

# Electronic supply, control and warning systems for touring vehicles

Status: July 2020

## GENERAL TERMS OF SALE

**Schautd GmbH**  
**Electrical and instrument engineering**

– Domestic market –

### 1. Scope of application

- 1.1 These General Terms of Sale (hereinafter the "GTS") apply to all our business customers whose responsible branch office is located in the Federal Republic of Germany (hereinafter the "Buyer"). The branch office of the company that enters into the contract in its own name is deemed to be responsible. The GTS only apply if the Buyer is an undertaking (Civil Code, § 14), a legal entity under public law or the property of a public not-for-profit organization.
- 1.2 In particular, the GTS apply to contracts for the sale and/or supply of movable property (hereinafter the "Goods", without regard to whether we produce the Goods ourselves or purchase them from sub-suppliers (Civil Code, §§ 433, 650). Unless otherwise agreed, the GTS shall apply as a model agreement without referring to them again in each individual case also for similar future contracts in the version in force at the time of the Purchaser's order or in the version last transmitted to him in text form.
- 1.3 Our GTS apply exclusively. Any Buyer's General Terms and Conditions of Transactions that may differ, be mutually exclusive or additional shall only become part of the contract if and when we are in full agreement with their validity. This requirement of consent applies in any case, for example, even if we make a delivery to the Buyer without stipulating it in advance, but with knowledge of his General Terms and Conditions of Transactions.
- 1.4 Legally relevant statements and notices by the Buyer concerning the contract (e.g. setting of deadlines, defect lists, rejection or price reduction) shall be submitted in writing, i.e. in writing or in text form (e.g. by letter, e-mail, telefax). The legal prescriptions on form and other confirmations, in particular in cases of doubt as to whether a declaration has been made, remain valid.

### 2. Conclusion of the contract

- 2.1 Our offers are free and non-binding. This shall also apply to catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions and other documents (including any in electronic form) which we make available to the Buyer, where we retain proprietary rights and copyrights.
- 2.2 Changes or misconceptions about our Goods relating to images or drawings in brochures, advertisements and price lists and data contained therein, such as material, size, shapes, shall constitute an exception if they are designated as binding.
- 2.3 The documents relating to the offer do not constitute a guarantee of quality or durability.
- 2.4 The ordering of the Goods by the Buyer shall be regarded as a binding offer to conclude a contract. Unless otherwise stated in the order, we are entitled to accept this contract proposal within two weeks of its receipt by us.
- 2.5 We can announce the acceptance in writing (e.g. in the form of an order confirmation) or by sending the Goods to the Buyer.

### 3. Delivery periods and late delivery

- 3.1 Delivery time will be agreed individually or notified by us upon receipt of your order. Otherwise, the delivery time shall be about four weeks from the conclusion of the contract.

## Electronic supply, control and warning systems for touring vehicles

- 3.2 The delivery period shall commence subject to the following clause 3.3. from the time we send the order confirmation.
- 3.3 If the Customer is obliged to procure certain documents themselves, e.g. permits, consignment permits etc., or to pay a deposit, then the delivery period will not begin until all documents procured by the Customer have become available to us or the deposit has been received by us.
- 3.4 The delivery time is met if, by the time it has elapsed - depending on the agreed method of delivery - the Goods have left the warehouse or we have provided the Goods to the Customer and notified him that the Goods are ready for dispatch.
- 3.5 If we are unable to comply with binding delivery deadlines for reasons beyond our control (unavailability of service), we will inform the Buyer immediately and at the same time inform him of the anticipated new delivery date. Should the service not be available even during the new delivery period, we shall be entitled to terminate the contract in whole or in part; any remuneration already paid by the Buyer shall be promptly refunded by us. An event of unavailability of the service in this sense shall be deemed to be in particular the untimely self-delivery in the event that we have entered into an equivalent transaction to cover the obligation, if the service is unavailable through no fault of ours or our sub-suppliers, or if we are not required to purchase the service in an individual case.
- 3.6 The obstacles pursuant to Clause 3.5 shall be deemed to include, in particular,
- (a) cases of natural disasters such as mobilization, war, acts of terrorism, riots, epidemics or other events (e.g. strike, lockout),
  - (b) virus or other third-party attacks on the supplier's IT system where these occur despite compliance with normal precautions,
  - (c) delays due to German, US as well as other applicable national, European and international foreign trade law regulations or due to other circumstances for which we are not responsible.
- 3.7 The occurrence of a delay in delivery on our part is determined by legal provisions. In any event, however, a reminder must be sent by the Buyer stating an acceptable time limit.
- 3.8 The Buyer's rights pursuant to Clause 7 of these General Terms and Conditions and our statutory rights, in particular, in the event of exclusion of the performance obligation (e.g. due to the impossibility or inadmissibility of requiring the performance of an obligated action and/or non-performance) shall remain unaffected.

## 4. Delivery, risk transfer, acceptance, delayed acceptance

- 4.1 Delivery takes place from the warehouse, where the place of fulfilment or possible non-fulfilment of the delivery is also located. At the request and expense of the Buyer, the Goods may be dispatched to another destination (mail-order trade operation). Unless otherwise agreed, we are entitled to determine the type of consignment (in particular the transport company, method of consignment, packaging) ourselves.
- 4.2 In the event of a mail-order trade operation, the risk of accidental loss or accidental deterioration of the Goods as well as the risk of delay from the time of Goods dispatch shall pass to the freight forwarder, carrier or other person or institution appointed to carry out the dispatch.
- 4.3 If the Buyer delays acceptance of the Goods, fails to cooperate or delays our delivery for other reasons under the Buyer's control, we shall be entitled to claim compensation for damages incurred in this regard, including excess costs (e.g. storage costs in the warehouse). For this, we shall charge a lump sum of compensation in the amount of EUR 20 per calendar day from the delivery date or - if there is no delivery date - from the date of dispatch of the notification that the Goods are ready for shipment. The right to prove higher damages and our legal claims (e.g. reimbursement of excess costs, fair compensation, termination of contract) shall remain unaffected; the lump sum amount shall be set off against subsequent monetary claims. The Buyer shall be entitled to prove that we have not suffered any damages at all or have suffered markedly less damage than the above-mentioned lump sum.

## 5. Prices and terms of payment

## Electronic supply, control and warning systems for touring vehicles

- 5.1 Unless otherwise agreed in an individual case, our prices current at the time of conclusion of the contract, namely upon release from a warehouse, excluding statutory VAT, shall apply.
- 5.2 In the event of a consignment trade (item 4.1), the Buyer shall bear the costs of transport from the warehouse and the costs of transport insurance, if the Buyer so requires. Any customs duties, levies, taxes and other governmental charges shall be borne by the Buyer.
- 5.3 The selling price shall be payable within 14 days of invoice and delivery or acceptance of the Goods. However, as part of the ongoing business relationship, we are entitled at any time to make full or partial delivery only against payment in advance. We shall state the relevant clause at the latest together with the order confirmation.
- 5.4 The Buyer shall only be entitled to set-off or the right to withdraw from the contract until we have fulfilled our obligations if the counterclaim is based on the same contractual relationship or the right is recognized legally and undisputed. In the event of defects in delivery, the Buyer's counterclaims, in particular, in accordance with Clause 7.6, Line 2 of these General Terms and Conditions, remain unaffected.
- 5.5 The Buyer shall only be entitled to withhold payment in the event of valid or urgent counterclaims arising from the same contractual relationship.

### **6. Reservation of title clause**

- 6.1 We reserve ownership of the Goods until all - including future - claims (including all ancillary claims such as financing costs, interest) arising from the business relationship with the Purchaser have been settled in full. If a current account agreement has been concluded with the Customer, the ownership of the Goods shall be retained until the balance of the current account has been paid in full.
- 6.2 Until such time as the secured claims have been paid in full, the Goods under retention may not be pledged or secured to third parties. The Buyer shall inform us immediately in writing if bankruptcy proceedings are initiated and third parties gain access to the Goods belonging to us (e.g. seizure).
- 6.3 In the event of breach of contract by the Buyer, in particular non-payment of the purchase price, we are entitled under statutory regulations to withdraw from the contract and/or reclaim the Goods on the basis of a reservation of title. Claiming the goods does not mean a simultaneous declaration of withdrawal from the contract; moreover, we are entitled to claim the Goods but retain the right to withdraw from the contract. If the Buyer fails to pay the purchase price, we may only exercise these rights if we have previously unsuccessfully set a reasonable payment deadline for the Buyer or if setting such a deadline is unnecessary according to legitimate regulations.
- 6.4 The Buyer is entitled to dispose of and/or recycle Goods subject to reservation of title up to and including the withdrawal of the Goods pursuant to point (c) below as a matter of good business practice. In such a case, the following additional provisions shall apply. In such a case, the following additional provisions apply.
  - (a) The clause of reservation of title applies to products resulting from processing, mixing or combining our Goods at their full cost, with us as the manufacturer. If processing, mixing or combining with third party Goods results in the reservation of title, we acquire joint ownership in the ratio of the invoiced values of the processed, mixed or combined Goods. In all other respects, the same provisions apply for the received Goods as for the Goods delivered with our retention of title.
  - (b) The Buyer now assigns to us claims against third parties arising from the resale of the Goods or the product in full or to the extent of our possible share in the common ownership according to the paragraph above in order to secure it. We accept the assignment. The obligations of the Buyer specified in Clause 6.2 shall also apply in consideration of the assigned claims.
  - (c) The Buyer is authorized to assert claims along with us. We undertake not to assert any claims as long as the Buyer meets his payment obligations towards us, as long as its performance is not defective and as long as we have not resorted to the reservation of title by exercising the right under Clause 6.3. In the case of claims, however, we may demand that the Buyer identifies to us the assigned claims and the debtors thereof, provides all

## Electronic supply, control and warning systems for touring vehicles

information necessary for the claim, issues all relevant documents and informs the debtors (third parties) of the assignment. In addition, in this case we are entitled to revoke the Buyer's authorization to further dispose of or process the Goods in our possession.

- (d) If the real value of the collateral exceeds our claims by more than 10 %, we shall, at the request of the Buyer, release the collateral at our discretion.

### **7. Buyer's claims for quality**

- 7.1 The Buyer shall inspect the Goods as soon as they are received and shall immediately, within 7 working days at the latest (Saturdays are not regarded as working days), notify us in writing of any defects detected; otherwise, the Goods shall be deemed to have been approved. Hidden defects must be reported to us in writing immediately after discovery, at the latest within 7 working days (Saturdays are not regarded as working days); otherwise, the Goods are deemed to be approved also insofar as such hidden defects are concerned.
- 7.2 If there is a defect in the Goods, we may at our option either remedy the defect (rectification of defects) or deliver the item free of defects (replacement delivery).
- 7.3 Claims arising from a reverse claim by the supplier (in particular for disassembly and installation costs) shall be governed by law. Such claims are excluded if the defective Goods have already been processed by the Customer or another company, e.g. by assembly into another product.
- 7.4 The Buyer shall be obliged to give us the time and opportunity necessary for subsequent performance, in particular, to hand over the Goods in question to us for inspection purposes. In the event of delivery for replacement purposes, the Customer shall return the defective Goods to us in accordance with the statutory regulations.
- 7.5 Otherwise, the Buyer has statutory rights relating to defects detected in the Goods.
- 7.6 Claims for partial performance shall not entitle the Customer to withdraw from the remainder of the contract, unless the Customer has the right to withdraw from the entire contract due to partial performance related to the defective Goods.
- 7.7 If the Customer makes a claim for damages, we shall only be liable subject to the following clause 8.

### **8. Scope of liability**

- 8.1 We are liable for damages - regardless of the legal cause - as part of culpable liability in cases of criminal intent and gross negligence. In the case of simple negligence, subject to the statutory limitations of liability (e.g. carelessness in certain matters; minor breach of duty) we shall only be liable for
- (a) damage resulting from injury to life, body or health,
- (b) damages caused by the breach of a material contractual obligation (obligation the fulfilment of which allows the contract to be performed in a generally proper manner and upon the observance of which the contracting party relies and can rely on); however, in this case our liability is limited to compensation for foreseeable, typically occurring damages.
- 8.2 The limitations of liability arising from Clause 8.1 also apply in the event of a breach of duty by or in of persons for whose fault we are legally liable. They do not apply in the event of our willful concealment of the existence of a defect or our granting of a warranty for the quality of the Goods or the Buyer's claims under the Product Liability Act.
- 8.3 In the case of a breach of duty that is not due to a defect, the Buyer is only entitled to withdraw from the contract or to terminate it if we are liable for the breach of duty. The Buyer's right to withdraw freely from the contract is excluded. Otherwise, the legal prerequisites and legal consequences apply.

### **9. Statute of limitation**

- 9.1 The statute of limitation shall apply in the case of a supplier's counterclaim in the supply chain for the purchase of consumer Goods, in the case of statutory liability without fault, in particular under

## Electronic supply, control and warning systems for touring vehicles

the Product Liability Act, and in the case of warranty liability.

- 9.2 The statute of limitation also applies in the case of damage to life, body or health resulting from a negligent breach of duty on our part or an intentional or negligent breach of obligations on the part of our legal representative or agent, in the case of other damages based on an intentional or grossly negligent breach of duty on our part or an intentional or negligent breach of duty on the part of our legal representative or agent, as well as in the event of damage based on willful or negligent breach of material obligations under the relevant contract on our part or on the part of our legal representatives or agents.
- 9.3 In all other cases the warranty period shall be one year.

### **10. Deteriorating property status and creditworthiness**

- 10.1 If the Customer's assets deteriorate after the conclusion of the contract, we shall only be entitled to make the missing deliveries and services after the Customer has paid the security deposit. If the Customer is unable to provide the required security deposit within a reasonable period of time, we shall be entitled to withdraw from the contract.
- 10.2 This shall also apply if after the conclusion of the contract we become aware of facts which give rise to reasonable doubt as to the solvency or creditworthiness of the Customer, unless the Customer proves that we were already aware of such facts at the time of conclusion of the contract or should have become aware of them through due diligence.
- 10.3 In addition, in the aforementioned cases we are entitled under the reservation of title agreed in Clause 6 to prohibit further processing and disposal of the delivered Goods and to revoke the authorization to claim under Clause 6.4 c).

### **11. Applicable law and place of jurisdiction**

- 11.1 The place of delivery performance and payments shall be Markdorf.
- 11.2 If the Buyer is a Seller pursuant to the German Commercial Code, a legal person under public law or an asset of a public-law company, the exclusive court for all disputes arising directly or indirectly from the contractual relationship shall be Ravensburg. A corresponding provision shall also apply if the Buyer is an entrepreneur pursuant to section 14 of the Civil Code of the Federal Republic of Germany. However, we shall in all cases be entitled to bring an action at the place of fulfilment of the delivery in accordance with these GTS or with a separate agreement having precedence or at the Buyer's general place of jurisdiction. The statutory preemption provisions, in particular with regard to exclusive competence, remain unaffected.

### **12. Binding nature of the contract**

If certain clauses are legally invalid, the contract remains binding in its other parts. This provision shall not apply if adhering to the contract would be unduly burdensome for one party.