



Template effective from: 01.01.2024			
<b>Name:</b>	FB-EK-001-AEB General Terms and Conditions of Purchase		
<b>Author:</b>	Inci Baur		
<b>Core process:</b>	Supplier Management		
<b>Main process:</b>	Purchase	<b>Version:</b>	03
<b>Subprocess:</b>		<b>Date:</b>	24.10.2024
<b>Approval:</b>	Inci Baur	<b>Release date:</b>	24.10.2024

## 1. Scope of Application

- 1.1 The present General Terms and Conditions of Purchase (GTCP) applies to all business relationships of Scherzinger Pumpen GmbH & Co.KG (Customer) with our business partners and suppliers. The GTCP shall apply only if the supplier is a company (§ 14 of the German Civil Code (BGB)), a legal entity under public law, or a separate fund under public law.
- 1.2 Our Terms and Conditions of Purchase shall apply exclusively; we shall only recognize General Terms and Conditions from the supplier that contradict or deviate from our Terms and Condition of Purchase insofar as we have expressly agreed to them in writing. The receipt of goods or services from the supplier (hereinafter: Contract Object) or the payment thereof does not signify consent.
- 1.3 Our Terms and Conditions of Purchase are considered accepted by the supplier in their entirety without amendments when the supplier accepts an order in writing or text form or commences with the deliveries or provisions of services that are items of the order. Every accepted order or otherwise concluded contract for the delivery of goods are referred to as a “delivery contract” in the terms of these GTCP.
- 1.4 Individually negotiated agreements with the supplier and information in our orders take priority over this GTCP. A written contract or the confirmation from Scherzinger in written or text form is decisive for the contents of individually negotiated agreements.

## 2. Conclusion of and Amendments to a Contract

- 2.1 Delivery contracts come into force with the acceptance of our order or call-off. The acceptance is deemed complete if the supplier has not objected to it in written or text form within six business days after receiving the order or within three business days after receipt of the call-off.
- 2.2 Contract conclusions and their acceptances, amendments, and supplements are made in written or text form. Verbal agreements of any art require confirmation from us in written or text form to be effective. Any silence, in particular the failure to object to an offer on the part of the supplier, does not represent consent. Similarly, the unopposed acceptance of the delivered goods does not represent tacit consent.
- 2.3 Quotes and offers are binding and will not be reimbursed, unless expressly agreed otherwise.
- 2.4 We are entitled to request reasonable changes to the construction and design of the delivery items from the supplier at any time. In the case of a change request, the supplier shall immediately present a detailed account of the effects of the change on costs and deadlines on the basis of which a jointly agreed adaption will be made. At our request, the supplier is, however, obliged to immediately implement a reasonable change.


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### 3. Shipment and Packaging

- 3.1 The logistic agreements made with the supplier and separately agreed delivery and packaging specifications are primarily applied.
- 3.2 Every delivery must be accompanied by a delivery note stating at least the following: delivery address, delivery date, contents of the delivery, our item number, batch number, quantity, our order information, order number, order date, and drawing index (provided it is submitted in the order). If the necessary information is incomplete or erroneous, we are entitled to charge an administrative fee of 150 euros to compensate for the processing. Additional claims remain unaffected.
- 3.3 We shall select the mode of transport. If we are responsible for the transport of the goods (e.g., when agreeing to “ex-work or EXW incoterms 2020”), the supplier is nevertheless obliged to inquire about the mode of transport and the courier and settle with them regarding the date for the loading and shipment of the goods independently and in good time to ensure a timely receipt of goods.
- 3.4 If an agreement concerning the packaging has not been met, this must be chosen by the supplier so that the goods are protected against damage and other deteriorations during the transport, loading and unloading, and storage.


### 4. Quality

- 4.1 The supplier must comply with the legal requirements as well as the recognized state of science and technology and the agreed-upon technical specifications for their deliveries. Our written consent is always required in advance for changes to the delivery status, the production process, and the place of production unless expressly agreed otherwise.
- 4.2 The supplier is obliged to observe the standards, legislation, and other safety regulations, such as, e.g., demands of the trade supervisory office, VDE regulations for electric components, or accident preventative regulations, the end-of-life vehicle ordinance, and the Regulation for the Conveyance of Hazardous Goods that respectively apply to the contract objects. They shall indemnify us from all public and private legal claims resulting in a violation of these regulations. The supplier is required to provide the required testing certificates and proofs unprompted for all continued use of the goods (e.g., for their processing, resale, etc.).
- 4.3 Our quality assurance agreement, “V-QM-005 QSV with suppliers” (as of: \_06.27.2024\_) (see online under <https://www.scherzinger-pumps.com/de/downloads/>), applies with respect to the process to be observed by the supplier for the quality assurance of their deliveries.

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## 5. Delivery, Transfer of Risks, and Ownership

- 5.1 Without our prior written consent, the supplier is not entitled to provide the services they owe through third parties (e.g. subcontractors).
- 5.2 Agreed deadlines and periods are binding. Our receipt of the goods is decisive for the compliance with the delivery date or delivery period. If “ex work” (DAP, DPU, or DDP according to incoterms 2020) is not agreed for the delivery, the supplier must prepare the goods on time with consideration of the loading and shipment times agreed upon with the courier.
- 5.3 The supplier is aware that we use the goods they produce for the production of products that our customers (generally, final producers) need for manufacturing their (end) products. Non-delivery or a late delivery of goods substantiates the danger of an assembly line standstill for both us and our customers. The results are considerable costs that usually amount to a multiple of the value of the outstanding order. The supplier shall then undertake everything necessary and reasonable to avoid a non-delivery or late delivery. If the supplier nevertheless notices difficulties regarding the production, primary material supply, fulfillment of the delivery date, or similar circumstances that could inhibit punctual delivery or a delivery with the agreed-upon quality, the supplier must inform us immediately. We reserve the right to assert any claim in full even when new delivery dates are agreed.
- 5.4 In the case of failure of delivery, we are entitled to request a contractual penalty in the amount of 0.2%, maximum 5%, of the respective contract value from the supplier for every completed business day of the failure of delivery. The contractual penalty shall be offset against the damage caused by the delay to be compensated by the supplier which can be claimed until the final payment.
- 5.5 In principle, partial deliveries are not permitted, unless we have expressly consented to this or the circumstances are acceptable to us.
- 5.6 Unless proved otherwise, the values we have determined in the incoming inspection for quantities, weights, and dimensions are decisive.
- 5.7 We are entitled, in the case of deliveries before the stipulated delivery date, to refuse to accept the goods and return the goods at the expense and risk of the supplier or store the goods with a third party at the expense of the supplier.
- 5.8 The supplier’s rights of retention are excluded unless the rights of retention are claimed due to counterclaims that are uncontested or have been legally established.
- 5.9 With receipt of the goods, the risk of accidental destruction of or damage to the goods as well as the ownership of the goods transfers to us.


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## 6. Force Majeure

- 6.1 In the event that a party is hindered from fulfilling their contractual obligations and duties due to an event of force majeure and they can prove the occurrence of such an event with sufficient evidence, the fulfillment of this obligation is suspended as long as the force majeure prevails. "Force majeure" means the occurrence of an event or circumstance that hinders the affected party from fulfilling one or more of their contractual obligations when the impediment lies outside of their feasible control and, at the time of the contract conclusion, could not have been reasonably foreseen and the effects of the impediment on the affected party also could not reasonably have been prevented or overcome. In the absence of evidence to the contrary, the following events affecting one party shall be assumed as meeting the requirements of force majeure: (i) war (declared or undeclared), hostility, attack, acts of foreign enemies, extensive military mobilization; (ii) civil war, turmoil, rebellion and revolution, military or other seizure of power, uprising, acts of terrorism, sabotage, or piracy; (iii) currency and trade restrictions, embargo, sanctions; (iv) legal and illegal official acts, compliance with laws or governmental regulations, dispossession, confiscation of work, requisition, nationalization; (v) plague, epidemic, natural catastrophe, or other extreme event of nature; (vi) explosion, fire, destruction of equipment, prolonged breakdown of means of transport, telecommunications, information systems, or power. If the force majeure lasts longer than six months, every contractual partner is entitled to terminate the existing delivery contract without an obligation to pay compensation to the other party.
- 6.2 Furthermore, Scherzinger has the right to terminate the delivery contract in writing with immediate effect and without liability for damages to the supplier if default of the supplier due to force majeure justifies an immediate termination or if the circumstances giving rise to the force majeure last longer than fourteen days. The supplier's compensation claim for already performed services remains unaffected.

## 7. Prices, Payment Terms

- 7.1 All prices listed in the contract are fixed prices and include all services and ancillary services of the supplier (e.g., assembly, installation) and all additional costs (e.g., proper packaging, transport costs including possible transport and liability insurance) if in individual cases nothing else has been agreed. In addition, the prices include statutory value-added tax, ex-works, and duty paid (DDP according to Incoterms 2020). If the packaging is not included in the price, the supplier is obliged to calculate these at cost price.
- 7.2 If no special agreements have been met, the invoice shall be settled within 30 days with a deduction of 3% cash back or within 60 days upon receipt of both the proper invoice and the

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goods or provision of services in the payment method of our choice. The receipt of our transfer order at the indicated bank is decisive for the punctuality of the due payment.


- 7.3 The proper invoice must be sent to the following address: rechnung@schertzinger.de. Attaching it to the goods delivery is not permitted.
- 7.4 The payment shall be made subject to a payment inspection. We are entitled to offset and retention rights as well as defense of the non-performance of the contract within the scope of legislation. We are particularly entitled to withhold due payments proportionately if we still have claims on incomplete or defective services against the supplier.
- 7.5 If we are in default on payment, the supplier is entitled to apply 5 percentage points over the base interest rate as default damages. There is no claim for payment of interest on arrears.

## 8. Claims for Defects and Recourse, Notice of Defects

- 8.1 The legal provisions on defects in property and title shall apply unless otherwise stipulated below. Under the legal provisions, the supplier is in particular liable for ensuring that the goods have the agreed quality at transfer of risk. In any case, these product descriptions – in particular, the name or reference in our order – are the object of the respective contract or have been included in the same manner as these General Terms and Conditions of Purchase are deemed as the agreement on quality. It is irrelevant as to whether the product description is from us, the supplier, or the manufacturer.
- 8.2 The legal provisions (§§ 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial obligation to inspect and give notice of defects on incoming goods in the following conditions: Our obligation to inspect is restricted to the inspection of incoming goods for visible defects, identity, and quantity of the delivered goods. Defects discovered here are immediately reported. Our obligation to immediate notice of later detected defects likewise remains unaffected. A notice (defect notification) is also deemed as immediate and timely when it follows within 10 business days as of detection or in the case of visible defects, identity deficits, or incorrect quantities as of delivery.

The supplier is obliged to align their QM system to this restricted incoming goods inspection.

- 8.3 In principle, we have the right to choose the type of supplementary performance. The supplier can refuse the type of supplementary performance we choose if it is only possible at disproportionate costs.
- 8.4 If, after our request, the supplier does not immediately begin to eliminate the defect, then we have the right, in addition to the cases regulated by law, even in urgent cases, to eliminate this defect ourselves or have a third party do so at the supplier's expense, in particular to avoid further damage.

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- 8.5 In the case of defects of title, the supplier also indemnifies us against any existing claims from third parties, unless the supplier is not responsible for the defect of title.
- 8.6 Claims for defects have a statute of limitations – except in cases of fraudulent intent – of 3 years for material defects, unless the object has been used appropriately in its normal use for a building which then caused the deficiency. The statute of limitations begins with the delivery of the Contract Object (transfer of risk). In the case of defects of title, the statute of limitations is 5 years.
- 8.7 If the supplier fulfills their obligation to provide a supplementary performance with a replacement delivery, the statute of limitations for the replacement goods then begins anew after the delivery, unless the supplier has expressly and relevantly reserved the right to make the replacement delivery as a gesture of goodwill with the supplementary performance.

## 9. Product Liability and Insurance

- 9.1 In the event, a liability claim is raised against us, the supplier is obliged to indemnify us from such claims at the first request. In the event of fault-based liability, this shall only apply if the supplier is at fault. If the cause of damage lies within the supplier's scope of responsibility, the supplier bears the burden of proof in this respect. The supplier is obliged to maintain product liability insurance with a coverage of at least €10,000,000 for personal injury and property damage.
- 9.2 The supplier assumes all costs and expenses in cases under Section 9.1, including the costs for a possible legal prosecution.
- 9.3 Within the context of indemnity obligation, the supplier must replace the expenses according to §§ 683, 670 of the German Civil Code (BGB) that occurred from or in connection with the contracting of a third party, including recall actions we performed. We will instruct the supplier on the content and scope of recall measures – as far as possible and reasonable – and give them an opportunity to comment. Additional legal claims remain unaffected.
- 9.4 If we have claims against the supplier for reimbursement of expenses and/or compensation for damages up to an amount of €5,000 respectively resulting, for example, from default, substitute performance, direct and indirect consequences of defects, and deviations from stipulated targets, the supplier waives the individual record with regard to expense/damage items. The supplier is at liberty to prove to us that the damage is lower. Claims higher than this amount are subject to the usual obligations to provide evidence.

## 10. Intellectual Property Rights



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- 10.1 If the contractual items are used in accordance with the contract, the supplier is liable for all claims arising from the infringement of industrial property rights and applications for industrial property rights (industrial property rights), at least one of which is published either in the supplier's home country or by the European Patent Office or in the Federal Republic of Germany, Italy, Spain, Poland, Hungary, United States of America, Canada, Brazil, Argentina, China, India, or Saudi Arabia.
- 10.2 The supplier indemnifies us and our customers from all claims arising from the use of such property rights. This does not apply if the supplier has manufactured the contractual objects based on drawings or models or other similar descriptions or information we provided and does not know, or does not need to know in connection with the results we developed, that this infringes on property rights.
- 10.4 At our request, the supplier shall disclose the use of published and unpublished own and licensed property rights and property rights applications regarding goods to be delivered and delivered to us.
- 10.5 Without affecting the existing regulations, the contractual partners undertake to inform themselves immediately of risks of infringement and alleged cases of infringement and give each other the opportunity to meet their respective claims by mutual agreement.

## 11. Performance of Work

Individuals who work at our factory site or enter the factory site on behalf of the supplier must observe the provisions of the respective operating regulations. Liability for accidents that occur to these individuals at the factory site is excluded unless this was caused by our, or that of our legal representatives or subcontractors, willful or grossly negligent infringement of obligations.

## 12. Provision, Tools, and Copyright

- 12.1 Material, components, containers, and special packaging that we have provided remain our property. These may only be used as intended. The production of materials and assembly of components are executed for us. It is agreed that we shall become co-owners of the products manufactured with our material and components in the ratio of the value of the materials provided to the value of the whole product and that the supplier shall store these for us.
- 12.2 The above provision shall apply accordingly to tools, samples, and other objects that we provide to the supplier for production. Such objects are – as long as they are not processed – to be stored separately at the expense of the supplier and insured to an appropriate extent against destruction and loss.

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### 13. Export Control and Customs

The supplier is obliged to inform us of any permit obligations for (re-)exports of their goods under German, European, US export and customs regulations as well as the export and customs regulations of the origin country of their goods in their business documents. The supplier should at least include the following information in their offers, order confirmations, and invoices for the relevant items of goods: - the export list number according to Annex AL of the German Foreign Trade and Payments Ordinance or comparable list items of relevant export lists, - for US goods, the ECCN (Export Control Classification Number) per the US Export Administration Regulations (EAR), - the commercial origin of their goods and their components, including technology and software, - if the goods are transported through the USA, manufactured or stored in the USA, or manufactured with the help of US technology, - the statistical goods number (HS code) of their items, and – a contact person in their office for the clarification of any questions for us. At our request, the supplier is obliged to communicate to us in writing of all other foreign trade data for their goods and their components and immediately (before the delivery of the affected goods) inform us in writing of all changes to the existing data.

### 14. Right of Withdrawal or Termination of the Contractual Partners; Duty to Inform

- 14.1 We are entitled to terminate a delivery contract or parts of such in a written declaration at any time and without giving reasons within an appropriate period (usually thirty (30) days). The contractual partners will then negotiate appropriate compensation with the objective of reimbursing the already agreed series price for finished goods less saved expenses and direct costs for unfinished products or raw materials that the supplier has manufactured or ordered under binding delivery call-offs. Both parties shall minimize the costs here, e.g., with alternative use of materials.
- 14.2 Every contractual partner is entitled, in the event of infringement of important contractual obligations that are not eliminated by the other contractual partner within a reasonable period of time despite a written warning, to terminate the delivery contract without notice or withdraw wholly or partially from the delivery contract. For us, such infringements could be significant, consecutive exceeded deadlines by the supplier or significant, repeated breaches of our quality regulations.
- 14.3 Furthermore, we are entitled to terminate the order without notice in the following instances
- in the event of a significant deterioration of the supplier's financial situation, suspension of payments, filing for insolvency (by the supplier or a third party, unless that claim has not been made in abuse of legal rights), or the opening of an insolvency process or rejection of an insolvency application due to lack of assets;



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- in the event a significant change in the ownership structure or shareholder interests in the supplier's company occurs on the basis of which we cannot reasonably be expected to continue with the delivery contract (e.g., competitive situation);

- if and when a customer of ours terminates the delivery contract for a product for which the goods are included.

## 15. Replacement Parts

The supplier is obliged to have replacement parts available for a period of at least fifteen years after the last delivery. If the supplier would like to cease the production of replacement parts, they must immediately inform us and supply us with our remaining demand at the last valid price if ordered accordingly. We are entitled to order our remaining demand within 12 months of receipt of the communication of cessation of production. This also applies to the ordinary termination of an existing delivery agreement.

## 16. Place of Fulfillment and Place of Jurisdiction


- 16.1 The place of fulfillment is the place where the goods are to be delivered according to the contract or where a service is to be provided.
- 16.2 The place of jurisdiction for all legal disputes directly or indirectly arising from contractual relationships based on these Terms and Conditions of Purchase is Donaueschingen. Furthermore, we are entitled to file a suit against the supplier at our discretion at the court of the place of fulfillment.

## 17. Sustainability and Supplier Assessment

- 17.1 The supplier is obliged to observe the Sustainability Guidelines of Schertzinger Pumpen GmbH & Co. KG. These can be viewed under:

<https://www.scherzinger-pumps.com/fileadmin/PDF/Allgemein/Nachhaltigkeitsichtlinie.pdf>

- 17.2 Furthermore, the supplier undertakes to participate in Schertzinger's campaigns for supplier assessments and provide the information requested by Schertzinger for this purpose. The

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supplier is aware that the successful completion of a supplier assessment is the basis for continued commissioning and the development of the business relationship with the supplier.

## 18. General Provisions

- 18.1 If a provision of these terms and conditions and additional concluded agreements is or will be ineffective, the validity of the remaining provisions will not be affected. The contractual partners are obliged to replace the ineffective provision with one that is as close as possible to it in economic effect.
- 18.2 German law with the exclusion of the United Nations Convention on Contracts (CIGS) shall apply exclusively to the contractual relationship.