

STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

of SCHWIND eye-tech-solutions GmbH

1. Applicability

These standard terms and conditions for the sale of goods ("the conditions") shall exclusively apply for any, even future, sales contract between SCHWIND and buyer, unless otherwise agreed by both parties in writing. The conditions shall only apply if buyer is a merchant, a public law entity or a public law trust (Sec. 14 (1) German Civil Code (BGB)).

2. Order

(1) The submission of offers of SCHWIND is not binding for SCHWIND. The buyer shall place an order with SCHWIND which shall completely correspond with the offer of SCHWIND.
(2) The contract shall only be deemed as concluded when SCHWIND confirmed the order of buyer in writing.

3. Prices and Payment

(1) The prices apply for delivery ex works in Kleinostheim excluding packaging. All prices are net prices (without value added tax).
(2) The prices of the good shall be those listed in SCHWIND's current price list at the date of delivery.
(3) Payments shall be executed by buyer within eight days after the buyer received the invoice. If, however, the goods were delivered prior to receipt of the invoice by the buyer, payment shall be executed within eight days from delivery. All payments shall be executed in full without any deductions.
(4) If buyer fails to make payment on the due date or if buyer is on default of payment without prejudice to any other right or remedy available, SCHWIND shall be entitled to charge buyer interest on the amount unpaid at the rate of 8% above the base rate in accordance with Sect. 247 German Civil Law (BGB) since the due date or the date of default payment, respectively.
(5) SCHWIND expressly retains the right to refuse bills of exchange or cheques; bills of exchange or cheques shall not be deemed as payment as long as they are not cashed by SCHWIND. Discount and exchange fees on bills of exchange or cheques shall be borne by the buyer and shall be paid immediately.
(6) If the buyer intentionally or negligently infringes with any of its contractual obligations, especially if the buyer is in default with payment in full or in part, then all outstanding payments of the buyer shall become due immediately, without consideration for the term of any received bills of exchange. This also applies for other contracts not yet fulfilled by both parties, from which SCHWIND can also withdraw in this case. Furthermore, SCHWIND is entitled to request security for all of its claims and to refuse carrying out outstanding deliveries until receipt of prepayment or security.
(7) Partial deliveries are deemed separate transactions; they will be invoiced accordingly and are to be paid separately.
(8) The buyer has the right of retention and refusal of performance until counter-performance of SCHWIND is effected and the right to set off against any claim of SCHWIND only and as far as the buyer's claim is uncontested by SCHWIND or legally approved and such approval cannot be appealed against. SCHWIND has the right of retention and refusal of performance until the counter-performance of the buyer is fully effected and the right to set off against any buyer's claim to the full extent given by statutory law.

4. Delivery

(1) Any delivery term does not begin as long as the buyer has not submitted all documents, permissions, certificates the buyer is responsible for or as long as the buyer has not executed a contractually agreed prepayment.
(2) Risk of damage or loss of the goods shall pass to buyer in case of goods to be delivered at SCHWIND's premises (at works) at the time when the goods are available for collection and SCHWIND notifies buyer of that fact. In case the goods are to be delivered by sending them to the buyer, risk of damage or loss of the goods shall pass to buyer at the time SCHWIND hands over the goods to the carrier.
(3) SCHWIND is entitled to partial deliveries to a reasonable extent.
(4) In the event of deterioration of the financial position of buyer, especially in the event of filing of the application for insolvency proceedings or in the event of filing of an application for a statutory declaration on assets and liabilities (eidesstattliche Versicherung über ein Vermögensverzeichnis), SCHWIND may immediately cancel any delivery and refuse to perform any current contract, as long as the buyer has not fully fulfilled his contractual obligation.

5. Retention of Title

(1) The property in the goods shall not pass to the buyer until SCHWIND has received payment in full of the price of the goods or of any other payment claims in the business relationship between SCHWIND and the buyer, without regard whether the payment claim is current or will be agreed between SCHWIND and the buyer in the future and for which payment is then due. As a payment claim shall be deemed any collateral claim such as interest, costs or any claims for indemnification or any of SCHWIND's claims for balance of current account with the buyer.
(2) Process and finishing of the goods shall take place for SCHWIND in exclusion of property acquisition by the buyer in accordance with Sect. 950 BGB. In case of processing and finishing together with goods which are not property of SCHWIND, SCHWIND shall acquire co-ownership of the new good in proportion to the value of the goods delivered by SCHWIND to that of the other goods at the time of processing. The new object is deemed reserved goods according to these conditions.
(3) In case of connecting, mixing or blending (Sections 947, 948 BGB) with other goods which are not property of SCHWIND, the previous (2) Sentences 2 and 3 are accordingly applicable.
(4) The buyer assigns to SCHWIND in advance his claims from the resale of the reserved goods for the amount of the purchase price to be paid to SCHWIND. The assignment applies also in the case of processing of goods, in the case of resale to several persons and for the buyer's claims for balance of current account against the person the buyer has resold goods to.
(5) The assignment also applies if SCHWIND acquires co-ownership or loses the ownership to the buyer due to connecting, mixing or blending (Sections 947, 948 BGB) and the buyer resells the goods.

(6) The buyer shall be entitled to resell the goods in the ordinary course of his business under the condition that SCHWIND validly acquires the buyer's claim for the purchasing price. The buyer is not entitled to any other disposals of the reserved goods. The buyer may neither sell, pledge or assign the reserved goods as security.
(7) The right of the buyer to resell the goods in the ordinary course of his business shall cease to exist in the event of suspension of his payments to and in the event of filing of application for insolvency proceedings against the buyer.
(8) In the cases of the previous paragraph (7) and in the case of default on payments of the buyer, SCHWIND shall be entitled to withdraw from the contract and to retake the reserved goods from the buyer.
(9) The buyer is entitled to collect payments for the goods he has resold in the ordinary course of his business as long as he does not infringe with his contractual obligations. Upon notice of SCHWIND, the buyer shall submit to SCHWIND an inventory on the reserved goods and debtors' names and to inform the debtors of the assignment to SCHWIND.
(10) Buyer shall immediately inform SCHWIND of any attachment or any seizure of reserved goods through third persons.
(11) Buyer shall effect an insurance on the reserved goods against theft and against property damages caused by breakage, water and fire and to submit due confirmation to SCHWIND. If buyer is on default to submit a proof of insurance to SCHWIND, SCHWIND is entitled to effect the insurance at the buyer's expense.

6. Defects

(1) Defects shall be reported to SCHWIND immediately, however, no later than 10 days, for obvious defects from the time of delivery, for the hidden defects from the time of discovery. Upon expiration of this term, the goods shall be deemed as fully accepted by the buyer.
(2) Normal or slight technical deviations, especially in quality, colour, quantity or weight are not deemed material defects and do not justify any claims.
(3) Where any valid claim is reported to SCHWIND which is based on any defects of the goods, SCHWIND shall be entitled at SCHWIND's sole discretion to either replace or repair the good (Section 439 BGB).
(4) Any claim on defect of the goods is barred by the statute of limitation after one year following the delivery of the good to the buyer. This shall not apply in the cases of Section 438 para. 1 No. 2 and Section 634 a para. 1 No 2 German Civil Code (BGB) and in the case of fraudulent non-disclosure of defect. Regarding the claims for damages or indemnification for contractual costs this also shall not apply in cases of Section 437 No. 2 German Civil Code (BGB) and in cases of Section 7 (1) of these conditions.
(5) The previous paragraphs (3) and (4) shall not apply to any regress claim of buyer in case of consumer sale.

7. Liability for Damages, Withdrawal from the Contract

(1) SCHWIND is responsible for damages based on deliberate action (Vorsatz) or gross negligence (grobe Fahrlässigkeit) by any of its statutory representatives or by any of its vicarious agents or in cases of harm done to life, body or health. In case of negligent infringement with substantial contractual obligations by statutory representatives or business executives of SCHWIND, SCHWIND is only liable for damages which are typical for such kind of contract and which are foreseeable; SCHWIND is not liable for loss of profit and consequential harm caused by a defect. Apart from the above mentioned cases, SCHWIND is not liable for any further damages.
(2) The buyer has no right to withdraw from the contract unless SCHWIND has intentionally or negligently infringed with its contractual obligations.
(3) SCHWIND is entitled to unlimited statutory rights to claim for damages or indemnifications for contractual costs and to the right to withdraw from the contract.
(4) In the case SCHWIND raises a claim for damages in lieu of the contractual performance, his contractual right to demand a contractual performance does not cease to exist as long as he has not received the indemnification from the buyer in full.

8. Lump Sum for Damages

In the cases where SCHWIND is entitled to claim for damages due to an infringement with a contractual obligation of the buyer, the buyer shall in any event indemnify SCHWIND for loss of profit and pay a lump sum for costs in the amount of 20% of the purchasing price plus value added tax. The buyer is, however, allowed to prove that there are no damages at all or that the damage is substantially lower than the lump sum for costs.

9. Patent Infringements

In the case SCHWIND produces the goods on the basis of a buyer's proposal, such as on the basis of a draft, sample or any other certain information of the buyer, the buyer warrants that the product does not infringe with any rights of third persons, especially with no utility model or any other intellectual property rights. Buyer shall be obliged to release SCHWIND from any claims of third parties which may result from such an obligation.

10. Venue, Applicable Law

(1) If the buyer is a merchant as defined in German Commercial Code (HGB), a public law entity or a public law trust (Section 38 (1) German Code of Civil Procedure (ZPO)), the exclusive venue for any dispute arising out of this contract shall be for both parties Frankfurt am Main. SCHWIND is entitled to sue buyer at buyer's general venue. This is also applicable in the case of documentary procedure, bills of exchange or cheques procedure.
(2) The complete contractual relationship of SCHWIND the buyer shall be exclusively governed by Law of German Federal Republic. The U.N. Convention on the International Sale of Goods shall not apply.

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