

## **General Terms and Conditions of Sale and Delivery of Wilhelm Schwarzmüller GmbH**

Version dated 01/05/2023

### **I. General information**

These General Terms and Conditions of Sale and Delivery apply to all legal transactions and the provision of services for which Wilhelm Schwarzmüller GmbH (FN 364874 f, hereinafter referred to as „Schwarzmüller“) acts as contracting partner. The present General Terms and Conditions of Sale and Delivery shall apply exclusively.

The respective country-specific General Terms and Conditions of Sale and Delivery of the companies of Schwarzmüller shall apply for all legal transactions and services for which Wilhelm Schwarzmüller GmbH does not act as contracting partner.

The present General Terms and Conditions of Sale and Delivery are designed exclusively for business transactions. There are no sales to private individuals.

### **II. Conclusion of the contract and its content**

All offers on the Internet, in brochures, advertisements and other advertising material are subject to change and are non-binding, unless they are expressly labelled as binding. Schwarzmüller accepts no liability for printing errors and mistakes.

At the customer's request, Schwarzmüller will forward to the customer a written offer containing all the necessary specifications for the order. A contract is concluded once the Contracting Partner signs the offer.

The Contracting Partner expressly recognises that the content of the agreement is composed exclusively of the written offer and that there are no verbal collateral agreements. Any agreements that deviate from the written offer or supplement it shall only apply if they are confirmed in writing by Schwarzmüller.

Any subsequent changes/adjustments to the order can only be made in writing. They shall only be deemed accepted if they are confirmed in writing by Schwarzmüller. Any subsequent changes to the order are, in principle, subject to a charge. Should the subsequent change necessitate a different design of the delivery item in any form, Schwarzmüller shall no longer be bound to any agreed delivery date. A new delivery date will be announced by Schwarzmüller in writing. (For details on delivery, see Point VII).

Schwarzmüller reserves the right to make changes to the design and shape during the delivery period. Any information in the descriptions regarding performance, weights, operating costs, speeds, etc. must be regarded as approximate. The unladen weight stated in quotations, order confirmations or other documents may deviate by up to +/- 5% to allow for manufacturing tolerances.

### **III. Prices**

All prices are net prices ex works, in particular excluding VAT, discounts, freight, packaging, transport, postage, customs duties, fees and other public duties and any comprehensive/liability insurance premiums. Prices are always quoted in EURO, unless another currency is expressly stated in the offer. If it is necessary

to convert currencies for invoicing purposes, the exchange rate on the date of accounting shall be applicable.

The prices stated in the offer apply.

However, the contractually agreed prices may be adjusted if changes of at least 2% have occurred since the contract was concluded with respect to individual cost components such as (a) wage costs by law, ordinance, collective agreement, works agreements or (b) other cost factors relevant to the provision of services, such as material costs, e.g. due to changes in national or world market prices for raw materials (such as steel and aluminium, in particular), changes in relevant exchange rates, price changes by third-party suppliers, etc. The adjustment will be made in the amount by which the actual production costs at the time of the conclusion of the contract have changed compared to those at the time of the actual provision of the service. Any adjustment must be made no later than ten weeks before completion.

Foreign contracting partners must, insofar as Schwarzmüller does not dispatch the goods itself, provide the proof of export required for VAT exemption and forward such proof to Schwarzmüller. In the case of an intra-Community supply, the Contracting Partner must provide their VAT number that has been issued by the other Member State. Should the proof of export not be provided or a valid VAT number not be communicated, the Contracting Partner must pay the VAT to Schwarzmüller.

Should used vehicles be traded in, the value to be assessed on the day of takeover shall be decisive for any depreciation or damage to the used vehicle between conclusion of the contract and takeover.

Any ancillary costs associated with the contract, such as financing costs, costs for securing the purchase price claim in the land register, fees, interest and the like shall be borne by the Contracting Partner.

### **IV. Terms of payment**

Any claims of Schwarzmüller are due for payment promptly once accounting has been completed, unless other terms of payment have been agreed in writing. All payments are to be made free of charges and without any deduction. In the event of late payment, Schwarzmüller is entitled to charge interest on arrears at a rate of 9.2% above the applicable base rate of the Austrian National Bank.

Any payments with debt-discharging effect shall only be made to Schwarzmüller or to representatives expressly authorised by Schwarzmüller to collect the debt. Schwarzmüller is authorised to assign purchase price claims against the Contracting Partner in whole or in part.

Multiple contracting partners are jointly and severally liable.

The Contracting Partner agrees that all payments it has made shall be credited first against interest and other ancillary charges, then against repair costs and claims for spare parts, and only finally against the purchase price.

Schwarzmüller may reject payments offered in the form of cheques or bills of exchange without stating reasons. Cheques and bills of exchange shall only be accepted upon special agreement and only on account of payment, not in lieu of performance. Any collection and discount charges shall be borne by the Contracting Partner. Forwarding and prolongation shall not be deemed fulfilment. No

liability shall be assumed for the punctual presentation, protesting, notification and return of these means of payment.

Should payment by instalments have been agreed with Schwarzmüller and the Contracting Partner is more than eight days in arrears with an instalment, the deadline shall immediately lapse without the need for a reminder. Should the deadline be missed, Schwarzmüller shall be entitled to withdraw from the contract without setting a further period of grace.

#### **V. Right of retention, exclusion of set-off**

The Contracting Partner shall not be entitled to withhold payments due to defective performance nor any warranty claims or other counterclaims of any kind. Offsetting against any counterclaims of the Contracting Partner is also excluded, unless the counterclaim has already been recognised or has been legally established.

Schwarzmüller shall be entitled, until all claims against the Contracting Partner arising from the existing business relationship have been satisfied, to exercise the right of retention to all objects that are to be delivered to the Contracting Partner or that have already been handed over to the Contracting Partner and are still in our ownership or possession or have been transferred to us.

#### **VI. Retention of title**

Irrespective of the payment obligation upon acceptance, all purchased items shall remain the property of Schwarzmüller until all liabilities of the Contracting Partner arising from the contract have been fully covered, in particular until the purchase price and all associated costs and expenses have been paid in full.

The retention of title may be noted in the type certificate (individual letter of permit) and on the vehicle. Schwarzmüller is authorised to retain the type certificate (individual letter of permit) until all obligations of the Contracting Partner arising from the contract have been met in full. Should the vehicle be seized by a third party, the Contracting Partner must inform Schwarzmüller of this by registered letter immediately. The Contracting Partner is not authorised to transfer the object of purchase to third parties, to sell it or to encumber it without the written consent of Schwarzmüller. The Contracting Partner must inform Schwarzmüller immediately of any change of residence or location and of any seizure of the object of purchase. Should any claims of the Contracting Partner against third parties arise as a result of actions by the Contracting Partner in breach of the contract, for example by disposing of the vehicle owned by Schwarzmüller, these claims shall already now be assigned to Schwarzmüller free of charge.

During the retention of title period, the Contracting Partner shall, upon Schwarzmüller's request, insure the object of purchase to the full value against all risks, including fire, and to register the insurance sum in favour of Schwarzmüller.

The Contracting Partner is obliged to keep the object of purchase in proper condition for the duration of the retention of title and to have any necessary repairs - except in emergencies - carried out in the repair workshops of Schwarzmüller or in a recognised workshop of Schwarzmüller.

Should, with the consent of Schwarzmüller, the object of purchase be resold prior to payment, the Contracting Partner hereby assigns its rights from this sale (purchase price claims, retention of title, etc.) vis-à-vis the third-party debtor to Schwarzmüller free of

charge. Both the third-party debtor and Schwarzmüller must be notified of this assignment.

Should the Contracting Partner fail to fulfil its contractual obligations, Schwarzmüller shall be entitled to assert the rights arising from the retention of title itself and without recourse to judicial assistance. In particular, the Contracting Partner authorises Schwarzmüller to remove the delivery item and acknowledges that the removal does not constitute a withdrawal from the contract, but merely serves to secure the delivery item, unless Schwarzmüller declares otherwise. Such removal shall not give rise to any claims against Schwarzmüller on the part of the Contracting Partner.

Should the delivery item be taken back, the Contracting Partner agrees that the current value of the vehicle will be determined by a motor vehicle expert appointed by Schwarzmüller and sworn by a court of law. Should it become necessary to recycle the delivery item, the proceeds from the sale less any costs incurred, such as commissions, valuation fees, repairs, etc., shall be credited against outstanding claims of Schwarzmüller. The Contracting Partner hereby expressly waives any other form of utilisation of the returned delivery item and any further claims.

#### **VII. Delivery**

In principle, the delivery deadlines are subject to change unless they have been expressly agreed in the offer as binding. If they are exceeded by more than three months, the Contracting Partner may withdraw from the contract by setting a reasonable period of grace. Further claims of the Contracting Partner shall be excluded, with the exception of cases of blatant gross negligence or intent on the part of Schwarzmüller, whereby such degrees of culpability must be proven by the Contracting Partner.

A delivery period agreed in the purchase offer shall not commence until the effective date of the contract. Any change in the type of execution after the effective date of the contract shall lead to the delivery period starting again. Prerequisite for adherence to the delivery period by Schwarzmüller is also punctual compliance with the agreed payment terms, taking into account the present General Terms and Conditions of Sale and Delivery. Should the Contracting Partner fall into arrears with a payment, Schwarzmüller shall be entitled to redetermine the agreed delivery period.

#### **VIII. Force majeure**

Schwarzmüller is not obliged to fulfil its obligations under a contract concluded with the Contracting Partner should a force majeure event prevent Schwarzmüller from doing so.

A force majeure event is any event that is beyond the reasonable control of Schwarzmüller, even if such an event was already foreseeable at the time the contract was concluded and which prevents Schwarzmüller from fulfilling the contract permanently or temporarily for an unforeseeable period of time. This includes, but is not limited to: a change in the laws and regulations applicable to Schwarzmüller and a force majeure event (e.g. war, epidemics, strikes, plant shutdowns, etc.) affecting Schwarzmüller, suppliers of Schwarzmüller or third parties engaged by Schwarzmüller, as well as measures taken by the authorities in connection with force majeure events.

Should Schwarzmüller be prevented from fulfilling their obligations on time due to force majeure, the delivery period shall be extended

by the period during which Schwarzmüller is directly or indirectly prevented from fulfilling the obligations due to the force majeure.

Should Schwarzmüller be permanently prevented from fulfilling the obligations due to force majeure, the contract shall be cancelled. Schwarzmüller must notify the Contracting Partner of this.

Should Schwarzmüller have already partially fulfilled their obligations at the time of the occurrence of a force majeure event or should Schwarzmüller only be able to partially fulfil their obligations, Schwarzmüller shall be entitled to issue a separate invoice for the performance already provided or for the part that Schwarzmüller is able to provide, which the Contracting Partner shall be obliged to pay.

#### **IX. Fulfilment, transfer of risk**

The obligations of Schwarzmüller under a contract of sale shall be deemed to have been fulfilled if the subject matter of the contract has been duly made available for collection as ordered and the Contracting Partner has been notified accordingly by means of a notice of completion. The Contracting Partner shall have 14 calendar days from the notification of completion to collect the contractual item itself („collection ex works“, whereby this also includes collection from a collection point to be designated by Schwarzmüller) or to arrange for collection by a forwarding agent.

The risk of total or partial destruction, deterioration, loss, damage or confiscation of the subject matter of the contract shall pass to the Contracting Partner at the latest upon expiry of the 14-day collection period.

In the case of collection ex works or from a collection point otherwise designated by Schwarzmüller, the risk shall be transferred to the Contracting Partner or a third party designated or authorised by the Contracting Partner as soon as the contractual goods have been accepted (leaving the sphere of Schwarzmüller).

Should the contractual goods be delivered by a carrier (whether commissioned by the Contracting Partner or by Schwarzmüller), the risk shall pass to the Contracting Partner upon handover to the carrier (leaving the sphere of Schwarzmüller).

#### **X. Handover and inspection of the subject matter of the contract**

The Contracting Partner or a third party authorised by the Contracting Partner must inspect the subject matter of the contract at the time of acceptance. Any obvious defects must be reported in writing on site, otherwise the claim shall be forfeited. For delivery by a carrier, the handover to the carrier is decisive for the time of the obligation to give notice of defects. Other defects must be reported in writing within a maximum period of eight days from the transfer of risk in the event of any other loss of entitlement.

Should the Contracting Partner fail to fulfil these obligations to give notice of defects, or fail to do so in due time or in full, any claims under warranty, compensation for damages or compensation for consequential damage as well as any other claims for such defects shall be excluded. The Contracting Partner must also immediately notify Schwarzmüller in writing of any defects that occur later, with the same legal consequences.

All of the above also applies mutatis mutandis to service and repair orders and spare parts.

The Contracting Partner shall be obliged to prove that an alleged defect already existed at the time of delivery. In the event of non-compliance with the regulations specified by Schwarzmüller regarding the handling, proper use and storage of the delivery item, it shall be assumed that this non-compliance is causal for the alleged defect. A lack of causality must be proven by the Contracting Partner.

#### **XI. Non-fulfilment and default**

The Contracting Partner has 14 calendar days from the notification of completion to collect the contractual item. From the 15th calendar day after notification of completion, Schwarzmüller shall be entitled to charge a flat-rate stand fee of EUR 7.00 per day. The assertion of any further damages remains unaffected by this.

In the event of non-fulfilment of the contract by the Contracting Partner, in particular in the absence of payment of the purchase price or in the event of delay in taking over the vehicle, Schwarzmüller shall be entitled to withdraw from the contract by setting a 14-day period of grace.

In the event of non-fulfilment of the contract by the Contracting Partner and justified withdrawal by Schwarzmüller, Schwarzmüller shall be entitled to charge a no-fault penalty in the amount of 15% of the agreed purchase price.

Any further claims for damages (including loss of profit) remain unaffected. In the event of fault, the Contracting Partner is also obliged to reimburse any commission actually paid by Schwarzmüller to the responsible representative of Schwarzmüller. The Contracting Partner shall not be entitled to any objections that the commission would not have been payable due to its culpable cancellation of the contract.

#### **XII. Return of spare parts**

The return of spare parts is only possible if the Contracting Partner provides Schwarzmüller with a written justification for the desired return within 14 days of delivery. Schwarzmüller may confirm this or reject it with good reason. In principle, only new and undamaged parts may be returned. The Contracting Partner must return the spare parts at its own expense and risk and shall receive a credit note issued by Schwarzmüller for this. Schwarzmüller reserves the right to reduce the credit note by 10% of the gross price charged to compensate for administrative costs. Any spare parts that have been produced as a special version at the request of the Contracting Partner are excluded from return.

#### **XIII. Service intervals to be observed**

The first service must be carried out after five weeks or a maximum of 10,000 km from the date of vehicle handover, whichever comes first. This initial service may only be carried out by Schwarzmüller itself or one of the service partners of Schwarzmüller.

The inspection and maintenance points for the initial service are shown in the service booklet and, as a result, are also accessible to the original purchaser or vehicle owner. After the initial service, annual service checks are required. The annual service interval is twelve months or 125,000 km from the time the vehicle is taken over, whichever comes first.

The tolerance for carrying out the annual service is three months or 30,000 km. This tolerance does not apply to the initial service

(five weeks or 10,000 km). The tolerance cannot be carried over to the subsequent year. All wear parts must be serviced and replaced separately and in accordance with their condition.

#### **XIV. Warranty**

##### **Warranty period:**

The warranty period is limited to a maximum mileage of 250,000 km or a maximum of two years from the time of handover, whichever comes first. In the event of resale to third parties, the warranty period shall be reduced to one year.

The prescribed service intervals (Point XIII) must be strictly adhered to. If the prescribed service intervals are not precisely adhered to, the warranty period shall be reduced to one year from the time of handover, irrespective of whether any defects are due to non-compliance with the service intervals. Proof of compliance with the service intervals must be provided by submitting the completed service booklet.

Any defects must be asserted in court within the warranty period, otherwise claims will be forfeited.

##### **Further warranty conditions:**

From the second year after delivery, warranty claims can only be asserted if precise compliance with the prescribed maintenance intervals and other maintenance conditions is proven through submission of the fully completed Schwarzmüller service booklet.

Any defects must be reported in writing to a Schwarzmüller service centre within eight days following assessment, otherwise the claim shall be forfeited.

The warranty shall be fulfilled, at the discretion of Schwarzmüller, either by repair in a Schwarzmüller workshop or by a contracting service partner or by sending the defective parts to a workshop to be specified by Schwarzmüller. Transport/shipping to the respective workshop and back shall be at the expense and risk of the Contracting Partner.

In the event of a justified warranty claim, only the defective material shall be replaced should the Contracting Partner replace the defective parts themselves. Any wages and costs incurred for fitting and removal shall be borne by the Contracting Partner.

Any parts that have been replaced or removed in the course of the warranty shall become the property of Schwarzmüller.

##### **Warranty limitations and exclusions:**

Schwarzmüller does not provide any warranty for parts that have not been produced by Schwarzmüller itself, but is prepared to assign to the Contracting Partner the claims to which it is entitled against the producer due to the defect.

Glass is excluded from the warranty.

Paint damage is only covered by the warranty if it is due to material or production defects.

The warranty shall lapse in particular if:

- ▶ the instructions on the proper use or operation of the vehicle in accordance with the operating manual(s), service booklet(s) or any additional documentation(s) have been disregarded

- ▶ the vehicle has not been operated in accordance with its intended use
- ▶ the permissible gross weight or the permissible axle loads have been exceeded
- ▶ the defective vehicle remains in use
- ▶ the vehicle was cleaned with a steam or high-pressure cleaner during the first two months
- ▶ the service and maintenance work was carried out by unauthorised persons
- ▶ the vehicle has been modified by unauthorised persons or non-certified spare parts have been installed
- ▶ unauthorised modifications have been made to the vehicle
- ▶ corrosive media (e.g. acids, alkalis, etc.) have been transported without authorisation from Schwarzmüller.

If the defect can be rectified within a reasonable period of time, there is no entitlement to cancellation or price reduction.

Any damage caused by wilful intent or negligence, improper handling or accidents attributable to the Contracting Partner shall be excluded from the warranty. Defects due to natural wear and tear are also excluded from the warranty.

The conditions and limitations set out in these General Terms and Conditions of Sale and Delivery apply to parts/spare parts and repairs that have been used/carried out under warranty, with the additional proviso that the warranty period ends with the original warranty period for the entire object of the contract. As a result, this also applies to replaced parts.

Schwarzmüller assumes no liability whatsoever for spoilage, loss or damage to all objects belonging to the Customer due to fire, water, burglary, theft, looting or causes for which Schwarzmüller is not responsible.

#### **XV. Limitation of liability, exclusion of avoidance on the ground of error and product liability**

In all cases of damage, Schwarzmüller shall only be liable in the event of gross negligence and wilful intent. The burden of proof for the existence of blatant gross negligence or intent lies with the Contracting Partner. The limitations of liability do not apply to personal injury and within the scope of the Product Liability Act.

Liability for consequential damages, financial losses, loss of profit, loss of interest and damages from third-party claims against the Contracting Partner as well as indirect damages are excluded.

The object of purchase only offers the level of safety that can be expected on the basis of authorisation regulations, operating instructions, regulations of the supplier's plant regarding the handling of the object of delivery (operating instructions) - in particular with regard to the prescribed inspections - as well as the other information provided.

Cancellation of the contract on the grounds of error is excluded.

In order to assess any claims for damages or warranty claims, Schwarzmüller or a partner authorised by Schwarzmüller is entitled to ascertain the data required in order to assess these claims

(e.g. reading electronic data recording devices). In return, the Contracting Partner undertakes to tolerate all investigative measures.

## **XVI. Data protection information**

The controller for data processing is Wilhelm Schwarzmüller GmbH, FN 364874f, 11 Hanzing, 4785 Freinberg, email: gdpr@schwarzmueller.com.

The personal data of the Contracting Partner which Schwarzmüller has collected within the scope of the contractual relationship shall be processed and stored (with the aid of automation). If required for production, and as a result for the fulfilment of the contract, personal data will be transmitted to the following companies of Schwarzmüller: Schwarzmüller Kft. Hungary (Cg: 13-09-068664), Schwarzmüller s.r.o. Czech Republic (IC 46885820), Schwarzmüller Deutschland GmbH (HRB9333), SCHWARZMÜLLER SR, s.r.o. Slovakia (31446175), Schwarzmüller Croatia d.o.o. Croatia (MBS:080224831), Schwarzmüller Polska Sp. z o.o. Poland (KRS 0000370208), Schwarzmueller d.o.o. Dobanovci Serbia and Montenegro (17408780), Schwarzmüller Romania SRL Romania (RO 14835621), Schwarzmueller Ukraine GmbH Ukraine (33296133), Schwarzmueller Bulgaria OOD Bulgaria (EIK175119877), Schwarzmüller BH d.o.o. Bosnia-Herzegovina (65-01-1099-12). The purpose of data processing and transmission is the processing of orders and the fulfilment of the contract. The data is used exclusively to fulfil the purpose of the contract. Personal data will be stored for the duration of the contractual relationship and beyond that for the statutory retention periods or for the assertion, exercise or defence of legal claims.

The Contracting Partner has a right to information about the personal data that is being processed. Should the Contracting Partner be of the opinion that the data concerning it is incorrect or incomplete, it has a right to rectification or completion. It has the right to erasure of data that it considers to have been processed unlawfully. In addition, it has the right to demand the restriction of processing or a copy of its processed personal data in a structured, commonly used and machine-readable format. The Contracting Partner also has the right to lodge a complaint with the data protection authority (Barichgasse 40-42, A-1030 Vienna, www.dsb.gv.at).

For further information on the right to protection of personal data and the rights of data subjects, please refer to our privacy policy, which is available on our website <https://www.schwarzmueller.com>.

## **XVII. Protection of intellectual property rights**

Schwarzmüller reserves the right of ownership and copyright and other rights to all offers and cost estimates submitted by Schwarzmüller, illustrations, plans, drawings, standards, diagrams, graphics, photographs, calculations, brochures, catalogues, models, tools and other documents and aids („Documents“) - whether on data carriers, in printed form or as material for print preparation or printing - which have been provided for the Contracting Partner. All such rights as well as trademark and design rights are held by Schwarzmüller. These documents also contain business secrets and may not be made accessible or known to third parties, either as an object or in terms of content, nor used or reproduced by third parties without the express consent of Schwarzmüller. At the request of Schwarzmüller, these documents must be returned to Schwarzmüller in full and any copies made must be destroyed unless corresponding rights have been granted through the conclusion of a contract.

## **XVIII. Final provisions**

It is agreed that the language of the contract shall be German.

Should individual parts of these General Terms and Conditions of Sale and Delivery be or become invalid or void, this shall not affect the validity of the remaining provisions. The provisions concerned shall be replaced by means of interpretation by such provisions that best fulfil the originally intended purpose.

The contractual relationship between the parties, including these General Terms and Conditions of Sale and Delivery, shall be governed by Austrian law to the exclusion of its conflict of law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

The place of jurisdiction for all disputes arising from or in connection with the contractual relationship concluded between the Contracting Parties shall be exclusively the competent court at the registered office of Wilhelm Schwarzmüller GmbH.