

I. Scope of application

1. Scope of application

All offers and sales of Schubarth + Co AG shall be governed exclusively by the following general terms and conditions of sale and delivery. Different conditions of the client shall not be applicable unless they have been specifically accepted by Schubarth + Co AG in writing.

II. Conclusion of the contract

2. Offers and orders

Our warehouse lists and sales documents are always submitted without obligation and do not constitute binding offers. Offers and agreements for deliveries ex-works are always submitted and reached subject to approval and the possibility of delivery by the supplier works and do not become binding until they have been confirmed in writing. In the case of goods which are in stock, sale in the mean-time is reserved.

3. Technical data and standards

All technical data and characteristics of the different products shown in our warehouse lists and sales documents are guide values and do not constitute assured properties. Particular properties and suitability for a specific intended use are only assured on the basis of a special written agreement in each particular case.

Where applicable, the relevant standards (e.g. ISO, EN, DIN, VSCM, SIA etc.) shall apply to the characteristics of the goods, tolerances on dimensions and quantities and so forth. In addition, any standard commercial practices which are relevant shall likewise apply. We are obliged to reserve special conditions imposed by the supplier works.

4. Prices

The price basis must be agreed in each case, together with value added tax and special wishes concerning dispatch, packaging, transport and insurance. Unforeseeable increases in works prices, alloy and scrap supplements, taxes, customs duties or other statutory particulars, transport costs, insurance premiums etc. are payable by the client.

5. Creditworthiness

All orders are accepted subject to the complete solvency of the customer. Should this requirement not be satisfied, we reserve the right to require adequate surety, to make progressive deliveries against cash payment of all arrears or to withdraw from the contract.

III. Delivery conditions

6. Tolerances on quantities

We endeavour to respect the quantities which have been ordered. However, we must reserve the right to deliver amounts +/-10% above or below the agreed quantities with appropriate price adjustments.

7. Delivery lead-times

All agreed delivery lead-times are quoted for guidance only and without obligation. We do not enter into transactions of any kind for delivery by a fixed date or an expiry date within the meaning of Art. 190 OR. We reserve the right to make partial deliveries.

In the event of late deliveries, the client is not entitled to cancel the order unless it is clear, in the light of the prevailing circumstances, that we cannot perform the order, in particular because of force majeure. In that case the client is only entitled to compensation for the prejudice suffered as a result of late or non-performance of the delivery if this circumstance can be demonstrably attributed to gross negligence on our part.

8. Place of performance and transfer of risks

The place of performance for sales is BASEL or the agreed delivery destination. Consignment costs and risks shall be governed by the appropriate INCOTERMS.

9. Reservation of ownership

Deliveries are effected with reservation of ownership. The client authorizes us to make an entry of the reservation of ownership in the register.

IV. Payment of the purchase price

10. Payment

Our invoices are payable within thirty days of the date of the invoice, net and without any deduction whatsoever. The purchase price for crude metal deliveries falls due according to the agreements reached at the time when the order was placed. In the absence of any such agreement, the normal advance payment rule shall apply.

In the event of failure to effect payment by the stipulated time, the client shall be deemed to be in arrears without the need for any warning on our part. We are entitled to charge interest at the rate of 6% p.a. on arrears. We are also entitled to withdraw from the agreement.

Payment of overdue amounts cannot be withheld under any circumstances. In particular, offsetting against claims of the client is not permitted.

The place of performance for payment of the purchase price and secondary obligations of the purchaser is BASEL.

V. Warranty and liability of the supplier

11. Complaints

Complaints about possible defects must be made to us in writing within eight days of receipt of the consignment. Later complaints will be accepted only if the defects were concealed, i.e. could not have been detected at the time when the consignment was received despite a careful examination. In that case, the client must enter written complaints about the defects within eight days of the date on which they come to light. The right to complain shall lapse definitively one year after receipt of the consignment.

12. Right of verification

Prior to further processing and use of the goods to which the complaint refers, the client must grant us an opportunity to inspect and verify the goods concerned in the condition prevailing at the time of delivery or at the time when the defect was discovered.

13. Applicable provisions

The particular rights in respect of defects stipulated in the Swiss Code of Obligations (Art. 205 – Art. 210 OR) are deemed to have been waived unless we have demonstrably concealed the defect with malicious intent (Art. 199 OR). If no rules can be derived in a specific case from the agreed provisions and from these general terms and conditions of business, the rules set out in the general part of the Swiss Code of Obligations concerning performance of the contract shall apply in the event of defects in the delivered goods and other problems affecting delivery (Art. 68 – Art. 109 OR).

14. Entitlements of the client in the event of defects

If a justified complaint has been made, we are entitled to choose between the following

- repair of the delivered goods if that is possible and is offered by us immediately;
- return of the goods to which the complaint refers and replacement by impeccable goods if that is possible without delay;
- return of the goods and refund of the purchase price which has already been paid.

The costs of returning the goods from the place of performance and the cost of a possible replacement delivery will be paid by us.

A reduction of the price, i.e. retention of the goods by the client accompanied by a reduction of the purchase price, requires agreement between the two parties.

15. Secondary consequences of defects and exclusion of liability

We shall only be liable for further damage, in particular for expenditure caused by the occurrence of a defect and for the secondary consequences of defects, in cases of gross negligence. This limitation likewise applies to prejudice caused by the contracting procedures, delivery problems and in cases where particular properties of the delivered goods are guaranteed. The binding stipulations of product liability law are reserved.

16. Works deliveries

If the goods are not delivered to the client by us but by a works supplier retained by us, we are only responsible for defects in the goods within the framework of the above Section 14 of these general terms and conditions of business. We will not make good further damage caused by defects in the delivered goods or other delivery problems. Our liability for deliberate intent or gross negligence is reserved.

VI. Applicable law and place of jurisdiction

17. Applicable law

All claims arising out of this agreement shall be governed by **Swiss law** to the exclusion of the United Nations Convention on Contracts for the International Purchase of Goods of 11 April 1980 (Vienna Purchasing Law).

18. Place of jurisdiction

The courts of **BASEL** shall have sole jurisdiction over all obligations arising out of this contract.