

General terms and conditions - Sebert Schwingungstechnik GmbH

Version of 2024

I. General information

1. These terms and conditions apply to all contracts, deliveries and miscellaneous services including consultancy, provision of information and the like of Sebert Schwingungstechnik GmbH. The conditions of the purchaser shall not be legally binding for Sebert Schwingungstechnik GmbH, even in the event that they are not expressly rejected anew upon receipt of them.
2. Any references in leaflets, catalogues, circulars, advertisements, price lists, drawings, pictures, technical data, indications as to weight, measures or performance shall have no binding effect unless they have been declared as contractually binding.
3. Verbal agreements and warranties given by the salespersons are invalid without a written confirmation.
4. It is pointed out that the customer data, which are known in connection with the business relationship of the client or third parties, are processed within the meaning of the Federal Data Protection Act.

II. Offers and contracts

1. Offers of Sebert Schwingungstechnik GmbH are always non-binding; the conclusion of a contract and other agreements are only binding upon receipt of their written confirmation.
2. Orders can only be executed within the scope of the production possibilities. The acceptance period is a maximum of 6 months from the day of the order confirmation. The goods not called during this period are invoiced and submitted to the purchaser. They must be paid immediately.

III. Prices

1. The prices mentioned in the commercial documents of Sebert Schwingungstechnik GmbH represent the goods value, i.e. they are always exclusive of Value Added Tax required by law.
2. Prices are calculated on the basis of those valid on the date of dispatch and, in the case of blanket orders, the price valid on the delivery due date, unless fixed prices have been specifically agreed to in advance. The prices are ex warehouse. If the delivery is not made for the commercial business of the purchaser, the agreed prices shall be deemed bound 3 months after the conclusion of the contract.
3. The minimum invoice amount is € 150.00 of the goods value. In case of processing the small orders below the stated amount, a minimum quantity surcharge may be increased or the minimum invoice amount may be invoiced to cover the costs.

IV Payment terms

1. The invoices shall be paid immediately after delivery without any deductions. The dispatch of the goods is done against invoice or advance payment. Deviations shall require an explicit agreement. Delivery conditions in accordance with the latest version of Incoterms.
2. In case of default in payment, Sebert Schwingungstechnik GmbH is entitled to claim interests in the amount of particular rate of discount of the Federal Bank of Germany plus 4% p.a. The right to claim further damages due to default is reserved.
3. If the purchaser fails to meet its payment obligations in whole or in part or if circumstances become known after the conclusion of the contract which are suitable – according to the sound commercial judgement – to affect the creditworthiness of the purchaser, all claims of Sebert Schwingungstechnik GmbH shall be due for immediate payment, irrespective of the term of any bills of exchange received and credited. Such circumstances entitle Sebert Schwingungstechnik GmbH to perform outstanding deliveries and services only against advance payment or security deposit or - without prejudice to further rights - to withdraw from the contract.
4. Counterclaims that are contested by Sebert Schwingungstechnik GmbH may not be set off. The purchaser is only entitled to a right of retention insofar as it is based on the same contractual relationship.

V. Terms of delivery

1. Terms of delivery are only binding if expressly agreed in writing. They begin with the dispatch of the order confirmation and are complied with if the goods have been dispatched until their expiry date.
2. The prerequisites for the beginning and compliance with the delivery terms shall be fulfilment of all contractual obligations of the purchaser. Obstacles that are outside of the control of Sebert Schwingungstechnik GmbH or the control of any possible pre-suppliers, such as industrial disputes, war or war-like events, export and import bans/force majeure and other delays in the delivery discharge Sebert Schwingungstechnik GmbH from the compliance with the delivery period and entitle them to withdraw from the contract. The responsibility for late delivery or non-delivery due to fault of suppliers cannot be admitted.
3. If Sebert Schwingungstechnik GmbH is in default of payment, the purchaser must set a 4-week grace period before the rights to withdraw from the contract or to compensation can be exercised. Any damage claims are limited to a maximum of 10% of the value of the goods to be delivered.

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VI Quantity and dimension deviations

1. Deviations from samples or earlier deliveries shall be avoided as far as technically feasible.

VII Dispatch

1. The risk shall pass to purchaser as soon as the goods have been handed over to the forwarding agent or carrier but at the latest when the goods have left the storage of Sebert Schwingungstechnik GmbH or with a seizure of the goods.
2. Unless otherwise agreed, the dispatch route and means shall be chosen by Sebert Schwingungstechnik GmbH. The dispatch shall be executed after best judgment freight unpaid ex warehouse against calculation of the expenses. The goods are insured at the request and expense of the purchaser.
3. Partial deliveries are permitted to a reasonable extent.

VIII Warranty

The liability for defects of the goods, which include the absence of certain expressly guaranteed features in writing, shall be held to the exclusion of all other claims as follows:

1. The purchaser must inspect the goods immediately upon receipt. Obvious defects are to be reported within one week after receipt of the goods, other defects immediately after their occurrence by means of a registered letter.
2. The legal warranty period amounts to 24 months. All parts which are unusable or handicapped in their functionality within the warranty period as a result of a circumstance prior to the passing of the risk shall be repaired or re-delivered. If even after repeated rectification, the objected defect in the goods has not been remedied or if Sebert Schwingungstechnik GmbH has passed a reasonable grace period for remedying a defect without effect, the purchaser can either demand new goods, reduce the purchase price or cancel the contract; the same applies if Sebert Schwingungstechnik GmbH has obliged itself to a work performance.
3. The warranty period for rectification, replacement delivery and replacement performance is 3 months. It shall run at least until the expiry of the original warranty period for the delivery object or the service owed.
4. The purchaser shall have no warranty rights in case of items sold as declassified or used material.
5. The purchaser is not entitled to any claims for damages due to faulty deliveries or services. All consequential damages - also from third parties - will not be compensated.
6. If a taking back of the goods is accepted by Sebert Schwingungstechnik GmbH, 10% of the net value of the goods will be charged to cover the costs. Customised products are generally not taken back.

IX Retention of title

1. The goods shall remain the property of Sebert Schwingungstechnik GmbH until all claims against the purchaser arising from the business relationship, including future and conditional claims arising from contracts signed simultaneously or subsequently. This also applies if individual or all claims are incorporated into a running account and the balance is drawn and recognized.
2. In case of breach of contract by the purchaser, in particular in case of default of payment, Sebert Schwingungstechnik GmbH is entitled to take back the goods after a reminder. The taking-back and seizure of the goods shall not constitute a rescission of the contract unless Sebert Schwingungstechnik GmbH expressly states this in writing.
3. The purchaser is entitled to sell the goods in the ordinary course of business on condition that the claims from the resale are passed over to Sebert Schwingungstechnik GmbH as follows: the purchaser assigns to Sebert Schwingungstechnik GmbH all claims and ancillary rights which accrue to the purchaser against the customer or against third parties as a result of the onward sale, irrespective of whether the goods subject to retention of title are sold on in an adapted or unadapted form. The purchaser shall, however, be entitled to collect these claims also after the assignment. The authority of Sebert Schwingungstechnik GmbH to collect the claims itself remains unaffected by this; however, this right will not be exercised as long as the purchaser meets its payment obligations. If the goods are sold together with other goods to which Sebert Schwingungstechnik GmbH does not hold ownership, the claim held by the purchaser against the customer is assigned to the value of the price agreed between Sebert Schwingungstechnik GmbH and the purchaser.

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4. Handling and processing of the reserved goods shall be done on behalf of Sebert Schwingungstechnik GmbH as manufacturer within the meaning of Art. 950 BGB, without implying any obligations on Sebert Schwingungstechnik GmbH. The adapted goods are regarded as goods subject to retention of title for the purposes of these terms and conditions. If the goods under retention of title are processed with or inseparably incorporated into other things that do not belong to Sebert Schwingungstechnik GmbH, the latter becomes an owner in common of the new thing in proportion to the ratio of the invoicing value of the goods under retention of title by the value of the other processed things at the time of processing or incorporation. The property rights having occurred this way are to be understood as goods reserved in the sense of these conditions.
5. If goods subject to reservation of title are joined or intermingled with other movable items to form a single unit, and if the other unit is classifiable as the primary item, it shall be deemed agreed that the purchaser shall transfer to Sebert Schwingungstechnik GmbH proportionate share of title, to the extent that the primary item belongs to it. The item created by the processing, joining or intermingling process shall otherwise be subject to the same provisions as the goods subject to reservation of title.
6. If the value of securities of Sebert Schwingungstechnik GmbH exceeds the total claim against the purchaser by more than 10%, then, at the request of the purchaser, it is obliged to release excess securities of its choice.

X Place of performance and jurisdiction

1. Place of performance for deliveries, services and payments as well as exclusive place of jurisdiction for all disputes arising from all kinds of transactions is, as far as permitted by law, Kirchheim/Teck, Germany. This exclusive place of jurisdiction also applies to all current and future claims arising from the business relationship, be it that the party subject to the claim of the legal action has moved its residence or normal abidance outside of the valid territory of German Law or it is unknown at the time of the litigation. The above shall apply to any claims being presented during a dunning procedure (§ 688 ff ZPO – Code of Civil Procedure).

XI General liability limitations, applicable law

Claims not expressly granted in these conditions, in particular claims for damages due to impossibility, delay, breach of contractual secondary obligations, breach of duty prior to contract, impermissible action - even if such claims are in connection with warranty rights of the buyer - shall be excluded, as far as legally permissible, whether they are based on an intentional or grossly negligent breach of contract by us or one of our vicarious agents. All claims against Sebert Schwingungstechnik GmbH for whatever legal reason become statute-barred no later than half a year after the transfer of risk to the purchaser.

1. The application of the law of the Federal Republic of Germany is arranged exclusively. The use of the Uniform Law on the Sale of Goods of the Hague Sales Convention as of 1964 is precluded.
2. If individual provisions of these delivery and payment conditions should be ineffective, the validity of the remaining conditions and the underlying contract shall not be affected. Insofar as the above conditions contain no regulations, statutory provisions are exclusively applicable.

Kirchheim/Teck 05.11.2024