

Terms and Conditions of Delivery and Payment of Schwinn Beschläge GmbH

I. General Information

1. Our deliveries, services and offers are made expressly on the basis of the following terms and conditions. These shall also apply to all future business relations, even if they are not expressly agreed again. These terms and conditions shall be deemed to have been accepted upon receipt of the goods or service by the Buyer at the latest. Any counter confirmation of the Buyer referring to its terms and conditions of business is hereby rejected. Any deviating terms and conditions shall only be effective if they are confirmed by us in writing.
2. **We point out that we will process data concerning the Buyer and the business transacted with the Buyer as defined in the German Federal Data Protection Act.**

II. Offer and Conclusion of Contract

1. Unless expressly stated otherwise, our offers shall be without obligation. Samples and specimens shall be for guidance only and are not binding. Sales contracts and agreements shall only become binding upon our written order confirmation or through our delivery, with our invoice substituting the order confirmation in the latter case.
2. Any order placed stating "as previously supplied" shall in all cases only refer to the design, and not to the price.
3. The only valid production description shall be the Schwinn article name. Additional references to customer article names shall not be binding.
4. Our technical advice, verbal or written, concerning application shall not be binding – also in relation to any third-party property rights – and shall not exempt the Buyer from its own obligation to examine our products with regard to their suitability for the processes and purposes intended by the Buyer.

III. Prices

1. Unless otherwise agreed, our prices are quoted "ex works" or "ex warehouse" and do not include packaging, freight or value added tax at the rate applicable on the day of delivery.
2. Unless expressly agreed otherwise, the stated prices shall be without obligation and based on current cost factors. Should these cost factors change before the date of delivery, e.g. due to price increases for raw materials or wage increases, we reserve the right to adjust our prices accordingly.
3. In the case of orders for which no prices have been agreed our prices that are valid on the day of delivery shall apply.
4. Selling prices as well as all offers and calculations shall be in EUR unless expressly agreed otherwise.

IV. Terms of Payment

1. Unless a different method of payment has been agreed upon by separate contract, the following shall apply: 2 % cash discount on the value of the goods (excluding the costs for packaging, freight and similar costs) for payment within 10 days; net cash within 30 days of the date of invoice, unless different terms of payment are given for certain ranges in the price lists. No cash discount shall be given on tool costs or on orders with a net invoiced value of goods less than 150.- EUR. The cash discount indicated above shall only be given after all payment obligations from previous deliveries have been discharged in full. Payment is to be effected irrespective of the receipt of the goods and any notice of defects. The place of performance for payments is Ober-Ramstadt.

2. The Buyer shall only be entitled to offset or withhold payment if its counterclaim is undisputed or has been legally established.
3. If payment deadlines are exceeded, this shall automatically give rise to default without a prior reminder being required. The Buyer shall also be in default if it fails to pay after having received a reminder following the due date of the purchase price.
4. Bills of exchange and checks will only be accepted for collection on account of payment, and we shall not be liable for due presentation and protest. In cases where bills are accepted, discount and any charges incurred will be invoiced; acceptance shall be subject to the right to demand cash payment against return of the document at any time. If payment is made by check, a cash discount may only be deducted if we receive the check within the period allowed. In the event of bills being accepted, no cash discount will be given.
5. In the event of default of payment, all open accounts or outstanding amounts of bills of exchange shall immediately become due and enforceable. If the terms of payment are not observed or in the event of circumstances that are capable of impairing the credit worthiness of the Buyer, we shall be entitled to declare all receivables immediately due for payment, regardless of the term of any bill discounted and not yet payable. Furthermore, we shall be entitled to effect any outstanding deliveries only against advance payment or the provision of security. If advance payments are not made or security is not provided even after setting a reasonable period of time, we shall be entitled to withdraw from the contract in respect of any goods and services not yet delivered, with the consequence that all claims on the part of the Buyer with regard to such deliveries not yet effected shall expire.
6. In the event of default of payment, we will charge interest as of the due date at the rate of 8 % above the current base rate. We reserve the right to claim for proven higher damages.
7. We shall be entitled to offset all receivables due to us from the Buyer against all receivables due to the Buyer from us on account of delivery or for other legal reasons.
8. We shall only grant price discounts and other concessions on the understanding that all our requirements are satisfied as agreed upon. If the Buyer is in default of payment we shall be entitled to cancel any price discounts and other concessions that we may have granted.
9. For foreign orders the following shall apply: the prices quoted in offers shall be understood to be inclusive of the costs for freight or freight to port and for loading aboard ship, without any obligation on our part with regard to timely transportation. If loading aboard ship of a "Free on Board Ship" purchase is delayed because the orderer did not issue a shipping instruction on time or the required shipping space was not available on time, the orderer shall be obliged to pay for the goods even before they are loaded aboard ship. The goods will be held in storage at the expense and risk of the orderer.

V. Retention of Title and Other Securities

1. The goods shall remain our property until all of our receivables, including any receivables that may arise in future from the business relationship, have been paid in full.
2. Goods subject to retention of title and supplied by us shall always be processed and altered to the exclusion of any acquisition of title pursuant to Section 950 of the German Civil Code (BGB) by our order, but without incurring any obligation on our part. The processed goods shall serve as our security only to the value of the goods subject to retention of title. In the event that the Buyer processes the goods together with other goods not owned by us, we shall be entitled to co-ownership of the new product in proportion to the value of the retained goods (invoiced value) with the consequence that this new product shall then constitute goods subject to retention of title within the meaning of these terms and conditions.
3. The Buyer shall be entitled to process and to sell the goods subject to retention of title in the orderly course of business.

4. The Buyer hereby assigns to us by way of security all receivables due to it, including balances receivable from current account agreements, any treatment, processing or incorporation of the goods supplied by us; this shall apply equally to claims of the Buyer for other legal reasons (insurance, tort, etc.) in respect of the goods under retention of title. Assignment shall in each case be restricted to the value, as indicated in our invoices, of the goods delivered.
Should the Buyer's customer have effectively excluded the assignment of receivables against itself, the Buyer and ourselves shall, within our internal relationship, act as if the afore-mentioned receivables of any type assigned to us in advance have been effectively assigned to us. We shall be authorized by the Buyer to assert the amount receivable in its name for our account as soon as the Buyer is no longer entitled, pursuant to the following provision, to collect the amount receivable in its own name.
5. We revocably authorize the Buyer to collect the receivables assigned to us for its own account and in its own name. As soon as the Buyer fails to meet any obligation to us, or any circumstance specified in IV.5 herein arises, the Buyer shall, at our request, disclose the assignment and furnish us with the necessary information and documents. We shall also be entitled to notify the Buyer's debtors of the assignment directly and to demand payment from them.
6. The delivered goods must neither be pledged nor assigned by way of security without our consent. Should a third party wish to seize the goods subject to retention of title, the Buyer shall draw attention to our title, inform us without delay and provide us with any assistance that is necessary to safeguard our rights.
7. In the event of the Buyer acting in breach of contract – in particular default of payment – we shall be entitled to assert our retention of title and to demand the immediate surrender of the goods subject to retention of title and, by ourselves or through agents, obtain direct possession of such goods or, if necessary, to demand the assignment of the Buyer's right to recover possession against any third parties. Asserting the retention of title shall not constitute a withdrawal from the contract.
8. Should the value of securities existing in our favor exceed our receivables in total by more than 20 %, we shall, at the Buyer's request, be obliged in this respect to release securities of our choice.
9. The Buyer shall adequately insure all goods under retention of title against fire and theft. Claims against the insurance company arising from a damage claim are hereby assigned to us in the amount of the value of the goods subject to retention of title.
10. In the event of insolvency, the retention of title shall relate to all goods belonging to or constituting part of the assets and supplied by us, including those already paid by the Buyer, until all receivables due to us have been fully paid. If the Buyer suspends payment before having paid us for the goods we have supplied, we shall have the right, pursuant to Sections 47, 48 of the German Insolvency Code (InsO), to segregate the goods or to require substitutional segregation.

VI. Periods of Delivery and Performance

1. The place of performance in respect of deliveries shall be Ober-Ramstadt, Germany. The periods of delivery and performance shall be deemed met if, at the time such periods expire, the item of delivery has left the plant or notice has been given that it is ready for dispatch, or the service has been performed.
2. The period of delivery and performance shall be extended by a reasonable amount of time in the event of measures in connection with industrial action, in particular strikes and lock-outs, as well as the occurrence of unforeseen obstacles beyond our control insofar as such obstacles verifiably have a significant impact on the production or delivery of the article to be supplied or on the performance of the service requested. This shall also apply if such circumstances occur at our suppliers or if we ourselves are inadequately supplied with primary materials through no fault of our own, or if such circumstances arise while we are in default. In the event of a deadline being exceeded for a prolonged period, we and – after first granting a period of grace – the Buyer shall be entitled to withdraw from the contract. In important cases, we shall notify the Buyer as soon as possible of the beginning and

end of such hindering circumstances.

3. The Buyer can withdraw from the contract without giving notice if it finally proves impossible for us to perform all contractual services before the passage of risk. Furthermore, the Buyer can also withdraw from the contract if it proves impossible for us to fulfill part of an order and the Buyer has a justified interest in refusing partial delivery. If this is not the case, the Buyer must pay the contractual price for the partial delivery. The same shall apply if we are unable to perform our obligations under the contract. In other respects the provisions of section IX.2 herein shall apply. If the impossibility or inability to perform occurs during the delay in acceptance, or if the Buyer is solely or largely responsible for these circumstances, it shall still have a duty of counter performance.
4. If the Buyer sets us – after the due date and taking account of the statutory exceptions – a reasonable deadline for the delivery and we fail to deliver on time, the Buyer shall be entitled to withdraw from the contract in accordance with the statutory regulations. Other claims arising from delayed delivery are governed exclusively in accordance with section IX.2 herein.
5. The Buyer must immediately request delivery of goods notified as being ready for dispatch upon expiry of the delivery period; otherwise we shall have the right to forward the goods or to store them at the Buyer's cost and risk, at our option and discretion. The same shall apply if dispatch cannot be effected by us for reasons beyond our control. Upon notification that goods are ready for dispatch, they shall be deemed to have been delivered and can be invoiced.
6. The mode of forwarding, means of dispatch, transport route as well as the nature and scope of required protection and the choice of forwarder or carrier as well as packaging shall be at our option. These choices will be made at our discretion and exercising due care and attention, to the exclusion of any liability whatsoever. The goods will only be insured at the express request of the Buyer and at the latter's expense.
7. Partial deliveries shall be admissible. We shall be entitled to over- or undersupply by 10% of the ordered volume, or 25% in the case of products manufactured to specification, against invoice.
8.
 - a) Terms of purchase of our customers shall only apply to the extent they do not contradict our Terms and Conditions of Delivery and Payment.
 - b) We shall be entitled to assign the claims arising from our business relationship.
 - c) Place of jurisdiction shall be the registered place of business of the issuer of the invoice.

VII. Passing of Risk

1. Unless nothing to the contrary has been agreed, the risk shall in all cases pass to the Buyer when the goods are handed over to the forwarder or carrier, however at the latest when the goods leave the plant or warehouse.
2. Complaints with respect to incomplete, defective or incorrect delivery must be made to us in writing without delay and at the latest within 10 days after arrival of the goods. Otherwise the deliveries shall be deemed to have been approved.

VIII. Claims for Defects

For material defects and defects in title we warrant – subject to section IX herein and barring any further claims – as follows:

Material defects

1. For all parts or services that exhibit a material defect within the period of limitation we shall, at our option, carry out repairs or deliver replacements at no charge insofar as the cause of the material defect existed at the time of passing of risk.
2. In the event of a notice of defects, the Buyer may withhold a share of its payments

in a reasonable proportion to the material defects. The Buyer may only withhold payments if there can be no doubt that the notice of defects is justified. If the notice of defects proves to be unjustified, we shall be entitled to demand payment of our costs incurred from the Buyer.

3. Initially, we shall be granted opportunity to render subsequent performance within a reasonable period of time. If subsequent performance fails, the Buyer – without prejudice to any claims for damages pursuant to section IX herein – can cancel the contract or reduce its payment.
4. Claims for defectiveness shall not be admissible if the goods vary only insignificantly from their agreed characteristics, if their usefulness is only insignificantly impaired, or if they have suffered natural wear or damage after the passing of risk due to incorrect or negligent handling, excessive loading or the use of unsuitable operating aids.
5. Claims made on the part of the Buyer to recover expenses necessitated by subsequent performance, especially transport, travel, labor and material costs, shall be inadmissible to the extent that the expenses have been increased because the delivered item was subsequently transferred to another location other than the Buyer's business establishment, unless the relocation is connected to the intended use of the goods.
6. Claims under a right of recourse on the part of the Buyer pursuant to Section 478 of the German Civil Code (BGB; entrepreneur's recourse) shall only apply to us insofar as no agreement exceeding the statutory provisions for claims concerning defects exists between the Buyer and its customer. No. 5 shall also apply in relation to the scope of claims under a right of recourse against us pursuant to Section 478, paragraph 2 of the German Civil Code.

Defects in Title

1. If we are required to deliver goods based on drawings, models, samples or using parts provided by the Buyer, the Buyer shall guarantee that property rights of third parties in the country of destination of the goods are thereby not violated. We will inform the Buyer of whatever rights we know of. The Buyer must release us from third-party claims and pay any ensuing damages. If a third party restrains us from manufacturing or delivering goods due to protective rights claimed by such third party, we shall be entitled – without checking the legal position – to stop work pending legal clarification by the Buyer and the third party. Should the delay be such that it is no longer reasonable for us to complete the order, we shall be entitled to withdraw from the contract.
2. Barring any agreement to the contrary, we shall be obliged to render the delivery free of any industrial property rights and copyrights of third parties solely in the country of the place of delivery. If the use of the delivered item causes industrial property rights or copyrights to be violated, we will in principle and at our expense procure for the Buyer the right to continue using it, or ensure that the delivered item no longer violates the rights concerned by modifying it in a manner which the Buyer can be reasonably expected to accept.
3. If this is not possible on commercially reasonable terms or within a reasonable period, the Buyer shall be entitled to withdraw from the contract. We shall also be entitled to withdraw from the contract under the stated conditions.
4. We will furthermore release the Buyer from uncontested or legally established claims by the relevant holder of the property rights.
5. The obligations on our part cited in No. 2 shall be – subject to section IX.2 herein – exhaustive with regard to the violation of property rights or copyrights.

They exist only if

- the Buyer informs us without delay of asserted claims concerning property right or copyright violations
- the Buyer supports us to a reasonable extent in countering the asserted claims or enables us to carry

- out the modification measures
- all countermeasures including out-of-court settlements remain reserved to us
- the defect in title is not based on an instruction or special provision by the Buyer and
- the Buyer itself did not cause the violation of property rights by having willfully altered or used the delivered item in a manner that is contrary to the contract or by otherwise incurring responsibility for the property right violation.

IX. Liability

1. Claims for damages and for compensation of expenses on the part of the Buyer, for whatever cause, in particular for violations of duties arising out of the contractual obligation and impermissible conduct, shall be excluded insofar as no liability is incurred in terms of No. 2.
2. For damage other than to the delivered item itself we shall only assume liability – on whatever legal grounds – in the case of
 - a) intent
 - b) gross negligence on the part of the proprietor/executive bodies or managerial staff
 - c) culpable injury to life, limb, health
 - d) defects that we have fraudulently concealed or the absence of which we have guaranteed, and
 - e) defects in the delivered item insofar as liability is incurred under the Product Liability Act for personal injury or material damage caused to privately used items.In the event of culpable breach of material contractual obligations we shall also assume liability for gross negligence on the part of non-managerial staff and for slight negligence, limited in the latter case to damage typical under the contract and reasonably foreseeable. Further claims shall be excluded.
3. Insofar as our liability is excluded or limited, this shall also apply in respect of the personal liability of our staff, legal representatives and vicarious agents.
4. The foregoing provisions are without prejudice to the statutory provisions governing the onus of proof.

X. Period of Limitation

1. All claims on the part of the Buyer – for whatever legal reason – shall become statute-barred after 12 months. For damage claims according to section IX, No. 2 a) to e), the statutory periods shall apply. These shall also apply to defects in buildings or delivered items which, having been put to their customary use in construction, are the cause of the building's defectiveness.

XI. Tolerances

1. Normal commercial variations in appearance, weight and color shall not entitle the Buyer to make a complaint. Illustrations, dimensions and weights in our lists, technical delivery standards, offers and order confirmations are only approximate. Variations in dimensions, weight, quantity and quality shall be permissible within the scope of normal commercial tolerances or in accordance with relevant standards. We do not make any representations regarding compliance.

XII. Copyrights and Industrial Property Rights, Molds and Tools

1. We reserve all rights of ownership and copyrights to drawings, samples and similar information; they may only be made available to third parties with our prior consent.
2. We shall in all cases claim the exclusive right of manufacture of articles relating to

designs, drawings and tools made by us. Unless expressly permitted, these documents and tools may not be passed on or duplicated, nor may their content be utilized or disclosed. Contravention hereof shall give rise to a claim for damages. We reserve all rights in the event of a patent being granted and for registrations of utility models. The Buyer shall warrant that the manufacture and supply of articles made in accordance with data supplied by the Buyer do not violate third-party property rights.

Molds, templates and other jigs and fixtures shall remain our sole property even if costs are charged to the orderer.

3. Insofar as we produce or procure models, molds, tools and other forming devices on behalf of the customer, we shall invoice a portion of the costs separately. As these partial costs do not cover our expenses incurred for design, construction, running-in, know-how and maintenance work, such models, molds and tools, including accessories, shall remain our sole property. The same shall apply in respect of modifications or replacement models and tooling as well as subsequent molds. The costs of tooling, molds etc. shall be immediately payable upon receipt of invoice, including statutory value added tax. If more than 3 years have elapsed since the last delivery of articles produced from them, we shall not be bound to retain them.

XIII. Place of Jurisdiction, Miscellaneous

1. The place of jurisdiction agreed for all mutual claims and obligations, including those related to receivables from bills of exchange and checks (irrespective of the place of payment) as well as for legal proceedings for cancellation of contract and reductions in price (regardless of in whose hands the subject of litigation is) shall be the regional court (Landgericht) in Darmstadt, irrespective of the amount of the value in dispute.
2. Should the contracting party suspend payment or should a petition be filed for insolvency proceedings against its assets, Schwinn Beschläge GmbH shall be entitled to withdraw from the part of the contract not yet performed.
3. German law shall apply. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.

Date 04/2012