

## **Part I: General Business Terms and Conditions of Schweickert Netzwerktechnik GmbH**

### **1 General Information, Validity**

- a.) These General Business Terms and Conditions are valid only for deliveries and all individual and ongoing services provided by Schweickert Netzwerktechnik GmbH (referred to in the following text as Schweickert NWT), as well as its legal successor within the framework of its total business activity.
- b.) These General Business Terms and Conditions only apply vis-à-vis entrepreneurs within the meaning of § 310 I BGB (German Civil Code).
- c.) Variations to conditions as well as addenda or alterations are only binding on the Supplier if they are confirmed in writing by the Supplier.
- These General Business Terms and Conditions also apply to the legal successor of the Customer and all future business relationships, without any requirement for them to be specifically included.
- d.) Insofar as Schweickert NWT supplies software from third-party under these General Business Terms and Conditions, the licensing conditions or other conditions of these vendors take precedence over the General Business Terms and Conditions in this document. The Customer is required to observe licensing and copyright conditions specified by individual manufacturers and suppliers.
- e.) At the time of placement of the order, and at the latest at the time of the first use of the Supplier's services, the Customer accepts these General Business Terms and Conditions. Contradictory statements of the Customer based on its own general terms and conditions are declared to be invalid herewith.

### **2 Obligations of Schweickert NWT**

- a.) Schweickert will carry out deliveries and services on its own responsibility. However, Schweickert NWT is authorized to

make use of third parties in order to carry out its deliveries and services.

- b.) Schweickert NWT will carry out the services specified in the contract according to the basic principles of good professional practice using qualified personnel.
- c.) Schweickert NWT will nominate a contact person for the Customer.

### **3 The Customer's duties of cooperation**

The contracting party is required to carry out the supporting activities required for performance of the contractual relationship. These include especially prompt provision of information, data, and hardware and software, to the extent that the duty of the Customer to cooperate requires this. In addition, the Customer is especially obliged to give the Supplier access to its business premises and to make time available for the use of machines. In order to provide its services, Schweickert NWT is entitled to shut down plants, machines or equipment of the contracting party, especially for the purposes of installation, maintenance or servicing.

- The contracting party is required to provide adequate electrical connections and power supply at its own expense.
- The contracting party must report technical faults with rented equipment to NWT without delay. Within reasonable limits the contracting party will receive reasonable instructions from Schweickert NWT and will carry out minor maintenance and repair work itself according to instructions from and at the cost of Schweickert NWT.

### **4 Duties of the Customer**

The Customer is required to inform the Supplier without delay of any changes in the conditions which prevailed when entering into the agreement, especially in connection with its legal status, its conditions of incorporation, its technical competence to perform the contract, as well as and in particular in connection with all information that could be relevant to the Customer's creditworthiness.

### **5 Use by third parties**

The contracting party is not permitted to make available to third parties for their sole use or to sublease devices, programs, or equipment supplied by Schweickert NWT

without the prior written consent of Schweickert NWT. In particular, license agreements and patent rights of the manufacturers of machines, programs and equipment supplied by Schweickert NWT must be complied with. Should Schweickert NWT fail to or refuse to give its consent, the contracting party has no right to extraordinary termination.

## 6 Tender and acceptance

Unless otherwise agreed, offers made by the Schweickert NWT are always non-binding and subject to change.

Oral agreements are only binding if they are confirmed in writing by Schweickert NWT.

The offer is bindingly accepted by written confirmation on the part of the Customer. In the case of ongoing services, the contract is accepted at the latest at the time of the first use or performance of the Supplier's service.

## 7 Prices - terms of payment

As long as Supplier and Customer have made no other written agreement, the following is agreed:

- Purchase prices are due immediately upon delivery of goods.
- Monthly fees, especially in connection with rents and maintenance, are due beginning on the day functioning equipment is taken into service or servicing or maintenance commences, and are to be paid on a pro rata basis for the balance of the month. Thereafter, fees are to be paid monthly in advance until the end of the contract.
- Where a fee involves only part of a calendar month, the price for each day is calculated at the rate of 1/30 of the monthly fee.
- Where the contract is cancelled in less than 30 calendar days, a full month's fee is calculated; this does not apply to the case of cancellation for good reason.
- Other fees are payable on provision of the service in question, and are to be paid when this occurs.
- The amount invoiced is payable immediately, and is to be paid in full into the account specified by Schweickert NWT within 10 days of the date of the invoice.

- Offers are not binding and, unless differently agreed in writing, prices are net prices to which value-added tax must be added.
- Additional services will be separately invoiced by Schweickert NWT. Costs for packing materials, installation, delivery and transport will be borne by the contracting party; these will be invoiced separately.

## 8 Delay in payment

In case of a delay in payment by the Customer, in order to secure its claims Schweickert NWT can demand that the Customer return software, hardware, hardware components, network components, machines, devices, or equipment including accessories supplied, without reminders or deadlines and without thereby withdrawing from the contract.

### 8.1 Delay in payment of rent

If the contracting party does not pay rent or a substantial portion of the rent for two consecutive months, or within a period of time that exceeds two months falls behind by a sum equaling two months' rent, Schweickert NWT can terminate the contract without notice and demand lump sum compensation in the amount of half the remaining rental payments that are due until the end of the contract, with a limit, however, of three years' interest on the rent. Lower or higher actual losses must be documented.

## 9 Reservation of ownership

Schweickert NWT retains ownership and all rights in services and goods supplied until payment in full of all sums arising from the business relationship. In the case of a running account the goods whose ownership is reserved will serve as security for sums owed to Schweickert NWT.

New developments and inventions by Schweickert NWT, especially in the case of equipment or computer programs, are protected by national and international patent laws, as well as by copyright laws and additional legal provisions and agreements.

Until title passes, the contracting party is obliged to provide adequate care for machines or equipment that have been supplied.

Any change in the location of machines or equipment must be reported to Schweickert NWT without delay, and requires the written consent of Schweickert NWT.

Assignment, insolvency, damage, or loss must be reported to Schweickert NWT without delay. In the case of culpable breach of these duties, Schweickert NWT has the right to withdraw from the contract or terminate the contract on an extraordinary basis.

If the software is resold, the Customer may assign rights to the software and documentation to the same extent these were assigned to it for performance of the contract, although in doing so license agreements and copyrights of the manufacturer must be observed. The Customer is required to cease all use, to destroy all copies that have been made, and to contractually require the third party to use the software and documentation only in the way they themselves were permitted to, as well as to observe these conditions and data protection regulations.

## 10 Warranty

### 10.1 Purchase

Claims of the Customer arising from defects are dependent on this party having complied in an orderly manner with its responsibility to investigate and censure breaches, in accordance with § 377 HGB. Defects must be reported to Schweickert NWT in writing.

- In the case of deficiencies, the Customer can exercise its right to demand subsequent performance. Schweickert NWT is authorized to carry out repairs or make replacements, at its own discretion, to the extent that more than one particular renewed performance is reasonable for the customer. If two attempts to execute the contract are unsuccessful, the Customer has the right to withdraw from the agreement or reduce the price, as long as the Customer has allowed a reasonable time for defects to be eliminated. This does not apply to the purchase of software.
- In the case of purchase of software, warranty is limited to the replacement delivery; if the replacement is unsuccessful on two occasions the contracting party has the right to withdraw from the purchase agreement or reduce the purchase price.

- Claims arising from a defect as well as claims for damages and compensation claims for expenses expire within a period of 12 months starting from the date of delivery or acceptance, unless Schweickert NWT has fraudulently concealed a defect.
- If the goods being purchased are used goods, all warranty shall be excluded.

### 10.2 Rent

Schweickert NWT guarantees that the goods being rented are free of material defects and possess the warranted characteristics. An insignificant reduction in the value or the ability of the goods to function in the customary or contractually agreed-upon manner will not be taken into consideration.

Where defects exist, the Customer has the right, in addition to a reduction and damages, to demand repair of the defect from Schweickert NWT. In the place of repair of defects, Schweickert NWT has the right to supply a replacement. If repair of the defect or supply of a replacement is unsuccessful, the contracting party has the right to cancel the agreement without notice.

## 11 Liability and compensation for loss suffered

Schweickert NWT only has unlimited liability for deliberate and gross negligence, as well as for the absence of a warranted characteristic and for injuries to life and limb or health.

Over and above this, Schweickert NWT is only liable for damages that result from breach of a significant contractual obligation by Schweickert NWT, its legal representatives or vicarious agents, and these are limited to the typical, foreseeable damage. In such cases liability is limited to € 250,000.00 per claim. In the case of several claims arising from the same agreement (e.g., the Master Supply Agreement), liability is limited to a maximum amount of €1,000,000.00. Claims for compensation for lost profits are excluded.

Where data is lost through the fault of Schweickert NWT, their liability is limited to the typical cost of reproducing data that would typically have arisen if regular backup copies appropriate to the degree of risk present had been made, at least, however, once a day.

No liability is accepted for encrypted data which cannot be recovered.

Liability for all other losses is specifically excluded, especially for losses resulting from improper treatment or use of software, devices or equipment. Liability is specifically excluded in particular for losses of data or hardware failures that are caused by incompatibility of the contracting party's systems, networks—or existing components of the aforesaid—with new or modified hardware or software, as well as for malfunctions of systems, networks or computers which result from faulty existing configurations or older, disruptive, incompletely uninstalled drivers.

The Customer shall hold Schweickert NWT harmless from product liability claims made by third parties.

## **12 Right to set off claims and right to retention**

The Customer can only set off claims against undisputed or legally established claims.

The Customer is not entitled to retain software, hardware, devices, equipment or documents.

## **13 Confidentiality, data protection, processing of order data**

The contracting parties are required to keep permanently confidential all information concerning the contracting party and its technical and business processes, inventions, and equipment received in connection with the preparation and conduct of the agreement, and not to allow third parties access to it, to the extent that it does not by its nature have to be made available to third parties or is not already known to third parties. Apart from business organizational processes, this applies particularly to all information that is labeled as confidential or is recognizable as involving operational and business secrets, especially technical and network-specific devices, circuit diagrams, or equipment. As long as fulfilling the agreement does not require it, no diagrams or communications will be made with third parties. Any passing on of information to third parties or any other form of making it public requires the written agreement of the other contracting party.

At the end of the contract, if requested to do so, the Customer will return documents supplied by Schweickert NWT, such as letters, plans, documentation, and instruction manuals. The contracting party has no right to retain these documents, unless the Customer is able to establish a justified interest in these documents.

Sub-contractors linked to Schweickert NWT and engaged by it to carry out the contract are not regarded as third parties in the sense of this stipulation.

The parties to the agreement agree to adhere to the legal requirements of privacy laws.

## **14 Concluding provisions**

- a.) The place of business of Schweickert NWT is the place of performance.
- b.) The place of business of Schweickert NWT is the exclusive place of jurisdiction.
- c.) The law of the Federal Republic of Germany shall be the governing law for all contractual relationships between the contracting parties, even when the contracting party's place of business is located outside Germany, to the specific exclusion of the laws on international sale of movable property, international private law, and the UN Sales Convention.
- d.) In the event that specific provisions of this Agreement should be or become invalid, this shall not affect the validity of the remaining provisions thereof. Invalid provisions are to be replaced by new ones which most closely approximate the economic purpose of the invalid ones. The same holds true for, for instance, gaps in this agreement
- e.) Any amendments or addenda to this Agreement shall be in writing. This also applies to dispensing with the requirement concerning the written form.

**PART II: Additional conditions for the delivery of hardware and software and setup**

To the extent that Schweickert NWT delivers hardware or software, or carries out setup or adaptation, the following additional conditions for the supply of hardware and software and setting up apply, supplementing the General Business Terms and Conditions in the first section.

**1 Software and hardware**

Within the framework of a maintenance agreement, Schweickert NWT takes responsibility for maintenance of the Customer's own software or software supplied to it as part of a rental agreement.

Software supplied by Schweickert NWT is only to be used in accordance with the descriptions in the user manual, the operating instructions, or the program description.

Within the framework of the licensing agreement, in exchange for a fee, Schweickert NWT grants the Customer a non-exclusive, unlimited license to use software, with the requirement that licensing agreements and copyright must be observed.

The Customer is forbidden to remove or alter copyright notices, serial numbers, or other markings designed to identify software and the manufacturer.

**2 Exclusion of services**

Schweickert NWT will not carry out repairs within the framework of its repair, maintenance, or service activities to eliminate the effects of operating errors or improper use of software, hardware, hardware components, systems, devices or equipment, or of deliberate or grossly negligent damage to these.

The contracting party must take out a separate repair contract for these. Incorrect operation and improper use are determined by reference to the accompanying material and the manufacturer's installation instructions.

No programming activities of any kind are to be carried out on the computer programs used by Schweickert NWT. If the contracting party or third parties make changes to com-

puter programs through their own programming activities, the altered computer program, files processed using it, and hardware affected by this are specifically excluded from the maintenance agreement.

Technical modifications and extensions to devices, systems or equipment about which Schweickert NWT was not informed and which cause additional maintenance work are not covered by the maintenance agreement.

Maintenance of components of devices, systems or equipment which are not covered by the maintenance agreement ends at the interface with components which are covered. In the case of files it depends on whether the storage units are covered by the maintenance agreement.

The installation of wearing parts falls under maintenance/repair. The purchase of wearing parts, consumables, data carriers, or accessories of any kind within the framework of repairs or maintaining a good state of repair will be invoiced by Schweickert NWT as an additional service.

**2.1 Telephone support – provision of information**

Within the framework of certain individual contracts, Schweickert NWT will provide the Customer with telephone advice and support or information.

Telephone advice, support, or information is available to the Customer only on working days between 9.00 a.m. and 5.00 p.m. and only under the telephone number provided in the particular contract. Telephone support and information outside the times just given requires a separate agreement with Schweickert NWT in each individual contract.

No telephone support and information will be provided under any service number other than the one provided to the Customer in the contract.

Any additional services are specified in the particular service level agreement and the description of services.

The basic language for communication is English, so that Schweickert NWT has the

right to provide its services exclusively in English.

### **2.1.1 Scope of performance**

The exact scope of performance is defined in each service level agreement and the description of services in each contract.

All contracted services are carried out by Schweickert NWT and its sub-contracted partners according to the latest technology available at the time the contract is signed, using personnel who are qualified to provide the services agreed upon. Schweickert NWT maintains the basic principles of correct professional practice and keeps up-to-date on technical developments. It selects effective and economical solutions.

### **3 Dismantling, return, return shipment of software, devices and equipment**

When the contract expires, the dismantling and return shipment of devices and equipment supplied to Schweickert NWT is to be carried out by Schweickert NWT at the expense of the Customer based on wages, travels expenses and materials required.

Software supplied on a rental basis or under license must be deleted by the Customer after expiration of the contract and all copies destroyed, and if requested, this must be reported to Schweickert NWT in writing.