

General Conditions of Sale and Delivery of SCHARR CPC GmbH

1. Area of validity

- 1.1 These Conditions of Sale and Delivery (hereinafter known as 'T&Cs') apply to all sales, delivery, and other transactions of the following companies in the SCHARR group of companies: SCHARR CPC GmbH, Hentrichstrasse 65, 47809 Krefeld (hereinafter referred to individually as 'SCHARR').
- 1.2 Only these T&Cs apply to all deliveries and performance of SCHARR (hereinafter referred to as 'performance'). Contrary, deviating and such conditions of the customer not governed in these T&Cs are not recognized by SCHARR unless SCHARR agreed to their validity expressly in writing. This applies also in cases where SCHARR executes performance non-reservedly with knowledge of conditions of the customer contrary to, deviating from, or not governed by these T&Cs, or if the customer refers to the validity of its conditions in its inquiry, in its order, or in another manner in the context of processing the contract, and SCHARR does not expressly object again to the validity of the conditions of the customer.
- 1.3 These T&Cs apply only towards an entrepreneur within the meaning of § 14 German Civil Code.
- 1.4 As part of ongoing business relationships, these T&Cs apply also to subsequent and follow-up orders.

2. Delivery condition - delivery time - delivery amount - location/method of carriage - transfer of risk

- 2.1 Insofar as no deviating agreement was made, the delivery condition 'ex works' (pursuant to INCOTERMS respective current version) in the location stated by SCHARR in the offer or acceptance is deemed agreed.
- 2.2 Information on the delivery time stated by SCHARR is fundamentally not deemed binding (§ 323 section 2 no. 2 German Civil Code, § 376 German Commercial Code). Partial deliveries are – insofar as reasonable for the customer – permitted.
- 2.3 The commencement of the agreed time for the performance presumes that all technical issues have been clarified. Timely adherence to the obligations by SCHARR presumes moreover that the customer fulfills all cooperation duties in a timely and orderly manner. SCHARR reserves the right to raise the objection of an unfulfilled contract.
- 2.4 The customer must ensure that lines and connections are provided in a timely manner, must cooperate in the acceptance, and draw the attention of SCHARR to impaired delivery circumstances (poor driveway, long hose path, etc.) in a timely manner.
- 2.5 Insofar as the parties have not agreed a deviating condition, the weight or volume calculated at the delivery point or established by customs and contained on the delivery note is deemed decisive.
- 2.6 Insofar as the parties have not agreed a deviating condition, SCHARR determines the location and method of carriage.
- 2.7 Insofar as the parties have not agreed a deviating condition, the risk of accidental loss and accidental deterioration of the goods is transferred to the customer when the goods are handed over to the transporting person; however, this shall not be later than when the goods leave the delivery warehouse.

3. Prices - payment conditions

- 3.1 Statutory value-added tax is not included in SCHARR's prices; it is itemized in the invoice at the statutory level on the day on which the invoice is issued. In the case of a registered permit waiver, the purpose for which the goods are to be used must be stated.
The deduction of a cash discount requires a separate written agreement.
- 3.2 Insofar as no deviating agreement was made between the parties, the purchase price is due for payment net (without deduction) within 10 days of the invoice date. If the customer enters payment arrears, SCHARR has the right to demand default interest to the level of 9 percentage points above the respective published base rate of interest (see § 247 German Civil Code).

4. Tax-supported deliveries

- 4.1 If the goods are tax-supported and a formal individual permission is required for the goods to be used on a tax-free basis, the customer must send SCHARR in a timely manner before the delivery a valid counterpart of the permit valid for the time of delivery. SCHARR is not duty bound to deliver the goods if there is not a valid permit.
- 4.2 In the case of a registered permit waiver, the purpose for which the goods are to be used must be stated.
- 4.3 In the cases in which the customer is purchasing the goods in the tax-suspension procedure, the customer provides assurance that it is authorized to waive the permit by transmitting its excise duty no., which the customs authorities assigned to the customer to indicate that it has been assigned an individual permission.
- 4.4 SCHARR is not duty bound to scrutinize the validity of the permit or the excise duty no. and the presence of the statutory pre-requisites for the tax-supported deliveries.
- 4.5 If the goods are determined for export outside of the territory, the customer is duty bound in the case of sell-on to apply for the goods to be processed in a new shipping procedure for which provision is made in national or Community law in the name of the customer.
- 4.6 The customer must absolve SCHARR of any damage, expenses, costs, and disadvantages arising from any invalidity of the permit or the culpable contravention of other statutory regulations by the customer or the customer must reimburse SCHARR for this damage, expenses, and costs. The customer is particularly responsible for the goods being used only for the purpose for which provision is made and is permissible in tax and customs law; it must reimburse SCHARR with tax and/or customs duties that SCHARR has to pay due to non-compliant use.

5. Containers - inspection - duties as part of filling

- 5.1 If SCHARR provides the customer with tank trucks, tank wagons, or tank ships as part of transporting the goods, the customer must empty them immediately. The customer does not have a right of retention to these containers.
- 5.2 If the tank wagons provided to the customer by SCHARR as part of transport are not returned to the railway company for return transport within 24 hours after their arrival at the place of reception of the customer, the customer must pay the usual rental fee for the tank wagons.
- 5.3 SCHARR is not duty bound to scrutinize tanks, containers, or other storage vessels of the customer for conformity to statutory regulations or the presence of technical or other defects.
- 5.4 SCHARR is not duty bound to investigate the brand and varietal purity of the tank content; however, it is authorized to secure the quality purity – upon consent of the customer – by affixing brand seals.
- 5.5 SCHARR is not duty bound to investigate and check the content of a tank, container, or other storage vessel of the customer. Claims for defects against SCHARR are ruled out if the defect to the goods delivered by SCHARR can be traced back solely to their being mixed with other goods.
- 5.6 Before the goods are delivered, the customer must either personally or by way of a dependable appointee establish the quality of the tanks or other storage vessels, scope and type of their content, the state of the feed lines and connections to the transport vehicle, in addition to all other pre-requisites of orderly filling, and to observe them during filling.
- 5.7 Transport leaders of SCHARR are instructed to observe exactly the required care in traffic and particularly the safety regulations for filling tanks and other storage vessels. SCHARR is liable for overfilling and mixing damage only in cases where and in the extent to which the customer fulfills its cooperation duty during filling. If a brand seal has been damaged without the consent of SCHARR, liability for mixing damage is obsolete. If SCHARR is not liable according to the aforementioned conditions or is only partially liable, the customer must absolve SCHARR of all (more extensive) claims by third parties, damage, costs, and expenses asserted against SCHARR in this context, particularly those according to the German Federal Water Act, insofar as the customer has committed a culpable violation of duty. In the case of applicability of the aforementioned sentence of this point 5.7, the customer is duty bound also to reimburse SCHARR for all damage, costs, and expenses.

6. Extension of the delivery deadlines - impossibility of delivery - self-delivery reservation - delivery delay - increase in production costs

- 6.1 If the parties have agreed an unloading window, that is: a period of time in which the goods are to be unloaded by SCHARR or the customer, the unloading window is deemed met if goods unloading can be commenced within the unloading window.
- 6.2 Force majeure events, that is: unforeseen events over which SCHARR does not have any influence and for which it is not responsible, extend the delivery periods by the duration of the events causing the delay insofar as it can be proven that these impairments are not of only inconsiderable influence to the delivery. This applies also in cases in which these circumstances arise during a delivery delay or on the premises of a sub-supplier of SCHARR. Force majeure events include the following, non-exhaustive list of examples: official measures and orders (irrespective of whether these are valid or invalid), fire, floods, storms, explosions, riots, natural disasters, war, and sabotage.
- 6.3 If it is impossible due to events of this type to deliver the goods within a reasonable period, the customer and SCHARR have the right to withdraw from the contract, or if appropriate to withdraw from the non-fulfilled part of the contract. Claims for compensation based on such a withdrawal are ruled out.
- 6.4 SCHARR is absolved of its delivery obligation if SCHARR itself non-culpably does not take delivery of the correct ordered goods to fulfill the contract in a timely manner.
- 6.5 Insofar as no deviating agreement was made between the parties, and this is reasonable for the customer in the respective individual case, SCHARR is authorized to exceed or fall below the agreed delivery amount in terms of quantity by +/- 10 %. The customer must then remunerate the actually delivered amount.
- 6.6 If the customer enters acceptance arrears or it culpably violates other cooperation duties, SCHARR has the right to demand reimbursement of the damage, costs, and expenses SCHARR hereby sustains, including any additional expenditure. These include in particular all demurrage fees, detention fees, and other payments arising due to the delayed unloading of the means of transport (e.g. tank truck, tank wagon, tank ships, etc.). More extensive claims or rights on the part of SCHARR remain reserved.
- 6.7 If the customer is in acceptance arrears, SCHARR has the right also to demand from the customer the costs arising from storage; however, this shall be at least 0.5 % of the invoice amount in question for each month or part thereof, up to a maximum of 5 % of the invoice amount in question. However, the customer may produce evidence that no storage costs whatsoever have arisen, or that the storage costs are significantly lower than the blanket amount. SCHARR may produce evidence that greater storage costs have arisen than the blanket amount. The statutory rights to withdraw from the contract or to demand compensation remain unaffected.
- 6.8 If force majeure events lead to an increase in the production costs on the part of SCHARR or if SCHARR uses sources of supply to maintain the delivery and these sources were hitherto not used or not used to this extent and this leads to an increase in production costs on the part of SCHARR, SCHARR may raise the price accordingly, but SCHARR must inform the customer in advance. The customer may withdraw from the contract within a week of receiving the notification.
- 6.9 SCHARR is liable for delivery delay according to the statutory provisions taking into account the restrictions governed under point 10 subject to the following: Insofar as the delivery delay is based on simple fault and there is no mandatory liability based on an injury to life, body, or health, or an assumption of a guarantee or a procurement risk, liability for delay damage is limited to the following: the customer may demand 0.5 % for each completed week of the delay; however, it may demand in total a maximum of 5 % of the price for the part of the delivery that was not able to be placed into appropriate operation due to the delay. This does not amount to a reversal of the burden of proof to the detriment of the customer. The statutory right of withdrawal of the customer remains unaffected by this.

7. Securities - offsetting

- 7.1 If there are actual indications that there is a deterioration in the financial situation after contract conclusion or if other facts are present or come to light after contract conclusion justifying the assumption that the entitlement of SCHARR to the consideration is endangered by a lack of capability on the part of the customer, SCHARR has the right to demand that a security is rendered and/or revoke granted periods of credit. For the case that the customer is not in a position to provide the demanded security within an appropriate period time, SCHARR has the right to withdraw from the contract. Any existing claims from rendered deliveries or due to arrears remain unaffected, as is the case for the rights of SCHARR from § 321 German Civil Code.
- 7.2 Offsetting rights may be asserted by the customer only in the cases where SCHARR has recognized its counterclaims, these have been legally established or are undisputed, or if its counterclaims are in a close synallagmatic relationship to the demand of SCHARR. The customer is authorized to exercise its right of retention only to the extent to which its counterclaim is based on the same contractual relationship.

8. Reservation of title

- 8.1 The delivered goods remain the property of SCHARR until complete fulfillment of all demands from the business relationship against the customer to which SCHARR is entitled. This applies also in cases where the purchase price has been paid for certain goods deliveries denoted by the customer. In the case of a current account, the reserved property may apply as the security for the balance claim of SCHARR.
- 8.2 Insofar as the validity of the reservation of title is linked to specific conditions in the country of the customer, the customer is duty bound to inform SCHARR about this and to ensure fulfillment at its own cost.
- 8.3 In the case of non-contractually-compliant conduct by the customer, particularly in the case of payment arrears, SCHARR has the right to take back the goods. If SCHARR takes back the goods, this amounts to withdrawal from the contract.
- 8.4 Pledging, transferring of security of, or other disposals concerning the goods subject to reservation of title is/are prohibited. Access by third parties, e.g. attachments, must be communicated by the customer to SCHARR immediately and the third party informed about the reservation of title. The customer must send SCHARR a copy of the attachment record immediately. If SCHARR sustains damage, costs, or expenditure in exercising its property rights, the customer must reimburse for them insofar as the practicing third party cannot be held to account and the customer has committed a culpable violation of duty.
- 8.5 In the case of resellers, further selling-on as part of usual business dealings is permitted with right of revocation. The customer assigns to SCHARR with immediate effect the claims resulting from the re-sale or another legal basis regarding the goods forming the property or joint property of SCHARR to the extent of the invoice value of the delivery object in question. Upon demand by SCHARR, the customer is duty bound to provide written declarations of assignment. The customer is authorized as part of usual business transactions to collect the assigned claims for SCHARR in its own name; this may however be revoked. This collection authorization may be revoked particularly when the customer does not fulfill its payment obligations.
- 8.6 A connection, processing, or mixing of the delivered goods takes place always for SCHARR as a manufacturer, however without an obligation for SCHARR. If the ownership or joint ownership becomes obsolete through connection, processing, or mixing, it is agreed now that the ownership or joint ownership of the new thing is transferred to SCHARR pro rata according to the ratio of the invoice amounts of the connected, processed, or mixed products. The customer stores the property or joint property of SCHARR gratuitously.
- 8.7 Upon demand of the customer, SCHARR will release securities insofar as they are no longer required to secure the demands of SCHARR not only temporarily. If the value of the securities existing for SCHARR exceeds the demands to be secured by more than 10 %, SCHARR will release the securities according to the choosing of SCHARR upon the demand of the customer.

9. Quality of the goods - claims for defects

- 9.1 Insofar as a deviating condition was not expressly agreed, the quality and use suitability of the SCHARR products is governed exclusively and finally in the respective specification belonging to the product.
- 9.2 All specimens and analysis data provide only non-binding indications for the average goods quality, unless the parties have agreed anything deviating from this.
- 9.3 Claims for defects reach the statute of limitation within 12 months as of the transfer of risk. This does not apply insofar as the law stipulates longer periods pursuant to § 438 section 1 no. 2 German Civil Code (buildings and things used for a building), § 479 section 1 German Civil Code (recourse claim), § 634 a German Civil Code (building defects) and § 438 section 3 German Civil Code (malice), and the liability is based on injury to life, body, or health in addition to damage based on an intentional or grossly negligent violation of duty.
- 9.4 Complaints must be placed in writing to SCHARR immediately; however, this must be within 7 days of delivery (open defects) or within 7 days after discovery of the defect. Assertion of defect claims is otherwise ruled out.
- 9.5 SCHARR does not consent to the restrictions of the statutory obligations of investigation and complaint of the customer (particularly pursuant to § 377 German Commercial Code).
- 9.6 In the case of defect complaints, payments of the customer may be withheld in an appropriate relationship to the material defects that have arisen. The customer may withhold payments only if a justified defect complaint is asserted. If the defect complaint is culpably unjustified, SCHARR has the right to demand that the customer reimburses the expenditure arising from the unjustified defect complaint.
- 9.7 The customer may demand compensation only according to the regulation of the following point 10.

10. Liability

- 10.1 SCHARR is liable for compensation and replacement of fruitless expenditure within the meaning of § 284 German Civil Code (hereinafter referred to as 'compensation') due to defective or delayed delivery or performance, in addition to violation of other contractual or extra-contractual duties, particularly arising from unauthorized action, only in the case of intent or gross negligence. The aforementioned liability restriction does not apply to injury to life, body, or health, the assumption of a guarantee or a procurement risk, violation of fundamental contractual duties, in addition to liability according to the German Product Liability Act.

- 10.2 The compensation due to violation of fundamental contractual duties is restricted to compensation for contractually typical damage that SCHARR must have been able to anticipate upon contract conclusion due to the circumstances recognizable by SCHARR as a possible consequence, insofar as liability is not based on intent or gross negligence or due to an injury to life, body, or health, or the assumption of a guarantee or a procurement risk, in addition to liability according to the German Product Liability Act.
- 10.3 The contractually typical, foreseeable damage within the meaning of the aforementioned point 10.2 in each damage case amount to a maximum of 10 % of the net revenue of the order relating to the damage case; this shall not exceed €25,000.00 per damage case under any circumstances.
- 10.4 In all cases, the contractually typical, foreseeable damage within the meaning of point 10.2 does not relate to indirect damage (e.g. lost profit or damage arising from production interruptions).
- 10.5 Irrespective of the aforementioned points 10.1 to 10.4, the following is to be taken into account appropriately to the credit of SCHARR when determining the level of the compensation claims against SCHARR: the economic circumstances at SCHARR; type, scope, duration of the business relationship; any cause and fault contributions by the customer pursuant to the regulation of § 254 German Civil Code. In particular, the compensation performance, costs, and expenditure SCHARR is duty bound to bear must be proportionate to the value of the SCHARR performance.
- 10.6 All liability restrictions apply in the same scope for vicarious agents and executing aides.
- 10.7 The aforementioned regulations do not amount to a reversal of the burden of proof to the detriment of the customer.
- 10.8 Fundamental contractual duties within the meaning of points 10.1 and 10.2 are such duties enabling orderly execution of the contract in the first place and which the customer has trusted and also was expected to trust would be observed.

11. Assignment

Assignment of claims against SCHARR is permitted only upon prior written consent of SCHARR. There is no entitlement to such consent being granted. § 354 a German Commercial Code remains unaffected.

12. Safety provisions - approvals - notice for tax-supported energy products

- 12.1 The customer is duty bound to read up on the valid safety provisions for the storage and use of the goods delivered by SCHARR and to observe these provisions.
- 12.2 Any requisite official and other approvals must be obtained by the customer at its own cost. SCHARR will provide the requisite documents for this to the customer upon request, insofar as SCHARR has the documents at its disposal or can obtain them with reasonable effort.
- 12.3 Tax-preferred energy products must not be used as fuel unless such a use is permitted pursuant to the German Energy Tax Act or the Implementing Ordinance on the German Energy Tax Act. Any other use as a fuel has tax-based and criminal law consequences! In cases of doubt, the customer should contact its main customs office.

13. Applicable law - place of performance - place of jurisdiction

- 13.1 The contractual relationships are subject only to the substantive law of the Federal Republic of Germany excluding the provisions on the collision of law. Place of performance for all deliveries and performance is the delivery point of SCHARR. This applies also to non-freight deliveries.
- 13.2 For legal disputes within the substantive competence of the local courts, the Stuttgart Local Court is agreed as the place of jurisdiction; for legal disputes within the substantive competence of the Regional Courts, the Stuttgart Regional Court is agreed as the place of jurisdiction.

14. Data back-up and processing

The customer provides its consent to the personal data collected as part of contract conclusion being processed on an automated basis. SCHARR will process and use this data only as part of and within the limits of the German Federal Data Protection Act. The data is forwarded to third parties only within the requirements of orderly order processing.