

International Conditions of Sale for Customers not Resident in Germany

I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of Schirmer Maschinen GmbH - hereinafter referred to as Schirmer - whose relevant place of business is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale of Schirmer apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to the present and all subsequent contracts whose preponderant object is the **supply of goods** to customers. Additional obligations assumed by Schirmer do not affect the application of these International Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind Schirmer, even if Schirmer does not explicitly object to them or even if Schirmer unconditionally renders performance or accepts the customer's performance irrespective of the customer's conflicting or differing terms of business. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from statutory provisions.
4. These International Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if Schirmer knew or should have known that at the conclusion of the contract.

II. Formation of the Contract

1. The customer is under an obligation to give **written notice to Schirmer** prior to the formation of a contract if the goods to be delivered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or will be used for processing unusual material.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Schirmer, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Schirmer, will **take effect exclusively if followed by a written acknowledgement** of the order by Schirmer. The actual delivery of the goods ordered, any other conduct of Schirmer or silence on the part of Schirmer does not allow the customer to assume the formation of the contract. Schirmer can dispatch such written acknowledgement of the order up to and including **14 calendar days after** the customer's order has been received by Schirmer. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** shall be **received in time**, if it is received by the customer within 14 calendar days after its date of printing. The customer will inform Schirmer without delay, if the written acknowledgement of the order is received with some delay.
5. The written acknowledgement of the order by Schirmer sets out all the **terms of the contract** and brings the contract into effect even if - except for the purchase price and the quantity to be delivered - the written acknowledgement deviates from the declarations of the customer in any other way, especially with reference to the exclusive application of these International Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation in every case. Regardless of the nature and extent of the deviations, the contract will only fail to come into existence if the **customer specifies the deviations and objects to them in writing** and the objection is received by Schirmer within a short time, at the latest seven calendar days after receipt of the written acknowledgement of the order by the customer.
6. Schirmer's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by Schirmer or to make promises which differ from its content or guarantees. **Changes** to the concluded contract likewise require written confirmation by Schirmer.

III. Obligations of Schirmer

1. Subject to an exemption according to section VII.-1. b) Schirmer must **deliver the goods** specified in the written acknowledgement of the order. Schirmer is **not obliged to perform obligations** not stated in the written acknowledgement of the order or in these International Conditions of Sale, in particular Schirmer is under no obligation to deliver accessories not explicitly listed, to install additional safety devices, to carry out assemblies or to advise the customer. Schirmer is in no case liable to perform duties associated with the putting of the goods into circulation outside Germany.
2. Schirmer's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against Schirmer. The customer's responsibility to take delivery continues to exist even if it **assigns rights to third parties**. The customer gives Schirmer an unlimited indemnity against all claims made by third parties against Schirmer out of the contract made with the customer. The indemnity includes in particular the reimbursement of expenses incurred by Schirmer and is granted by the customer waiving any further conditions or other objections, in particular waiving any defence of limitation.
3. Schirmer undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity, quality and packaging. Performance specifications given by Schirmer are subject to good operational conditions, particularly in view of the materials to be processed and the personnel used, as well as the exclusive use of original spare parts and to appropriate maintenance. Schirmer is entitled to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, Schirmer will carry this out having regard to its own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Schirmer does not undertake to inform the customer of the specification it has made or to give the customer the option of a differing specification.
5. Schirmer undertakes to place the goods **at disposal for collection by the customer** at the agreed time of delivery at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at its premises in Ver/ Germany. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Schirmer is not obliged to arrange for the shipment of the goods or to insure the goods. Under no circumstances, not even when INCOTERMS are agreed Schirmer is obliged to inform the customer of the delivery. The agreement of **INCOTERMS** in Group F, Group C or Group D or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; moreover, the provisions laid down in these International Conditions of Sale continue to apply.
6. Agreed **delivery time periods or delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon it properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Schirmer. Schirmer is entitled to deliver earlier than at the agreed delivery time.
7. Without prejudice to its continuing legal rights, Schirmer is entitled to fulfil its obligations **after the delivery time agreed upon**, if it informs the customer that it will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, Schirmer is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Schirmer before commencing late performance. Schirmer will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Schirmer is liable for this under the provisions laid down in section VII.
8. Including where INCOTERMS or clauses such as "delivery free....." or alike are agreed **risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Schirmer to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations.
9. Including where INCOTERMS or clauses such as "delivery free....." or alike are agreed, Schirmer is not obliged to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import or to procure customs clearance. However, Schirmer renders at the customer's request, risk and expense every assistance in obtaining the documents that the customer has required in writing.
10. Schirmer is **not obliged** to bear levies, duties and charges accruing **outside Ver/ Germany**, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Ver/ Germany or to take back according to legal provisions regarding waste-disposal from the customer or a third party goods delivered to the customer or packaging material. Irrespective of any statutory provisions, the customer shall at its own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed waste-disposal of the goods delivered by Schirmer to the customer and of the packaging material.
11. Without prejudice to its continuing legal rights, Schirmer is entitled to **suspend the performance of its obligations** so long as, in the opinion of Schirmer, there are grounds for concern that the customer will wholly or partly fail to fulfil its obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs its obligations to enable payment to Schirmer or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance Schirmer is entitled at its own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. Schirmer is not required to continue with performance of its obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.
12. Except as provided in section III.-7., Schirmer is only obliged to inform the customer of **possible disruption in performance**, once the disruption is definitely known to Schirmer.

IV. Price, Payment and Acceptance of the Goods

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to the financial institution designated by Schirmer. To the extent that a price has not been agreed, the contract has nevertheless been validly concluded; in such a case the price which is at the agreed time of delivery Schirmer's usual price will apply. Schirmer's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order, or otherwise on receipt of the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Schirmer or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or if the cover given by a credit insurer is reduced on grounds for which Schirmer is not responsible.
3. The customer warrants that all legal requirements for delivery free of **German value added tax** will be fulfilled. To the extent that Schirmer does not receive the document in proof of tax-free-export-delivery or Schirmer is called upon to pay value added tax as a result of the terms of delivery or of circumstances allocable to the customer, the customer will indemnify Schirmer in all and every respect without prejudice to any continuing claim by Schirmer. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by Schirmer.
4. Regardless of the currency and of the jurisdiction of any court, Schirmer is entitled at its own discretion to **set off** incoming payments against claims existing against the customer by virtue of its own or assigned rights at the time of payment.
5. Any statutory rights of the customer to **set-off** against claims of Schirmer are excluded, except where the corresponding claim of the customer is in the same currency, is founded in the customer's own right and has either been finally adjudicated or is due and undisputed or acknowledged by Schirmer in writing.
6. Any statutory rights of the customer to **suspend payment** or to **raise defences or counterclaims** are excluded, except where despite written warning Schirmer has committed a fundamental breach of its obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
7. The customer undertakes to take delivery of the goods at the delivery time without taking any additional period of time and at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at the premises of Schirmer in Ver/ Germany. The customer is only entitled to refuse to **take delivery** if it exercises - in accordance with the rules in section VI.-1. - its rights to avoid the contract.

V. Delivery of non-conforming Goods or Goods with Defective Title

- Without prejudice to any exclusion or reduction of liability of the seller provided by law, delivery does **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in VerI/Germany. Changes in design, construction or material which reflect technical improvements do not constitute a lack of conformity with the contract. Even if the goods would have been non-conforming according to the legal requirements applicable in VerI/Germany, the goods shall be deemed to conform with the contract, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods. Second-hand goods are delivered without any liability for their conformity.
- To the extent that the written acknowledgement of the order does not contain an explicit statement to the contrary, Schirmer is in particular **not liable** for the goods being fit for a purpose which is not usual in VerI/Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal requirements existing outside of VerI/Germany, for instance in the customer's country. Schirmer shall also not be liable for any non-conformity with the contract occurring after the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Schirmer, Schirmer will be released from its liability.
- The customer must **examine the goods** at the time of delivery and moreover as required by law and in so doing check every single delivery in every respect for any discoverable or typical lack of conformity with the contract.
- Without prejudice to any exclusion or reduction of liability of the seller provided by law, the goods delivered have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered and made public in Germany. Irrespective of the legal requirements applicable in Germany, title to the goods is not defective, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.
- The customer shall give notice as required by law to Schirmer of any lack of conformity with the contract or of any deficiency in title, and in any event directly and in writing. Schirmer's employees, commercial agents or other sales intermediaries are not authorised to accept **notices** or to make any statements concerning lack of conformity with the contract or of title and its consequences.
- Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. The satisfaction by Schirmer of the customer's remedies does not constitute any acknowledgement causing a new beginning of the limitation period. In the event of **notice not having been properly given**, the customer may only rely on remedies if Schirmer has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by Schirmer as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Schirmer of the requirement of proper notice.
- To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, it is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair or to reduce the purchase price**. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, Schirmer is always entitled in accordance with the provision in section III.-7. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving it a credit note of an appropriate amount.

VI. Avoidance of the Contract

- The **customer** is only entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after it has threatened Schirmer with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, it is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to Schirmer directly.
- Without prejudice to its continuing legal rights, **Schirmer** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the application of these International Conditions of Sale, if the written acknowledgement of the order is received by the customer more than 14 calendar days after its date of printing, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Schirmer or towards third parties, if the customer has provided inaccurate information regarding its creditworthiness, if the cover given by a credit insurer is reduced on grounds for which Schirmer is not responsible, if Schirmer through no fault of its own does not receive supplies properly or on time, or if for other reasons Schirmer cannot be expected to fulfil its obligations by means which taking into consideration its own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

VII. Damages

- On the basis of the contract with the customer or in consequence of the contractual negotiations carried on with the customer **Schirmer** is only obliged to **pay damages** in accordance with the following provisions:
 - The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.
 - Schirmer is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. Neither is Schirmer liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or similar circumstances and which cannot be controlled by Schirmer with reasonable means. Moreover, Schirmer is only liable to the extent that its executive bodies or members of staff deliberately or in circumstances amounting to gross negligence breach contractual obligations owed to the customer.
 - In the event of liability Schirmer will compensate within the limits of lit. d) the proven **loss** to the customer to the extent that it was unavoidable for the customer and **foreseeable** to Schirmer, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. The customer must **advise** Schirmer in writing before formation of the contract of particular risks, atypical possibilities for damages and unusual amounts of loss. Moreover, the customer is required to **mitigate its loss** as soon as a breach of contract is or ought to be known.
 - Schirmer is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent, and for other breaches of obligations is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to gross negligence by the executive bodies or the management of Schirmer.
 - For breach of contractual obligations owed to the customer, Schirmer is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of Sale. Every reliance on **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against Schirmer's employees, servants, members of staff, representatives and/or those employed by Schirmer in the performance of its obligations on grounds of breach of contractual obligations owed by Schirmer.
 - Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six months** beginning with the rejection of the claim for damages by Schirmer.
- Irrespective of Schirmer's continuing legal or contractual claims the **customer** is obliged to pay **damages** to Schirmer as follows:
 - In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in VerI/Germany for unsecured short-term loans in the agreed currency, at least however interest at 8 per cent over the base rate of the German Federal Bank (Deutsche Bundesbank).
 - In the case of a failure to accept delivery by the customer or of seriously **late acceptance** of delivery by the customer, Schirmer is entitled to claim damages without evidence being necessary up to 15 per cent of the value of the goods to be delivered.
- Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in its commercial relationships with its clients obliged to **limit its liability** both in principle and in amount.

VIII. Other Provisions

- Title of the goods** that have been delivered **remains with Schirmer** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-8. is not affected by the reservation of title.
- In the case of late payment by the customer, without prejudice to Schirmer's continuing claims Schirmer is entitled unilaterally and without compensation to modify the contract by reducing the customer's as well as its own contractual obligations. The **reduction of contractual obligations** applies solely to obligations of the customer and of Schirmer which have not yet been performed at the time of the reduction and may only be made with the consequence that both the customer and Schirmer have satisfied their contractual obligations and are not obliged to perform further. The reduction does not apply to performance already rendered nor to any remedies of Schirmer.
- Without prejudice to Schirmer's continuing claims, the customer will indemnify Schirmer without limit against all claims of third parties which are brought against Schirmer on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of Schirmer. In particular, the indemnity also includes the reimbursement for expenses incurred by Schirmer and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.
- In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by Schirmer in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.
- All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being in **writing**.

IX. General Basis of Contracts

- The **place of performance** and payment for all obligations arising from the legal relationship between Schirmer and the customer is VerI/Germany. This provision also applies if Schirmer assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of **INCOTERMS** or clauses such as "delivery free....." or alike do not entail any change of the above rule as to the place of performance.
- The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version as well as the usage in force in VerI/Germany govern the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, the **INCOTERMS 2000** of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.
- The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Outside the application of the UN Sales Convention, the legal relationship between the parties is governed by the non-uniform Swiss law, namely by the Swiss Obligationrecht.
- All contractual and extra-contractual disputes arising out of or in connection with contracts to which these International Conditions of Sale apply, shall be finally resolved by **arbitration** according to the Rules of the London Court of International Arbitration (LCIA) without recourse to the ordinary courts of law. The tribunal shall consist of three arbitrators, two of them shall be nominated by the respective parties, or if the amount in dispute is inferior to € 50.000, there shall be one arbitrator. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. However, Schirmer is also entitled instead of a claim in an arbitration to bring an action before the national Courts in VerI/Germany or at the customer's place of business, or before other courts having jurisdiction according to domestic or foreign law. Every claim or counterclaim by the customer before a national court is excluded.
- If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.