SCHÖNENBERGER

Business Terms and Conditions of SCHÖNENBERGER Systeme GmbH

For the Sale, Delivery and Installation/Dismantling of Technical Conveyor Systems and Facilities as well as Parts thereof
Valid only for Commercial Business

These terms and conditions set down by SCHÖNENBERGER Systeme GmbH (hereinafter called Schönenberger) shall apply to customers who are pursuing their commercial or self-employed professional business activity (entrepreneurs) when concluding the contract and to legal entities under public law or a separate fund under public law.

1 General Provisions

All deliveries and services provided by Schönenberger shall be based on these terms as well as possibly concluded separate contractual agreements.

Schönenberger shall continue to have the ownership and copyright of the offer including all documentation, illustrations, samples, costs estimates, drawings, calculations and any other records in any form what so ever, including electronic data. The customer shall return these documents and the above information to Schönenberger if the order is not realised.

2 Scope of Order, Processing and Impossibility

2.1

Type and extent of the deliveries and services shall be determined finally by Schönenberger's offer and a corresponding confirmation of the offer by the customer and a re-confirmation by Schönenberger if the latter does not correspond. The written confirmation of offer by Schönenberger shall constitute the contract in the absence of a special agreement. Deviations from the contents of the original order shall be agreed by way of supplementary orders.

The following terms shall apply as prioritised in the following for the processing of an order:

- Contractual terms agreed separately (offer and confirmation of order including respective enclosures);
- Agreed specifications;
- Schönenberger terms of delivery/installation and payment and general terms of technics and installation;
- Legal regulations.

The customer's purchasing conditions shall only apply after express confirmation by Schönenberger and shall not constitute part of the contract even after order confirmation by Schönenberger.

2.2

Schönenberger shall be entitled to exclude liability if the customer demands features, possibly after placement of the order, which do not correspond to the technological development of the products to be delivered and the systems. Schönenberger may refuse execution if it has safety concerns. In the event that the customer demands new developments, further developments or modifications after placement of the order the customer shall carry the costs incurred. Schönenberger shall reserve the right to implement modifications which become necessary due to official requirements or structural necessities. The customer shall carry related additional costs. Schönenberger shall not be liable for the organisational planning and implementation of operational procedures and the intended use of the system. This shall also apply if the customer communicated its concept before placement of the order and Schönenberger was not also instructed with the planning of this concept.

2.3

Fig. 6 shall apply accordingly for any type of damage claims arising from the impossibility of providing the delivery or service. Insofar as Schönenberger is not forced to assume unlimited liability according to fig. 6.2 any compensation for damages due to the impossibility of a delivery/service or any compensation for lost expenses shall be limited to maximum 50% of the respective order value. The customer's right to withdraw from the contract shall not be affected.

The customer shall not be entitled to any damage claims in the event of Schönenberger's or one of its supplier's inability to perform through no fault of their own and in the event of force majeure.

Schönenberger's obligation to take responsibility for the fulfilment of its delivery and performance obligations shall be subject to the reservation that Schönenberger obtained delivery correctly and in due time, providing Schönenberger proves that it concluded a corresponding covering operation with its supplier and the latter failed to perform. Schönenberger shall immediately communicate a foreseeable default on a delivery by the supplier.

2.4

In the event that Schönenberger describes the nature and quality of goods and services this shall not constitute a warranty as long as a warranty commitment is not expressly given in writing.

3 Advance and Additional Services

3.1

The following shall apply for the rendering of installation services at the customer's operation site. The customer shall provide all advance and additional services necessary for the installation of the facility, such as building and operating permissions, officially examined static calculations etc. at its own costs and risks. The customer shall provide the personnel and technical installations such as heating, lighting and operating power with connections to the installation sites as requested by Schönenberger. The customer shall furthermore provide suitable dry and lockable rooms for the storing of work material and tools as well as staff work and recreation rooms. The customer shall have no-fault liability for any damage from theft, fire, water and any other loss.

3.2

In the event that the start or procedure of the work is delayed due to circumstances for which Schönenberger cannot be held responsible the customer shall carry all the additional costs. This shall also apply for interruptions caused by structural modifications of the system requested by the customer.

3.3

In the event of deliveries without installation services Schönenberger shall not be obligated to check the customer's orders in terms of usability and suitability for their intended use.

4 Delivery and Performance Deadlines, Completion Dates, Acceptance

4.1

Delivery/performance and completion dates shall be agreed individually. Deadlines shall be extended for a reasonable period of time and dates for the start or termination of the services shall be postponed if certain components of the contract are defined by mutual agreement only after placement of the order, the customer does not render its advance services on time before performance is due or if the contents of the order are modified due to other agreements or circumstances for which Schönenberger cannot be held responsible or the uninterrupted completion is impeded. Schönenberger may also demand that the delivery and performance deadlines and completion dates be re-determined if the customer requested modifications to the contents of the order, for example, in the event of illegal requirements or unexpected additional requirements by the public authorities.

Deliveries shall be ex works and the delivery deadline shall be deemed to have been met once notice that the goods are ready for shipment is given also if the dispatch from the delivering plant or the warehouse is not possible through no fault of Schönenberger. The same shall apply to collection by the customer.

4.2

The customer shall set a reasonable additional period in the event that the agreed delivery and performance deadlines and completion dates are exceeded.

Fig. 6 shall apply accordingly for damage claims of any type due to late delivery and performance. Insofar as Schönenberger is forced to assume unlimited liability according to fig. 6.2 the compensation for damages due to the culpable delay of a delivery/performance shall be limited to maximum 50% of the respective order value. The right to fix lump-sum damage compensation in special contractual provisions is reserved.

In the event that Schönenberger or its suppliers are incapacitated through no fault of their own and in the event of force majeure the customer's damage claims for delay and other reasons shall lapse.

Compliance with delivery/performance deadlines and completion dates shall be subject to the reservation that Schönenberger obtained delivery correctly and in due time, providing Schönenberger proves that it concluded a corresponding covering operation with its supplier and the latter failed to perform. Schönenberger shall immediately communicate any foreseeable delays.

4.3

The customer shall take receipt of the completed work upon Schönenberger's request. Acceptance shall be considered completed with the termination of the last partial acceptance if all parts of the service to be rendered have been fully accepted. In the event that acceptance does not occur the service shall be deemed to have been accepted upon expiry of twelve working weeks after written notice of completion, at the latest, however, once the service rendered is put into operation.

5 Passing of Risk, Warranty

5.1

The risk for the deliveries shall pass to the customer ex Schönenberger's manufacturing plant or warehouse. It shall also pass to the customer if dispatch is delayed upon the customer's request as from notice of readiness for shipment.

This shall also apply, if agreed, to deliveries of objects dispatched to the customer for the provision of an installation service on the basis of a contract for work and services or a contract for work and materials. Otherwise the risk shall pass to the customer with the arrival of the delivery/installation goods at the installation site.

5.2

The customer shall report obvious defects which are recognisable during a standard inspection immediately after delivery in writing. The customer shall, furthermore, report defects which are not obvious and recognisable during a standard inspection immediately upon discovery in writing.

5.3

The warranty period for deliveries and services shall be 12 months and come into effect with the acceptance of the installation work or delivery of the goods to be delivered. Liability for defects shall be limited to re-working or replacement of the parts objected to at Schönenberger's discretion. The customer shall have the choice of demanding a reduction of the fee or a rescission of the contract in the event that the re-working or the substitute shipment fail or the deadline for the removal of the defects is not observed.

In the event that a system to be delivered/installed by Schönenberger is to be fully or partially used by the customer already before acceptance such an arrangement must be agreed by contract prior to the beginning of the installation work. The risk passes once the customer has started to operate the facility, also with respect to the use of the system or parts thereof by the customer. In such cases, contractual advance acceptance for the areas to be used can be agreed prior to the start of the installation work.

In the event that the systems delivered are serviced or repaired contrary to the user manual delivered with the system or used contrary to regulations Schönenberger's warranty and liability shall lapse irrespective of the legal grounds unless Schönenberger is otherwise at fault and therefore forced to assume co-liability according to fig. 6. Schönenberger shall also not be liable for the consequences of damaging influences such as an aggressive climate at the installation/utilisation site of the deliveries/services (unless Schönenberger was responsible for taking such circumstances into account) and in the event of the utilisation of the deliveries/services for purposes other than normal operation.

5.4

Schönenberger shall not warrant for the supply of third-party products insofar as the customer was informed hereof at conclusion of the agreement. Schönenberger shall in this respect assign warranty claims against the supplier companies to the customer who hereby accepts the assignment.

5.5

Schönenberger shall not be liable for the normal wear and tear through usage of delivery and/or installation components which are subject to such wear and tear if used according to instructions ("components subject to ware").

6 Liability

The following regulations shall apply irrespective of the legal grounds, in particular, but not exclusively, to damage claims in addition to or instead of the performance, also claims relating to defects, the failure to comply with duties resulting from an obligation as well as to compensation claims for lost expenses, claims based on a delay and a tortious act.

6.1

In the event that an installation part supplied by Schönenberger is damaged through the fault of Schönenberger the latter shall have the choice of either repairing it at its own costs or supplying a new part. Insofar as it is Schönenberger's fault that the supplied or installed part cannot be used by the customer as agreed in the contract due to the omission or faulty execution of proposals and advise prior or after conclusion of the agreement or due to the violation of other additional contractual obligations – in particular operation and maintenance instructions for the delivered objects – the regulations regarding liability for breach of warranty and the following regulations shall apply accordingly with the exclusion of any further claims by the customer.

6.2

Schönenberger shall always be liable for damages – on whatever legal grounds --

a) if committed with intent
b) in the event of gross negligence on the part of the proprietor/the bodies or senior executives
c) in the event of injury to life, body and health,
d) in the event of defects which were fraudulently concealed or the absence of which was guaranteed
e) in the event of defects in the product supplied insofar as the product liability law stipulates liability for personal or material damage to objects used privately.

6.3

In the event of a culpable violation of essential contractual obligations Schönenberger shall also be liable for the gross negligence of employees not in a leading position and for slight negligence, in the latter case this shall be limited to the reasonably foreseeable damage typical under the contract.

6.4

In cases of gross negligence Schönenberger's liability shall be limited to the reasonably foreseeable damage typical under the contract unless one of the other compelling reasons for liability according to fig. 6.2 is given.

6.5

Further claims shall be excluded.

7 Prices

The prices for the services shall be standard and lump-sum prices to which the value added tax must always be added. Deliveries of equipment and system parts not installed by Schönenberger shall be subject to the prices on Schönenberger's price list valid at the respective time of order. Standard and lump-sum prices for services rendered according to the confirmed order shall apply as list prices for a period of four months as from placement of the order. In the event that personnel and material costs increase during the respective time periods Schönenberger may demand a reasonable increase for subsequent services.

8 Reservation of Title

Schönenberger shall reserve ownership of the objects delivered and installed until receipt of all payments due on the basis of the delivery and installation agreement. The customer shall inform Schönenberger in advance in the event that the customer mixes and processes the delivered and installed objects with other objects. In any case, Schönenberger shall become a proportionate co-owner of the impersonal entity created with the objects it supplied with a share corresponding to the share it contributed to this entity. In the event of a linking or mixing which would make the customer's entity the principal entity it is hereby agreed that the customer shall transfer a pro rata co-ownership share to Schönenberger; the supplier shall hold the sole ownership or co-ownership in custody for Schönenberger. The determination of the value of the co-ownership share which arises for Schönenberger shall be based on the calculation of the value of the parts supplied by Schönenberger according to the invoice amount including VAT, the other objects, in particular, those belonging to the customer shall be based on the current market value.

Insofar as the market value of the security collateral yet to be realised by Schönenberger, including the realisation costs, exceeds the value of Schönenberger's still outstanding receivables from the customer by more than 20% Schönenberger shall be under the obligation to release a proportionate part of the reserved property.

The customer may not sell, pledge or transfer ownership of the delivered/installed objects to provide security. The customer shall immediately inform Schönenberger of any pledges and confiscations or other dispositions by third parties.

In the event that the customer acts in breach of contract, in particular, in the event of a delay in payment, Schönenberger shall be entitled to take back the goods delivered/installed after a warning and the customer shall be obliged to hand these over immediately. Due to the reservation of title Schönenberger may only demand the return of the goods delivered/installed if it has withdrawn from the contract.

In the event that insolvency proceedings are instituted against the customer's assets or in the event of unavoidable enforcement procedures by third parties against the reserved goods Schönenberger shall be entitled to withdraw from the contract and demand the immediate return of the goods delivered/installed.

As long as its reservation of title is in force Schönenberger shall be entitled to insure the goods delivered/installed at the customer's expense against theft breakage fire water and other damages if the objects have to be at hand on the construction site during the installation work and if the customer doesn't provide proof of having insured the goods itself.

9 Settlement of Payments

The setting off and exercise of the retention right against Schönenberger's claims which have not been recognised or legally declared on whatever legal grounds shall be excluded. Schönenberger shall be entitled to assign its claims to third parties. Costs for means of payment which Schönenberger has assumed on account of performance shall be charged to the customer.

The amounts billed shall be paid within 14 days after receipt of the invoice if not otherwise stipulated in an invoice.

The minimum order value is 100 Euro net. If an order does not amount to this value Schönenberger is entitled to bill the whole minimum order value of 100 Euro.

If the customers' due payment is delayer by more than 30 days, we are entitled interest at a value of 8% above the respective base interest rate p.a. as far as the customer is a firm.

If the customer is a consumer, the interest will be at value of 5% above the respective base interest rate.

10 Statute of Limitation

All of the customer's claims – based on whatever legal grounds - shall become statute-barred after 12 months. The statutory limitation periods shall apply to the damage claims under section 6.2 a) through e). These shall also apply to defects in a construction or to delivered objects which were used for a construction according to their customary intended use and caused defects in the construction.

11 Software Utilisation

Insofar as software is included as part of the goods to be delivered the customer shall be granted a non-exclusive right to use the software supplied including respective documentation. It shall be provided for utilisation on the object delivered/installed for which it was intended. The utilisation of the software on more than one system shall not be permitted.

The customer may only reproduce edit and translate the software or transfer its object code into the source code to the extent legally permitted (Sections 69a of the copyright law). The customer engages not to remove manufacturer information – in particular copyright notices – or to modify these without Schönenberger's prior express consent. A claim to disclosure of the software's source code is not established.

All other rights to the software and respective documentation, including copies thereof, shall be retained by Schönenberger or the software supplier. The granting of sublicenses shall not be permitted.

12 Amendments to the Contract

Amendments or supplements to the contract shall be made in writing. Insofar as individual provisions or parts thereof are or become invalid the validity of the remainder of the contract shall not be affected. The contracting parties engage to replace the invalid provision by a valid one which comes closest to the economic intention of the original one.

13 Confidentiality

The customer shall be under the obligation to treat all illustrations drawings calculations and other records and information (see also fig. 1) received strictly confidentially. These may only be disclosed to third parties with Schönenberger's express consent. The duty to maintain secrecy shall also apply after performance of this contract; it shall expire if and insofar as the manufacturing know-how contained in the illustrations drawings calculations and other records provided has become generally known.

14 Place of Performance and Jurisdiction

Place of performance and jurisdiction for both parties shall be Landsberg. Insofar as legally permissible, both parties engage to agree in an effective way that Munich shall be the place of jurisdiction in the event of any legal dispute after pendency of the claim. Schönenberger shall also be entitled to sue the customer at the place of its registered office. This contract and all legal issues arising from it shall be subject to German law. The Vienna UN convention on contracts for the international sale of goods of 04/11/1980 shall not apply.