

General Terms of Sale and Delivery of Schirm GmbH

Article 1 General Information/Area of Application/Written Form for Declarations

1. These General Terms and Conditions of Sale and Delivery of Schirm GmbH (hereinafter referred to as "Terms") apply to all deliveries of goods, other services and the performance thereof (contracts) of Schirm GmbH (hereinafter referred to as "Schirm") to its contractual partner (hereinafter referred to as "Customer"), provided that the Customer is an entrepreneur (section 14 German Civil Code (*Bürgerliches Gesetzbuch* (hereinafter referred to as "BGB")), a legal person under public law or a public-law special fund. These Terms in the relevant applicable version also apply to future deliveries of goods, other services and their performance provided to the same Customer even if Schirm does not refer to or invoke the same in the individual case.
2. Terms and conditions of business which deviate from the Terms and other agreements are valid only if Schirm has expressly acknowledged the same in writing. If Schirm performs delivery in awareness of the general terms and conditions of business of the Customer and without making any express objection to the same towards the Customer, this cannot under any circumstances be taken to mean that the Schirm had accepted or acknowledged these deviating business terms and conditions. Neither silence nor the performance of delivery nor acceptance of the contractually agreed remuneration by Schirm can be construed to be such acknowledgement.
3. Declarations and notifications of legal relevance to be given by the Customer to Schirm after conclusion of the contract, inter alia, the setting of deadlines, notifications of defects, withdrawal from the contract or a reduction of the price, must be made in writing to be valid.
4. References to the application of statutory provisions in these Terms serve only a clarifying purpose. For this reason, the statutory provisions apply even without such reference, unless they have been expressly modified or excluded by these Terms.

Article 2 Conclusion of the Contract/Purchase Orders/Quotations/Modifications

1. Quotations by Schirm are not binding unless they are expressly described as binding or contain a specific deadline for acceptance.
2. The ordering of goods or other services by the Customer is deemed to be a binding offer to enter into a contract. Unless otherwise stated in the purchase order of the customer, Schirm is entitled to accept this offer of a contract within three (3) weeks.

3. Acceptances of orders, agreements or alterations are binding only if confirmed by Schirm in writing. Agreements made verbally or by telephone must be subsequently confirmed in writing by Schirm in order to be legally valid. The same applies to verbal collateral agreements and alterations of the contract. The contract including these Terms has been validly concluded only if the Customer has accepted the binding quotation from Schirm within the time stipulated or Schirm has accepted the purchase order of the Customer within the time stipulated and confirmed it in writing.
4. Product descriptions, documents and details transmitted to the Customer, inter alia: weights, dimensions and suitable uses, tolerances and/or technical data are not guaranteed quality characteristics. Minor deviations, usual commercial-law deviations and deviations based on legal provisions are admissible provided that they do not impair suitability for the contractually intended purpose.

Article 3 Characteristics of the Goods/Technical Advice/Samples and Specimens/Guarantees/Area of Responsibility of the Customer

1. Unless otherwise agreed, the characteristics of the goods are described solely in the product descriptions, specifications and labels of Schirm. Uses for the goods identified pertinently in the European Chemical Regulation REACH do not represent either an agreement on a corresponding contractual characteristic of the goods or a use assumed under the contract.
2. If Schirm provides technical information or consultancy services without charge in the course of the business relations, then it does so to the best of its knowledge and belief, but this is deemed to be merely a non-binding indication, also with regard to any proprietary rights of third parties. This does not absolve the Customer from checking the goods delivered by Schirm as to their suitability for the intended processes and purposes. The application, use and processing of the goods are beyond the control of Schirm and, therefore, lie exclusively within the area of responsibility of the Customer. No matter whether the Customer uses the goods delivered by Schirm itself or resells the same, it must comply with generally applicable safety regulations, precautions and measures, etc. If there are any uncertainties in this connection or the Customer is under the impression that the references to safety precautions and measures, etc. given by Schirm are incorrect or incomplete, the Customer must draw attention to this fact in writing and then, if risk or damage cannot be excluded, await further information from Schirm.

3. Characteristics of samples or specimens are binding only if they are expressly agreed as characteristics of the goods.
4. Details of characteristics and durability and other details represent guarantees only if they are agreed or described as such.

Article 4 Delivery Dates/Default in Delivery

1. If fixed delivery dates were not agreed or not expressly confirmed by Schirm at the time of acceptance of the purchase order, Schirm will endeavour to deliver as soon as possible. To this extent, Schirm is also entitled to make part-deliveries and provide part-services. If shipment has been agreed, the delivery periods and delivery dates refer to the time of handover to the carrier, freight forwarder or other third party assigned to perform transport. This does not apply if the parties have agreed on delivery to the Customer.
2. Deemed to be the date of delivery is the day on which Schirm makes the goods available to the Customer on time.
3. If Schirm is unable to comply with binding delivery dates, Schirm will notify the Customer accordingly without delay and simultaneously – provided that Schirm is already able to do so – notify the probable new delivery date.
4. The occurrence of delivery default is determined by the statutory provisions. In the event of default, the Customer must set a reasonable extension for subsequent delivery of at least two (2) weeks.

Article 5 Delivery/Place of Performance/Shipping/ Passing of the Risk/ Default in Acceptance/ Conclusion of a Special Storage Agreement/Excess and Short Deliveries

1. Deliveries are made ex works (EXW) in accordance with INCOTERMS ® 2010. If it is agreed in the individual case that Schirm undertakes shipment of the goods, place of performance is the place of handover of the goods by Schirm to the transport operator.
2. If the Customer has special shipping requirements and if extra costs are incurred as a result, these extra costs are charged to the Customer. If carriage-paid delivery has not been agreed, the Customer must pay the freight costs on top of the price agreed for the goods (i.e. unless otherwise agreed, the prices agreed refer to deliveries ex works). The duty of the Customer to pay costs applies in this case also to increases in freight rates, extra costs for re-routing, storage costs, etc. arising after the conclusion of the contract.
3. If the Customer is in default with acceptance of the goods, for example, if shipment of the goods was postponed on the Customer's instructions or goods made available are not collected by the Customer, the Customer has the possibility of concluding a

storage contract with Schirm until actual delivery of the goods. The provisions of Article 2 of these Terms apply *mutatis mutandis* to the conclusion of such a contract.

4. In the event of default in acceptance by the Customer, Schirm is entitled to dispose of the delivery item after setting a reasonable subsequent deadline and after expiry thereof without issue. Apart from that, Schirm holds all other statutory rights in the event of default in acceptance by the Customer.
5. In the event of non-stock items or products made to order, production-related excess or short deliveries to the extent usual in the trade are admissible.
6. In the event of call-ups under blanket orders, unless otherwise agreed in writing, Schirm is entitled to procure the material for the entire blanket order and produce the complete blanket order immediately. Consequently, any changes desired by the Customer can no longer be given consideration after conclusion of the contract. This clause applies *mutatis mutandis* in the event that Schirm procures goods from third parties.

Article 6 Force Majeure/Contractual and Performance Obstructions/Withdrawal in the event of Disruptions of longer duration or Incidents of Force Majeure

1. Schirm is released from the obligation to provide the services for the duration and extent of the disruption in the event of force majeure in any form, unforeseeable disruptions of operation, traffic or shipment, fire, explosion, impact of aircraft or motor vehicles, natural disasters of all kinds, flooding and low water levels, unforeseeable shortages of labour, energy or auxiliary materials, labour disputes, lockouts, political unrest, acts of terrorism, war, orders by the authorities, the non-delivery or late delivery by subcontractors used by Schirm or other obstructions for which Schirm is not responsible and which are beyond its control which reduce, delay or obstruct the provision of the service, the availability of the goods or shipment or otherwise cause the same to be unreasonable.

Schirm will notify the Customer without delay of the occurrence of such a disruption, its probable duration and the foreseeable extent of its effects.

2. If the disruption, the occurrence of force majeure lasts longer than three (3) months or if it is established that such an obstruction will last longer than three (3) months, Schirm is entitled, in the event of a not merely negligible disruption, to withdraw from the contract either wholly or in part; any consideration already furnished by the Customer in this case will be refunded without delay. This does not affect any contractual or statutory rights of withdrawal or termination of the Customer.
3. If the Customer breaches the contractual duties incumbent upon it to such an extent or in such a way that it can no longer be reasonably expected of Schirm to continue the work and services required to perform the contract, Schirm is also relieved of

the obligation to adhere to delivery and service periods and delivery and services dates.

4. For all aforementioned obstructions in this Article 6: if the obstructions are of temporary duration and if Schirm does not exercise a right of withdrawal available to it, the delivery and service periods are lengthened or the delivery and service dates are postponed by the length of the obstruction plus a reasonable start-up period.

Article 7 Invoicing/Payments/Set-off/Rights to Withhold and to Refuse to Perform/Assignment of Claims from the Contractual Relations

1. Unless otherwise agreed or stated in the invoice, the invoice amount is due immediately on receipt of the invoice and payable without deduction within ten (10) calendar days of the invoice date. The invoice is deemed to have been received in each case no later than three (3) days after it was sent to the invoice address last notified by the Customer. Payments are deemed to have been received only when the Schirm is finally able to dispose of the amount in its account.
2. The Customer may set-off only against undisputed or legally established claims; withholding is also excluded in these cases.
3. Schirm is entitled to apply payments made by the Customer to settle its older debts first. If costs and interest have already been incurred, the payment is initially applied to the costs, then to the interest and then to the main receivable.
4. The assignment of claims from the contractual relations by the Customer to third parties – regardless of their nature – requires the prior written consent of Schirm. Any assignment without this consent is invalid.

Article 8 Reservation of Title: simple, widened and extended Reservation of Title/Processing Clause/Combining and Mixing Clause/Right to Information/Default in Payment/Partial-Waiver Clause

1. Schirm reserves title to the delivered goods (hereinafter referred to as “Reserved-title goods”) in each case until payment in full of all and future receivables from the ongoing business relations with the Customer, including accessory claims and claims to compensation for damages (hereinafter referred to as “Secured claims”).
2. The Reserved-title goods may not be pledged to third parties or their title transferred as security before payment of the Secured claims. If, and to the extent to which, third parties attach the Reserved-title goods, the Customer must notify Schirm thereof without delay in writing.
3. If Schirm processes materials supplied by the Customer (hereinafter referred to as “Customer-supplied materials”) as defined in section 950 BGB, it is deemed to have been agreed that co-ownership

in the end-product arises in favour of Schirm even when the value of the processing work done by Schirm is low in comparison to the value of the product. In this event, Schirm acquires direct title to the new goods in the ratio represented by the value of the processing work done by Schirm to the value of the Customer-supplied materials.

4. If a combination or inseparable mixing of the Reserved-title goods as defined in sections 947, 948 BGB with other goods not belonging to Schirm takes place in such a way that one of the other items is deemed to be the principal item, it is deemed to be agreed that the Customer assigns co-ownership to Schirm pro-rata in the ratio of the value of the Reserved-title goods to the other combined or mixed items and takes care of the object of co-ownership for Schirm with the diligence of a prudent businessperson. The parties are in agreement already today on the transfer of title taking place to this extent.
5. The Customer is entitled to resell the Reserved-title goods in the ownership of Schirm in the due course of business provided that it duly and timely performs its obligations arising from the business relations with Schirm. In this event, the Customer already now assigns all claims held by it against third parties as consideration for the resale of the Reserved-title goods in the future, including all auxiliary claims, to Schirm as security. Schirm accepts this assignment. Schirm is entitled to collect the receivables assigned to Schirm in its own name if the Customer (a) is in default with its payment obligation in respect of the Reserved-title goods, (b) an application has been made to initiate insolvency proceedings on the assets of the Customer or (c) there are other deficiencies in the ability to perform of the Customer from which the conclusion can be drawn that the satisfaction of the claims held by Schirm is endangered. In the aforementioned cases (a) to (c), the Customer must give Schirm, if Schirm so requires, all necessary information and documents about the inventory of goods owned by Schirm and the receivables assigned to Schirm. The Customer must also mark the goods owned by Schirm as such, if required by Schirm, and notify its customers of the assignment.
6. If the Reserved-title goods are not resold (directly), the Customer is obliged to take good care of the Reserved-title goods and to insure the same to the extent required of a prudent businessperson at its own expense against loss or damage for as long as title is reserved.
7. If Schirm is overinsured as a result of the securities agreed in this Article 8 by more than 10% compared to the existing total liabilities of the Customer to Schirm, then Schirm is obliged, on demand by the Customer and at its own discretion, to release securities up to the amount that exceeds 110% of the secured total liability.

Article 9 Industrial Property Rights, Copyrights, Patent Rights or Competition Rights/Rights of Third Parties

1. Where the contractual product to be supplied to the Customer by Schirm, no matter whether it is one single product, more than one product or a complete system solution, is capable of being protected wholly or in parts under the relevant statutes, (e.g. Patent Act (*Patentgesetz*), Copyright Act (*Urheberrechtsgesetz*), Utility Model Act (*Gebrauchsmustergesetz*), Registered Designs Act (*Geschmacksmustergesetz*)), Schirm transfers the right limited to the relevant contractual extent to use the same in conformity with the contract, to exploit the same or to resell the same in the usual due course of business. The transfer of more extensive rights by Schirm to the Customer requires an individual written contractual agreement in order to be valid.
2. In the event of a breach of industrial property rights, copyrights, patent rights, competition rights or similar rights and trademarks of third parties (hereinafter referred to as "Proprietary rights") by Schirm during application of the formulae or process descriptions prescribed or recommended by the Customer or during the use of such materials which were procured by the Customer or by Schirm from a supplier prescribed by the Customer, the following applies: the Customer is obliged to indemnify Schirm against all claims of any kind brought against Schirm by third parties on the grounds that one of their Proprietary rights has been breached by the activity of Schirm unless Schirm has brought about the breach of Proprietary rights by gross negligence or intent.
3. If a claim is brought against the Customer or its purchasers by third parties for breach of proprietary rights by reference to a product made by Schirm (contractual subject matter), the Customer must notify Schirm of such claims without delay in writing. The Customer must notify the basis of the claim by the third party and the amount of the claim brought with as much detail as possible.

Article 10 Periods for Notification of Defects/Periods for Notification of Defects in the event of Default in Acceptance/Admissible Short Deliveries

1. The goods delivered by Schirm must be examined carefully without delay after delivery. The Customer must notify obvious defects without delay after delivery and such defects which are able to be discovered during proper examination of the goods must be notified in writing to Schirm within 14 days of receipt of the goods giving an exact description of the defect. Section 377 (3) German Commercial Code (*Handelsgesetzbuch* (hereinafter "HGB")) applies to concealed defects. The notification in the event of concealed defects must also be made in writing to Schirm and the defect precisely described. Deemed to apply in all cases: if the Customer refrains to notify defects on time, the goods delivered are deemed to have been approved.
2. The periods for examination or for the notification of defects also start to run if shipment has been postponed on the instructions of the Customer or the Customer is in default of acceptance on other

grounds; to this extent, the aforementioned periods are deemed to start to run on notification of readiness for shipment by Schirm.

3. Usual filling losses which cannot be avoided without unreasonable expense or other quantity losses during production are admissible and are deemed to be in conformity with the contract.

Article 11 Customer-supplied Materials: Passing of the Risk/Guarantees/Defects/Indemnification against Claims

1. Deliveries of Customer-supplied materials take place always for the account and risk of the Customer. Insurance against transport damage is arranged solely on the written instructions of the Customer and in return for a separate charge.
2. The Customer guarantees and gives an assurance that the Customer-supplied materials provided by it for processing of the order conform to all statutory regulations, have the necessary fitness to manufacture the contractual subject matter agreed between Schirm and the Customer and exhibit no defects (e.g. impurities) whatsoever and conform to the specifications quoted by the Customer in every respect.

Moreover, the Customer provides up-to-date safety data sheets in the German language. In the event of the safety data sheets being updated, the Customer is obliged to inform Schirm of this without delay.

3. Schirm will notify the Customer of obvious defects in the Customer-supplied materials delivered by the Customer without delay and notify other defects as soon as they are discovered in the due course of business. Such a notification of defects is deemed to have been made without delay if it is made within 14 calendar days after receipt of the Customer-supplied materials by Schirm. Schirm will notify the Customer of concealed defects which are not established by Schirm until later within 14 calendar days of gaining knowledge of the same and send the Customer a notification of defects accordingly.
4. Unless expressly agreed otherwise, the duty of examination of Schirm under section 377 HGB for Customer-supplied materials is limited to a visual inspection for external damage, a quantity check to the usual extent (in the event of large quantities of goods by means of meaningful random samples, weighing and/or counting) and an inspection of the product contents by comparison against the delivery note and the labelling/markings on the product.
5. If Schirm discovers defects in the Customer-supplied materials, the Customer must, upon demand and at the discretion of Schirm, eliminate the defects without delay and free of charge by making subsequent improvement or replacement delivery. Moreover, the Customer must pay all costs associated with the elimination of defects. These include, inter alia, the costs incurred for detection of the fault and any necessary costs for experts and transport. If elimination of the defect is refused or if subsequent improvement or replacement delivery is

not possible or remains unsuccessful, or if the elimination of defects is delayed beyond a reasonable period set by Schirm in writing, then Schirm has the statutory rights to cancel the contract, to reduce the amounts and has claims to compensation for damages.

6. If a claim is brought against Schirm by a third party by reason of a defect in the Customer-supplied materials (inter alia, because the contractual subject matter agreed with the Customer is defective because of a defect in the Customer-supplied materials), then the Customer is obliged to indemnify Schirm against all claims by such third parties.
7. Schirm is obliged to insure Customer-supplied materials only if required to do so by the Customer. If the Customer requires the Customer-supplied materials to be insured, it must notify Schirm in writing of the maximum value of the Customer-supplied materials. The Customer pays the costs of the insurance.

Article 12 Third-party Goods: Passing of the Risk/Guarantees/Defects/Indemnification against Claims

1. If Schirm procures other raw materials or auxiliary materials from third parties in its own name in addition to the Customer-supplied materials, inter alia, base materials, components, labels, packagings, containers (hereinafter referred to as “Third-party Goods”) to manufacture the subject matter of the contract agreed with the Customer, Schirm and the Customer must put themselves in the position in relations *inter se* as if the Customer had purchased the Third-party Goods procured from the supplier/manufacturer by Schirm in its own name and for its own account and subsequently delivered the Third-party Goods to Schirm. The delivery of Third-party Goods is always for the account and risk of the Customer. Insurance against transport damage is arranged solely on the written instructions of the Customer and in return for a separate charge.
2. If Schirm procures Third-party goods from specific suppliers and manufacturers on the instructions of the Customer, the Customer guarantees and gives an assurance that the Third-party Goods conform to all statutory regulations, have the necessary fitness to manufacture the contractual subject matter agreed between Schirm and the Customer and exhibit no defects (e.g. impurities) whatsoever and conform to the specifications quoted by the Customer in every respect.
3. Schirm will notify the supplier/manufacturer and also the Customer of obvious defects in the Third-party goods delivered by the Customer without delay in writing and notify defects as soon as they are discovered in the due course of business. Such a notification of defects is deemed to have been made without delay if it is made within 14 calendar days after receipt of the Third-party goods by Schirm. Schirm will notify the supplier/manufacturer and also the Customer of concealed defects which are not established by Schirm until later within 14 cal-

endar days of gaining knowledge of the same and send a notification of defects to the supplier/manufacturer and to the Customer accordingly.

4. The duty of examination of Schirm within the framework of section 377 HGB for Third-party goods is limited to a visual inspection for external damage, a quantity check to the usual extent (in the event of large quantities of goods by means of meaningful random samples, weighing and/or counting) and an inspection of the product contents by comparison against the delivery note and the labelling/markings on the product.
5. If Schirm discovers defects in the Third-party goods, Schirm (in close consultation with the Customer) will demand that the supplier of the Third-party goods eliminate the existing defects without delay and free of charge by subsequent improvement or replacement delivery and/or (in the event that the elimination of defects is refused, is not possible, remains unsuccessful or is inadequate) assert more extensive rights against the latter.
6. If a third party brings a claim against Schirm by reason of a defect in the Third-party goods (inter alia, because the contractual subject matter agreed with the Customer is defective because of this defect), then the Customer is obliged to indemnify Schirm against all claims by such third parties. Subject to the condition precedent of indemnification by the Customer, Schirm already now assigns all claims held against the supplier/manufacturer of the Third-party goods to the Customer.

Article 13 Claims of the Customer based on Defects/Breach of Warranty/Rights of Recourse under the Law governing Sales of Consumer Goods

1. If the goods delivered by Schirm are defective and if the Customer has duly notified these defects under its duty to examine the goods and notify defects in accordance with Article 10 of these Terms, the Customer holds the statutory rights as follows:
 - a) Schirm has, at its own discretion, the right to have the defective goods returned to Schirm for reworking or for exchange with subsequent return – at the expense of Schirm – or the Customer holds the defective product in readiness and reworking or replacement is done in situ by Schirm or by a third party assigned by Schirm. The Customer is entitled to this if it is unreasonable to expect the Customer to return the defective product to Schirm.
 - b) In the event of replacement delivery, the Customer must return the defective goods if required by Schirm. Schirm has two (2) attempts at subsequent performance. If subsequent performance fails or is unreasonable for Schirm, the Customer may, at its own discretion, withdraw from the contract or require a reduction in the purchase price. However, the Customer has no right of withdrawal for a merely insignificant defect.

- c) Article 14 of these Terms applies to claims to compensation for damages or claims of the Customer for the refund of wasted expenses.
2. If Schirm has maliciously concealed the defect or did not adhere to an agreed guarantee of the characteristics of the goods delivered, then the rights of the Customer based on material defects are governed by the statutory provisions.
3. If the warranty concerns recourse of the Customer after the latter was successfully claimed against under the provisions of the law governing sales of consumer goods, this does not affect the rights to recourse under the law governing sales of consumer goods. Article 14 of these Terms applies to the claim for compensation for damages.
4. Unless there is particular urgency due to danger in delay, necessary recalls of defective products must be agreed in consultation with Schirm.
5. Warranty claims of the Customer become time-barred one (1) year after delivery of the goods.

Article 14 Exclusions of Liability, Limitations of Liability, Rights of Recourse and Indemnification in the event of a Claim under the Product Liability Act

1. Schirm is generally liable for damages under the statutory provisions. In the event of simple negligent breach of essential contractual duties, i.e. such duties which must be fulfilled to enable the contract to be duly performed, which arise from the nature of the contract and whose breach endangers the achievement of the contractual purpose (cardinal duties) – the liability of Schirm is limited to the compensation of typical, foreseeable damages; the liability of Schirm is excluded in the event of a simply negligent breach of non-essential contractual duties.
2. The aforementioned exclusions or limitations of liability do not apply in the event of claims based on harm to human life, physical injury or harm to health.
3. If a claim is brought against Schirm by third parties on the legal grounds of product liability, for example, under the Product Liability Act, the Customer must indemnify Schirm against all claims of third parties unless the Customer verifies that liability is based on gross negligence or intent on the part of Schirm.
4. If the Customer requires subsequent performance by Schirm, Schirm may refuse the same if it involves disproportionately high costs. Costs are deemed to be disproportionately high if they exceed the net value of the delivery of the defective goods by 50%.
5. if there is an exclusion of liability or limitation of liability in favour of Schirm under the provisions of this Article 14 of the Terms, this exclusion of liability or this limitation of liability also applies to any claims of the Customer against the boards, statutory

representatives, employees, agents, vicarious agents of Schirm arising from the same basis of liability.

Article 15 Place of Performance/Place of Jurisdiction/ Partial Nullity/ Supplementing Law/ Miscellaneous

1. Place of performance for the payment obligations of the Customer is Schönebeck (Elbe).
2. Schirm is entitled to transfer the rights and duties arising from the business relations with the Customer to a company affiliated to Schirm as defined in section 15 ff. Stock Corporation Act (*Aktiengesetz* (AktG)).
3. The law of the Federal Republic of Germany applies to all legal relations between Schirm and the Customer. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded. However, the requirements and effects of the reservation of title in accordance with Article 8 of these Terms are subject to the law at the relevant place of storage of the Reserved-title goods if and to the extent to which the choice of law in favour of German law is inadmissible or invalid.
4. Exclusive place of jurisdiction for all disputes arising from the contractual relations is Schönebeck. However, Schirm is also entitled to bring claims against the Customer before the general place of jurisdiction of the Customer.
5. Personal data which arise in connection with the contractual relations are stored by us for the purposes of data processing (section 28 Federal Data Protection Act (*Bundesdatenschutzgesetz*)).
6. Should any provision of these General Terms and Conditions of Sale and Delivery (Terms) be or become invalid, this shall not affect the validity of the remaining terms and conditions.