

**General Terms and Conditions of Payment and Delivery  
of Schmoll Maschinen GmbH,  
D-63322 Rödermark/Ober-Roden  
Valid effective February 2013**

## **1. General**

1.1 These General Terms and Conditions of Payment and Delivery shall have sole application. Individual agreements with the customer (hereinafter "Buyer") made in individual cases shall in all cases have precedence over these General Terms and Conditions of Payment and Delivery. All agreements shall only be valid through a written contract or written confirmation from Schmoll Maschinen GmbH. Buyer's terms and conditions of purchase or any other differing agreements shall only be deemed accepted if Schmoll Maschinen GmbH confirms in writing that they shall supplement these Terms and Conditions of Sale. These General Terms and Conditions of Payment and Delivery shall also be valid if Schmoll Maschinen GmbH effects the delivery of the goods despite being aware of the existence of differing or contrary terms and conditions.

1.2 References or counter-confirmations by Buyer quoting Buyer's own terms and conditions of purchase are hereby expressly rejected by Schmoll Maschinen GmbH.

1.3 These General Terms and Conditions of Payment and Delivery, in each case as amended, shall also govern all future transactions and contracts with Buyer, without it being necessary to refer to them again in each individual case; Schmoll Maschinen GmbH will inform Buyer without delay of any amendments to the General Terms and Conditions of Payment and Delivery.

1.4 The General Terms and Conditions of Payment and Delivery shall only apply in relation to merchants, legal entities under public law or special funds under public law.

1.5 References to the validity of statutory provisions are for purposes of clarification only. This means that even without such clarification, the statutory provisions shall apply unless they have been directly amended or expressly excluded in these General Terms and Conditions of Delivery and Payment.

## **2. Offer and Formation of a Contract**

2.1 The offers made by Schmoll Maschinen GmbH shall be subject to change without notice until acceptance by Buyer and may therefore be revoked at any time by Schmoll Maschinen GmbH before the receipt of the written declaration of acceptance or the delivery of the item in question. The offer is subject to prior sale until the written declaration of acceptance.

2.2 The acceptance of offers and orders from Buyer shall be through a written order acknowledgement or through the delivery of the items in question by Schmoll Maschinen GmbH.

2.3 Schmoll Maschinen GmbH reserves the right to make modifications to the contractual item during the delivery period unless this means making changes to the contractual item that are unreasonable for the customer and as long as Schmoll Maschinen GmbH has a

legitimate interest in such a modification. Schmoll Maschinen GmbH has the right to commission third parties in order to fulfil its contractual obligations.

The information contained in catalogues, prospectuses, circulars, advertisements, images and price lists concerning weights, measurements, prices, services and similar are not binding unless they are expressly included in the terms of the contract. Schmoll Maschinen GmbH shall only be obliged to comply exactly with DIN standards, drawings, certain weights and measurements and plans if this has been expressly agreed in writing. Otherwise the characteristics of the products of Schmoll Maschinen GmbH guaranteed by contract shall depend solely on their product description. Suggestions unilaterally put forward by Buyer shall not be taken into consideration.

### **3. Delivery and Scope of Deliveries**

3.1 Unless otherwise agreed in writing, delivery shall be effected ex works in Rödermark, which is also the place of performance. At Buyer's request and expense the goods will also be sent to a different place of destination (sale with shipment to a place other than the place of performance). Unless otherwise agreed, Schmoll Maschinen GmbH shall have the right to determine the type of shipment (particularly the haulage contractors, the route and the packaging). Schmoll Maschinen GmbH shall only be obliged to take out transport insurance at Buyer's express request. The costs shall be borne by Buyer.

3.2 The scope of the consignments shall depend on the information provided by Schmoll Maschinen GmbH in the order acknowledgement; if there is no order acknowledgement, the information in the offer shall be determinative.

3.3 Buyer shall assume full responsibility for the accuracy of the documents it supplies, such as drawings, specifications, gauges, samples, moulds and tools. All information concerning dimensions and similar details requires written confirmation.

### **4. Prices**

4.1 In the absence of any other written confirmation, all prices shall be quoted ex works in Rödermark, excluding packaging, insurance, transport, customs, fees, taxes and other public charges etc., and in each case plus statutory VAT (net value of the goods).

4.2 Arrival, waiting times and travelling times shall be reimbursed as working time. If a fixed price has been agreed for assembly or if assembly is to be free of charge, separate surcharges shall be paid separately for any overtime, night work, work on Sundays and work on public holidays as well as for waiting times for which Schmoll Maschinen GmbH cannot be held responsible. Any outlay or expenses for travelling, meals and beverages, accommodation and telephone shall be added in addition.

### **5. Delivery Period, Delayed Delivery and Delayed Acceptance**

5.1 Unless expressly agreed otherwise, the delivery period shall be the date stated in the order acknowledgement from Schmoll Maschinen GmbH. If Buyer does not provide the documents it has to provide or the raw material it has to supply in good time, the delivery period shall be extended by the duration of the delay. The same applies if any raw material

has to be examined for suitability during the inspection of incoming goods by Schmoll Maschinen GmbH and Schmoll Maschinen GmbH cannot be held responsible for any delay.

5.2 The delivery period shall be deemed complied with if the delivery item has left the works of Schmoll Maschinen GmbH by the end of the delivery period or Schmoll Maschinen GmbH has made the delivery items ready for delivery and notified Buyer that the goods are ready to be shipped.

5.3 The delivery period shall be extended by a reasonable amount of time in the case of measures in connection with industrial disputes, particularly strikes and lockouts, and on the occurrence of unforeseeable hindrances that are beyond the control of Schmoll Maschinen GmbH, to the extent that such hindrances have an influence on the completion or the delivery of the item to be delivered. This also applies if subcontractors are affected by such circumstances. Schmoll Maschinen GmbH cannot be held responsible for the aforesaid circumstances even if they occur during a delay that has already occurred. Schmoll Maschinen GmbH shall notify Buyer as soon as possible of the beginning and end of such hindrances in important cases.

5.4 If Schmoll Maschinen GmbH should be in default, Buyer must set Schmoll Maschinen GmbH a reasonable extended deadline - in as far as this is provided for by law. At the end of this extended deadline Buyer may withdraw from the contract if Buyer has not been notified by then that the goods are ready to be shipped.

5.5 Partial deliveries shall be permissible.

5.6 If Buyer delays in accepting the goods or fails to cooperate in any respect, or if the delivery of Schmoll Maschinen GmbH should be delayed for other reasons that are the fault of Buyer, Schmoll Maschinen GmbH shall have the right to claim damages for the resulting loss, including additional expenses (such as storage costs).

## **6. Payment**

6.1 The invoice shall be issued when the goods are shipped, unless otherwise agreed. If goods that are ready to be shipped cannot be dispatched for reasons arising from the customer's sphere of risk, the invoice shall nevertheless be issued and become due for payment.

6.2 Unless otherwise agreed, invoices shall be due for payment within 30 days of the invoice date, without any deductions.

6.3 Cash discounts shall only be permitted if they have been expressly agreed and Buyer has paid all outstanding invoice amounts to Schmoll Maschinen GmbH or settles them at the same time.

6.4 Schmoll Maschinen GmbH will only accept bills of exchange on the basis of special agreements. Bills of exchange or cheques shall always be accepted only on account of payment. Discount charges and other bill of exchange expenses shall be borne by Buyer.

6.5 Buyer is not entitled to set off claims against those of Schmoll Maschinen GmbH unless these claims are undisputed or have been recognised through a final court judgment. Defects in the consignment shall not affect Buyer's counter-rights, especially those set out in clause 9.7 of these General Terms and Conditions of Payment and Delivery.

6.6 Buyer shall be in default on the expiry of the aforesaid payment period (clause 6.2). In the case of default Schmoll Maschinen GmbH shall have the right to charge interest at a rate of 8 % p.a. above the applicable base rate – if Schmoll Maschinen GmbH can show that it had to pay a higher rate to its bank, it shall have the right to charge this interest rate. In the event of irregular and unpunctual payment by Buyer and in the case of doubts concerning Buyer's solvency or willingness to pay, Schmoll Maschinen GmbH shall have the right to demand immediate payment or collateral for deliveries already effected and deliveries outstanding and to stop further deliveries until this collateral has been provided. Furthermore, Schmoll Maschinen GmbH shall have the right - if applicable after setting a deadline - to withdraw from the contract and/or to claim damages if Buyer is at fault. In addition, Schmoll Maschinen GmbH may also refuse to allow the resale of goods supplied under reservation of title or demand their return or the transfer of collateral possession at Buyer's expense and may revoke a direct debit authorisation.

## **7. Reservation of Title**

7.1 The goods supplied shall remain the property of Schmoll Maschinen GmbH until full payment of all present and future claims arising from the contract of sale and an ongoing business relationship.

7.2 Buyer has the right to resell the goods under reservation of title in the normal course of business; however, Buyer may only pledge these goods or transfer ownership by way of security if Schmoll Maschinen GmbH has agreed.

7.3 Buyer hereby assigns its claims from the resale of the goods under reservation of title to Schmoll Maschinen GmbH; Schmoll Maschinen GmbH accepts the assignment. Irrespective of the assignment and Schmoll Maschinen GmbH's right of collection, Buyer shall be entitled to collect the claims as long as Buyer complies with its obligations to Schmoll Maschinen GmbH and does not incur a financial collapse.

7.4 At the request of Schmoll Maschinen GmbH, Buyer must provide the information concerning the assigned claim that is needed for collection, particularly giving Schmoll Maschinen GmbH a list of the debtors with their names and addresses, showing the sum of the claim and the date when the invoice was issued; the debtors must be informed of the assignment.

7.5 If Buyer should machine or process the goods under reservation of title, this shall be done on behalf of Schmoll Maschinen GmbH, without creating any obligations for Schmoll Maschinen GmbH. If the goods under reservation of title are combined or mixed with other goods that do not belong to Schmoll Maschinen GmbH, Schmoll Maschinen GmbH shall be entitled to the resulting co-ownership share of the new item in the same ratio as its invoice value in relation to the other processed goods at the time of processing, combination or mixing. If Buyer acquires sole ownership of a new item, the Contracting Parties are in agreement that Buyer shall grant Schmoll Maschinen GmbH co-ownership of the new item in the same ratio as its invoice value in relation to the processed, combined or mixed goods under reservation of title and shall store the item free of charge on behalf of Schmoll Maschinen GmbH.

7.6 If the goods under reservation of title are resold together with other goods, irrespective of whether this be without or after processing, combination or mixing, the advance assignment

agreed above shall only apply to the sum of the invoice value of the goods under reservation of title that are resold together with other goods.

7.7 Buyer shall notify Schmoll Maschinen GmbH without delay of any compulsory debt enforcement measures of third parties affecting the goods under reservation of title or the claim assigned in advance, providing the documents necessary for an intervention.

7.8 Buyer's authorisation to dispose of the goods under reservation of title and to collect the assigned claim shall lapse if Buyer should be in default of payment, in the event of protest of bills of exchange and cheques or if Buyer should incur a financial collapse - particularly if Buyer should file for insolvency. In such cases, Schmoll Maschinen GmbH shall have the right to take possession of the goods under reservation of title and Buyer shall be obliged to surrender these goods to Schmoll Maschinen GmbH, without Schmoll Maschinen GmbH first having to announce its intention to withdraw from the contract. Buyer must also surrender the goods under reservation of title if Buyer has combined these goods with other movable objects and they have to be disassembled in order for the goods under reservation of title to be surrendered. This obligation shall not apply, if the delivery item of Schmoll Maschinen GmbH has become an essential part of a uniform thing within the meaning of 947 of the German Civil Code (BGB). If Buyer is a registered trader entered in the commercial register, the taking back of the goods under reservation of title shall only entail withdrawal from the contract if Schmoll Maschinen GmbH has explicitly stated that this is to be the case.

7.9 Schmoll Maschinen GmbH undertakes to release the collateral that it may claim under the foregoing provisions on Buyer's request, choosing which items this shall be, if the value of such collateral exceeds the value of the claim by 10 % or more.

## **8. Acceptance and Inspection**

8.1 If an acceptance has been agreed, the goods must be examined without delay. Acceptance cannot be refused on grounds of insignificant defects.

8.2 The goods shall be deemed accepted if Buyer does not give notice of a defect within four weeks from the date when the goods are made available or if Buyer puts the goods into operation. Schmoll Maschinen GmbH is not obligated to address later complaints of defects that were not hidden.

## **9. Claims due to Defects, Limitation Period**

9.1 If Buyer is to have claims due to defects, the precondition is that Buyer has complied with all its legal obligations to inspect the goods and give notice of defects (§§ 377 and 381 of the German Commercial Code, HGB). Buyer must examine items delivered by Schmoll Maschinen GmbH for defects immediately after receipt of the consignment. During this inspection, the corresponding samples must also be taken and test runs carried out. During the test run, Buyer shall check the technical functionality of the machines supplied by Schmoll Maschinen GmbH, especially by examining the test products manufactured on the machine that has been supplied within a sufficient measurement procedure. These obligations to inspect the goods and give notice of defects also apply to the delivery of software and hardware updates and in case of service (maintenance) or repair work after a malfunction of the respective machine.

9.2 Complaints due to incomplete or incorrect consignments as well as due to obvious defects or defects that were noticeable during the inspection must be notified in writing to Schmoll Maschinen GmbH without delay and the defective parts in question returned to Schmoll Maschinen GmbH at the latter's request. Hidden defects that cannot even be

detected through sampling or test runs must be notified to Schmoll Maschinen GmbH immediately after being found. If complaints or defects are not reported in good time, the consignment shall be deemed approved, excluding any claims on grounds of incomplete, incorrect or defective delivery.

9.3 The obligation to inspect the goods and give notice of defects also extends to assembly instructions and the delivery of excess or insufficient volumes.

9.4 The quality of the goods explicitly depends on the technical delivery specifications agreed. If Schmoll Maschinen GmbH has to deliver according to Buyer's drawings, specifications, samples etc. Buyer assumes the risk of their being fit for the intended purpose.

9.5 Schmoll Maschinen GmbH shall not be liable for material defects caused by unsuitable or improper use, defective assembly or commissioning by Buyer or defective or careless handling, nor for the consequences of improper changes or repairs made by Buyer or third parties without the consent of Schmoll Maschinen GmbH. The same applies to defects that only slightly reduce the value or suitability of the goods.

9.6 Rejected goods shall be returned to Schmoll Maschinen GmbH immediately on request. If Buyer does not comply with its obligation to return the goods or makes changes to the rejected goods without the agreement of Schmoll Maschinen GmbH, Buyer shall forfeit any claims that Buyer may have on grounds of material defects. Schmoll Maschinen GmbH shall pay the transport expenses if the complaint is justified. However, if Buyer makes an unjustified request for the rectification of defects, Schmoll Maschinen GmbH may demand that Buyer refunds the resulting costs.

9.7 If notice is given in good time of a defect and this is justified, Schmoll Maschinen GmbH shall have the choice of improving the goods or supplying a replacement that is free of defects. Within the framework of the statutory provisions Buyer shall have the right to withdraw from the contract or demand a reduction in the purchase price if Schmoll Maschinen GmbH - taking account of the statutory exceptions where it is not necessary to set a deadline - allows a reasonable deadline set for the improvement of the goods or the delivery of a replacement due to a defect, within the meaning of the Terms and Conditions of Sale, to lapse without taking any action. Buyer, however, shall not have the right to withdraw from the contract if a defect is only insignificant.

9.8 Buyer shall have no claims in the case of defects:  
caused through damage from improper handling or overloading by Buyer or Buyer's customers;  
if Buyer or Buyer's customers do not observe the legal requirements or Schmoll Maschinen GmbH's own requirements regarding installation, operation and maintenance, unless the defect has not been caused by this failure to comply; or  
if the delivery item has been produced according to Buyer's specifications, particularly according to the raw material that Buyer has supplied or drawings that Buyer has provided and the defect in the delivery item is due to this specified raw material or these specification drawings.

9.9 Buyer shall only have claims to damages or compensation for wasted expenditure as set out in clause 9; such claims shall otherwise be excluded.

## **10. Other Liability**

10.1 Unless otherwise provided for below, Buyer shall have no other claims and no further claims against Schmoll Maschinen GmbH. This particularly applies to claims to damages due to a breach of the duties arising from the contractual obligation and on grounds of tort as well as claims to the reimbursement of expenses. Schmoll Maschinen GmbH shall therefore not be liable for damage other than damage to the actual delivery item. Above all, Schmoll Maschinen GmbH shall not be liable for lost profits or other financial loss suffered by Buyer.

10.2 The aforesaid limitations of liability shall not apply in the case of wilful intent and gross negligence on the part of legal representatives or senior executives, in the event of a culpable breach of fundamental contractual obligations nor if Schmoll Maschinen GmbH has guaranteed the quality of the item or has fraudulently concealed a defect.

10.3 In the event of the culpable breach of fundamental contractual obligations (obligations that make the proper performance of the contract at all possible and which the other Contracting Party regularly and legitimately relies on being fulfilled), Schmoll Maschinen GmbH shall only be liable for typical, reasonably foreseeable damage except in cases of wilful intent or gross negligence on the part of its legal representatives or senior executives.

10.4 Furthermore, the limitations of liability shall not apply in the case of liability under the Product Liability Act and in the case of liability due to culpable injury to life, limb or health.

## **11. Limitation Period**

11.1 Claims due to material defects and defects of title shall become statute-barred 12 months after delivery. In derogation from this provision, the limitation period shall be 6 months in the case of spindles, spare parts and services. If the dispatch of the goods is delayed without this being the fault of Schmoll Maschinen GmbH, liability shall lapse no later than 18 months after written notice has been given that the goods are ready for dispatch. This shall not apply if the law prescribes longer periods. If an acceptance has been agreed, the limitation period shall commence on the date of acceptance.

11.2 On no account shall this affect the limitation periods under the Product Liability Act. Only the statutory limitation periods shall apply to claims for damages that are not based on defects.

## **12. Copyrights and Industrial Property Rights of Third Parties**

12.1 Schmoll Maschinen GmbH reserves rights of ownership and copyrights to samples, cost estimates, drawings and similar and information in tangible and intangible form - including electronic form; they are not to be made accessible to third parties.

12.2 Schmoll Maschinen GmbH undertakes to make information and documents that Buyer has designated as confidential accessible to third parties only if this has been approved by Buyer.

12.3 It shall be Buyer's duty to ensure that the documents it provides do not infringe the rights of third parties, particularly copyrights and industrial property rights (registered designs, patents, utility models, trademarks). If a third party makes a claim against Schmoll Maschinen GmbH due to the use, exploitation or duplication of the documents and templates

provided by Buyer on grounds of copyright infringement and/or infringement of industrial property rights or due to a breach of the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb), Buyer shall support Schmoll Maschinen GmbH in defending such claims and shall compensate Schmoll Maschinen GmbH for all losses (including lawyers' fees and litigation costs) that the latter incurs.

### **13. Passing of the Risk**

13.1 If the goods are sent to Buyer at Buyer's request, the risk of accidental destruction and the accidental deterioration of the delivery item shall pass to Buyer when the delivery item is handed over to the forwarding agent, haulage contractor or carrier. This shall also be the case if the goods are not shipped from the place of performance and/or if Schmoll Maschinen GmbH bears the freight costs.

13.2 If the goods are ready to be dispatched and shipping is delayed for reasons to do with Buyer, the risk shall pass to Buyer on receipt of the notice that the goods are ready to be shipped.

### **14. Final Provisions**

14.1 The laws of the Federal Republic of Germany shall govern these General Terms and Conditions of Payment and Delivery and the legal relations arising from this contract between Schmoll Maschinen GmbH and Buyer.

14.2 The place of performance for payment and delivery is Rödermark/Ober-Roden.

14.3 The place of jurisdiction is the place where Schmoll Maschinen GmbH has its registered office unless otherwise prescribed by law. Schmoll Maschinen GmbH may also bring an action before the competent court in the place where Buyer has its registered office.

14.4 Side agreements, reservations, amendments and additions shall require written confirmation by Schmoll Maschinen GmbH in order to be valid.

