

**General Terms and Conditions (GTC)**  
**of Schmidt Verpackungstechnik GmbH & Co. KG,**  
**hereinafter to be referred as "SVT"**  
**for the delivery of machines and machinery (standard) as well as**  
**for the construction and manufacturing of special machinery incl.**  
**additional services for**  
**machine installation and commissioning**  
**(Status: as of April 2018)**

**I. General Conditions**

**§ 1 Scope of validity**

- 1.1 These GTC are valid for any deliveries and services by SVT under exclusion of opposing conditions of our contractual partners/customers.
- 1.2 Our GTC apply only to companies in the sense of § 310 (1) of the German Civil Code as well as to legal persons under public law or a special fund under public law.
- 1.3 They also apply to future business relations without additional and explicit reference. Exception rules of our GTC are subject to prior written agreements.
- 1.4 In addition the current Incoterms apply in its current version including all additions valid at the time the contract is concluded. Unless otherwise agreed upon in text form, all deliveries and services are always to be understood as Incoterm ex works (EXW).

**§ 2 Quotations and Conclusion of Contracts**

- 2.1. Our quotations are subject to final confirmations, unless we have explicitly marked them as binding quotations.
- 2.2. The customer is bound by his order for 2 weeks. The sales contract will only become effective when a corresponding order confirmation will have been issued within 2 weeks from order receipt or the order will have been performed within the same time.
- 2.3. Electronically issued and/or business mail by post is legally binding on both pages without showing any respective signature.
- 2.4. Our deliveries and services are subject to current state-of-the-art technology in Germany. In case a machine installation and commissioning is stipulated to take place outside of Europe in the contract, the buyer is requested to provide SVT with all necessary information regarding special local regulatory or statutory requests/requirements and/or regulations, which may hinder or complicate the installation and commissioning, of a machine, which was developed in accordance with German and European standards. In case the buyer fails to provide such information, which shall be submitted in text form, and consequently extra costs occur, the customer shall upon first request indemnify SVT immediately against all such costs and bear them himself. The customer is responsible for any losses and liabilities which may arise due to the use of contractual products outside the place of delivery which is indicated in the order confirmation.
- 2.5. Illustrations, samples, brochures, drawings and/or any other details/documents which are part of the quotation do not imply a quality statements, nor warranted characteristics, warranties or guarantees, unless they are separately agreed upon in text form. We explicitly reserve any property, copy or other IP- rights to any kind of illustrations, samples, brochures, drawings and other documentation. They must not be disclosed to third parties. Unless otherwise explicitly stated, we only warrant the existence of our IP-Rights within the Federal Republic of Germany.
- 2.6. Information regarding the processing and application of SVT-Products, technical recommendations as well as technical advice or any other information provided by our staff are made according to best knowledge. It is non-binding and exempted from any kind of liability, unless we explicitly confirm specific features, application possibilities and scope of use of contracted products in text form. Our non-binding information does not exempt the customer and its sub-contractors to carry out their own inspections and tests in order to check the suitability of the products for the intended purpose, in particular by taking into account the quality of the material which is

used by the customer for processing in our SVT-machinery /contracted products. Any technical advice provided by the seller does not establish any contractual legal/advisor relationship.

- 2.7 The right of proper and timely self-supply is herewith reserved. In case of non-availability of a delivery or service we will immediately inform the customer thereof and reimburse all received contributions in case of withdrawal from the contract.

### **§ 3 Scope of Service for the delivery of standard machines and machinery and related equipment (Purchase Agreement)**

- 3.1 The scope of service can basically be derived from the SVT-Quotation and the SVT-Order of Confirmation in consideration of point 2.4 of our GTC. The scope of service does not comprise the machine installation, commissioning and/or instruction/training of personnel and maintenance staff. Should our services and products be subject to specific know how, design rights or other special rights upon conclusion of the contract, the customer will be granted a non-exclusive, non-transferable right of use for his operational purposes.
- 3.2 SVT shall be entitled to partial loads and services, without any new quotation being required. In case of a non-deliverability of the remaining part(s), the customer is entitled to withdraw from the contract and is exempted from paying any penalty or cancellation fee in connection therewith, if the missing part(s) lead(s) to an improper function of the machinery or the customer does not have any interest in the delivery due to the missing part(s) and he shall submit respective evidence. Additional costs which may accrue due to additional partial deliveries shall be borne by SVT.
- 3.3 Post-Contractual amendments required by the customer shall be submitted in text form and shall describe the nature of the intended change in detail.
- 3.4 Contracts for the manufacturing and delivery of basic machines and machinery in general shall not comprise any obligation from our side for machine installation or commissioning, unless there is a separate agreement concluded in text form. An instruction and training of how to use the machine is subject to a separate installation /service agreement.
- 3.5 We are entitled to assign sub-contractors with the fulfillment our contractual obligations.

### **§ 4 Scope of Service, Special machines and machinery, Right of use/ IP-Rights**

- 4.1 The scope of service is generally derived from the SVT-quotation as well as from the SVT-Order confirmation based on the specifications provided by the customer together with Point 2.4 of our GTC. In case the specification sheet will be updated/amended in a performance-relevant manner, which leads to additional costs and which is initiated by the customer, SVT is obliged to accept and implement those amendments against charge. In case the parties are not content regarding the question, whether or not there is a change in performance regarding the original contract, SVT is only entitled to its extra charge with a security being established in the meaning of § 232 (1) German Civil Code BGB regarding the change in the scope of performance. § 650 b), § 650 c) BGB remain unaffected, whereas SVT is obliged to return the security immediately after the post-contractual extra charges will have been paid.
- 4.2 Unless otherwise agreed in text form contracts for the construction/design and manufacturing of special machines shall not comprise any obligation for machine installation and commissioning in general. However on the contrary, the commissioning and machine instruction after installation are part of the contract. Training is not part of the contract and shall be separately assigned.
- 4.3 SVT shall be entitled to assign at its own discretion subcontractors in order to fulfill its performance obligation.
- 4.4 All rights to work results, copyright, invention rights, technical IP-rights of any kind, design rights etc. exclusively belong to SVT. This is also the case if development results were achieved by SVT with the help of customer specifications. The customer is only granted a non-exclusive, non-transferable right of use the machinery for operational services. A right to changes or reproduction shall not be included.

### **§ 5 The customer's obligation to participate in planning and constructing special machines and machinery**

- 5.1 The customer is obliged, to timely and completely submit without any request all necessary information and documents in text form via data carrier or online. This is in particular necessary for SVT, in order to be able to make a complete and suitable quotation by SVT. This information shall comprise information on the production environment, interfaces, procedures and on raw materials processed etc..

- 5.2 The customer makes sure that he fulfills the following particular and elementary obligations:
- Submission of any required information as soon as possible
  - Quick decision-making, otherwise this will lead to an extension of the delivery and performance time by the time elapsing from the overdue notice
  - Participation in technical tests and trial runs by providing sufficient personnel and data during normal operating hours
  - Participation in an unhindered machine installation (if applicable)
  - Participation in the commissioning by providing qualified workers and signing of the commissioning protocol in text form, even in the event of reservations to defects these are to be exactly mentioned e.g. reservations/defects/ disturbance sources, provided that a commissioning is agreed upon in connection with the contract
  - Preparation and implementation of the machine-acceptance, in case there is a separate formal acceptance beside the commissioning agreed according to the contract
  - Assistance in handling insurance claims
  - Obtaining all permissions/approvals by third parties or authorities, even if they relate to SVT ; application and obtaining of all necessary permissions/approvals to the extent they are not part of the obligations by SVT under the contract
  - Verification of the customized planning and all parameters, specifications, technical statements and warranties in respect of completeness, correctness and accuracy, in case the customer is required to provide them according to the information situation
- 5.3 A fulfillment of the contract by SVT is subject to a complete fulfillment of any obligations of participation from the customer's side.
- 5.4 In case the customer does not participate in the machine commissioning and/or does not sign the commissioning/acceptance protocol, although the machinery is ready to use and running properly without any material defects and such an acceptance date was arranged for desperately or there was a deadline given for the acceptance/commissioning that expired fruitlessly, the acceptance/commissioning shall be deemed as accepted by the customer. The machine shall not be deemed accepted/commissioned if the customer refuses to sign the acceptance/commissioning protocol due to material reasons/defects he is entitled to claim within the given deadline.

## **§ 6 Prices / Payment Terms / Default**

- 6.1 Unless otherwise stated in the order confirmation the prices of SVT are to be understood as net prices ex works SVT (EXW Incoterms 2010) excluding packaging and freight costs and VAT (if applicable, according to the contract concluded).
- 6.2 Unless otherwise explicitly agreed in text form invoices are due immediately without any deduction of discounts or otherwise. SVT explicitly prohibits any kind of deduction which was not explicitly agreed upon in the order confirmation.
- 6.3 The right to withhold payments or to offset them against counterclaims is only insofar admitted, in case they are undisputed or have been recognized by declaratory judgment and entail a mutuality of obligation.
- 6.4 In case the delivery takes place 4 months after the date which was planned when confirming the order, we explicitly reserve the right of increasing the price, to the extent that material changes of cost factors underlying this contract have taken place - e. g. increase in salaries/wages, packaging material, freight, energy costs, raw materials, taxes, storage fees. This increase will be calculated based in the actual price increase of costs of which evidence shall be submitted.
- 6.5 Checks and bills of exchange shall only be deemed accepted after encashment. Discount or bank charges are to be borne by the customer. To the extent that we have agreed upon check and bills of exchange as means of payment with the customer for the payment of invoices, the right of retention extends to encashment of the bill of exchange accepted by us by the purchaser and does not expire as a result of the crediting of the received check by us.
- 6.6 In case a money transfer is not possible from the country it should have been transferred from when the payment is due, the customer is obliged to timely pay in the owed amount at any European bank in this country and present a respective receipt. In case of a decline of the exchange rate of foreign currency that was paid in foreign currency but not agreed to in the contract, the customer is obliged to perform a subsequent payment for the exchange rate difference.

- 6.7 If it becomes apparent for SVT, following the conclusion of the contract, that the supplier's right to receive payment of the purchase price is at risk due to the Customer's inability to effect performance, e.g. due to the application for or the opening of insolvency proceedings or a deteriorating of the credit reports of a credit insurer the supplier shall be entitled to refuse performance in accordance with the statutory provisions and - where applicable after setting a deadline – to withdraw from the contract. We hereby undertake to allow the customer a prepayment up the amount of the delivery or alternatively, a respective guarantee of a credit insurer or a European bank in form of an absolute unlimited guarantee under waiver of a plea of unexhausted remedies. In case the customer does not make any prepayment or does not arrange for the required guarantee, we are entitled to a permanent right of retention or alternatively after unsuccessful delivery of overdue notices to the right of withdrawal. Apart from that we are entitled to compensation claims.
- 6.8 In case the customer is in default with his payment, we will charge interests amounting to 9 % above the base rate interest of the European Central Bank subject to the proof of a higher damage.

## **§ 7 Subject to Fulfillment / Embargo Clause / Force Majeure**

- 7.1 Fulfillment of the Agreement is subject to the provision that fulfillment shall not be prevented by impediments on the grounds of national and/or international legal requirements of foreign trade or embargos and/or other sanctions. The customer is in particular obliged to refrain from doing business with (a) persons, organizations or institutions, which are mentioned on the sanctions list according to EC-regulation or according to the US- export regulations, (b) embargo states that are banned, (c) for which the required permission is not at hand or is not required, (d) which may arise in connection with ABC weapons and military theft.
- 7.2 The customer is obliged to inform us immediately and without request in text form in case he intends to deliver products or services he has retrieved from us into regions or to use them in those regions which are subject to those regulations. He will release us from any legal consequences, which may arise due to the violation of those regulations and he will compensate for the damage accordingly, in case there is a causal link to the damage.
- 7.3 SVT is entitled to cancel the contract without paying a penalty, in case SVT is not only temporarily prevented from fulfilling its contractual duties and it would be unreasonable to adhere to the contract. As force majeure shall be considered any event that is reasonably unforeseeable or controllable and/or cannot be prevented and which hinders SVT to fully or partially fulfill its contractual obligations, in particular in case of war, terrorist attacks, natural disasters, fire etc.. To the extent SVT refers to force majeure it shall inform the customer thereof with no undue delay.
- 7.4 The customer is entitled to terminate the contract after having received a notification according to Number 6.3 above, if SVT is not capable of offering a reasonable restitution of the owed performance.

## **§ 8 Delivery Time & Delivery Delay**

- 8.1 The delivery time starts on the day the order confirmation is issued or the order is performed; the delivery time is non-binding, unless there is a fixed delivery time explicitly mentioned in text form. We explicitly exclude the delivery on fixed dates.
- 8.2 The goods can only be delivered in time, if the customer has duly fulfilled his obligations. The delivery date shall be deemed as met if the goods have left our production facility until the expiry of the respective deadline or if a notification was sent that they are ready for dispatch. Delivery times do not start earlier than upon conclusion of a contract, but not before all necessary documentation required by the customer has been submitted and not before a release, technical clarifications and the fulfillment of the customer obligations in particular according to number 2.4 and 5.2 of the GTC have been taken place. Retrospective changes or additions from the customer's side will extend the delivery time accordingly. The same applies to other unforeseeable events for which we are not responsible, such as force majeure, war, strike, lock-out or other interruption in operation, e.g. unforeseeable difficulties from sub-contractor's side. In such cases of hindrance of performance which last for more than six months we are entitled to withdraw from the contract in respect of the outstanding delivery without paying any kind of compensation.
- 8.3 In case we are in delay with our delivery, the customer shall set a new reasonable deadline, after he has claimed the delay towards us in text form and clearly states that he will refuse to accept the contract after the new deadline will have expired. Only after expiration of the second deadline the customer is entitled to withdraw from the contract by notifying the seller in text form, but only to the extent we are responsible for the violation of our obligations, which would only occur in case of malicious intent and gross negligence and the customer submits sufficient evidence that he has no more interest in the delivery/service. The customer is not entitled to any compensation claims in case he withdraws from the contract. In any case our liability for damages shall only be

limited to foreseeable typically occurring damage. We do not accept to pay any lump sum or penalty in case of delivery delay.

- 8.4 If the customer is in default of acceptance we are entitled to claim compensation and additional expenses that may have arisen in connection therewith.

## **§ 9 Transfer of Risk/ Dispatch of Goods**

- 9.1 The dispatch of goods will be done at customer's risk and costs (Incoterms 2010 EXW). In general the risk shall be passed over to the customer at the place of loading in this case from the production site of SVT. This shall always be the case, unless there are other separate agreements. This also applies to partial loadings or in case we have been assigned by the customer for further services. The choice of the routing and packaging of the goods is subject to the seller.
- 9.2 In case there is a delay in dispatch for which the customer is responsible, the transfer of risk will be effected on the day the goods are ready for dispatch. The customer is obliged to accept the delivery of goods, even if they show insignificant defects.
- 9.3 In case the customer is obliged to provide means of transport for the delivery and if he fails to do so within the agreed timeline, we are released from our delivery obligation as well as from any obligation to store or insure the goods on our account and at our risk. The return receipt of the freight forwarder shall be deemed as an evidence for the delivery in accordance with the contract.
- 9.4 On explicit customer request we can arrange for insurance against transport damages and other risks on customers account.

## **§ 10 Notice of and liability for defects**

- 10.1 Any of our delivered goods and rendered services are to be checked for completeness and possible defects. In case obvious defects are found during routine control this shall be immediately reported after unloading to the seller in text form. Any detected defect shall be immediately reported by the entrepreneur to the seller, even if it occurs after installation or commissioning. This notification shall comprise a detailed description of the default/defect.
- 10.2 Upon receipt or collection of goods the customer is obliged to get a confirmation of the condition of goods either by himself or by authorized third parties. A shortfall in delivery or wrong delivery shall not constitute any kind of defect. We are furthermore entitled to supplementary delivery upon request.
- 10.3 In case the delivered goods or the rendered service are inappropriate we will rework or replace the goods in connection with our warranty. For the time being the customer is only entitled to supplementary performance. Claims on the part of the purchaser for expenditures necessary for the purpose of subsequent performance are excluded if these expenditures increase because the goods delivered by us were subsequently transported to a location other than the purchaser's place of business, unless such transport is consistent with the goods' intended use. Should the subsequent performance fail despite at least two attempts, the customer can either reduce the payment or, if the defect is essential, withdraw from the contract.
- 10.4 Claims for defects are not permissible in case the deviation in quality or the affected usability is insignificant.
- 10.5 If, due to a material defect, the customer chooses to withdraw from the contract, the customer shall not be entitled to any additional damage claims due to the defect. If the customer chooses to claim compensation after failed subsequent performance, the goods will remain at the customer, in case this can be reasonably expected. The replacement is limited to the price difference between the purchase price and the value of the defective goods. This shall not apply if the violation of the contract was done with malicious intent or gross negligence.
- 10.6 Following a clarification with the customer he shall grant SVT the necessary time and opportunity in order to carry out necessary rework or replacements. If he fails to do so, we are exempted from our liability for damages. Only in case we are in delay with eliminating the defects, the customer is entitled to have the defect eliminated by himself or third parties, but only after having sent a overdue reminder and after a further setting of deadlines with a warning that he will make us of this right accordingly.
- 10.7 The period of limitation for any claims and rights due to defects of the object of agreement - for whatever legal grounds - is one year regardless if upon delivery or production. This deadline also applies to other compensation claims of the customer for whatever legal grounds, unless we acted with malicious intent or committed breach of

a guarantee or in case of malicious concealment of material defects or entitled claims in accordance with the product liability law and in case of culpable violation of essential contractual obligations.

- 10.8 A notice of defects does in no way affect the limitation period of warranty claims, if we after having carried out a thorough check cannot find any reason for the defects and announce that we are not responsible for the defect.
- 10.9 We shall not be liable for damages that occur due to an unsuitable, improper or uncoordinated use or incorrect handling by the customer or third parties, negligent handling, improper cleaning and care, chemical or mechanical influences, excessive or improper use, failure of components in the system environment, in case of subsequent change or unauthorized repair by the customer or due to the use of software which was not agreed to be used by SVT or with parts other than of SVT, to the extent they were not caused by us. In case of simple violation of obligations the liability is herewith excluded. In case of gross negligence our liability is limited to foreseeable, contractual damages, as well as in case of breach of contract. We assume liability in accordance with the product liability law which comprises liability due to loss of life, bodily injury or health or in case of culpable violation of essential contractual obligations.

## **§ 11 Retention of Title**

- 11.1 Until the complete payment all of our present and future claims resulting from a contract of ongoing business relations (guaranteed claim) we reserve the right of ownership regarding the delivered goods. The retention of title relates to all unsettled balances from current accounts and to the acceptance of bills of exchanges and checks until their final encashment, whereas the fulfillment is only deemed effected after payment receipt by us.
- 11.2 The retention of title also relates to products that are created by processing, mixing and/or combining our goods at full value, whereas we remain the manufacturer. In case the proprietary rights of the customer persist after processing, mixing or combining his goods with goods of third parties, we are entitled to a co-ownership in proportion to the invoice amount of the processed, mixed or combined goods. In such a case the customer is obliged to hold the solely or jointly owned product(s) in safekeeping for SVT free of charge. The same applies to the manufacturing of such processed goods and for goods delivered under the regulations for the retention of title.
- 11.3 The customer is entitled to process reserved goods with his duly manufacturing practice and to sell them, as long as he is not in delay. The authorization for resale becomes non-effective if the purchaser has agreed on a ban of assignment with his buyers. Pledges or transfer of securities are not permitted.
- 11.4 In case conditional goods of the customer are sold solely or together with goods that do not belong to SVT, for security reasons the customer hereby already assigns all those claims towards SVT, which may arise from the resale or from any other legal ground (including any unsettled balances from current accounts); SVT hereby explicitly accepts the assignment.
- 11.5 The customer is hereby irrevocably authorized to debit any claims assigned to the accounts receivables of SVT on his account and in his own name. SVT shall be entitled to terminate the direct debit authorization any time should the customer not pay timely or be in payment default, if the purchaser has agreed on a ban of assignment with his buyers or an application or opening of insolvency proceedings are filed or the payment has stopped. On request the customer is obliged to inform his customers about this assignment and forward all necessary documentation and information to SVT which are necessary for the direct debit.
- 11.6 In case of pending pledges or foreclosures or other interventions by third parties relating to conditional goods or assigned claims the customer shall inform SVT immediately thereof by handing over all necessary documents that are necessary for filing an appeal, in order to assert our rights; he shall be obliged to point out that the property rights still belong to us and that we are entitled to all claims. In case the third party is not capable of paying the costs for the legal proceedings, they shall be borne by the customer.
- 11.7 In case payments due will stop and/or upon opening of an insolvency case the right of resale, processing, combining and mixing of the reserved goods expires as well as the authorization to claim accounts receivables; in case of paying with checks or bills of exchange the authorization for direct debit also expires. This does not apply to the rights of the insolvency administrator.
- 11.8 In case the title of retention is not valid in the same form in the country of destination of the goods according to local applicable law, the customer shall assist SVT in establishing a similar security right complying with the provisions of his country, in favor of SVT.

- 11.9 In case of breach of contract by the customer, in particular in case of default of payment, we are entitled to withdraw from the contract according to applicable law and/or to demand a return of goods from the customer in accordance with the guidelines regarding the retention of title. The demand for a return of goods does not imply a withdrawal from the contract but we are furthermore authorized, to only ask for a return of the goods and only reserve the right of withdrawal. In case the customer does not pay the purchasing price due, we are only entitled to assert our rights if we have set the customer an adequate timeline for the payment before or if a setting of deadlines is not required due to applicable law.

## **§ 12 Liability**

- 12.1 Unless otherwise stated in the GTC we shall only be liable for the violation of contractual and non-contractual obligations in accordance with the respective legal regulations, in case the following does not apply:
- 12.2 Our liability for damages is limited –for whatever legal grounds- to malicious intent and gross negligence. In case of simple negligence we shall only be liable for:
- a) damages resulting in bodily injury, damages to life and health
  - b) damages resulting from a material breach of contract (obligations that are reasonably to be fulfilled and can be expected to be fulfilled); in this case the liability of SVT for compensation is limited to foreseeable, typically occurring damage.
- 12.3 The limitations regarding the liability resulting from paragraph 2 do not apply, in case SVT has maliciously concealed a defect or if it has granted a guarantee for the quality of its goods. The same applies to customer rights according to the product liability law.
- 12.4 In case of a violation of obligations, which do not consist of a defect, the customer may only withdraw from or terminate the contract, if SVT is responsible for the violation and if it is serious. An unrestricted right of termination is hereby explicitly excluded. The general preconditions and legal consequences apply.
- 12.5 A declared claim of liability does in no way affect the limitation period, if after a thorough check we come to the conclusion that we are not liable for the damage and notify the customer thereof.
- 12.6 We hereby explicitly object any kind of penalties or payment of lump sums for damages on whatever legal grounds, namely in case of defaults and defects.
- 12.7 Should a third party assert its rights towards the customer in case of an infringement for which SVT is responsible, the customer shall inform SVT immediately thereof. SVT shall have the right, at its own choice and costs to grant the customer the right to performance or to arrange for a legal performance or to take back the performance at the invoice amount, if SVT fails to provide any reasonable remedy. In particular the interests of the customer shall be considered here.

## **§ 13 IP-Rights of third Parties**

The customer confirms that the goods which are to be manufactured with the contracted machine do not infringe any IP-rights of third parties and that the customized products can consequently be produced. In connection therewith the customer shall indemnify us from third party claims.

## **§ 14 Place of Performance, Jurisdiction, Applicable Law, Severability Clause**

- 14.1 Place of Performance for all obligations in connection with this contract is the place of business of SVT.
- 14.2 To the extent the customer is a registered merchant, a legal persons under public law or a special fund under public, any disputes that may arise direct or indirect from the contract, including proceedings due to check or bill of exchange fraud shall be addressed to the district courts in Osnabrück. This also applies in case the customer does not have any general place of jurisdiction or if he moves outside the country after conclusion of the contract or in case his place of residence remains unknown at the time legal proceedings are filed at the court.
- 14.3 Solely the laws of the Federal Republic of Germany shall apply for these Terms and Conditions and to all legal relationships between the customer and us. The UN-Sales Convention is hereby explicitly excluded (Convention of the United Nations dd. 11.04.1980 regarding international sale, BGBl. 1989 II S. 588).
- 14.4 In case provisions of the GTC are or become invalid or unenforceable, the validity and enforceability of the remaining provisions remain unaffected. In such a case both parties undertake to replace those invalid and unenforceable provisions by those valid and unenforceable provisions that come closest to the original commercial purpose. This also applies in case of unintended contractual gaps.