

## General Terms and Conditions to the Contract on the Manufacture of Workpieces

General Business Terms and Conditions (Terms and Conditions) of Hans Scharpegge GmbH governing the Manufacture of Workpieces according to customer specification and by using material provided by the customer

- Corporate Customers -

### 1. In General

**1.1** The following General Terms and Conditions of Manufacture and Payment (Terms and Conditions) shall provide the legal framework for the manufacture of workpieces by Hans Scharpegge GmbH (hereinafter referred to as "SCHARPEGGE") and entrepreneurs, as defined in Section 14 of the German Civil Code (*BGB*) (hereinafter referred to as "Customer"). Entrepreneurs within the meaning of said statutory provision are defined as natural or legal persons or partnerships with legal capacity who, upon contract conclusion, act in preparation or in the exercise of their commercial or independent professional activities.

**1.2** SCHARPEGGE shall provide all goods and services exclusively on the basis of these Terms and Conditions. Terms and conditions of the Customer shall not apply, even if SCHARPEGGE has not explicitly objected thereto.

**1.3** These Terms and Conditions shall also apply if SCHARPEGGE provides goods and services without any reservation in spite of being aware of contradicting or deviating terms and conditions of the Customer. In such cases, the acceptance of the goods and services by the Customer shall constitute an approval of these Terms and Conditions and, at the same time, an already now accepted waiver of the applicability of its own terms and conditions on the part of the Customer.

### 2. Offers and Prices

**2.1** Offers shall in any case be unbinding. In the absence of a written agreement, a contract shall come into being no earlier than upon written order confirmation by SCHARPEGGE. In the event that SCHARPEGGE provides goods and services without having given the Customer a prior order confirmation, the contract shall come into being upon commencement of order execution.

**2.2** Packaging, freight, postage and other shipping costs shall not be included. Packages for transportation or other purposes according to the packaging regulations shall not be taken back by SCHARPEGGE. Costs for the disposal of the packaging shall be borne by the Customer.

**2.3** Orders shall be executed at the prices and under the special conditions set forth in the respective manufacturing contract and, if appropriate, in the statement of work. The prices set forth therein shall be binding.

**2.4** Unless otherwise agreed upon on a case-by-case basis, prices shall be net prices exclusive of the statutory VAT owed in each case at the rate valid at the time being, currently 19 %.

### 3. Purpose of Contract, Goods and Services, Rights of Use

**3.1** Unless otherwise agreed upon on a case-by-case basis, the contents/quality and scope of the goods and services owed by SCHARPEGGE shall result from the respective manufacturing contract or, in the absence of such contract, the order confirmation.

**3.2** The manufacturing contract shall be based on the Customer's technical and functional requirements, as specified by the latter. A responsibility for success shall be assumed by SCHARPEGGE exclusively to the extent that:

**3.2.1** the criteria applicable thereto have, upon contract conclusion, precisely and conclusively been defined in the manufacturing contract or the order confirmation, at least with respect to scope and effect, and have become a subject matter of the contract (agreed performance criteria);

**3.2.2** the Customer fulfils its duties to cooperate properly and in due time. This shall not apply if an improper or delayed cooperation (clause 3.2.2) does not have an impact upon the provision of the goods and services.

**3.3** The manufacturing contract or order confirmation shall be based upon the technical and functional requirements specified by the Customer. Such requirements shall, in particular, reflect the performance criteria agreed upon (clause 3.2.1) as well as criteria, if any, agreed upon with respect to the determination of the eligibility for acceptance.

**3.4** Analytical, planning and consulting services, if any, for the statement of work shall be performed by SCHARPEGGE on the basis of a separate contract only.

### 4. Dates and Deadlines

**4.1** Dates and deadlines shall be binding if they have been bindingly agreed upon in writing between SCHARPEGGE and the Customer on a case-by-case basis. Unless otherwise agreed upon, the performance period shall commence upon contract conclusion or upon dispatch of the order confirmation, but in no case prior to having received the necessary documents to be provided by the Customer for order execution (clause 5.2).

An agreement on a fixed performance date shall be subject to the condition that SCHARPEGGE receives the supplies and services required by it from the Customer or, as the case may be, the latter's sub-suppliers in due time and according to the contract.

**4.2** In the event that a performance period agreed upon fails to be observed due to circumstances SCHARPEGGE cannot be made liable for (inclusive of strike or lockout), performance dates shall be postponed by the period of the interruption, inclusive of a reasonable start-up phase.

**4.3** In the event that SCHARPEGGE is either totally or partly in default with the provision of goods and services, the compensation to be paid to the Customer for damages and expenditures due to the default shall, for each complete week, be limited to 0.5 % of the price of that part of the goods and services that cannot be used on account of the default. The maximum liability for delay shall be limited to 5 % of the total price of the respective order. This shall not apply to the extent that the delay is due to gross negligence or intentional behaviour on the part of SCHARPEGGE.

**4.4** In the event of a delay in performance, the Customer shall be entitled to rescind the contract according to statutory provisions only if the delay is due to reasons SCHARPEGGE is responsible for.

If the Customer asserts a claim for compensation of damages and expenditures incurred due to the delay instead of requesting performance the Customer shall, for each complete week of the delay, be entitled to request 1 % of the price of the part of the goods and services that cannot be used on account of the default, but in no case more than 10 % of the complete price of the respective order. Clause 4.3 sentence 3 shall apply *mutatis mutandis*.

### 5. Duties of the Customer

**5.1** The Customer guarantees that the base material pieces provided by it are accurate in terms of dimensions, particularly that they have usual dimensions e.g. in the bore and consist of a material making a processing according to generally accepted good engineering practice with tools commercially available in the Federal Republic of Germany possible.

**5.2** The Customer shall give SCHARPEGGE the name of a qualified contact person authorised to take binding decisions on the Customer's behalf during contract implementation. Said person shall make himself or herself available for exchanging necessary information and participate in decisions required for contract performance. Required decisions of the Customer shall immediately be brought about by the contact person and jointly documented by the parties in writing immediately after having been taken.

**5.3** The Customer shall ensure that any documents, information and data necessary for providing the goods and services are made available to SCHARPEGGE to their full extent, in their correct versions, in due time and without charge, unless they are owed by SCHARPEGGE. SCHARPEGGE may rely on the completeness and correctness of such documents, information and data, unless it becomes aware or ought to become aware of the contrary.

### 6. Acceptance

**6.1** After having made the goods and services available to the Customer, SCHARPEGGE may request the latter in writing to accept them within a reasonable period specified by it (test period). As a rule and especially if no other period has been agreed upon, a term of 10 calendar days after receipt of the manufactured item shall be regarded as reasonable. The Customer shall then be obliged to declare acceptance by the date of expiry of said period, unless the existence of a defect entitles the Customer to refuse acceptance. The period in question shall commence upon the Customer's receipt of the written request for acceptance. During the test period, the Customer shall be entitled to convince itself that the goods and services made available are in conformity with the contract, if appropriate, by applying the criteria for determining eligibility for acceptance, as agreed upon with SCHARPEGGE (clause 3.3).

**6.2** The Customer shall give immediate and proper notice of any defects arising during the test period, but in no case later than five calendar days after having become aware of them. Clause 8.3 shall apply *mutatis mutandis*.

**6.3** The Customer shall be allowed to refuse acceptance in case of significant defects only. The refusal to accept and the notice of defects shall be subject to writing.

**6.4** Any defects properly notified shall be eliminated by SCHARPEGGE within a reasonable period of time.

**6.5** Already declared partial acceptances shall remain unaffected by later tests of other goods and services, unless such partial acceptances were, due to a defect, declared with reservation. The same shall apply to tests already performed, except to the extent that they are affected by a defect or its elimination.

**6.6** In the absence of significant defects, the goods and services shall be deemed to be eligible for acceptance. In this case, the Customer shall declare acceptance without any delay.

**6.7** The goods and services shall be deemed to have been accepted - also without an explicit statement in this respect and without a request for acceptance on the part of SCHARPEGGE:

- if and when the Customer makes use of them for other purposes than for test purposes and does not complain about defects inhibiting an acceptance; or
- upon payment, unless the Customer refused acceptance for justified reasons; or

- if, in case of an application of the criteria agreed upon for determining eligibility for acceptance, the tests can be carried out without the occurrence of defects inhibiting an acceptance.

**6.8** Unless otherwise agreed upon on a case-by-case basis, acceptance of separately identifiable parts of goods and services may, accordingly, also be carried out separately according to these regulations.

## **7. Payments, Setoffs and Retentions**

**7.1** Unless otherwise agreed upon on a case-by-case basis, payments shall - subject to acceptance - categorically become due without any deductions within seven calendar days after invoice date.

**7.2** Remunerations shall be paid to one of the accounts of SCHARPEGGE, as designated in the manufacturing contract or SCHARPEGGE's order confirmation or invoice. Payment shall be deemed to have been made if it has been credited to one of the bank accounts of SCHARPEGGE. Upon maturity, SCHARPEGGE shall be entitled to charge interest at a rate of 5 %. In case of delay, SCHARPEGGE shall be entitled to request interest at a rate of 9 percentage points above the basic interest rate. The right of SCHARPEGGE to claim higher damages shall remain unaffected.

**7.3** A payment term granted to the Customer shall in case of each individual order be subject to the existence of a sufficient credit limit. In the event that the respective order exceeds the credit limit available, SCHARPEGGE shall be entitled to execute this and any other order exclusively against advance payment or against provision of a security in form of a performance bond issued by a financial institution or credit insurer registered in the European Union. The same shall apply if, after order confirmation, SCHARPEGGE becomes aware of circumstances justifying doubts concerning the Customer's creditworthiness.

**7.4** In the event that the Customer fails to settle a justified claim by the due date agreed upon either in total or in part, SCHARPEGGE shall be entitled to withhold the goods and services forming the subject matter of other orders. In addition, SCHARPEGGE shall be entitled to revoke any cash discounts and payment terms agreed upon with respect to all other claims outstanding at the time in question and demand immediate payment in this respect. Apart from that, SCHARPEGGE shall have the right to deliver any further goods and services exclusively against advance payment or provision of a security in form of a performance bond issued by a financial institution or credit insurer registered in the European Union.

**7.5** In the event that the Customer is economically unable to fulfil its obligations towards SCHARPEGGE or files an insolvency application, SCHARPEGGE shall have the right to rescind or terminate the contract with the Customer. Section 321 of the German Civil Code (*BGB*) and Section 112 of the German Insolvency Code (*InsO*) shall remain unaffected. The Customer shall give SCHARPEGGE early notice of an imminent insolvency.

**7.6** The Customer shall only be permitted to make setoffs or to retain payments on the grounds of defects if the Customer is actually entitled to assert such claims for material defects and/or defects in title. A retention of payments by the Customer on the grounds of defects shall only be admissible if the amount withheld is in an appropriate proportion to the defect, and if so, only if the defect exists beyond any doubt. In the event that the claim for defects has become statute-barred, the Customer shall have no right of retention. Apart from that, the Customer may only offset against claims or exercise its right of retention with respect to claims that are undisputed or have been established with legal effect. The exercise of a right of retention on the part of the Customer due to a counterclaim not based on a right arising from a contract underlying these General Business Terms and Conditions shall be excluded.

## **8. Material Defects**

**8.1** SCHARPEGGE guarantees towards the Customer that the goods and services comply with the agreements according to clause 3.1, always provided that they are used according to the contract.

**8.2** Claims for material defects shall be excluded to the extent that non-compliance with the quality contractually agreed upon is due to excessive or improper use, incorrect assembly or installation, insufficient maintenance or normal wear and tear. The same shall apply with respect to those discrepancies occurring due to special external influences not provided for in the contract or arising due to the fact that the Customer uses the goods and services delivered by SCHARPEGGE in an environment that was not agreed upon, unless the Customer is able to show that the defect would also have arisen in case of a use in the environment agreed upon.

**8.3** Material defects, if any, shall be reported by the Customer in writing in an understandable and detailed form by indicating the information necessary for identifying and analysing the defect without any delay, but in no case later than five calendar days after having become aware of them. If necessary, the Customer shall assist SCHARPEGGE also in any other respect concerning the elimination of defects.

**8.4** If the Customer is entitled to assert claims for defects, such right shall initially be restricted to the right to subsequent performance within a reasonable period of time. Subsequent performance shall, at SCHARPEGGE's option, consist of the elimination of defects or a new production. When making use of this option, SCHARPEGGE shall take the Customer's interests into

reasonable account. If SCHARPEGGE decides to eliminate the defects the Customer shall return the manufactured items to SCHARPEGGE by making use of the manner of dispatch or transportation already used for sending the items to the Customer. The costs related thereto shall be borne by SCHARPEGGE.

The processing of a Customer's notice of a material defect on the part of SCHARPEGGE shall only cause a suspension of the period of limitation if the statutory prerequisites have been fulfilled. A subsequent performance may only have an effect upon the period of limitation relating to defect that forms the cause of the subsequent performance.

**8.5** In the event that subsequent performance fails to be made or cannot be carried out for any other reason, the Customer may according to statutory provisions reduce the remuneration, rescind the contract, terminate the contract and/or request compensation for damages and expenditures according to clauses 9.1.-9.3. A self-performance against costs on the part of the Customer shall only be permitted if a defect fails to have been eliminated although the term reasonably granted by the Customer has expired and the reason for this failure must be attributed to SCHARPEGGE. Rights of election the Customer is entitled to shall be exercised by the latter within a reasonable term; as a rule, this term shall amount to seven calendar days as from the date when the Customer becomes aware of this right of election.

**8.6** The limitation period for material defects shall amount to one year as from its statutory commencement. Time limits provided for by law shall remain unaffected to the extent that statutory provisions mandatorily require longer terms, as it is the case in Section 634a paragraph 1 no. 2 of the German Civil Code (*BGB*) (building structures and items used for building structures), as well as in case of an intentional or grossly negligent breach of duty by SCHARPEGGE, particularly its legal representatives or persons employed in the performance of its obligations, in the event of a fraudulent concealment of a defect as well as in case of injuries to life, body or health and claims based on the product liability act.

**8.7** Unless otherwise agreed upon, the Customer shall bear any additional expenses required for subsequent performance whenever the Customer has taken the goods and services concerned to another place of use than the one indicated towards SCHARPEGGE upon contract conclusion.

**8.8** SCHARPEGGE may request compensation for its efforts/expenses if

- it becomes active in response to a notice of a defect which actually does not exist, unless the Customer was - after reasonable efforts on its part - unable to recognise that the defect did not exist or
- additional efforts/expenses become necessary due to an improper fulfilment of the Customer's duties, especially according to clause 8.2 and 8.3.

## **9. Liability**

**9.1** SCHARPEGGE shall always be liable to pay damages to the Customer

- for any damage caused by it, its legal representatives or persons employed in the performance of its obligations either intentionally or due to gross negligence;
- according to the product liability act, and
- in case of damage arisen from injuries to life, body or health for which SCHARPEGGE, its legal representatives or persons employed in the performance of its obligations can be made liable for.

**9.2** SCHARPEGGE shall be liable for slight negligence to the extent that SCHARPEGGE, its legal representatives or persons employed in the performance of its obligations violated a significant contractual duty (so-called cardinal duty) the fulfilment of which is indispensable for the due performance of the contract or the infringement of which threatens the achievement of the contract purpose and the fulfilment of which (as e. g. in case of the obligation to provide faultless goods and services) may regularly be relied on by the Customer. In any other respect, a liability in case of slight negligence shall be excluded.

To the extent that SCHARPEGGE assumes liability for slight negligence, the liability shall in case of material and pecuniary damage be limited to the foreseeable damage typical to the contract. A liability for any other, remote consequential damage shall be excluded. Liability for each individual damage event shall be limited to the contract value. This subsection shall not affect the liability according to clause 9.1.

**9.3** With respect to the limitation period, clause 8.6 shall apply *mutatis mutandis*.

**9.4** In connection with a guarantee statement, SCHARPEGGE shall only be liable for damages if this has explicitly been provided for in the guarantee. This liability shall in case of slight negligence be subject to the restrictions according to clause 9.2.

**9.5** With respect to claims for compensation of expenditures and other liability claims of the Customer towards SCHARPEGGE, clauses 9.1-9.3 shall apply *mutatis mutandis*.

## **10. Export**

**10.1** All supplies and services shall be delivered by SCHARPEGGE according to the actually valid Dual-Use Regulations in the German Foreign Trade Law/Foreign Trade Regulation and the EC Dual-Use Regulations and according to the U.S. Export Regulations and shall be destined for use and stay in the country of destination agreed upon with the Customer.

**10.2** In case of border-crossing supplies and services, the Customer shall bear all customs duties, fees and other charges, unless otherwise provided for in individual contracts.

**10.3** If the Customer intends to (re-)export goods, it shall be obliged to obtain the permits required for this purpose, particularly from the foreign trade authority before exporting the products. The Customer shall obtain its own information on the provisions and regulations valid at the time being and carry out the (re-)export on its own responsibility. To this extent, SCHARPEGGE shall not have any obligation to inform, to render advice or to cooperate.

**10.4** In the event that, in case of an export or import to another country contrary to the contract, the Customer fails to comply with a statutory regulation applicable thereto and SCHARPEGGE is for this reason made liable by the exporting or importing country, a transit country or a third country on the basis of the statutory regulations in force in such country, the Customer undertakes to indemnify SCHARPEGGE with respect to any and all financial obligations arising in this context and shall furthermore be obliged to compensate SCHARPEGGE for any damage resulting from the non-conforming export or import.

## **11. Miscellaneous**

**11.1** Changes and amendments to any contract concluded between the parties shall be subject to writing. For complying with this requirement, the text form (Section 126 of the German Civil Code (*BGB*)) shall be sufficient. In the event that written form has explicitly been provided for in a contract (e.g. for changes or amendments, a statement of misgivings, a rescission or cancellation), the text form shall not be sufficient. Oral agreements shall only be valid if confirmed by SCHARPEGGE in text form within seven calendar days.

**11.2** SCHARPEGGE and the Customer shall be obliged to maintain secrecy with respect to all business and trade secrets and any other information described as confidential which become known to them in connection with their contractual relation or the contractual relationship resulting therefrom. A disclosure of such information to persons not involved in the conclusion, implementation or handling of the contractual relationship shall be subject to the explicit written consent of the contract party, unless a statutory regulation exists or the information is disclosed to members of the legal and/or tax consulting professions and the disclosure takes place in connection with the legal or tax-related cooperation and its consequences. Unless otherwise agreed upon, this obligation shall cease to exist after expiry of five years after the respective information has become known, but in no case prior to the termination of the contractual relationship between SCHARPEGGE and the Customer.

The contract parties shall impose these obligations also upon their employees and third parties, if any, deployed by them.

**11.3** SCHARPEGGE and the Customer are aware that electronic and unencrypted communication (e. g. by e-mail) is exposed to safety risks. For this reason, SCHARPEGGE and the Customer shall not assert any claims towards each other in connection with this kind of communication if such claims are based upon the absence of encryption, unless they have concluded a prior written agreement on the use of encryption.

All contractual relationships between the parties shall exclusively be subject to the law of the Federal Republic of Germany.

## **12. Place of Performance and Place of Jurisdiction**

**12.1** Place of performance for all obligations arising from the contractual relationships of the parties shall be Dortmund.

**12.2** Place of jurisdiction for all legal disputes arising from or in connection with the contractual relationships between the parties and for all disputes concerning the establishment and effectiveness of such contractual relationships shall vis-a-vis merchants, legal persons under public law or special funds under public law be Dortmund. SCHARPEGGE shall, however, be entitled to sue the Customer at the place of the latter's registered office.