

# GENERAL TERMS AND CONDITIONS OF PURCHASE OF SCHWIHAG GROUP

V.2021-04-21

## **SECTION 1 - GENERAL**

### **a) Validity**

(1) All invitations to tender, enquiries, orders, and contracts for the purpose of purchasing goods or services, in particular purchase contracts, transport contracts, freight forwarding and logistics agreements, service contracts or contracts to produce a work and all actions of SCHWIHAG AG and all other companies of the SCHWIHAG GROUP (SCHWIHAG) associated with these contracts and declarations shall be based solely upon these General Terms and Conditions of Purchase.

(2) Following their first inclusion, these Terms and Conditions of Purchase shall also apply to all future declarations and contracts within the meaning of sentence 1 above, even if they are not expressly agreed upon again.

(3) References made by the contractual partner in offers, order confirmations, counter-offers or in any other way to its General Terms and Conditions are hereby rejected by SCHWIHAG. They shall not apply, even if SCHWIHAG does not separately object to their validity in the individual case. Deviating conditions of the contractual partner shall only apply if their inclusion has been confirmed in writing by SCHWIHAG.

### **b) Conclusion of a contract**

(1) All contract offers made by SCHWIHAG are subject to change and non-binding, unless it is expressly and specifically stated therein that they are binding, and they include a term of acceptance.

(2) Contract offers made by the contractual partner shall only be deemed to be accepted if they have been confirmed by SCHWIHAG in writing or in text form.

### **c) Integrity clause**

(1) SCHWIHAG and its contractual partners hereby undertake to take all necessary measures to avoid corruption, other criminal offences, and other serious misconduct. They undertake to take all necessary precautions in their companies to avoid serious misconduct at home and abroad.

(2) The contractual partner undertakes to adhere to the „CODE OF CONDUCT FOR BUSINESS PARTNERS OF THE SCHWIHAG – GROUP“ and to take appropriate organizational measures to guarantee compliance therewith in its company.

(3) The contractual partner shall ensure that the contract products do not emit any hazardous rays, gases or other substances throughout the entire product life cycle or represent a source of hazard to the user and the environment in other ways. The contractual partner shall also be obliged to design its production processes in a manner that the impact on people and the environment is reduced to the smallest possible minimum.

### **d) Retention of documents, inspection**

The seller undertakes to keep all documents relating to the order, in particular to the production, storage, supply and the sale of the products as well as specifications, drawings, test plan, outcome documents, ISIRs etc. for a period of not less than 10 years from the date of delivery and to provide SCHWIHAG with these documents upon request.

## **SECTION 2 - SPECIFICATIONS, QUANTITIES, WEIGHTS, PROPERTIES AND CONDITION**

(1) Information provided by SCHWIHAG with regard to the subject of the delivery or service in orders or specifications (in particular weights, measures, utility values, load capacities, tolerances and technical data) and the representations of the same (in particular in drawings) describe the agreed properties and condition of the subject of the delivery, unless expressly agreed otherwise. They are guaranteed characteristics.

(2) The delivery of a subject other than the article sampled and approved by SCHWIHAG shall not constitute a fulfilment of the contract. A change of supplier must be announced prior to delivery also if the delivered article is identical in every respect. In these cases, the supplier must at its own expense have the new article sampled by SCHWIHAG.

(3) SCHWIHAG shall be entitled at any time to change specifications if this should become necessary, for example in the case of changes in the specifications of the end product carried out by the customer or for product improvement.

(4) SCHWIHAG shall have the right to identify specifications with regard to storage and transport requirements or KPI.

(5) The contractual partner shall be informed immediately in every individual case about changes in specifications.

## **SECTION 3 - QUALITY ASSURANCE**

### **a) Quality management system (QMS)**

The contractual partner undertakes to commence with the establishment and implementation of an effective quality management system, if it does not yet exist, within 3 months after the agreement of these Terms and Conditions of Purchase which shall comply with the requirements set out in DIN EN ISO 9000 ff. The system must be certified by an accredited body. Upon receipt of the certificate SCHWIHAG must be informed about it by submitting a copy of the certificate.

#### **b) Quality target and quality improvement**

SCHWIHAG and its contractual partner shall jointly pursue a zero-defect strategy. In view of this, the contractual partner undertakes to continuously optimize its procedures and services and to report measures for optimization and its effects to SCHWIHAG on a regular basis.

#### **c) Quality audits**

(1) In order to assess the quality management system and to inspect the contractual partner's quality of production and products, SCHWIHAG shall be entitled at any time to carry out audits at the contractual partner's premises.

(2) For the purpose of carrying out the audit SCHWIHAG shall be entitled to inspect

- (a) all business premises of the contractual partner where contract products are produced,
- (b) all equipment used for the production of the contract product and documents concerning the production, storage and transport of the products and
- (c) the products before delivery.

(3) SCHWIHAG shall be entitled to have these activities carried out by an independent company which it shall be free to choose for the purpose of such an inspection.

(4) If quality problems arise which have their origin in the services of subcontractors, the contractual partner must enable SCHWIHAG upon request to carry out a joint audit at the subcontractor's premises.

(5) The representatives for quality assurance of Deutsche Bahn AG and its group company shall have the same auditing rights as SCHWIHAG.

#### **d) Quality problems or modifications**

(1) If it becomes apparent that quality characteristics, in particular deviations from SCHWIHAG's specifications in the meaning of Section 2 of these Terms and Conditions cannot be complied with, the contractual partner shall be obliged to immediately inform SCHWIHAG thereof, about the measures taken to guarantee and maintain all quality standards as well as about the detailed circumstances of the deviations from the specifications.

(2) Before modifying production processes, materials or vendor parts for products, relocations of production sites and changes in processes or equipment for inspecting products, the contractual partner shall inform SCHWIHAG immediately in good time so as to enable it to examine whether the modifications may have negative implications.

(3) SCHWIHAG shall be and remain owner of all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the contractual partner. With regard to the copyrights SCHWIHAG shall only grant a right to use

insofar as this is required for the production of the products to be delivered. Without the express consent of SCHWIHAG, the contractual partner must not make these items available to third parties either in form or in content, disclose them, use or reproduce them either by itself or by third parties. The contractual partner shall upon request of SCHWIHAG entirely destroy these items including any copies which may have been made, if they will no longer be needed by it in the orderly course of business or if negotiations do not result in the conclusion of a contract.

#### **e) Production monitoring**

##### **(1) Initial sampling**

Before starting serial delivery, the contractual partner shall provide SCHWIHAG with a duly completed initial sample inspection report (ISIR) along with a corresponding initial sample for cross-checking purposes. In addition, factory certifications and acceptance test reports shall be sent to SCHWIHAG. The release of the initial sample inspection report and of the sample by SCHWIHAG shall be the release for serial production. A renewed initial sampling must be carried out in the event of:

- product modifications or adaptation
- model change
- new tool
- modification of production processes
- longer suspension of the production (at least 1 year)
- change of the subcontractor

##### **(3) Deviations in initial sampling**

If during initial sampling carried out by the contractual partner deviations from the information within the meaning of Section 2 are detected, which cannot be remedied by means of a correction and if this endangers the delivery date, the contractual partner shall be obliged to provide SCHWIHAG by the quickest possible means with samples for decision, in order to make a special release by SCHWIHAG possible. SCHWIHAG shall then take a decision without delay and inform the contractual partner thereof in writing or in text form, unless the decision can only be taken by means of a sample production by SCHWIHAG.

##### **(4) Tests during the production process**

Upon acceptance of the order the contractual partner shall define on its own responsibility an inspection concept ensuring the compliance with SCHWIHAG's quality-related specifications. The contractual partner shall at SCHWIHAG's request present its inspection concept.

#### **(5) Identification / Traceability**

The contractual partner shall ensure the traceability of the products supplied by it, so that the defective quantities can be narrowed down if a defect is detected. The products shall be specified so that in the case of a defect an identification and subsequent notification of the relevant data is possible for SCHWIHAG without any problems.

#### **(6) Investigation of the causes and corrective measures plan**

The contractual partner shall be obliged to submit a written statement to SCHWIHAG with regard to each defect, its causes and the necessary corrective measures to avoid the defect in the future. The statement shall accordingly present the type, implementation, and effectiveness of the corrective measures in an 8 D-Report.

#### **(7) Contact person**

Each contracting party shall appoint a contact person who shall be responsible for the quality management and who shall take and lead to related decision. The parties shall establish regulations regarding the representation of the contact person and inform the other party immediately and without prior request about a change of the contact person.

### **SECTION 4 - LIABILITY FOR DEFECTS AND INFRINGEMENT OF LAWS**

(1) The contractual partner shall be liable in the event of a deviation of its service from SCHWIHAG's specification within the meaning of Section 2 of these Terms and Conditions according to the regulations laid down in these Terms and Conditions and, insofar as these do not provide for any regulations, according to the legal provisions applicable to the purchase contract.

(2) SCHWIHAG may at its choice demand subsequent delivery also in the case of non-substantial breaches of contract.

(3) The contractual partner shall be liable for all consequences of each deviation of the actual from the agreed quality, even if the reason for the deviation was beyond its control. The contractual partner shall be liable for its subcontractors or suppliers.

(4) SCHWIHAG may, if setting the time limit for subsequent performance is unreasonable for it, in particular if it has the obligation towards its customer to immediately remove defects, remove the defect on its own and request compensation for the necessary expenses. It shall immediately inform the contractual partner about such claims for defects and about the type and scope of the immediate measures taken.

(5) The contractual partner shall be obliged to ensure that its services or products comply with the statutory regulations of the country in which the service is to be used or the product is delivered to, insofar as the country was made known to the contractual partner, must have been known to it from the circumstances or was known to it. If the contractual partner's service or product shall infringe such provisions, especially intellectual property rights, it shall be liable for the damage resulting from the infringement.

### **SECTION 5 - NOTICE OF CONCERN AND OBSTRUCTION**

(1) If in the contractual partner's opinion, the execution of the order cannot be achieved in the manner required by SCHWIHAG, due to technical or other reasons, or not suitable for achieving the results intended with it, the contractual partner shall immediately inform SCHWIHAG thereof.

(2) If the contractual partner shall not be able to execute the order of SCHWIHAG in the manner it is placed, particularly because it does not have sufficient spare capacity it shall inform SCHWIHAG thereof within 24 hours after receipt of the order.

### **SECTION 6 - DELIVERY, PASSING OF RISK**

(1) Deliveries to SCHWIHAG shall be made, unless otherwise agreed in writing, in the event of deliveries to Switzerland DDP Tägerwilten/warehouse Zecchinell (Incoterms 2010), to Germany DDP Schkeuditz (Incoterms 2010) and to Great Britain DDP Doncaster. The risk shall pass in each case upon delivery.

(2) The stated delivery and unloading times shall always be binding, unless otherwise expressly agreed in writing. If collection by SCHWIHAG is agreed, delivery deadlines and dates shall refer to the time of the handover by the freight forwarder, carrier or any other third party instructed to carry out the transport, to SCHWIHAG at the consignment's place of destination. If SCHWIHAG should agree to a premature delivery, this shall in no way affect the originally agreed terms of payment.

(3) Delivery obstacles shall not release the contractual partner from the obligation to comply with any agreed delivery and unloading times. The contractual partner shall immediately inform SCHWIHAG about obstacles which might delay a delivery.

## **SECTION 7 – PACKAGING, LABELLING, SHIPPING DOCUMENTS**

(1) The contractual partner shall be obliged to pack the goods, independent of who is responsible for the transport, in a manner that they will not be damaged due to the impacts to be expected during transport. If the contractual partner is obliged to arrange for the loading, it shall stow and secure the consignment appropriately for carriage on the means of transportation.

(2) The contractual partner shall at its own expenses include in the consignment at least the export or delivery documents listed below, insofar as the creation is required by law for delivery and export, insofar as no further documents are requested in the order:

- commercial invoice
- delivery note
- preference certificate of origin
- export accompanying document (ABD)

whereby these documents shall be sent as a PDF to SCHWIHAG at least one day before. These documents are part of the purchased item. A fulfilment and maturity of the purchase price shall take effect at the earliest upon delivery of the goods and documents.

(3) The contractual partner shall enclose delivery notes with each delivery which must contain the following information:

- delivery note number
- SCHWIHAG order number
- batch number of the finished part, of the molding compound and of the material
- product designation with SCHWIHAG article number and quantity
- drawing number
- quantity to be delivered
- delivery weight net (in kg)
- delivery weight gross (in kg)
- dimensions and weight (gross) per package, stackable, not stackable

(4) The contractual partner shall be obliged to label each packing unit clearly visible and waterproof on the outer wall so that this information might not dispatch itself from the package. The labelling must contain the information listed below:

- manufacturer/supplier
- place of departure and country code
- SCHWIHAG order number
- batch number of the finished part, of the molding compound and of the material

- product designation with SCHWIHAG article number and quantity (packing list)
- delivery note number
- delivery weight gross (in kg)
- delivery weight net (in kg)
- number of the package
- total number of packages
- recipient address

## **SECTION 8 - PREFERENCE CERTIFICATES**

(1) The contractual partner shall present preference certificates valid under customs law for all articles.

(2) For deliveries within the EU or within Switzerland the contractual partner shall issue upon request a supplier's declaration within one week.

(3) For deliveries passing customs borders a preference certificate of origin must generally be submitted. The preferential origin of each article shall be confirmed in accordance with the customs provisions and stating the corresponding customs tariff number. This shall be done – depending on the case – either on the dated and signed in-voice or by means of a dated movement certificate stamped by customs, in particular EUR1/EUR-MED or A.TR. In both cases all documents shall contain as reference our order number and, where appropriate, the number of the order item concerned.

## **SECTION 9 - OBLIGATION TO INSPECT AND SUBMIT COMPLAINTS**

(1) The contractual partner shall be obliged to inspect the goods immediately before handing the delivery over to the carrier with regard to quality, quantity, weights and packaging. It shall ensure and document that the goods comply with all contractual requirements at that point in time.

(2) SCHWIHAG shall only be obliged to inspect the goods when being delivered to the final recipient for externally apparent transport damages. In the event of a delivery contrary to the contract, SCHWIHAG shall neither have the obligation to inspect nor shall SCHWIHAG be obliged to notify the contractual partner of the non-conformity with the contract to safeguard its rights.

(3) SCHWIHAG and the contractual partner shall furthermore agree that for terminating the contract by side of SCHWIHAG it shall not be required to set a deadline with the threat of refusal.

## **SECTION 10 - COMPENSATION**

- (1) SCHWIHAG's liability for compensation, regardless of the legal reason, in particular due to impossibility, delay, breach of contract, breach of obligations in contractual negotiations and tort, in so far as there is a question of fault in each case, is limited in accordance with this Section 10.
- (2) SCHWIHAG shall not be liable in the event of ordinary negligence on the part of its institutions, legal representatives, employees, or other vicarious agents, unless it is a case of infringement of material contractual duties.
- (3) To the extent that SCHWIHAG is liable for compensation on the merits, this liability shall be limited to damages which SCHWIHAG foresaw as a possible result of a breach of contract when concluding the contract or which it should have foreseen by applying due diligence.
- (4) In the event of liability for ordinary negligence, the obligation to indemnify for material damage and further financial losses resulting therefrom shall be limited to an amount of CHF 20 million per damage case (corresponding to the current sum covered by SCHWIHAG's liability insurance) even in the case of infringement of material contractual duties.
- (5) The abovementioned exclusions and limitations of liability shall apply to the same extent in favor of SCHWIHAG's institutions, legal representatives, employees, or other vicarious agents.
- (6) Insofar as SCHWIHAG provides technical information or consultancy services and if such information or consultancy services do not belong to the contractually agreed scope of services owed by it (drawings, material, money), this shall be done free of charge and with the exclusion of any liability.
- (7) The limitations of this Section 10 shall not apply to SCHWIHAG's liability due to intentional conduct, injury to life, body, or health or according to the product liability law.

## **SECTION 11 - PAYMENT**

- (1) Payments by SCHWIHAG shall be exclusively made by bank transfer.
- (2) The parties have agreed upon a term of payment of 60 days after receipt of the invoice.
- (3) If payment is made within 30 days after receipt of the invoice SCHWIHAG shall be entitled to deduct a discount of 3 % from the total invoice amount unless a different payment.

## **SECTION 12 - ASSIGNMENT, RETENTION, SET-OFF**

- (1) The contractual partner shall only be entitled to offset or retain, in particular outstanding deliveries or services, if the counterclaims alleged by it in this regard are legally

established or have been explicitly acknowledged by SCHWIHAG.

- (2) The contractual partner shall have no right to assign any claims existing against SCHWIHAG.

## **SECTION 13 - RESERVATION OF OWNERSHIP**

- (1) Any reservations of ownership by third parties with regard to the goods delivered by the contractual party shall be disclosed to SCHWIHAG. Otherwise, SCHWIHAG will assume that the delivered goods are owned by the contractual partner until the transfer of ownership.
- (2) SCHWIHAG shall be entitled, regardless of ownership, to process the delivered goods without restriction, with the consequence of ownership being transferred to it and to sell it in the orderly course of business.

## **SECTION 14 - PROPERTY RIGHTS AND PRODUCT LIABILITY**

- (1) The contractual partner undertakes to release SCHWIHAG from any liability to third parties or liability claims arising from the production, supply, or storage of the products. It shall be obliged to reimburse SCHWIHAG for payments made for the settlement of justified claims.
- (2) The obligation of exemption and reimbursement shall not apply if the underlying event can be verifiably attributed to grossly negligent or intentional misconduct by SCHWIHAG or by one of its employees, representatives, vicarious agents, or a company in another way connected with it.
- (3) The contractual party shall be obliged to immediately inform SCHWIHAG about any actions brought against it or claims asserted with regard to delivered items and to provide SCHWIHAG upon request with all relevant documents. Each contracting party shall immediately notify the other contracting party in writing if product liability claims are asserted against it or claims due to an infringement of industrial property rights.

## **SECTION 15 - CONFIDENTIALITY**

- (1) The contractual partner shall be obliged to keep any information and documents provided in connection with the instruction by SCHWIHAG including the fact of cooperation with SCHWIHAG, secret as confidential information, in particular not to disclose it to third parties, unless these are authorized recipients, who in the same manner and to the same extent as the contracting parties themselves are bound to the obligations arising from this agreement to use the confidential information exclusively for the purpose of the contract and to treat the confidential information with the same degree of care confidential, which it applies for the secrecy of its own confidential information, but at least with the due diligence of a prudent business man.



(2) The confidentiality obligation shall apply indefinitely beyond the end of the parties' cooperation.

#### **SECTION 16 - INSURANCE**

(1) The contractual partner undertakes to take out a comprehensive liability insurance including product liability and, in the event of its assumption of risk for the transport, a transport insurance with a renowned insurance company with a minimum coverage in the amount of CHF 20 million (liability) per damage case/material damage case. Such insurance shall extend to companies affiliated to the contractual partner, insofar as these provide a service or supply of goods which fall under these General Terms and Conditions of Purchase.

(2) The contractual partner undertakes to submit to SCHWIHAG every year a binding confirmation in each case by the insurer to prove the coverage. Each confirmation shall state its scope of cover and all exclusions.

#### **SECTION 17 - ARBITRATION AGREEMENT AND CHOICE OF LAW**

All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The seat of the arbitration is Cologne, Germany. The arbitral tribunal shall be comprised of three members. The language of the arbitration shall be English. The rules of law applicable to the merits shall be German law.

#### **SECTION 18 - FINAL PROVISIONS**

(1) The legal relationships between SCHWIHAG and the contractual partner shall be exclusively governed by the contract concluded in writing or by means of offers, orders or order confirmations including these General Terms and Conditions of Purchase. This fully reflects all agreements between the contracting parties concerning the subject matter of the contract. Verbal agreements shall not be valid. Additions and amendments to the agreements reached, including these General Terms and Conditions of Purchase shall only be effective if made in writing. This shall also apply to the cancellation of the requirement of the written form. The written form in this sense shall also be observed by transmission of declarations by fax or email.

(2) The invalidity of individual provisions of these General Terms and Conditions shall not affect the validity of the other provisions. Invalid provisions shall be deemed replaced by such valid provisions that are suitable for realizing the economic purpose of the deleted provision as far as possible.