

SERVICE used machines - General Terms & Conditions for international sales

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I. General

1. For the relationship between SCHULER PRESSEN and the customer only these General Terms of Sale (Terms) shall apply
SCHULER PRESSEN does not recognize those terms and conditions of the customer which deviate or differ from these Terms unless SCHULER PRESSEN has given express written approval. Even if SCHULER PRESSEN renders services without reservation in the knowledge of the customer's differing or conflicting conditions, this does not constitute acceptance – in such cases, these Terms shall also apply.
2. In individual cases, the separate written agreements made with the customer (including side agreements, amendments and modifications) shall take precedence over these Terms.

II. Conclusion of a contract

1. All offers of SCHULER PRESSEN are budget offers, only and are non-binding. All papers which are part of the offer, such as but not limited to, pictures, drawings, weight of measure information are to be seen as approximate values, except as explicitly otherwise stated. If SCHULER PRESSEN provides drawing, models, patterns or other technical papers (hereinafter "papers") to the customer no title to such paper is transferred to the customer, instead drawings, models, templates, etc. remain the exclusive property of SCHULER PRESSEN. They are only entrusted for the agreed purpose and may not be used for any other purpose. Copies or other reproductions may only be made for the agreed purpose. Neither the originals nor copies may be handed to third parties nor made available to them in any way.
2. Orders of the customers are binding. Insofar as SCHULER PRESSEN does not give any other written confirmation the delivery or the invoice is to be understood as the order confirmation.
3. SCHULER PRESSEN's written order confirmation is the ruling document except the customer objects the order confirmation immediately. This is especially applicable for orders or agreements, made verbal or via telephone. Objections are not given immediately, if they are not received by SCHULER PRESSEN 7 days after the date of the order confirmation.

III. Date of delivery

1. Delivery dates and terms are approximate dates and terms, except as explicitly stated otherwise by SCHULER PRESSEN in writing. If not all contractual points are clarified by the customer and if not all provisions to be granted by the customer are granted in due time, the delivery dates and terms are prolonged accordingly. Delivery dates are deemed to be met with notification of readiness for delivery.
2. Delivery in installments is allowed.
3. The customer has to prove and sign the shipping note. SCHULER PRESSEN must be informed in writing about any objections otherwise the delivery is deemed to be accepted.
4. If SCHULER PRESSEN should be prevented from fulfillment of its obligations under the order by an event of Force Majeure, the time for performing the respective obligations shall be extended by a period equal to the time during which the effect of Force Majeure prevents SCHULER PRESSEN from performing its obligations. The term „Force Majeure“ shall mean any events or causes beyond the reasonable control of SCHULER PRESSEN, which could not at the time of concluding the order as foreseen, and which prevents SCHULER PRESSEN from wholly or partly performing any duties or obligations under this contract, such as, but not limited to, civil commotion or civil uprising, embargos, war, revolution, serious fire, flood, typhoon, strike or lock-outs (either at SCHULER PRESSEN's site or at SCHULER PRESSEN'S sub supplier's site) earthquake or similar events.
5. In case customer suffers damages due to SCHULER PRESSEN's sole fault to provide the Goods within the time agreed between the parties, customer may claim, after a grace period of 2 weeks, as liquidated damages and not as a penalty 0,5% of the net order price of the delayed Goods for each complete week of delay. The maximum amount of liquidated damages to be paid shall be limited to 5 % of the total net order price. Once the maximum of 5 % of the net order value is reached, the customer may give SCHULER PRESSEN the notice to deliver the GOODS in an appropriate period of time. If notified so, customer has the right to terminate the order to the extent the Goods are not supplied after such period.. All further claims due to delay, especially claims due to consequential damages such as but not limited loss of production, loss of profit, loss of revenues, costs for interest shall be excluded.

IV. Prices, payment terms

1. All prices are net prices, excluding VAT, transport, customs, packaging, insurance and other extra costs. The prices for new Goods are set forth in the price lists of SCHULER PRESSEN. Packaging will be invoiced separately without a mark-up, the packaging shall not be taken back.
2. Invoices are due without discount immediately.
3. If payments are delayed an interest rate of 10% p.a. is due additionally. Further damages for delay can be claimed by SCHULER PRESSEN.

4. The customer is only entitled to withhold payment insofar as its counterclaims are undisputed or legally binding. The customer is only entitled to assert its right to offset counterclaims from other legal relationships insofar as they are undisputed or legally binding.

V. Transfer of Risk, Acceptance

1. The risk is transferred to the Customer as soon as the shipment or the delivery starts, even if the delivery takes place in instalments or in the event SCHULER PRESSEN undertakes to provide further services, such as but not limited to bear the costs of delivery, commissioning. If the parties agreed that an acceptance of the goods is necessary the time of acceptance is the time where the risk is passed to the Customer. The acceptance must be granted by the Customer at the agreed time of acceptance. If Customer refuses the acceptance without reasons the acceptance is deemed to have taken place upon receipt of notice of readiness for acceptance. The Customer has no right to refuse the acceptance due to minor defects.
2. Is the delivery or the acceptance delayed for reasons which are not on behalf of SCHULER PRESSEN, the risk is passed over to the customer on the day SCHULER PRESSEN gives notice of readiness for delivery/acceptance.

VI. Warranty

1. SCHULER PRESSEN is liable for defects in Goods excluding all other claims of the customer without prejudice to section VII. in such a way that it must remedy the defects. SCHULER PRESSEN has the right to make remedies twice.
 - 1.1 Warranty time is 12 months after delivery. The warranty period for repaired / replaced Goods restarts but shall end 6 months after the end of the initial warranty period. Any assistance or extra costs for the replacement/repair which occur on customer's site are borne by the customer..
 - 1.2. If the Goods which are ordered are used Goods no warranty will be granted. Such used Goods will be delivered in the state as they are at the time of the order. All liability for defect – also for hidden defects – are fully excluded, even if customer as not checked the Goods prior to the order. The aforesaid exclusion of liability shall not be applicable in the event SCHULER PRESSEN has concealed any defects with willful misconduct or gross negligence. .
2. Any and all warranty claims shall be excluded if Customer, without reason, refuses any replacement or repair by SCHULER PRESSEN, the customer replaces or repairs the defect either himself or by a third party without granting SCHULER PRESSEN the possibility for the replacement or the repair, or the defect is based on, a requirement requested by the Customer, input data, support material or assistance, each of which provided by the Customer. No warranty for wear and tear parts is granted. If a machine is the Good, the warranty period is based on the use of a machine in 1-shift operation.
3. The customer is obliged to inspect the delivered Goods immediately after delivery and to give SCHULER PRESSEN written notice on any defects, wrong deliveries, deliveries of less than agreed Goods not later than seven days after receipt of the delivery. After the seven days the delivery is deemed to be accepted as contractual agreed, except for hidden defects. Hidden defects shall be notified in writing immediately after their detection
4. Quality defects in parts of the Goods does not grant the customer the right to reject other parts of the Goods, except customer can prove that further deliveries are not reasonable.
5. If customer detects a defect the customer is obliged not to change or process anything and not to transfer the Goods to any third party, instead customer shall grant SCHULER PRESSEN the possibility to confirm and to rectify the defect. Without doing so all claims of the customer due to the defect shall become void. Customer has on VÖGTHLE's costs only the right to rectify the defect either by himself or a third party in order to avoid any security risk or any extraordinary damages which are not reasonable for the customer. All warranty claims are excluded as soon as customer has – without SCHULER PRESSEN'S prior written consent, done any repair or maintenance work either by himself or by a third party.
6. Damages due to transport must be notified to SCHULER PRESSEN immediately and customer has to fulfill all formalities with the carrier in order to retain all claims against third parties.
7. After customer's written notice of defect SCHULER PRESSEN undertakes at its option and twice, if necessary, to remedy a defect by repair or replacement within an adequate period of time.
8. SCHULER PRESSEN bears all direct costs, including costs for transport, personell or material costs in connection with the rectification/repair of the defect, except the costs are higher due to a relocation of the Goods after the delivery. Any costs for necessary provisions, such as but not limited to downtime of the Goods to be repaired, necessary energy, tooling, etc., are borne by the customer.
9. In the event SCHULER PRESSEN does not fulfill ist warranty obligation although customer notified SCHULER PRESSEN accordingly and set an adequate period of time for the fulfillment of the warranty period, customer has solely the right – after the adequate period of time has elapsed without

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reaction of SCHULER PRESSEN – to rescind the order or to lower the purchase price.

1. VII. Limitation of Liability

1. SCHULER PRESSEN shall not be liable, whether based on contract, tort, strict liability, indemnity or otherwise, for any indirect or consequential loss or damage, such as but not limited to loss of use, loss of production, or loss of profit or revenue, loss of interest costs, loss of information or data. SCHULER PRESSEN's overall liability for the breach of its contractual obligations, for delay and for other damages including indemnifications if any which might occur out of or in connection with these Terms shall be limited to and based on the provisions stated within these Terms, only, and any and all statutory remedies shall be excluded, and shall in the aggregate not exceed 20% of the total net contract price in the aggregate.
2. However, the aforementioned limitations of liability shall not apply in the event SCHULER PRESSEN acted with willful misconduct or caused personal injury.
3. All further claims for damages are excluded.

VIII. Retention of title / lien

1. SCHULER PRESSEN shall retain title for all items delivered until receipt of all payments arising from the contract – also for any additional ancillary services owed.
2. The customer may not sell or pledge the item delivered nor provide it as collateral. In the case of seizure, confiscation or other dispositions by third parties, SCHULER PRESSEN must be informed immediately.
3. In the case of breach of contract by the customer, especially in the case of default, SCHULER PRESSEN is entitled to take back the item delivered after issuing a reminder and the customer is obliged to hand over the item.
4. Due to the retention of title, SCHULER PRESSEN may only demand the return of the item delivered if it has withdrawn from the contract.
5. An application to open insolvency proceedings regarding the customer's assets entitles SCHULER PRESSEN to withdraw from the contract and demand the immediate return of the item delivered.
6. As a result of its claim under the contract, SCHULER PRESSEN is entitled to a lien on the object for repair of the customer in its possession as a result of the contract. The lien can also be asserted owing to claims arising from earlier work carried out, replacement part deliveries and other services to the extent that they are connected with the object of repair. The lien shall only apply to other claims arising from the business relationship to the extent that these are undisputed or have been determined by a court of law.
7. SCHULER PRESSEN has the right to insure the Goods on customer's costs against theft, fire, water or other damages insofar as the customer has not concluded an insurance himself.
8. The customer has the right to resell the Goods but only by assigning its claims against the buyer to SCHULER PRESSEN at the same time.

IX. Non-delivery

1. The delivery of the Goods are under the condition that SCHULER PRESSEN receives the right and timely delivery by its sub-suppliers.
2. If the delivery of the Goods becomes (partly) impossible due to SCHULER PRESSEN's sole fault, customer can rescind (partly) the order. All further rights, especially the claim for damages are excluded if not otherwise stated under clause VII.

X. Miscellaneous

1. If any provision of these Terms should be invalid or unenforceable, or become invalid or unenforceable after conclusion of the contract, the validity of the remaining provisions shall not be affected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come closest to the economic objectives pursued by SCHULER PRESSEN with the invalid or unenforceable provision.
2. SCHULER PRESSEN has the right to store, work with and let store and work with all data about the customer it receives in the course of the business in accordance with the German Data Protection Act.

XI. Applicable law, place of jurisdiction

1. All Terms and all obligations contained herein and in connection herewith shall be exclusively subject to and construed and interpreted in accordance with the substantive law in force in Switzerland with the exclusion of the United Nation's Convention on Contracts for the International Sale of Goods (CISG) of 1980 and without reference to any of the Swiss conflict of law rules.
2. All disputes shall be finally settled under the Rules of Arbitration and Conciliation of the International Chamber of Commerce, Paris ("Rules"), by three arbitrators appointed in accordance with the Rules. The arbitral award shall be final and binding for both parties. The arbitration procedures shall take place in Zürich, Switzerland. The procedural laws of this place shall apply, where the Rules are silent. The Court of Arbitration shall decide on the costs of the procedure which have to be borne by the unsuccessful party including the fee of the lawyer of the successful party. The arbitration shall be held in the English language.

XII. Export control, insofar as delivery is outside Europe:

Offers and order confirmations provided by SCHULER PRESSEN are subject to approval by the German Federal Office of Economics and Export Control (BAFA), as well as all additional regulatory approvals required.