to sender as well as being invoiced with a service charge of 100 EURO.
- 3.10 The goods of Schlemmer GmbH are produced, stored, processed and loaded at secure operating and transshipment facilities. Goods are protected against unauthorized access during production, processing, loading and transportation. Reliable personell are employed in the production, storage, processing, loading, transportation and acceptance of such goods.

### 4. Prices

- 4.1 All prices if not otherwise agreed are  
- ex works,  
- plus packaging and dispatch costs,  
- plus legal value-added tax for sales within the Federal Republic of Germany.
- 4.2 Prices if not otherwise agreed are EURO per 100 pieces respectively 100 meters.
- 4.3 A low-quantity surcharge of 45.60 Euro shall be imposed for invoices with a net goods value of less than 100 Euro.
- 4.4 A handlings fee of 4.40 Euro shall be imposed for orders less than 300 Euro.
- 4.5 Opened packaging unit will be charged with 7,50 Euro per position.
- 4.6 If any extraordinary cost increases (e.g. raw material, energy, wages or shipping costs) should be incurred to Schlemmer GmbH or its suppliers after having closed a contract thereupon leading to higher buying prices or prime cost, then Schlemmer GmbH reserves the right after a binding term of four (4) weeks to resume negotiations with the buyer for a price adjustment. If no agreement is reached, then Schlemmer GmbH withdraws itself from the obligation to deliver the remaining deliveries.
- 4.7 Our brass-made products are calculated at a brass price quotation of 155,- Euro for MS 58. For every 13 Euro up or down a price increase or decrease of 5 % is determined. For example:
- |                           |                                |
|---------------------------|--------------------------------|
| EURO 142,- to EURO 167,99 | 0 Percent Brass Price Increase |
| EURO 168,- to EURO 180,99 | 5 Percent BPI                  |
| EURO 181,- to EURO 193,99 | 10 Percent BPI                 |
| EURO 194,- to EURO 206,99 | 15 Percent BPI                 |
| EURO 207,- to EURO 219,99 | 20 Percent BPI etc.            |

### 5. Warranty

- 5.1 The time limit of the warranty is **one year** and commences with the date of delivery. This can be null and void in single cases where any other agreement has been arranged respectively fraudulent reproaches can be made against Schlemmer GmbH. The obligation to indicate defects according to clause 5.6 remains unaffected.
- 5.2 Should operating and maintenance notices not be followed, products be altered, parts exchanged or functional parts be used, that do not correspond to the original specifications, then all warranty rights are not applicable other than it can be proven that the defect is not attributable to improper handling or interference. The warranty also does not apply if the products supplied by Schlemmer are not used for their intended purpose. (Declaration according to REACH and DUAL-USE Regulation)
- 5.3 Product quality is principally regarded as characteristics, which the buyer can rely upon due to statements made by Schlemmer GmbH or due to the manufacturer's product descriptions, other than Schlemmer GmbH did not know nor have to know of these statements at the time the contract was concluded or at that time equivalently corrected or could not influence the decision to buy the product. Any other statements given by the manufacturer, especially in advertisements are not regarded as a stipulated condition of the product.
- 5.4 Should the buyer receive an insufficient mounting instruction, then Schlemmer GmbH is only obliged to deliver a fault-free mounting instruction and this only if the mounting instruction default would lead to an insufficient mounting.

- 5.5 The buyer shall not receive any kind of legally stated warranties through Schlemmer GmbH. Manufacturer's warranties shall stay unaffected.

- 5.6.1 The buyer shall immediately on receipt of a shipment from Schlemmer GmbH, 14 days at the latest inspect the products for defects and report apparent defects to Schlemmer GmbH. Not apparent defects are to be reported immediately, but 14 days at the latest after the discovery. Observance of deadline is an on time return notification. Should the notification be disregarded then the enforcement of any warranty claim is excluded. The buyer is responsible for full burden of proof for any claim especially for the defect itself, the time of filing the deficiency claim and for an on-time notice of defect.
- 5.6.2 In case of an unjustified customer complaint we reserve the right to charge a handling fee of 100 EURO.
- 5.7 The warranty of merchantable quality will at discretion of Schlemmer GmbH be performed by repair or replacement of the faulty product. If the repair or replacement is not satisfactory, the buyer shall be principally entitled to demand a reduction of purchase price or rescission of the contract. For any minor contradictions to the contract, especially minor deficiencies the buyer has no withdrawal rights from the contract.
- 5.8 In order to carry out such warranty obligations Schlemmer GmbH may at its own discretion request the buyer to  
a) return the faulty product for repair to Schlemmer GmbH at the buyers own expense or  
b) prepare the faulty product for a service technician commissioned by Schlemmer GmbH to carry out the repair as agreed with the buyer.
- 5.9 Should the buyer choose to rescind from contract after a failed repair then the buyer shall not be entitled to any further claim for damages. Should the buyer choose to claim for damage after a failed attempt to repair, then the product shall remain with the buyer in so far as it be reasonable. The claim for damage is limited to the difference between the sales price and value of the faulty material. This although does not apply if the default was caused by deception of Schlemmer GmbH.

### 6. Limitation of liability, assignment

- 6.1 Schlemmer GmbH is not liable for minor intended infringement of insignificant contractual duties. Otherwise liabilities are limited to the case of minor infringement of duties relating to type of product with foreseeable, contractual type damages. The above limitation of liability also applies to parties engaged in the performance of Schlemmer GmbH obligations.
- 6.2 The above mentioned liability limitations do not affect buyers claims for product liability. Furthermore the liability limitations do not pertain to body and health damages or loss of life, in so far as they are chargeable to Schlemmer GmbH.
- 6.3 Right of assignment of claim: Schlemmer GmbH keeps the right to assign his receivables from goods and services opposite third party.

### 7. Retention of title

- 7.1 Schlemmer GmbH shall retain title over all goods until completely paid for and until all claims for whatever legal reasons are settled.
- 7.2 Reserved goods and thereof processed goods may be sold or otherwise used by the buyer only on terms which are customary in the industry and in the ordinary course of business and provided that the buyer is not in default and that no circumstances are evident which could result in the sale prejudicing the claims of Schlemmer GmbH. The goods subject to retention of title may not be transferred as property by way of security or be pledged by the buyer. (Goods subject to retention of title are referred to as „reserved goods“)
- 7.3 If reserved goods are combined with objects not belonging to Schlemmer GmbH, this shall be done on behalf of Schlemmer GmbH with the result that Schlemmer GmbH receives title to the new object in accordance with the proportionate value (invoice value) of reserved goods in the final product. The combination and storage of reserved goods for Schlemmer GmbH shall not entitle the buyer to make any claims against Schlemmer GmbH.
- 7.4 The buyer is obliged to handle the reserved goods with care and insure sufficiently against customary risks.
- 7.5 The buyer is entitled to sell the reserved goods in the ordinary course of business. The rights acquired by the buyer through the use of reserved goods or through the handling by third parties shall be assigned entirely or partially to Schlemmer GmbH by the buyer when the contract with Schlemmer GmbH is entered into. Schlemmer GmbH shall accept the assignment. It authorises the buyer to collect claims due. Schlemmer GmbH reserves the right to revoke the authorisation and to collect claims itself as soon as the buyer becomes default in payment. In this case the buyer must disclose the assignment and submit any and all required necessary documents. If goods subject to retention of title be disposed of by the buyer- after processing/connecting - with foreign goods not belonging to Schlemmer GmbH, the buyer already at this point assigns the claim arising from sale of the goods applying to the portion of the value subject to retention of title.
- 7.6 If the reserved goods are pledged or the rights of Schlemmer GmbH are otherwise jeopardised the buyer shall immediately inform Schlemmer GmbH and in alignment with Schlemmer GmbH do everything necessary to avert the property. If appropriate, the buyer shall on request by Schlemmer GmbH assign claims to Schlemmer GmbH as required. The buyer must immediately notify Schlemmer GmbH about any exchange of ownership of reserved goods as well as any corporate relocation.
- 7.7 In case of any contradiction of contract especially default of payment, Schlemmer GmbH is entitled to rescind the contract and demand return of reserved goods.
- 7.8 Excess safeguarding clause: If the value of the securities arising from the aforementioned provisions for the seller exceeds the amount of his claims to the buyer by more than 20%, he is obliged to this extent to release the related portion of securities on the request of the buyer.
- 7.9 If, in the case of a foreign country of destination, retention of title is not effective or not fully effective to the stipulated extent of the selected agreed clause No. 9.1 the buyer shall cooperate in providing securities which effectively approximate as close as possible to the retention of title.

### 8. Payment

- 8.1 All Schlemmer GmbH invoices shall be immediately payable without deductions, if not otherwise agreed.
- 8.2 In the event of the buyer defaulting in payment on the due date, Schlemmer GmbH shall be entitled to charge interest from the said date onwards at the rate of 8% above the official discount rate. Schlemmer GmbH reserves the right to make further claims for damage or loss resulting from damage.
- 8.3 In the event the buyer has been granted a credit or the term of payment has been extended due to false statements or Schlemmer GmbH learns of circumstances that cast serious doubt on the buyers creditworthiness after a contract is entered into, then Schlemmer GmbH shall be entitled to declare the outstanding debt due for payment or demand an assignment as security.
- 8.4 The buyer shall be entitled to offset only if the counterclaims have been established in law or have been accepted by Schlemmer GmbH. The buyer shall be entitled to retain amounts only if the counterclaims are based upon the same legal relationship and are undisputed by Schlemmer GmbH.

### 9. Final provisions

- 9.1 The contractual relationship between Schlemmer GmbH and the buyer, if not otherwise agreed shall be **exclusively** governed by the law of the federal Republic of Germany. The uniform international commercial code relating to the international sale of goods and formation of contracts as well as any other international provisions for sale of goods shall not apply.
- 9.2 Place of fulfillment is Poing. For bilateral commercial transactions the legal venue shall be the competent court located near to Schlemmer GmbH (depending upon functional responsibility either Lower District Court Ebersberg or Higher Court II Munich.) If Schlemmer GmbH is complainant, it shall be entitled to take action against the buyer in the courts in its general place of jurisdiction.
- 9.3 The buyer's data shall be stored with Schlemmer GmbH for the purpose of this contract observing the prevailing form of the federal Data Protection Law. Should any term or condition of this agreement of any part of any term or condition thereof shall be or become invalid, the other terms and conditions or parts thereof shall remain valid. The inoperative term or condition or part thereof shall be replaced by a term or condition which the parties agree as close as possible in commercial content to the inoperative term or condition thereof.