

General terms and conditions

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1. Scope of application

These general terms and conditions apply to the conclusion, content and execution of contracts for the purchase and service of products from Schaerer Ltd. (hereafter „Schaerer“). Other written agreements between the parties are reserved. Placing the order constitutes the customer's acceptance of the general terms and conditions. Changes, additions and secondary agreements must be confirmed in writing by Schaerer to be effective. Any of the customer's deviating general terms and conditions are explicitly excluded. The interpretation of international terms of trade is based on Incoterms 2010.

2. Proposals

Price lists and brochures contain non-binding information and recommended prices. Information provided by phone does not have a long-term validity unless the information constitutes a clear offer. Written offers are binding for Schaerer for two weeks from the issue unless otherwise agreed.

3. Conclusion of the contract

The written order confirmation constitutes a concluded contract for purchase. The order confirmation may be transmitted by mail, fax or email.

4. Credit assessment

The customer acknowledges that Schaerer may check the customer's credit after an order has been placed and obtain information about the customer for this purpose even without his explicit consent. Compliance with Swiss data protection laws applies. Schaerer reserves the explicit right to change the ordering terms, or reject the order, if the credit assessment is negative. The evaluation of the assessment occurs at Schaerer's discretion.

5. Order changes

The customer will notify Schaerer regarding requested changes in writing. Schaerer will notify the customer with, whether, and under what conditions the changes are possible. The order change is considered to be accepted by the customer if the customer does not reject the changes within two business days. Price changes exceeding 20% of the original order total always require a written confirmation from the customer. The customer will be immediately notified of any changes made by Schaerer (especially changes of prices and dates). In the event of price increases, the customer has the right to rescind from the contract within 10 business days from notification. Schaerer reserves the right to changes with regard to the order confirmation that do not affect the function, price and date.

6. Prices and payment terms

Unless otherwise agreed to, the agreed upon purchase price applies from factory and covers all services required for the relevant contract fulfilment. This especially applies to the conventional packaging costs, such as per diem and all public expenses that are not listed separately. Unless otherwise agreed to, payment is due within 30 days from the date of the invoice without discount. Schaerer has the right to charge late fees without reminder in the amount of 5% if the due date is not met. In the event of past due payments, Schaerer reserves the right to retain all deliveries until payment in full has been received. Partial payments require a written authorization from Schaerer in advance. Payments to settle older invoices will be applied to the customer's account in the following order: Costs, interest, main claim. Schaerer reserves the right to demand prepayment in justified cases or cancel approved partial payments. If the customer is late with one payment of an agreed upon partial payment, Schaerer will have the right to demand immediate payment in full or rescind from the contract immediately without additional extensions of due dates and claim damages. The same applies if the customer defaults with the total amount due.

7. Place of fulfilment and transfer of risk

The place of the delivery agreed to by both parties constitutes the place of fulfilment. With deliveries without installation work, this is the transfer of goods to the shipping carrier. With deliveries that include installation, this is the date of installation on place (work report, transfer protocol). Use and risk are transferred to the customer at the place of fulfilment. With delays of shipment or transfer that the buyer is responsible for, the risk is transferred to the customer on the date the goods are ready for shipping.

8. Delivery

Delivery dates are not binding. Schaerer will notify the customer regarding delivery delays in a timely manner. Exceeding the delivery date does not entitle the customer to rescind from the contract or claim damages. If a fixed delivery date was agreed to and Schaerer is experiencing a delay, then the customer must set a reasonable extended deadline of at least four weeks. In the event of a delayed or non-delivery, the customer has the right to rescind from the contract in spite of an extended date. If the delivery date cannot be met as a result of force majeure (such as business interruption, delay of delivery of major materials, strike, etc.), the deadline will be reasonably extended. If performance of the service becomes impossible due to force majeure, Schaerer will be released from the obligation to perform without an obligation to pay damages. If the hindrances outlined above occur at the customer's premises, the same provisions apply to his obligation to accept. If the products that were ordered cannot be delivered on the agreed upon date, and this is the customer's responsibility (e.g. missing installations at the premises), Schaerer will have the right to rescind from the contract after setting a reasonable extension and claim damages or bill for the purchase price and demand reimbursement for storage costs from the customer. The customer has the explicit right to prove that Schaerer has incurred lesser or no damages. The customer's compliance with documents supplied by Schaerer, such as instruction manuals, etc., and instructions provided by Schaerer, is absolutely mandatory. If the installation is performed by Schaerer, any structural clarifications and installations (e.g. proper installation of plumbing to the machine, electric lines to the machine or to the main switch, setup of water drainage) are the customer's responsibility. Any costs resulting therefrom are the customer's responsibility. Schaerer is not liable for compliance with general and local regulations for structural installation work (e.g. electronic regulations). Used equipment received for payment must be operated in compliance with Schaerer's instructions.

9. Conditional sales contract

Delivered goods remain the property of Schaerer until all demands have been fulfilled. The buyer is obligated to participate in all measures to protect Schaerer's property. He especially authorises Schaerer with conclusion of the contract to fulfilment the entry of the reservation of proprietary rights in public registers according to the formalities and at his expense. If Schaerer rescinds from the contract as a result of the customer's delayed payment, the customer is obligated to immediately release the purchased item to Schaerer at the first request. The sale of a product purchased under a conditional sales contract requires the explicit written authorization from Schaerer.

10. Rescission from the sale contract

The customer may rescind from a confirmed order with written consent from Schaerer. In the event of a rescission from the sale contract, the customer will owe a contract penalty in the amount of 15% of the net purchase price to Schaerer for any expenses that may have occurred. The right to claim additional damages is reserved whereby the contract penalty will be applied to this amount. If a contract is reserved after the delivery has occurred, Schaerer is entitled to other claims for damages in the following amounts for use and utilization of the products:

- 25% of the purchase price plus VAT within the first quarter;
- 30% of the purchase price plus VAT within the second quarter;
- 40% of the purchase price plus VAT after one year;
- 50% of the purchase price plus VAT after two years;
- 60% of the purchase price plus VAT after three years;

The buyer has the right to prove that a lesser reduction of value applies.

11. Warranty

Schaerer guarantees that the purchased goods have the promised properties that comply with the applicable Swiss safety regulations and that do not have physical or legal defects that would impact their value or suitability for the intended use. The order confirmation and any addendums determine the type and scope of the delivery. The customer will inspect the condition of the item within 30 days from delivery. If no notification is received by Schaerer within this period of time it is assumed that the delivery was free of defects. Hidden defects are subject to a warranty period of 12 months from installation (work report, transfer protocol), but no longer than 18 months from leaving the factory in Zuchwil. Other written agreements according to the order confirmation are reserved (e.g. defined number of purchased products). Any complaints must be submitted in writing. When claiming damages for defects, the customer is only entitled to retain payments for open invoices if there is no dispute.

There is no warranty for:

- Wear and tear parts (e.g. seals, valves, taps, heater resistors, temperature controls);
- Accessories that were delivered or installed following the customer's explicit request (e.g. account settlement system);
- Defects resulting due to effects of weather, chemical, physical, electrochemical or electrical effects, to the extent that this did not occur as a result of Schaerer's fault;
- In the event that water treatment is waived in spite of the necessity of same;
- Defects caused by non-compliance with cleaning, operating and similar regulations;
- Defects as a result of the use of non-original parts, incorrect work performed by the buyer or third parties that was not authorized by Schaerer, improper handling and or changes made to the product.

In the event of a defect, the customer must first grant Schaerer the opportunity for repair. If this is not possible or unsuccessful, the customer has the choice to demand another repair free of charge after a reasonable period of time, rescind from the contract or demand the delivery of a replacement. The delivery of a replacement may especially be performed by replacing the defective components. Replaced parts become the property of Schaerer. Additional claims for damages, especially for direct or indirect subsequent damages, are excluded unless otherwise prescribed by mandatory statutory regulations. Liability for negligence is explicitly waived.

12. Service

This section only applies to services performed by Schaerer directly at the customer's premises and that are not subject to service subscription agreements. Services that are performed subject to a service subscription agreement are referred to our general service conditions. Services are maintenance or repairs that are performed outside of warranty cases or service subscriptions. The orders may be carried out by Schaerer or authorized third parties. It is the customer's responsibility to ensure that any third parties are authorized by Schaerer. The service order is constituted at the time an order is signed or the order confirmation is submitted, but no later than at the time the service is performed. The customer guarantees unrestricted access to the machines. Spare parts become the property of Schaerer without compensation. Unless otherwise agreed to in writing, services will be provided according to the fees applicable at the time the order is accepted. Service invoices are payable according to the conditions under Item 5 Section 2. Schaerer explicitly reserves the right not to become active until prepayment or payment has been received in cash if there are justified doubts that the customer cannot or will not meet his obligation to pay. Justified doubts especially apply when there were or still are past due outstanding payments for other invoices. Open invoices may be deducted from prepayments or payments in cash. Schaerer's warranty for service performance is limited to the repair. Schaerer cannot be held liable for additional damages, especially for lost profits.

13. Transfer and pledges

The customer does not have the right to transfer or pledge any claims he is entitled to from the purchase agreement without the explicit written authorization from Schaerer.

14. Confidentiality / intellectual property

The parties entering the contract will treat all of those facts confidentially that are neither public nor generally accessible. Any programs developed by Schaerer and knowledge related to the machines remain the sole property of Schaerer. The buyer is obligated to use such only for the agreed upon purpose and only disclose it to third parties if such is required for the use of the products.

15. Resale

If the products are subject to resale, the customer is obligated to transfer all obligations from the purchase agreement to the buyer to the extent that they are applicable (especially the provisions for warranty and service).

16. Final provisions

These general terms and conditions apply in their applicable most current version. The customer will be notified of changes in writing. The changes are considered to have been accepted at the time they are delivered. If one provision of this agreement is legally invalid or it cannot be performed, the validity of the general terms of conditions remains otherwise unaffected. The provision that is invalid or cannot be performed will be replaced with a provision that most closely meets the desired economical result intended by the parties entering the contract. These provisions were authored in the German language. The German version will prevail in the event of any unclarity. The general terms and conditions are exclusively based on Swiss Law. The application of the agreement of the United Nations regarding international traffic of goods dated April 11, 1980 (Vienna purchase law) is explicitly excluded. The exclusive place of venue is the location of Schaerer, whereby Schaerer has the right to sue the customer for a contract violation at his location.