

Article 1 Scope of application and contract terms

- 1.1 These general terms and conditions apply to contracts (also referred to as order confirmations or agreements) between the contractee and the SR-SCHINDLER MaschinenAnlagentechnik GmbH, also SR SCHINDLER, also referred to as the contracting parties. Contracts in the negotiating phase as well as quotations, which SR SCHINDLER submits to the employer, are also included in the general terms and conditions.
- 1.2 SR SCHINDLER explicitly excludes purchasing and tender terms or other general terms and conditions of the employer. Deviations of these general terms and conditions by the client are only binding if SR SCHINDLER has explicitly consented to this in writing.

Article 2 Offers and offer documents

- 2.1 The offers by SR SCHINDLER are, if not described otherwise in the offer, non-binding and unshareable.
- 2.2 SR SCHINDLER reserves the ownership or copyright of all of their submitted quotations and estimates of cost as well as drawings, pictures, calculations, brochures, catalogues, models, tools and other documents and resources made available to the employer. The employer may not share these objects without the express consent of SR SCHINDLER with third parties, publicize them, use them themselves or through third parties or reproduce them. If SR SCHINDLER so desires, the employer must also completely return these objects or copies that may have been made, or destroy these, if they are not needed any more during standard negotiations or if negotiations will not lead to the completion of a contract.
- 2.3 Details by SR SCHINDLER in pictures, catalogues, brochures, drawings as well as measurements and weight data, capacity data, yield data and other details that SR Schindler makes available are only then binding for SR SCHINDLER if they are clearly noted in the contract as guaranteed quality features.
- 2.4 The SR SCHINDLER facilities adhere to German law, while adhering to German standards, the rules of the Association for Electrical, Electronic & Information Technologies as well as German accident prevention regulations, valid from the point in time of the completion of the contract. Divergent or additional measures due to foreign standards or laws such as, for example, security and safety regulations, are to be noted by the employer and SR SCHINDLER is to be notified separately and/or these separately. Should the employer not inform SR SCHINDLER of the standards and laws applicable, such as security and safety regulations, at the point of destination, thus leading to violations of applicable standards and laws at the point of destination and SR SCHINDLER is then subjected to these violations and held accountable, the employer frees SR SCHINDLER of these claims; this exemption does also include prosecution costs.

Article 3 Contract

- 3.1 If the contract is concluded in written, SR SCHINDLER is only then bound after and when SR SCHINDLER has confirmed the contract in written form. The contents of the contract are exclusively determined by this order confirmation.
- 3.2 The written order confirmation is solely responsible for the legal relations between SR SCHINDLER and the employer according to number 3.1 including these general terms and conditions. The order confirmation completely reiterates all accords between the contract parties regarding the contents of the contract. Oral agreements, submitted quotations and agreements made before completion of this contract are legally non-binding. Oral agreements of the contract parties are replaced by the written contract if it is not made clear on both sides that these are

further binding. 3.3 Excess work or reduction of work are referred to as changes regarding the size and/or the property of that which was agreed upon completion of the contract.

Article 4 Drawings and descriptions

- 4.1 The drawings and descriptions made available to the employer are the property of SR SCHINDLER. They are to be used exclusively for management and not to be shared with third parties without the express consent of SR SCHINDLER. If not explicitly agreed upon otherwise, SR SCHINDLER is not obligated to make detail drawings available.
- 4.2 Drawings, which the client must

Article 6 Payment

- 6.1 Payment of the contracting price must be made according to the delivery and payment conditions or rather the payment plan noted in the order confirmation. If no agreement can be reached, it is owed as followed:
- a) 30% of the order value as a prepayment within 10 calendar days after sending of the order confirmation by SR SCHINDLER
 - b) 30% of the order value at half the delivery term, but no later than three months after sending of the order confirmation by SR SCHINDLER.
 - c) 35% of the contract value on delivery, or rather on announcement of readiness of sending by SR SCHINDLER, according to the respective shipping terms agreed upon.
 - d) 5% of the contract value on transfer of risk, however no later than 3 months after announcement of shipping readiness by SR SCHINDLER.
- 6.2 Should no flat rate be included in the contract price for assembly and start-up services by SR SCHINDLER, a separate billing will take place based on cost rates of SR SCHINDLER. The settlement will take place while taking the in the assembly report reported work hours and the cost rates as a basis. Traveling expenses are billed including a 5% handling fee. The settlement takes place on a monthly basis.
- 6.3 All payments are to be made without any deductions and without any offsetting onto an account supplied by SR SCHINDLER if no other time frame has been agreed upon.
- 6.4 Any costs arising with the service of payment securities are to be covered by the employer.
- 6.5 If payments – be it via documentary letter of credit – are to be made on presentation of transport documents, these are also to be made on presenting a proof of warehousing should the transport cannot be carried out due to force majeure or circumstances that SR SCHINDLER has no power over. Costs arising due to warehousing are to be covered by the employer in this case according to article 7.5.
- 6.6 Should the employer not pay when payment is due, he is immediately in default without any further notice. If the employer is in default, he owes default interest of eight (8) percent over the respective base interest rate as well as costs arising from court and out of

has informed the party of the acceptance to occur. The employer may not decline the acceptance of goods if there are no substantial defects.

- 8.5. If sending is delayed or does not occur due to circumstances out of SR SCHINDLER's reach, the risk is transferred to the employer on the day of readiness of shipping. SR SCHINDLER is obliged to take out the insurances demanded by the employer at his cost.
- 8.6. SR SCHINDLER is only obligated to sending of the goods when the costs of warehousing have been covered by the employer with regards to article 7.5.
- 8.7. Partial deliveries are valid. In this case the employer is obligated to payment of the respective partial amounts as soon as SR SCHINDLER has shipped the goods, or rather when SR SCHINDLER has notified the employer of readiness of shipping respectively.

Article 9 Conditions of assembly and commissioning

- 9.1 If not agreed upon otherwise in the order confirmation, assembly and commissioning are limited to an arranging master assembly and commissioning by SR SCHINDLER which are connected to the following conditions:
 - 9.2 Assembly
 - 9.2.1 For assembly, all building materials delivered and important to the start-up that are included in the scope of delivery and are assembled and examined for their operational conditions by SR SCHINDLER.
 - 9.2.2 All details on duration of assembly are estimated values. Should the duration of assembly be agreed upon as binding, it is then considered upheld if the entire assembly of the building materials included in the scope of delivery has been executed by SR SCHINDLER before expiration. Assembly must be made without interruptions regarding the employer or his performing agents. The employer is to assist SR SCHINDLER's employees for a smooth process at his own cost. In the case of waiting time caused by the employer, all occurring costs, including traveling expenses of SR SCHINDLER employees, are to be covered by the employer. This also applies if a flat price has been agreed upon regarding assembly and/or start-up. The conditions also apply to articles 9.2 – 9.5. 9.2.3. Fulfilling the following obligations for the employer is a requirement for an orderly and consistent assembly and start-up:
 - 9.2.3.1 Before beginning of assembly as well as before beginning of start-up, check lists that are to be filled out and sent back may be provided by SR SCHINDLER. 9.2.3.2 The employer is obligated to construction site coordination for crafts that are not included in the SR SCHINDLER scope of delivery as well as designating someone responsible for the construction site.
 - 9.2.3.3 Upon arrival of the deliveries to the employer, but at beginning of assembly the latest, the employer must supply the following permanently (including the time of assembly, start-up, instruction and assembly as well as the time of permanent acceptance) at their own cost and risk:
 - a) compiling static calculations necessary to or also required by the facility location, especially for the building, foundations, stairs, ladders, platforms and scaffolds; that are not immediately required by SR SCHINDLER.
 - b) Preparation of all necessary building measures according to the recommendations of final drawings made available by SR SCHINDLER;
 - c) Supplying exact, durable and broom-clean foundations according to SR SCHINDLER's final foundation plan;
 - d) Disassembly of facility components that may exist;
 - e) Supplying a drivable access road (admissible traffic load according to SLW 60) for unloading and transporting material to the site of assembly;
 - f) Supplying a suitable fenced-in area for temporarily storing as well as protecting the material from climatic influences;

- g) Unloading from the truck and installation of the facility components at the position determined according to plan;
- h) Supplying cranes and other lifting gear (including an operator) as well as hydraulic lifts or operating platforms respectively. The necessary need and time frame will be determined by SR SCHINDLER before assembly begins.
- i) Supplying operating platforms, scaffolds, ladders according to a list of requirements made available by SR SCHINDLER;
- j) Transport of SR SCHINDLER employees from/to the airport as well as on site between lodging and construction site (rental car may be needed). Travel time is considered working hours.
- k) Supplying a warehouse for assembly that is wind and rainproof for assembly of SR SCHINDLER's scope of delivery. A minimum temperature of +5°C in the warehouse is to be guaranteed.
- l) Supplying lodging (middle class hotel or apartment) to SR SCHINDLER employees according to following specifications: minimum standard 3* middle European standard, single room with shower/toilet or bathroom/toilet including daily cleaning and towel change, change of linens weekly and continental breakfast.
- m) Supplying a dry and lockable room for storing SR SCHINDLER employees' tools or supplying an area for constructing a 20 feet tool container with a power connection.
- n) Supplying burglarproof common and work rooms with a heater and lighting as well as sanitary equipment for SR SCHINDLER employees.
- o) Supplying sufficient qualified aid personnel for transport and assembly in required number and qualification. The exact number will be specified by SR SCHINDLER. The aid personnel is to follow SR SCHINDLER employees' instructions. SR SCHINDLER does not carry any liability/responsibility for aid personnel. For installation of further, not specified components, such as noise cancellation, additional personnel is required. If not sufficiently qualified, SR SCHINDLER reserves the right to make personnel available at a cost in order to guarantee a smooth procedure of the assembly and start-up.
- p) Making all required security measures for personal protection available according to local regulations, as far as these are not included in SR SCHINDLER's scope of delivery. Due to reasons of liability, start-up may only commence when all security requirements have been met completely.
- q) Schooling SR SCHINDLER employees regarding local security regulations as well as notification regarding possible disregard of these security regulations.
- r) Supplying electricity and water according to circuit diagrams or that is to say according to the notes in the foundation drawings. If not agreed upon otherwise, scope of delivery for SR SCHINDLER equipment and services begins at the main switches installed in the control cabinets. Current transformers, power distributors and access lines in respective measurements and with appropriate fusing are to be made available by the employer. All power lines to each building part are to be installed in cable ducts. Should any other cabling (meaning cable racks) be necessary, this will be billed separately.
- s) Supplying all components/services that are not included in SR SCHINDLER's scope of delivery (products/services of third parties). Technical data, services, interfaces for control and other services for products of third parties must be exactly clarified by the employer before assembly works commence. The time plan for the delivery and assembly of products of third parties as well as their services is to be coordinated with SR SCHINDLER 15 workdays before assembly works begin.
- t) Supplying welders including oxygen as other resources and tools according to a list separately made available by SR SCHINDLER.

- u) Supplying a German or English-speaking interpreter with technical knowledge, should no German or English-speaking personnel be present.
- v) Grounding and illumination of the entire facility.
- 9.3 Start-up and test run
- 9.3.1 Start-up and test run occur in two parts: 9.3.1.1 Cold start-up (without material): The core functionality of each component or that is to say the workflow of the facility is tested without material. Only after cold start-up can the facility be taken into operation with material.
- 9.3.1.2 Warm commissioning (with material): start-up or that is to say test run occur, if not contractually determined otherwise by testing the manufacturing process with a standard form.
During warm commissioning, the employer must make a sufficient number of qualified operating personnel available for each component. SR SCHINDLER recommends making the operating personnel available from the start of assembly as this will give them sufficient time to familiarize themselves with the facility.
- 9.3.1.3 If additional forms are tested, or that is to say run-in, all costs arising from this will be billed to the employer if no other flat rate has been agreed upon.
- 9.3.1.4 The employer must make the following available free of charge until the start of the testing and commissioning phase:
 - a) compressed air
 - b) resources such as, for example, hydraulic oil
 - c) Separate phone line for the use of a modem for remote maintenance or a high-speed internet connection with a transfer rate of at least 500 Kbit
 - d) Forklifts for the commissioning of the facility, for instance for transporting brick packs, for change in form, etc.
 - e) Sufficient amounts of resources and ingredients, such as binder materials, cement, additives, colors, etc. of sufficient quality. The amount of required materials must be determined by the employer before the start of the test run and commissioning. The agreed upon product services may only be fulfilled if concrete aggregates in accordance with DIN 52100-2 and concretes in accordance with DIN 1045 are used. SR SCHINDLER only has an advisory role regarding concrete mixture and quality. The employer is responsible for the selection and provision of appropriate resources and ingredients as well as their formulation.
 - f) At least one form in accordance with the technical specifications of SR SCHINDLER, provided it is not included in the scope of delivery contractually agreed upon.
 - g) Production padding (e.g. metal sheets, wooden boards) in sufficient number and of su

conflicts, commissioning and any other services will be delayed accordingly. At least a time frame by which the completion of the facility and/or the execution of the services delayed by the event is considered an appropriate delay. The assumption of costs arising from such delays is to be handled amicably between the employer and SR SCHINDLER.

- 9.7.2 Should the assembly, commissioning, schooling or test run as well as the acceptance be interrupted due to reasons outside of SR SCHINDLER's control and are not force majeure in any case, all additional costs including the travel expenses will be billed to the employer.

Article 10 Reservation of ownership

- 10.1 SR SCHINDLER reserves the ownership of the items to be delivered or the facility respectively until all payments contained in the order confirmation have been made.
- 10.2 SR SCHINDLER has the right to take out an insurance at the cost of the employer for theft, breach, fire and water damages or any other damages if the employer himself has not explicitly taken out such an insurance.
- 10.3

12.2.5 The demands only stand when:

- a) The employer immediately informs SR SCHINDLER of the applicable violations of property rights and copyrights,
- b) The employer assists SR SCHINDLER in an appropriate scope in the defense of the alleged demands or makes it possible for SR SCHINDLER to complete the modification procedures according to article 12.2.1,
- c) SR SCHINDLER reserves the right to all defensive measures including settlements out of court,
- d) the delivery item was not changed on demand of the employer and the violation of rights was not caused by the employer producing the delivery item unilaterally or in using it in a way not negotiated in the contract.

12.3 Claims of the employer regarding faults become statute-barred after a year or 2,000 operating hours (depending on what occurs first) after commissioning without material in accordance with article 9.3.1.1, but 18 months the latest after delivery or notification of delivery readiness by SR SCHINDLER. This does not apply for malice or fraudulent concealment of the fault and when violating a guarantee of quality assumed by SR SCHINDLER as well as an item which was used for its appropriate usual usage for a structure and has caused the defectiveness of the structure. If SR SCHINDLER corrects a fault, the limitation period amounts to three (3) months for reworks and substitute parts but expires at least until the expiration of the original limitation period for fault demands of the delivery item. The legal periods in accordance with the product liability act apply to demands made.

Article 13 Liability

13.1 Should the delivery item not be able to be properly used by the employer due to SR SCHINDLER omitting or faulty execution of advices and consultation occurring before or after conclusion of the contract as well as violation of secondary obligations – especially instructions for operating and maintenance of the delivery item – the regulations of article 12 and 13.2 apply with the exclusion of further demands by the employer.

13.2 In accordance with legal regulations, SR SCHINDLER is liable for damages caused by culpable negligence on the part of SR SCHINDLER, their legal representatives or leading employees as well as for personal damage.

13.3 In the event of malice or culpable negligence regarding simple vicarious agents as well as in the event of slight negligent violation of essential contractual obligations which are vital for completion of the intended purpose of the contract and the employer thus having to be able to depend on their strict adherence, SR SCHINDLER is liable in accordance with legal regulations limited to such direct damages which were foreseeable by SR SCHINDLER in the broad scope of things.

In such a case, SR SCHINDLER is not liable for indirect and/or follow-up damages such as, but not limited to, breakdown, loss of goodwill, loss of profit, decrease in value of or partial damages to assets and damages for third parties due not being able to deliver, incorrect delivery or missing a deadline and/or the not functioning, not correct functioning or missing a deadline regarding a service.

13.4 SR SCHINDLER is liable for damages to the employer's property if said damages occurred due to gross negligence or malice on the part of SR SCHINDLER.

13.5 Notwithstanding anything to the contrary elsewhere, SR SCHINDLER shall in no event and irrespective of the legal basis (contract, tort (including negligence), statutory liability, misrepresentation, indemnity or any other area of law) be liable for loss of profit or revenue, loss of production or loss of use, loss of data, cost of capital, cost of substitute goods, any incidental or consequential damages or any of the foregoing suffered by any third party.

13.6 SR SCHINDLER is not liable for damages due to errors or faults in any sense if SR SCHINDLER did not negotiate a counter performance for its services or the acting or forbearance of the employer, their employees or third parties on the side of the employer contrary to operating instructions, maintenance instructions or any other instructions and if any material or bodily damages occurred and/or if the items were changed in any way without the express consent of SR SCHINDLER, SR SCHINDLER is not liable.

13.7 Furthermore, but without prejudice to any further limitation of liability stipulated elsewhere in this contract, SR SCHINDLER's overall liability arising out or related to this contract, irrespective of its legal basis, shall in aggregate be limited to an amount of 10% of the contract prize of the equipment.

13.8 Notwithstanding the aforementioned regulations, SR SCHINDLER shall be liable without limitation in accordance with the applicable law in case of culpable causation of loss of life, bodily injury or damage to health.

Article 14 Suspension and rescission or invalidity of the contract

14.1 In the event of not being able to execute the contract due to force majeure, including, among other things, fire, explosions, work stoppages, judicial measures, negative travel recommendations, occupation of the workplace and excessive absent due to illness, or if the execution of the contract cannot be demanded from SR SCHINDLER due to circumstances arising from events outside of SR SCHINDLER's reach, SR SCHINDLER is eligible to either delay the execution of the contract for six months without a court's approval or completely or partially terminate the contract without being obligated to any damage compensation. During the reprieve SR SCHINDLER is eligible and obligated at the end of said reprieve to decide between the execution of complete or partial termination of the delayed contract (the delayed contracts)

14.2 Not only in the event of suspension but also in the event of termination in accordance with article "14.1" SR SCHINDLER is eligible to demand payment for the execution of the contract regarding the resources, materials, parts and other objects ordered, in process and produced as well as the achieved direct and indirect working time, this for the fairness of the value in consideration.

In the event of termination in accordance with article 14.1, the employer is obligated to accept the items covered in the owed amount of the previous article after payment, otherwise SR SCHINDLER is eligible to store these items at the employer's costs and risk or sell these at the employer's expense.

14.3 If the employer is not able completely, incorrectly or fulfill any obligation stated in the concluded contract with SR SCHINDLER at due date or the justified fear exists that the employer is or will be unable to fulfill their contractual obligations regarding SR

contract, at the employer's cost and risk. In the event of termination in accordance with article 14.3, the price agreed upon – as far as no other reprieve has previously occurred - and the saved costs by SR SCHINDLER due to said delay are due immediately, the deductions already paid excluded. Furthermore, the employer is obligated to pay the previously mentioned amount and accept all items included in this, otherwise SR SCHINDLER is allowed to store said items at the employer's cost and risk or sell these at his expense.

- 14.5 The employer is not entitled to retroactively demand the termination of the contract.
- 14.6 After a potential termination or in the event of negligence of the contract occurring for any reason, these general terms and conditions remain in effect, as far as they have an independent meaning and/or they were determined for ruling the consequences, such as especially (but not limited to) the conditions regarding the delivery, penalty payment clauses, liability or judicial responsibility and the applicable right.

Article 15 Spare parts

- 15.1 These conditions are also valid for the delivery of spare parts, as far as nothing else has been agreed upon otherwise.
- 15.2 SR SCHINDLER is entitled to delivering parts other than those ordered by the employer under the condition that said parts are technically equal to the originally ordered parts.
- 15.3 The assembly of the spare parts is not included in the price.
- 15.4 The guarantee for spare parts amounts to six (6) months after the delivery date ex works.

Article 16 Documentation

- 16.1 SR SCHINDLER will provide the following documentation in English language:
- Technical information in pdf-format which are required for the intended operation and for the proper maintenance and repair in accordance with the supplier's requirements.
 - Drawings in pdf-format
 - Wiring diagrams in pdf-format
 - Software if it is not protected by copyright
- 16.2 SR SCHINDLER will not provide any other file format than listed above.

Article 17 Statute of limitation

- 17.1 Pending article 12.3, all claims of the employer – indifferent of as to due to which legal reasons – lapse in twelve (12) months, six (6 months) for the delivery of spare parts. The legal deadlines apply to deliberate or malicious behavior as well as claims in accordance with the product liability law. They also apply to structures and items which are used in their usual intended form.

Article 18 Applicable law and disputes

- 18.1 This CONTRACT and all disputes related thereto or arising there under, shall be governed and construed in accordance with Swiss Law under exclusion of the international civil law and UN Convention on Contracts.
- 18.2 Any dispute, controversy or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.
- The number of arbitrators shall be "one"; the seat of the arbitration shall be Zurich; the arbitral proceedings shall be conducted in English.