

**General conditions of sale of the Schwab-Feller AG ("Company")**  
**CH - 3294 Bueren a.A.**

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**§ 1 General observations – Applicability**

- (1) The Company's conditions of sale apply to the exclusion of all other conditions. The Company does not recognise any conditions imposed by purchasers which either contradict or in some way differ from its own, except if the Company has expressly acknowledged their validity in writing. The Company's conditions of sales shall apply even if, fully cognisant of conditions imposed by the purchaser that either contradict or in some way differ from its own, it has unconditionally supplied the said purchaser.
- (2) All agreements made between the Company and the purchaser concerning implementation of this contract are to be included in this contract in writing.
- (3) Should any provision of the present conditions of sale be or become invalid or contain a loophole, the validity of the remaining provisions shall remain unaffected. Any invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose intended by the parties. The same shall apply in case of a loophole.
- (4) The respective conditions of sale in the version valid at the time of conclusion of the contract shall apply. Subsequent changes or amendments to the conditions of sale shall form an integral part of the contract, if the purchaser does not object to the changed provisions within 30 (thirty) days after taking note of them.

**§ 2 Supply and related documents**

- (1) If the order is to be qualified as a request within the meaning of Art. 7 of the Swiss Code of Obligations then the Company can accept it within four weeks.
- (2) Proprietary rights and copyright shall apply to all illustrations, drawings, calculations and other documents, which shall not be made available to third parties and shall not be used by the purchaser (without contractual basis). This applies in particular to written documents marked as "confidential". The latter may be provided to third parties only after obtaining the express consent of the Company. Also the purchaser shall not make available to third parties and shall not use (without contractual basis) commercial and technical information obtained in connection with the business relationship which is not generally known. The purchaser shall impose these obligations on third parties engaged by him.

**§ 3 Prices, conditions of payment**

- (1) Prices are "ex factory" (EXW CH - 3294 Bueren a.A., Incoterms 2020) and do not include the packaging, which will be added separately to the invoice.
- (2) The official rate of value added tax is not included in the prices and will be added separately to the invoice when it is drawn up.
- (3) The deduction of a discount is possible only in the case of a special agreement in writing.
- (4) Unless otherwise stated in the confirmation of the order the net purchase price (without deduction) is to be paid within 30 days of the date of the invoice. If payment is delayed beyond that date the Company is entitled to demand the payment of interest on arrears at 5 per cent p.a. above the current discount rate of the Swiss National Bank. Additionally, collection expenses in the amount of CHF 20.00 will be charged for every reminder. If the Company is in a position to demonstrate more substantial damage resulting from the delay it is entitled to take further action. The purchaser is at liberty however to attempt to prove to the Company that the delay in payment has on the contrary caused no damage to the Company or that the damage is much less substantial than alleged by the Company.
- (5) In case of any delay in payment or in case of liquidity problems of the purchaser, the Company is entitled to request full advance payment for further deliveries and is entitled to only deliver against advance payment even if other payment terms have been agreed upon at the conclusion of contract and this without being in default itself.
- (6) Upon purchaser's delay in payment, any and all claims of the Company become due immediately. Purchaser's non-compliance with payment terms shall authorise the Company to suspend the order and all other orders of the purchaser. The Company is also entitled to rescind the contract and to claim damages. The Company is also entitled to rescind the contract and to recover the products from the purchaser, if the purchaser already took possession of the products before full payment of the purchase price. The purchaser does not have a lien on the products.
- (7) The purchaser is only entitled to offsetting rights if his counterclaims are legally established or if the counterclaims are unopposed or have been accepted by the Company. Moreover the purchaser shall be allowed to exercise a right of retention insofar as his counterclaim is based on the same contractual conditions.

**§ 4 Delivery time**

- (1) The delivery times stated by the Company take effect only once all technical questions have been resolved.
- (2) The fulfilment of the Company's commitments with regard to deliveries depends on the purchaser fulfilling his commitments in a suitable manner and at the proper time.

- (3) Default in taking delivery on the part of the purchaser or his failure in some other way to co-operate in the appropriate manner entitles the Company to demand compensation for the damage incurred by the Company, including any additional expenses. Moreover since it is the purchaser who fails to take delivery, from that moment on the responsibility for any accidental loss or deterioration of the goods purchased shall be his. The purchase price is due for payment, even if the purchaser is in default of acceptance.

#### **§ 5 Transfer of risk, documents**

- (1) Insofar as nothing to the contrary is stated in the confirmation of the order, it is agreed that the delivery shall be "ex factory" (EXW CH - 3294 Bueren a.A., Incoterms 2020).
- (2) If the purchaser so desires the Company shall arrange for the delivery to be covered by transport insurance, the cost of which is to be borne by the purchaser.

#### **§ 6 Warranty for defects**

- (1) The purchaser's warranty entitlement is dependent on having duly fulfilled the legally owed inspection and complaint obligations. The Company is entitled to refuse to remedy possible defects as long as the purchaser has not complied with his payment obligations.
- (2) If there is a defect in the goods purchased for which the Company is responsible, the Company may at its sole discretion either remedy the defect or provide replacements. If the Company decides to remedy the defects the Company shall then be obliged to bear all related costs and in particular the transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item was taken to a place other than the place of performance.
- (3) If the Company is not willing or able to remedy the defect / provide replacements, and in particular if such action is delayed beyond a reasonable period for reasons for which the Company is responsible, or if the remedying of defects or replacement fails in some other way, the purchaser is entitled to demand an appropriate reduction in the purchase price. Any other claims of the purchaser, in particular cancellation of the contract or execution by substitution through a third party at the expenses of the Company, are excluded.
- (4) Unless otherwise stated below, further claims by the purchaser, on whatever legal grounds, are excluded. The Company thus accepts no liability for any damage that does not specifically concern the goods delivered, and in particular can accept no responsibility for unrealised profits or any other pecuniary loss of the purchaser.
- (5) The aforementioned exemption from liability shall not apply if the damage is based on intent or gross negligence. Nor shall it apply if the purchaser makes a claim for damages due to non-performance due to the absence of a warranted characteristic.
- (6) If the Company neglectfully fails to honour a main performance obligation or an essential contractual obligation, its liability to pay damages shall be limited to the foreseeable damages typical for the contract.
- (7) The warranty period shall be 12 months, starting from the transfer of risk. This corresponds to a statute of limitations period and applies equally to claims for indemnification for consequential damage due to a defect insofar as no claims are made for actionable tort.
- (8) Warranted characteristics are only those that are designated as such in the specifications.

#### **§ 7 Liability**

- (1) There shall be no further liability other than that provided for in § 6 paragraph (4) to (6) above, regardless of the legal grounds for any claim that might be made.
- (2) The provision of paragraph (1) does not apply to claims based on the product liability act, or in cases of impossibility of performance.
- (3) To the extent that the Company's liability is excluded or limited, this also applies to the personal liability of the Company's staff, employees and assistants in whatever capacity.

#### **§ 8 Retention of title**

- (1) The company reserves the right to ownership of the goods sold until receipt of all payments arising from the contract. The Company shall be entitled to reclaim products already delivered and the purchaser shall be obliged to hand over such products. The purchaser hereby authorises the Company to enter the retention of title in the official register at the purchaser's expense and to deal with all the necessary formalities.
- (2) The processing or transformation of the goods sold are always carried out by the purchaser on behalf of the Company. If the goods sold are processed with other items that are not the property of the Company then the latter shall have co-ownership of the new good in proportion to the value of the goods sold in relation to the other goods involved in the processing at the time it is carried out. In all other respects, the goods created by the processing shall be considered in the same way as the goods sold and delivered under retention of title.
- (3) If the goods sold are inseparably amalgamated with other items that are not Company property, the latter shall have co-ownership of the new good in proportion to the value of the goods sold in relation to the other goods involved in the amalgamation at the time it is carried out. If the amalgamation takes place in such a way as to make the purchaser's good the main good then it shall be taken as agreed that the purchaser shall transfer to the Company a proportionate degree of co-ownership. The purchaser shall hold the sole ownership or co-ownership thus created in safe custody for the Company.

- (4) With the conclusion of the contract the purchaser assigns to the Company any claims against its customers resulting from the resale of the products. The purchaser shall be entitled to enforce such claims after they have been assigned. The purchaser's entitlement to enforce such claims itself remains unaffected, but the Company shall not enforce such claims as long as the purchaser complies with its payment obligations and without being in delay in payment. Should the purchaser not comply, the Company shall be entitled to claim from the purchaser all and any information as to the claims assigned and its corresponding debtors as well as any and all information necessary for enforcement of such claims, to hand over the relevant documents and to inform the debtors about the assignment.

#### **§ 9 Place of performance, place of jurisdiction, applicable law**

The place of jurisdiction for both the purchaser and the Company is Bueren a.A. The Company is also entitled to bring an action against the purchaser in the court of the purchaser's domicile. Insofar as nothing to the contrary is stated in the confirmation of the order, the place of performance shall be the domicile of the Company. The contract shall be governed exclusively by the substantive laws of Switzerland excluding the provisions of international private law (to the exception of Art. 116 PILA, which allows such an express choice of law) and the United Nation convention on contracts for the international sale of goods CISG.

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