

## **General Terms and Conditions of Business for use in commercial transactions with businesses - Valid from 1<sup>st</sup> August 2011 –**

### **1. General**

These general terms and conditions of business alone shall govern the entire business relationship with our customers. They shall also apply for all future business relationships without having to be expressly included again. Any terms and conditions of purchase or other terms and conditions of business of our customers which may contradict our terms and conditions of business shall not become part of the contract should we not object to them or should we deliver the consignment. Even if W.Schillig refers to correspondence which contains the Contracting Principal's terms and conditions, or those of a third party, this does not constitute a consent regarding the applicability of said terms and conditions. We hereby reject the application of such terms and conditions. Agreements to the contrary or deviating from these terms and conditions of business to hand must be made in writing to be valid.

The customer shall also guarantee that the information and documentation he provides to the tax authorities is correct in the event that W.Schillig should lose the right to offset its VAT payments as a result of incorrect information or has to pay value added tax as a result of an invalid VAT registration number, the customer alone shall bear the risk.

### **2. Scope of Performance**

The quality shown in our current catalogues and price lists defines our performance and is complete. Other public statements do not include any descriptions of the goods to be delivered which may be taken as supplementing or amending the catalogue.

### **3. Terms of payment and offsetting**

The remuneration shall be payable in full upon delivery, unless other terms of payment have been agreed. The Customer shall be in default thirty days from the date on which payment is due, unless he has paid, otherwise he owes the legal default interest. In the event that there are defects the Customer shall not be entitled to a right of retention, unless the Customer is obviously entitled to refuse to accept the consignment. In such a case the Customer shall only be entitled to retention provided that the retained amount is in a reasonable proportion to the defects and the probable costs of subsequent fulfillment (this means in particular rectifying a defect). The Customer shall not be entitled to assert claims and rights on account of defects if he has not paid up payments which are payable and the payable amount is in a reasonable proportion to the value of the consignment beset with defects. Above and beyond this, offsetting against claims by W.Schillig or asserting a right of retention against a claim by W.Schillig is not allowed, unless this counter claim has been recognised by W.Schillig or has been declared final and absolute in a court of law.

### **4. Delivery Date**

Deadlines and appointments held out for by W.Schillig for performances or deliveries are always approximate. Anything to the contrary only applies when the customer and W.Schillig have agreed to a set period, or set appointment expressly. As far as delivery has been agreed upon, the delivery appointment or deadline refers to the point in time when the object is transferred to the carrying company, the freight company, or any other third party commissioned with the delivery. W.Schillig is entitled to demand an extension to the delivery and performance appointment for the period in which the customer does not fulfill his duties vis-à-vis W.Schillig – notwithstanding the rights from the delay.

### **5. Dispatch and passing of risk**

The type of delivery and packaging is subject to W.Schillig's dutiful discretion. Risk is transferred to the customer at the latest upon delivery of the subject of delivery, whereby the commencement of the loading process to the freight company, the carrying company or the third party commissioned with the delivery is significant. W.Schillig assumes no liability for damages or losses in transit, as long as W.Schillig cannot be accused of dealing with gross negligence or intention. Should the delivery or transfer of risk be delayed for reasons which are the customer's responsibility, risk is transferred as of the day in which the subject of delivery is ready for dispatch and W.Schillig has informed the customer of this. Should nothing to the contrary have been agreed upon, delivery will take place FCA and duty unpaid for international transport. The customer will carry the costs of storage after risk is transferred. If W.Schillig is to store the subject of delivery, the cost is 0.25% of the invoiced amount of the object to be delivered per finished week. The right to provide proof of fewer costs or further costs remains unaffected.

Unless delivery has not been agreed upon with customer, W.Schillig reserves the right at shipment of merchandise basically not to ensure it in case of shipment. Upon the express wish of the customer, W.Schillig may inspect the possibility of ensuring the delivery against insurable risks, at the expense of the customer, whereby W.Schillig reserves the right to deny insuring the delivery.

### **6. Reservation of title**

W.Schillig shall be granted the following securities until all the claims to which W.Schillig is entitled (including all claims on the balance of current account) based on any legal reason against the Customer now or in future until all W.Schillig claims are fulfilled. Upon demand such securities shall be released by W.Schillig at its choice, provided that the value of such securities exceeds its claims by more than 20% on a permanent basis. The goods shall remain the property of W.Schillig until all its secured claims have been paid for in full. Processing or transformation of the goods shall always be affected for W.Schillig as manufacturer, without however, this creating any obligation for W.Schillig. If the (co) ownership of W.Schillig expires as a result of its products being combined with other products, it shall consequently be agreed here and now that the (co) ownership of W.Schillig to the combined thing shall pass over to W.Schillig in proportion to the value of W.Schillig goods to the invoiced value of the combined thing. The Customer shall keep the (co) ownership of W.Schillig without payment. Goods to which W.Schillig is entitled to (co) ownership, shall be known in the following as goods subject to reservation of title.

The Customer shall be entitled to process and sell the goods subject to reservation of title in the course of a proper commercial transaction, as long as he is not in default with paying W.Schillig's invoices. The Customer must not pledge the goods subject to reservation of title or assign them by bill of a sale as a security. The claims created with regard to the goods subject to reservation of title (including all claims on the balance of current account) from resale or other legal reason (insurance, claim against third parties for damages in compensation on account of an illegal act) shall be assigned by the customer to W.Schillig here and now and in full for the sake of security.

W.Schillig authorises the customer revocably to collect the assigned claims for W.Schillig's account but in his own name. This collection authorization can be revoked, if the Customer does not fulfill his payment obligations to W.Schillig properly.

In the event of third party seizures of the goods subject to reservation of title, the Customer shall point out that the goods are the property of W.Schillig and notify W.Schillig of the seizure immediately. Costs and damages shall be reimbursed by the Customer. In the event of breaches of duty by the Customer, in particular default in payment, W.Schillig shall be entitled, even without setting a time limit to demand the surrender of the delivered goods and / or to withdraw from the contract; the Customer shall be obliged to hand over the

goods. A demand for the surrender of the delivered goods shall not constitute withdrawal from the contract by the seller unless this is expressly stated.

#### **7. Limitation of liability and conditions for claims based on defects**

Warranty claims are not valid for an insignificant deviation from the quality, which has been agreed on, or for an insignificant impairment of usefulness. Usual differences in the surface structure of leather covers are no defects.

In addition, warranty claims shall only be valid if notification of recognizable defects is made in writing before transfer of possession or delivery to the end customer. Every complaint about a defect must be in writing. Each complaint must be made promptly. This means that the notification of a defect must be received in writing by W.Schillig no later than 10 (ten) calendar days after the delivery and for overseas deliveries 30 (thirty) calendar days. The fulfillment of this obligation to notify in writing is also a prerequisite for claims according to paragraph 478 of the German Civil Code.

In all cases W.Schillig shall be entitled to choose between rectifying the defect and supplying new goods. If the subsequent fulfillment is unsuccessful, the Customer shall consequently be entitled to reduce the price or to withdraw from the contract. If the Customer demands compensation for damages instead of performance, or carries out a repair himself, W.Schillig shall be allowed a second attempt to effect subsequent fulfillment. Only once this second attempt has failed shall subsequent fulfillment be regarded as having been unsuccessful.

This expenditure required for the purposes of subsequent fulfillment shall be borne by the Customer, in so far as they increase as a result of the goods and services having to be rendered to a place other than the Customer's premises.

In cases of intent or gross negligence W.Schillig shall be liable in accordance with the law. Moreover W.Schillig shall only be liable in accordance with the (German) Product Liability Law, on account of loss of life, physical injury or impairment of health or on account of a culpable breach of important contractual obligations. The right to compensation for the breach of important contractual duties and in all cases of gross negligence is however, limited to damages which are foreseeable for this type of contract.

W.Schillig's liability shall also be limited in all cases of gross negligence to damages which are foreseeable for this type of contract. Liability for damage to the Customer's legal property is ruled out. This shall only not apply in cases of intent or gross negligence or on account of loss of life, physical injury or impairment to health.

The exclusion of liability shall also cover compensation for damages plus performance and compensation for damages instead of performance, regardless of the legal reason, in particular on account of defects, the breach of duties under the obligation or illegal act.

Moreover, W.Schillig's liability on account of delay in performance for compensation for damages in addition to performance shall be limited to 5% and for compensation for damages instead of performance to 10% of the value of the goods or service. Claims by the customer over and above this shall be ruled out. Liability by W.Schillig on account of impossibility for compensation for damages and to the reimbursement of expenditure spent unsuccessfully shall be limited to a total of 10% of the value of the goods and services. Claims over and above this by the customer on account of impossibility of supply are ruled out. These limitations shall not apply in cases of intent, gross negligence or on account of loss of life, physical injury or impairment to health. The Customer's right to withdraw from the contract on account of impossibility shall not be affected as a result of this.

The limitation period for defect claims concerning deliveries and services amounts to one year from the time of delivery. This does, however, not apply to cases under Section 479(1) of the Bürgerliches Gesetzbuch ('German Civil Code'), unless the recourse claims of the customer against W.Schillig are effectively excluded.

Claims and rights arising due to defects in the deliveries of used articles – regardless of the legal grounds – are excluded. This exclusion provision for the deliveries of used articles also applies to all claims for damages against W.Schillig which are connected to the defects, regardless of the legal ground for the claim. To the extent that claims for damages of any kind exist against W.Schillig which are not connected to a defect, these shall be excluded.

The provision on the limitation period and the exclusion provision are not generally applicable in the case of intent, if W.Schillig has maliciously not disclosed a defect, for claims for damages in cases of injury to life, limb, health or freedom, for claims stemming from the Produkthaftungsgesetz ('Product Liability Law'), in the case of a gross negligent breach of duty or in the case of a violation of essential contractual duties.

The Customer shall not have any right of recourse against W.Schillig in accordance with § 478 BGB, because W.Schillig grants a discount on the purchase prices charged to date in line with the net purchase list in force at that time.

#### **8. Place of fulfillment and place of jurisdiction**

W.Schillig's headquarter in 96237 Ebersdorf-Frohnach, Germany shall be regarded as the place of fulfillment for all deliveries. The sole place of jurisdiction for all legal disputes is Coburg. Binding legal regulations regarding sole jurisdiction remain unaffected by this regulation. These terms and conditions of business shall be governed by German law excluding United Nations Convention on Contracts for the International Sales of Goods. In the event that there should be a legal dispute in a court other than a German court the Buyer shall be obliged to bear the costs of the legal dispute and to reimburse the lawyers' costs incurred by W.Schillig. The Buyer is aware that his data will be stored on a computer.

#### **9. Validity**

Should this contract or these general terms and conditions contain loopholes, then the legally affective regulation applicable to the implementation of the contract, which comes closest to the goals of the contract and these general terms and conditions, which the contractual partners would have agreed upon were they aware of the loophole, is seen as agreed upon.