

# General Terms and Conditions of Sale (T&Cs) for Schlang & Reichart Spezialmaschinen GmbH

## Section 1: Scope

(1) These Terms and Conditions of Sale apply exclusively and only to companies, legal entities under public law or public law special funds in the sense of Section 310 (1) BGB (German Civil Code). Contradictory or differing terms and conditions of sale from the Buyer are only recognised if we have expressly agreed to their validity in writing.

(2) These Terms and Conditions of Sale apply to all future transactions with the Buyer, insofar as they are legal transactions of a related kind (as a precaution the Terms and Conditions of Sale should be attached to every order confirmation).

(3) A contract is concluded – in the absence of a specific agreement – with the written order confirmation by the Supplier.

(4) All offers and illustrations are non-binding; the right to make design changes remains reserved. The documentation contained in the offer and the order confirmation, such as descriptions, designs, size and weight details, are only approximate indications unless they are expressly designated as binding.

(5) The Supplier retains all ownership and copyright rights to patterns, cost estimates and illustrations, in physical or intangible form – including in electronic form; they may not be made available to third parties. The Supplier commits to only make information or documents from the Buyer that have been designated as confidential available to third parties with the Buyer's permission.

## Section 2: Offer and Conclusion of Contract

If an order is considered an offer according to Section 145 BGB (German Civil Code), we can accept this within two weeks.

## Section 3: Provided Documents

We reserve the ownership and copyright rights to all documents provided to the Buyer as part of the order placement, such as calculations, illustrations etc. Documents may not be made available to third parties unless the Buyer is granted express written permission. If the offer of the Buyer is not accepted within the term specified in Section 2 then the documents must be returned without delay.

## Section 4: Pricing and Payment

(1) Unless otherwise agreed in writing, our prices apply ex works, excluding packaging, plus the applicable rate of VAT. Costs for packaging are invoiced separately.

(2) Payment of the purchase price must only be made to the account specified on the invoice form. The deduction of discounts is only permitted with special written agreement.

(3) Unless otherwise agreed the purchase price is to be paid within 10 days after delivery (alternatives: "...the purchase price is to be paid within 21 days of invoicing" or "...the purchase price is to be paid by XX.XX.XXXX"). Interest for late payment will be charged at 8% p.a. above the current base rate. The right to assert higher damages caused by default is reserved.

(4) Unless a fixed price agreement has been made, the right to reasonable price changes due to changes in wage, material or sales costs, for deliveries that take place 3 or more months after conclusion of the contract, is reserved.

(5) Payments are, irrespective of the transaction purpose, always used for settlement of the oldest payable debt plus any default interest accrued.

## Section 5: Offsetting and Right of Retention

The Buyer is only entitled to offset if their counter-claims are legally established or uncontested. The Buyer is only entitled to exercise a right to retention if as their counter-claim is based on the same contractual relationship.

## Section 6: Delivery Period

(1) The delivery period arises from the agreement between the contractual partners.

(2) Compliance by the Supplier is conditional upon all commercial and technical questions between the contractual partners being clarified and the Buyer meeting all their obligations, such as the providing all required official permits or certificates, and making of an advance payment. If this does not occur the delivery period will be extended accordingly. The right to defence of non-performance of the contract remains reserved. This does not apply if the Supplier is responsible for the delay. **Subsequent changes requested by the Buyer may result in a deferral of the delivery date, amendment of the contractual terms and possibly an increase in price.**

(3) Compliance with the delivery deadline is subject to correct and punctual self-delivery. The Supplier shall inform of any likely delays.

(4) The delivery period is observed if the readiness for dispatch is notified before its expiry.

(5) If the dispatch or pick-up of the delivery item(s) are delayed for reasons that the Buyer is responsible for (default of acceptance) then one month after notification of the readiness for dispatch the Buyer will be charged for any costs caused by the delay.

(6) If the Buyer is in default of acceptance or culpably violates other obligations to cooperate, the Supplier is entitled to claim for resulting damages, including possible additional expenditures. The right to make further claims is reserved. The Buyer, on their part, reserves the right to prove that there was damages did not occur to the extent claimed, or occurred at a considerably lower rate. The risk of accidental loss or accidental degradation of the purchased item(s) transfers to the Buyer at the point of time that they enter into default of acceptance or default of payment.

(7) If failure to comply with the delivery period is due to force majeure, labour disputes or other events that are beyond the Supplier's control, then the delivery period is extended accordingly. The Supplier will inform the Buyer about the beginning and end of such circumstances as soon as possible.

(8) The Buyer can withdraw from the contract without a notice period if it becomes impossible for the Supplier to fulfil their obligations completely before the transfer of risk. If the incapacity or impossibility occurs during the default of acceptance period, or if the Buyer is either solely or primarily responsible for these circumstances, then they are liable to provide compensation.

(9) In a case of delivery delay due to unintentional or grossly negligent actions by the Supplier, the Supplier must pay lump-sum compensation for the delay of 0.5% of the delivery value for each completed week of delay, up to a maximum of no more

than 5% of the total delivery that, due to the delay, cannot be used on time or in accordance with the contract.

(10) If the Buyer sets the Supplier – taking account of the statutory exceptions – a reasonable deadline for performance after due date and this deadline is not complied with, then the Buyer is entitled to withdraw within the framework of the statutory provisions.

(11) Additional claims and rights of the Buyer remain unaffected by the delay in delivery.

## Section 7: Transfer of Risk with Shipment

(1) If the goods are shipped to the Buyer at the Buyer's request, then the risk of accidental loss or accidental degradation transfers to the Buyer once the goods are shipped, at the latest when they leave the factory/warehouse.

(2) If the shipment or pick-up is delayed or stopped due to circumstances that the Supplier is not responsible for, then the risk transfers to the Buyer on the day that readiness for shipment is communicated. The Supplier commits to take out insurance at the expense of the Buyer if the Buyer requests it.

(3) Partial deliveries are permissible if they are reasonable for the Buyer.

## Section 8: Retention of Title

(1) We retain the title to the delivered item(s) until complete payment of all amounts in the delivery agreement has been received. This also applies to all future deliveries, even if we do not constantly and expressly refer to this fact. We are entitled to take the purchased items back if the Buyer behaves contrary to the terms of the contract.

(2) The Buyer is committed to treat the purchased item(s) carefully until the title has been transferred to them. In particular they are obliged to, at their own expense, insure high-value goods against theft, fire and water damage at the replacement value. If maintenance and inspection work must be carried out then this must be done in a timely manner at the Buyer's expense.

(3) The Buyer may not pledge or use as collateral security any goods that are subject to retention of title. While the title has not transferred to the Buyer they must promptly inform us in writing if the delivered item(s) are pledged or otherwise subject to the intervention of a third party. If the third party is not able to reimburse us for the judicial and extra-judicial costs of legal action in accordance with Section 771 ZPO (Code of Civil Procedure) then the Buyer must reimburse us for any loss.

(4) The Buyer is entitled to resell the reserved goods in the ordinary course of business. The purchaser here and now assigns to us the receivables from resale of the reserved goods, up to the amount of the final invoice total agreed with us (including value added tax). With account agreements between the Buyer and third parties this applies to the credited balance in the current account. This assignment will apply regardless of whether reserved goods are sold with or without additional processing. The Buyer is entitled to the collection of receivables even after assignment. Our authorisation to collect the account receivable ourselves shall remain unaffected. However we will not enforce debt collection if the Buyer meets their payment obligations from the proceeds collected, is not in default of payment and, in particular, as long as no application to open insolvency proceedings has been made and there has been no cessation of payment. If this occurs then the Supplier may demand that the Buyer disclose assigned claims and their debtors, along with all the information required for collection and associated documentation, and inform the debtors (third parties) of the assignment.

(5) The administration, processing or remodelling of the purchased item(s) by the Buyer is always done on our behalf. In this case, the Buyer's expectant right to the purchased item(s) carries over to the remodelled item. If the purchased items are processed with articles that do not belong to us then we then we acquire co-ownership of the newly created item, in the ratio of the objective value, at the time of processing, of the purchased item to the value of the other item(s) processed. The same applies in the event of mixing. If the mixing occurs in such a way that the item of the Buyer is to be regarded as the main item, it is deemed to be agreed that the Buyer shall assign part ownership to us and that the resulting sole ownership or joint ownership shall be granted to us. To secure our claims against the Buyer the Buyer shall also assign to us any receivables from third parties that result from a combination of the reserved goods with real estate; we hereby accept this assignment.

(6) The Buyer stores the reserved goods for the Supplier free of charge. The Buyer must insure the goods against fire, theft and water damage, and already assigns to the Supplier any claims concerning this insurance as well as any compensation claims due to loss or destruction of the goods.

(7) An application to open insolvency proceedings gives the Supplier the right to withdraw from the contract and demand immediate return of the delivery item(s).

(8) The Supplier commits to release any securities that they are entitled to upon request of the Buyer, insofar as their value exceeds the receivables to be secured by more than 20%.

## Section 9: Warranty and Notice of Defects as well as Recourse/Manufacturer Recourse

(1) The warranty rights of the Buyer assume that the Buyer properly met their inspection and notification obligations according to Section 377 HGB (Commercial Code).

(2) Claims arising from defects expire 12 months after delivery of the goods to the Buyer. If the Buyer is an entrepreneur then the warranty is excluded for the purchase of used goods. The above provisions do not apply if the law in accordance with Section 438 (1) No. 2 BGB (Construction Work and Objects for Construction Work), Section 479 (1) BGB (Right of Recourse) or Section 634 (a) Paragraph 1 BGB (Construction Defects) prescribe longer time limits. Our consent must be obtained prior to any return of the goods. **If the Buyer is an entrepreneur then the warranty is excluded for the purchase of used goods.**

(3) If, despite all care taken, the delivered goods exhibit a defect that already existed at the time of transfer of risk, then we will at our discretion either repair the good or replace the goods, provided that the notice of defects was communicated promptly. The Supplier shall repair or replace all parts that are proved as defective due to certain circumstances occurring before the transfer of risk, as per the Supplier's discretion. The Buyer shall notify us in writing of such defects as soon as they are discovered. Replaced parts become the property of the Supplier.

(4) We must always be given the opportunity to carry out subsequent performance within a reasonable period of time; otherwise the Supplier is released from any liability for resulting consequences. Only in urgent cases of danger to operational safety or to prevent disproportionately large losses, whereby the Supplier is to be immediately notified, does the Buyer have the right to resolve the defect themselves or have it resolved by third parties, and then demand reimbursement of necessary expenses. Recourse claims shall remain unaffected by the above provision.

(5) The direct costs incurred by the repair or replacement are to be borne by the Supplier – insofar as the complaint proves to be justified – as are the costs for removal, installation and the necessary provision of required fitters and assistants (including any travel expenses), insofar as this does not incur any unreasonable expenses for the Supplier.

(6) Claims of the Buyer for expenses necessarily incurred for the purpose of supplementary performance, in particular transport, route, work and material costs, shall be excluded insofar as the costs increase as a consequence of the delivered goods having been moved to a different location of the Buyer, unless this move corresponds with the intended use.

(7) The Buyer has a right to withdraw from the contract, in accordance with the statutory regulations, if the Supplier – taking account of the statutory exceptions – has allowed a reasonable deadline set for remedy of the defect or replacement lapse without result. If the defect is only of a minor nature, the Buyer shall only be entitled to a right to reduction of the contract price. The right to demand a reduction in the contract price is excluded in all other cases.

(8) There will be no claims for defects in the case of only slight variation from the agreed quality, with only minor impairment of the usability, with natural wear-and-tear, or for damages that occurred after the transferral of risk due to faulty or incorrect handling, excessive use, unsuitable operating material, defective construction work, unsuitable subsoil or due to particular external influences, which are not presupposed by the contract.

(9) If subsequent performance fails then the Buyer – irrespective of any claims for damages – can withdraw from the contract or reduce payment.

(10) Under the following conditions, claims for damages due to defects can only be made by the Buyer once the subsequent performance has failed or the Supplier has refused to carry it out. The right of the Buyer to make claims for further compensation under the following conditions remains unaffected. Claims for damages in accordance with Section 9 (1) Paragraphs 10 and 11 are subject to the statutory periods.

(11) The Supplier has unlimited liability, regardless of the aforementioned provisions and the following liability limitations, for damages to life, body and health that are due to a willful or fraudulent breach of obligations by their legal representative or vicarious agent, for damages that are covered by the "Produkthaftungsgesetz." (German Product Liability Act), and for all damages that are related to willful or grossly negligent breaches of the contract or fraudulent intent by their legal representative or vicarious agent. If the Supplier stated a quality or service life guarantee with regard to the goods or parts of the goods, then they are liable as part of this guarantee. For damages that are related to a lack of guaranteed quality or durability, but are not immediately obvious on the goods, they are only liable if the risk of such damage is evidently included in the quality or durability guarantee.

(12) The Supplier is also liable for damages that are caused by ordinary negligence, insofar as the negligence infringes on contractual obligations that are essential for the achievement of the contractual purpose (cardinal obligations). However they are only liable if the damages are typically associated with the contract and are foreseeable. They are not liable in other cases of ordinary negligence that leads to violation of non-cardinal obligations. The limitations of liability included in Sentences 1 to 3 also apply if the liability relates to a legal representative, company executive or other representative.

(13) Any further liability for compensation, other than that provided for, is excluded - regardless of the legal nature of the claim. Insofar as liability of the Supplier is excluded or limited, this also applies for the personal liability of their employees, workers, staff, representatives and vicarious agents.

(14) If the Buyer or third parties carry out improper maintenance work or implement changes then there can be no claims for defects due to this or any consequences. We shall **not assume liability** in particular in the following cases:

Unsuitable or improper use, faulty assembly or repair by the Buyer or a third party, natural wear-and-tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials, insofar as they were not the responsibility of the Supplier. If the Buyer or a third party remedies a defect improperly, the Supplier is not liable for the resulting consequences. The same applies for modifications to the delivered item(s) that were made without prior permission of the Supplier.

(15) Recourse claims of the Buyer against us are only permitted if the Buyer has not entered into any agreements with their own customers going beyond the mandatory statutory claims based on defects. Furthermore, as for the scope of the purchaser's right of recourse against the Supplier, Paragraph 6 applies accordingly.

(16) In the event of fraudulent concealment of a defect, or in the event that a warranty is given with respect to the condition of the goods at the time of transfer of risk within the meaning of Section 444 BGB (the Supplier's declaration that the object of purchase has a certain property during the transfer of risk and that the Supplier, independent of negligence, takes responsibility for all consequences of this defect), the Buyer's rights shall be exclusively governed by the statutory provisions.

## 2. Defect of Title

(1) If usage of the delivered item(s) lead to infringement of domestic industrial property rights or copyrights then the supplier will, at their own expense, either procure for the buyer the rights to continued use or modify the delivered item(s) in a way that is both acceptable to the buyer and also ensures that the industrial property rights are no longer infringed. If this is not possible at economically reasonable terms, or within a reasonable time period, then the Buyer is entitled to withdraw from the contract. Under the circumstances mentioned above, the Supplier is also entitled to withdraw from the contract. In addition to this, the Supplier shall release the Buyer from uncontested or legally binding claims by the relevant industrial property right holder.

(2) The responsibilities of the Supplier specified in Section 9 (2) Clause 1 are subject to Section 9 (2) Clauses 10 and 11 in the event of infringement of industrial property rights or copyright. These only exist if

- the Buyer promptly informs the Supplier of asserted industrial property right or copyright claims,

- the Buyer supports the Supplier to a reasonable extent in the defence of the asserted claims, or allows the implementation of modification methods in accordance with Clause 2 (1),

- the Supplier reserves the right to all defence measures including extra-judicial settlements,

- the defect of title is not based on an instruction made by the Buyer, and

- the legal violation did not arise from the Buyer modifying the delivery item in an unauthorised manner or using it in a manner not compliant with the contract.

## Section 10: Limitation Period

The warranty period is 12 months, beginning with the transfer of risk. This period also applies for compensation claims for consequential damages, insofar as no claims are made for unauthorised action.

## Section 11: Software usage

(1) Insofar as software is included in the delivery the Buyer is not granted an exclusive right to use the delivered software or its documentation.

(2) The Buyer may only reproduce or adapt the software, or convert the object code into source code, to the extent permitted by law (Sections 69a et seq. UrhG - Copyright Act). The Buyer commits to not remove any manufacturer information – in particular copyright notices – without prior express permission of the Supplier.

(3) All other rights to the software and documentation, including copies, remain with the Supplier or the software provider. The allocation of sub-licenses is not permitted.

## Section 12: Miscellaneous

(1) This contract and the overall legal relationship between the parties is governed by the law of the Federal Republic of Germany, with the exclusion of UN purchasing law (CISG).

(2) No changes or additions to the contract shall be effective unless formulated in writing. This shall also apply to any change to this written form clause. Additional verbal agreements have not been made.

(3) If any provision of this contract is or becomes invalid, or contains a loophole, then this does not affect the validity of the remaining provisions.

## Section 13: Court of Jurisdiction

(1) Our place of business is the place of fulfilment.

(2) The exclusive court of jurisdiction for any disputes arising from the contractual relationship is the court of jurisdiction for the Supplier's place of business, insofar as the contractual parties are merchants, who are not tradespeople listed in Section 4 of the German Commercial Code, legal persons under public law or legal special funds.

## Additional conditions of sale for dealers:

### §1 Replacement Parts and Customer Service

(1) The dealer assures that they currently have and will continue to have adequate service, financial and management structures as well as sufficient organisation to implement customer service and warranty work for the contractual goods. They are responsible for fast, reliable and reasonable replacement part and warranty works, and for ensuring the greatest possible satisfaction of customers.

(2) The dealer shall employ professionally trained staff to fulfil the responsibilities arising from these T&Cs. The employees must regularly, and at the cost of the dealer, participate in the technical product training courses that Schlang & Reichart Spezialmaschinen GmbH (SuR) requires at their discretion. The dealer must carry out the training courses required by SuR for their employees.

(3) The business locations of the dealer must contain the following facilities:

- workshop spaces **Section 12**

- department for original spare parts

(4) The dealer shall acquire and maintain tools, machines and equipment identified as necessary by SuR in an appropriate quantity, quality and condition to satisfy the normal service requirements for the contractual goods.

(5) When delivering the machines and/or contractual goods to customers, the dealer shall always present a complete copy of the warranty documentation provided by SuR, and indicate the SuR warranty conditions.

(6) With every delivery of a machine and/or contractual good the dealer must have the customer confirm in writing, in the form provided by SuR, that they have received the SuR warranty conditions. This written confirmation is to be sent to SuR in the warranty booklet within the term defined by SuR.

(7) Insofar as the warranty conditions of SuR provides for free customer service for machines and/or contractual goods this must be carried out free of charge for customers apart from material costs.

(8) During the warranty period for machines and/or contractual goods they must, upon customer complaint, promptly examine the functioning or condition of the machine and/or contractual goods free of charge, as well as establish the cause of the respective defect. The dealer must promptly inform SuR of every warranty case, so that SuR can plan an efficient and economically justifiable procedure for the planned activities.

(9) They must implement all required works for the customer that are approved by SuR in accordance with the warranty conditions, or as part of special customer service or a product recall. In all other cases the respectively valid compensation and other conditions apply as stipulated in the warranty conditions or by SuR. In a justified warranty case SuR shall make the parts required for elimination of defects available to the dealer. SuR shall compensate the required dismantling and installation costs for the vehicle, and travel expenses. However travel expenses will only be compensated for a distance of up to 500 km and one-way.

(10) For the performance of warranty works and as part of the free customer service or product recalls the dealer may only use, install or deliver original spare parts. In the case of replacement delivery or repair the warranty period starts again, however this is limited to the part that has been exchanged.

(11) If the dealer uses anything apart from contractual goods for the repair or maintenance of machines they must inform the customer of this with signage. The signs are to be attached permanently and clearly visible throughout the premises of the dealer.

(12) If anything apart from contractual goods are used for the repair or maintenance work, for which the suitable contractual goods with the SuR trademark would have been made available, then the dealer must expressly make their customers aware of this with an appropriate note in the invoice and/or delivery note.

(13) The dealer must offer their customers a quick and professional maintenance and repair service for every machine, either in their workshop or at the customer's location, at the dealer's discretion, to ensure safe and reliable usage of the machine and customer satisfaction.

(14) If the same dealer remedies defects that were not caused by SuR, or if an inspection is carried out, then only a pro rata expense claim will be made. In the determining of the scope of corrective action, it should be assumed that it will be taken on an axle in its installed state.

(15) The dealer shall inform the user, who for whatever reason shows them machines, about safety risks that are created by the user or others, namely due to changes made to the machine, missing protective measures or other circumstances that have an effect on the safety of the machines usage. The dealer shall recommend measures to the customer that are required to eliminate the risks.

### Section 2: Amendments, Delivery

(1) The dealer commits to inform the customer that with conclusion of the contract the T&Cs of the machine manufacturer SuR are also an integral part of the contract. In particular the dealer commits to only submit offers to customers regarding SuR machines with the explicit notice that the

**Offers and illustrations are non-binding and the manufacturer SuR reserves the right to make design modifications**, in particular in connection with amendments or supplements to the ISO, DIN, or EN standards, or for required adjustments due to the current state of technology at the time of the contract, or if specific guidelines of the customer and/or the authorities mean that the contractual purpose can otherwise not be achieved. This means that the documentation contained in the offer and the order confirmation, such as descriptions, designs, size and weight details, are only approximate indications unless they are expressly designated as binding.

(2) The dealer may not change or remove SuR manufacturer designations, serial numbers or identification plates. Without prior written consent from SuR the dealer may neither modify the machines and/or contractual goods nor exchange or replace parts of the standard configuration before resale.

(3) The dealer must deliver the machines and/or contractual goods with the documentation provided by SuR. In particular the dealer must present the customer with the operating instructions and explain to the customer how to properly use and operate the machines and/or contractual goods. The dealer must have the customer or their representative confirm that they have received the operating instructions and have been instructed in proper use and operation.

### Section 3: Trademarks and Patents

(1) Trademarks, trade names, logos and all patents, utility models and registered designs, illustrations, models and other industrial property rights of any type, which are held or used by SuR in this territory or somewhere else (SuR industrial property rights) are and remain the exclusive property of SuR, even if they are not registered in this territory. The dealer does not become entitled to any of these rights; they may only use them for SuR during the term of the contract. If SuR requests it, a formal agreement regarding the usage of SuR industrial property rights is to be concluded.

(2) Without prior written consent from SuR the dealer may not use any trademarks, trade names or logos that belong to or are used by SuR in connection with the dealer's company name, or in any other way that gives the impression that the trademarks, trade names or logos are part of the dealer's corporate name. They may also not, without prior consent from SuR, modify these into a different form, or use them in a different combination unless this is in advertising that has been approved in writing by SuR.

(3) The dealer may not, neither in connection with the sale of contractual goods nor in connection with other business activities, in the course of business use trademarks, trade names, logos, utility models, design patents, illustrations or models that, due to their similarity to SuR industrial property, could cause confusion or misrepresentation.

(4) The dealer must immediately inform SuR about any usage of SuR industrial property rights, or similar trademarks, trade names, logos, utility model, design patents, illustrations, or models that are used in their territory by third parties, which in business dealing could lead to confusion or misrepresentation.

### §4 Miscellaneous

(1) If SuR once or repeatedly does not make use of their entitlements according to these T&Cs, or tolerates the behaviour of a dealer, then this does not constitute a waiver of the rights in these T&Cs.

(2) Amendments and modifications to these T&Cs must be made in written form and signed by both of the parties in order to be valid.

(3) The dealer may only transfer their rights from these T&Cs or dispose of them in a different way if SuR has given prior written consent. A prerequisite is that they submit the guarantees and declarations of intention in advance, as well as provide any securities that SuR requests at their own discretion.

(4) SuR may transfer rights or obligations associated with these T&Cs to third parties, and make appropriate agreements.

(5) Notifications are to be sent by registered post with acknowledgement of receipt or by courier with acknowledgement of receipt to the address given by the dealer or SuR as the location of the headquarters, or a different address specified for this purpose.

(6) If individual provisions of these T&Cs are or become invalid or unenforceable then this does not affect the validity or enforceability of the remaining provisions. As well as this, SuR has the right to amend or modify the contract, insofar as it is necessary, to comply with legal regulations or other public directives, in particular those of the EC Commission.

(7) These T&Cs and their interpretation are subject to German law, to the exclusion of the UN Sales Convention. The contractual parties hereby agree that the court of jurisdiction for SuR is the exclusive court of jurisdiction.