

## **General sales and delivery conditions Schülke & Mayr Benelux B.V.**

### **1. Definitions**

1.1 In these general terms and conditions ("Terms and Conditions"), the following terms have the following meanings

- S&M: Schülke & Mayr Benelux B.V;
- Client: any natural or legal person with whom S&M negotiates to enter into a contract and/or with whom a contract is entered into;
- Agreement: any contract between S&M and the client, any amendment or addition thereto, as well as any (legal) acts in preparation for and in execution of that contract;
- Products All items that are the subject of an agreement;
- Order Any order placed by the client with S&M.

### **2. Applicability**

- 2.1 These terms and conditions form part of all contracts between S&M and the client.
- 2.2 Unless the nature or the specific content of a provision in these terms and conditions dictates otherwise, the provisions of these terms and conditions also apply to contracts in which S&M does not act in its capacity as seller.
- 2.3 The applicability of any general or specific terms or conditions of the client is expressly rejected by S&M.
- 3. Offers, conclusion of contracts and specifications and indications of products.
  - 3.1 An offer or quotation is not binding on S&M and serves only as an invitation to the client to place an order.
  - 3.2 A contract is concluded only if and insofar as S&M accepts an order in writing or executes an order.
  - 3.3 All statements by S&M regarding numbers, measurements, weights and/or other indications of products have been made with care. However, S&M cannot guarantee that no deviations will occur in this respect. Samples, drawings or models shown or provided are only indications of the Products concerned.
  - 3.4 If a customer consists of several natural persons and/or legal entities, each of these persons is jointly and severally liable for compliance with the obligations arising from the agreement.

### **4. Changes and additions**

Changes and additions to any provision in an agreement and/or the terms and conditions will only apply if they are recorded in writing by S&M and only apply to the agreement in question.

### **5. Prices**

- 5.1. Unless expressly stated otherwise, all S&M's prices are in euros and exclusive of turnover tax, import and export duties and any duties and/or other taxes or levies to be imposed by the government.
- 5.2. Should price increases occur, for example in respect of raw materials, exchange rates, materials, wages and/or government charges, S&M is entitled to pass on these price increases to the client, on the understanding that the client is entitled to cancel the contract if such increase(s) amount to more than 10% of the original order amount.
- 5.3. Deliveries with a net order amount from € 500,00 per order are free domicile. For orders with an invoice amount up to €500.00 per Order, €75.00 in administration and transport costs will be charged.

## **6. Payment**

- 6.1. Client shall pay S&M the amounts invoiced by it within 30 days of the invoice date. Client is never entitled to any discount, set-off or suspension, except with S&M's express written consent.
- 6.2. S&M is entitled at all times, before performing or continuing to perform, to require the customer to pay the purchase price in advance or to provide proper security for the amount that S&M has or will have to claim from the customer under the contract, whether or not due, at S&M's discretion.
- 6.3. By the mere expiry of a payment term, the client is in default. In that case, all S&M's claims against the client, on any account whatsoever, are immediately due and payable.
- 6.4. Without further notice of default, the client will owe default interest from that date on all sums not received by the last day of the payment term, equal to the statutory interest in force in the Netherlands at that time, plus interest on the amount of the default interest.  
  
Netherlands applicable at that time, plus a surcharge of 2%.
- 6.5. If the client is in default towards S&M, he is obliged to fully reimburse S&M for the extrajudicial and judicial costs. The extrajudicial costs to be reimbursed by the client amount to at least 15% of the unpaid amount with a minimum of € 250,00 plus the turnover tax due on this.
- 6.6. If, after Customer is in default, S&M sends payment reminders or other requests for payment to Customer, this does not detract from the provisions in 6.3, 6.4 and 6.5.

## **7. Delivery period**

- 7.1. Delivery times are stated as accurately as possible. However, delivery times stated by S&M are never to be regarded as deadlines, unless expressly agreed otherwise in writing.
- 7.2. Delivery time will commence on the day specified in the written order confirmation. If certain data are required for the execution of the agreement, the delivery time does not commence until all data are in S&M's possession, but not before the date of the written order confirmation.
- 7.3. If the delivery period is exceeded, the client is not entitled to any compensation in this respect. Nor is the client, in that case, entitled to rescind or terminate the agreement, unless the exceeding of the delivery time is of such a nature that the client cannot reasonably be required to maintain the relevant part of the agreement. In that case, the Client should declare S&M in default, observing a period of at least three weeks, within which S&M is still able to remove the grounds for partial termination.
- 7.4. S&M is entitled to deliver in parts. Deliveries may be invoiced separately by S&M.

## **8. Delivery and risk**

- 8.1 Without prejudice to the provisions of Article 13, the products are deemed to have been delivered and accepted by the client and the risk for the products delivered passes to the client from the moment when the products to be delivered to the client are delivered to the client.
- 8.2 If, for any reason, the products are not collected by client on time, client will be in default without prior notice of default. S&M is then entitled to have the products stored at the client's expense and risk or to sell them to a third party.

## 9. Complaints/Warranty

- 9.1 Client is obliged to carefully inspect the products or have them inspected immediately on arrival at the destination or, if earlier, upon receipt by himself or by a third party acting on his instructions. Complaints should be reported to S&M in writing no later than 5 working days after delivery of the products.
- 9.2 Defects which could not reasonably have been discovered within the term specified in paragraph 1 should be reported to S&M in writing immediately after discovery and at the latest within 30 days after delivery of the products [End of text].
- 9.3 After discovering any defect, the Client is obliged to immediately cease using, processing, assimilating and/or installing the Products in question and furthermore to do and refrain from doing everything reasonably possible to prevent any (further) damage.
- 9.4 In investigating the complaint, the client will provide the necessary cooperation, including by giving S&M the opportunity to investigate the circumstances of the use, processing, processing and/or installation (or have it investigated).
- 9.5 If the client does not cooperate or if investigation is not or no longer possible in any other way, the complaint will not be dealt with and the client will have no claims in this respect.
- 9.6 The client is not free to return the products before S&M has agreed to do so. The reasonable costs of returning the products will be borne by S&M only if a timely, correct and justified complaint is made.
- 9.7 If the Customer complains about a defect in a product in a timely, correct and justified manner, S&M's liability arising therefrom will be limited to the obligations described in Article 12.3, subject to the other provisions in Article 12.

## 10. Transfer

Without S&M's prior written consent, the Customer may not transfer to any third party any contract concluded or any right and/or obligation arising therefrom.

## 11. Retention of title

- 11.1 The ownership of the products, notwithstanding actual delivery, does not pass to the client until the client has paid all S&M's claims relating to the consideration for the products delivered or to be delivered by S&M to the client under the agreement or any similar agreement, as well as any claims arising from any failure in the performance of such agreement.
- 11.2 Before ownership of the products is transferred to the client, the client is not entitled to lease or give in use, pledge or sell the products owned by S&M to third parties. Client will inform his customer(s) of S&M's ownership rights.

12. S&M's obligations

- 12.1 S&M guarantees the quality of the products it supplies, if and insofar as they are used and applied by experts in the field in accordance with the applicable user instructions, without prejudice to what is stipulated in these general terms and conditions.
- 12.2 In the event of non-performance or improper performance of its obligations under any contract, S&M is only obliged to supplement or replace defective products and/or to supply products again.
- 12.3 On the condition that a complaint has been made in time, correctly and in accordance with the provisions of Article 9, and it has been sufficiently demonstrated that the products

- do not comply with what has been agreed in that respect, or

- do not function properly,

S&M has the choice either to redeliver the Products found to be faulty (free of charge) against the return of the Products found to be faulty, or to grant the customer a pro rata discount on the purchase price.

S&M is fully discharged of its obligations in this respect by fulfilling one of the aforementioned performances.

### **13. Liability**

- 13.1 S&M is not liable for any damage to the Products or caused by or on account of the Products other than in accordance with the provisions of Article 12.
- 13.2 S&M is never liable for any loss suffered by the Customer, including direct consequential loss, intangible loss, trading loss and/or environmental loss.
- 13.3 Without prejudice to the provisions in Article 13.1 and 13.2, S&M's contractual and statutory liability is at all times limited to the amount of the purchase price of the product in respect of which such liability arose.

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- 13.4 Except in the case of gross negligence or intent on the part of S&M or its managerial staff, the client will indemnify S&M against all third-party claims, on any grounds whatsoever, in respect of compensation for damage, costs or interest relating to the Products, arising or connected with the use of the Products or from putting the Products into circulation. The client will fully indemnify S&M against all third-party claims which may arise from or are connected with S&M's (non-)fulfilment of its obligations under any agreement with the client.

### **14. Force majeure**

- 14.1 S&M has the right, if, during performance of the contract, circumstances arise resulting in force majeure, foreseeable or otherwise, to terminate the contract or postpone the term of delivery. 14.2 Circumstances that qualify as force majeure include, but are not limited to, import and export bans, war, strikes, and defective or non-timely delivery of goods by suppliers.
- 14.3 In the period in which fulfilment of the obligations is not possible due to such force majeure and exceeds a period of 6 months, both parties shall be entitled to dissolve the agreement without judicial intervention.

### **15. Premature termination**

If the client fails to meet one or more of his obligations under the agreement for any other reason, as well as if a petition is filed for the client's bankruptcy or a request for suspension of payment is made, or if the client's assets are wholly or partly attached, or the client otherwise loses the free disposal of his assets, S&M is entitled to suspend or terminate the agreement insofar as it has not yet been carried out. Products already delivered by S&M but not paid for may be reclaimed, all without prejudice to S&M's right to compensation for damages, costs and interest.

## **16. Final provisions**

- 16.1 All offers, deliveries, order confirmations and agreements, of which these conditions under Article 2.1 are part, as well as the obligations arising from them, are governed by Dutch law.

The provisions of the Vienna Sales Convention 1980 shall not apply.

- 16.2 All disputes relating to deliveries, order confirmations and agreements of which these terms and conditions under article 1 form a part, as well as the obligations arising therefrom, shall be decided in the first instance by the competent court in Amsterdam.
- 16.3 Should any provision of these terms and conditions not apply, be held invalid or be nullified, the other provisions will remain in full force and the inapplicable invalid or nullified provision will be converted into a provision which S&M would have stipulated if the original provision had been waived on account of its inapplicability, invalidity or voidability. If necessary, the client declares his agreement to this in advance.

Haarlem, November 18, 2021