

General Terms and Conditions of Business, Delivery and Assembly (Terms and Conditions) of the company Schäfer Trennwandsysteme GmbH

I.

General basis of contract

§ 1 Scope of Application

The terms and conditions of business of the company Schäfer Trennwandsysteme GmbH, which are brought to the attention of the Customer below, shall become an integral part of the contract when the order is placed. Any deviating terms and conditions shall require a special written agreement. Counter-confirmations of the Customer with reference to his General Terms and Conditions are hereby contradicted. The terms and conditions of Schäfer Trennwandsysteme GmbH shall also apply if the order is executed without reservation in the knowledge of conflicting or deviating terms and conditions of the customer. An exclusion clause with the same wording in its terms and conditions of business shall oblige the Customer to make a separate written reference. The terms and conditions of business of Schäfer Trennwandsysteme GmbH shall apply to future business with the Customer, even if they are not expressly agreed again or reference is made to them.

§ 2 Conclusion of Contract and Content of Contract

1. The offers of Schäfer Trennwandsysteme GmbH are made without engagement. The Customer shall be bound to the order within a period of 4 weeks. The contract shall be concluded by the order confirmation made by Schäfer Trennwandsysteme GmbH within this period, or by the execution of the contract made directly in response to the order. Order confirmations made by web-based means and/or by fax shall be deemed to have been made in writing. Verbal agreements or verbal amendments or supplements to orders require express written confirmation by Schäfer Trennwandsysteme GmbH in order to be legally effective. If an on-site measurement and detailed clarifications are necessary, the customer shall receive an updated order confirmation. Schäfer Trennwandsysteme GmbH shall be entitled to inform the Customer of any deviations from the order resulting from the measurement and detail clarification with this order confirmation. These deviations shall be binding for both parties if the Customer does not object to the content of the updated order confirmation within 10 days of receipt thereof. If the customer requests an earlier installation date than specified in the order confirmation, this request must be received by Schäfer Trennwandsysteme GmbH within a period of 10 days after receipt of the order confirmation. Earlier installation dates can only be agreed by mutual consent. If the contracting parties cannot agree on an earlier installation date, Schäfer Trennwandsysteme GmbH shall be entitled to withdraw from the contract to the exclusion of claims for damages.
2. A measurement form shall be issued for measurements, which shall be signed by the customer. If measurements are taken in the unfinished state, the customer is obligated to immediately notify all changes in dimensions resulting from the progress of the construction work.
3. Dispositions within the scope of a validly concluded contract shall only be permissible by mutual agreement.
4. Schäfer Trennwandsysteme GmbH shall be entitled to withdraw from the contract in whole or in part immediately,
 - if the performance of the contract is permanently disrupted due to the effects of force majeure (natural disaster, riots, war, official measures, transport disruptions, strikes, lockouts, operational disruptions),
 - if an application is filed for the opening of insolvency proceedings or similar proceedings under local law against the assets of the Customer.

5. Schäfer Trennwandsysteme GmbH reserves its unrestricted property rights and copyrights to cost estimates, drawings and other documents (hereinafter referred to as Documents). The Documents may only be made accessible to third parties with the prior consent of Schäfer Trennwandsysteme GmbH and shall be returned without delay if a contract is not concluded. Documents of the Customer may be made accessible to such third parties as are used by Schäfer Trennwandsysteme GmbH for the performance of the contract.

§ 3 Examination for defects

The Customer is obliged to inspect the delivery item immediately upon receipt and to notify any defects - which also includes the delivery of a delivery item deviating from the order - within a preclusive period of 7 days after receipt of the delivery. In the case of hidden defects, the period shall run from the time of discovery. Sales representatives of Schäfer Trennwandsysteme GmbH are not authorized to accept notices of defects. After expiry of the deadline, complaints - in the case of sale also via the recourse of § 478 BGB (German Civil Code) - are excluded. The same shall apply if the delivery item has been modified by the customer.

§ 4 Delivery and execution periods

1. The dates confirmed by Schäfer Trennwandsysteme GmbH are approximate dates which shall be observed as far as possible. Fixed dates must be agreed separately and expressly.
2. Compliance with agreed deadlines shall be subject to the timely receipt of all documents to be supplied by the customer, necessary approvals and releases, in particular of plans, as well as the confirmation of the terms of payment of Schäfer Trennwandsysteme GmbH by the customer. If these prerequisites are not met, the delivery period shall be extended accordingly; unless Schäfer Trennwandsysteme GmbH is responsible for the delay.
3. Agreed delivery periods shall be reasonably extended in the event of force majeure, labor disputes and other operational disruptions for which Schäfer Trennwandsysteme GmbH is not responsible or in the event of delays in the delivery of essential input material if the duration of the hindrance exceeds one week. The delivery period shall then be extended by the duration of the hindrance, but by no more than five weeks plus a subsequent delivery period. Schäfer Trennwandsysteme GmbH shall be obliged to inform the customer immediately of the reason for the impediment as soon as it can be foreseen that the agreed delivery deadlines cannot be met. In the event of an impediment lasting more than five weeks, there shall be a mutual right of withdrawal. However, the client's right of withdrawal must be announced in writing at least two weeks before it is exercised.

§ 5 Retention of title

1. The delivery item shall remain the property of Schäfer Trennwandsysteme GmbH until full payment of all claims arising from the entire business relationship, including ancillary claims and claims for damages. The retention of title shall remain in force even if individual claims are included in a current account or the balance is struck and acknowledged.
2. Any processing or treatment shall be carried out by the customer on behalf of Schäfer Trennwandsysteme GmbH without any obligation on the part of Schäfer Trennwandsysteme GmbH arising therefrom. In the event of processing, use and mixing of the goods subject to retention of title with other goods not belonging to Schäfer Trennwandsysteme GmbH, Schäfer Trennwandsysteme GmbH shall be entitled to the co-ownership share in the new item in the ratio of the factor value to the other processed goods at the time of processing, use or mixing. If the customer acquires sole ownership of the new item, the contracting parties agree that the customer shall grant Schäfer Trennwandsysteme GmbH a co-ownership share in the new item in proportion to the factor value of the processed or combined or mixed goods subject to retention of title and shall keep such co-ownership share in safe custody for Schäfer Trennwandsysteme GmbH free of charge.

3. In the event of purchase, Buyer shall be entitled to resell the goods in the ordinary course of business. However, he already assigns to Schäfer Trennwandsysteme GmbH the claims with all ancillary rights arising from the resale of the goods subject to retention of title. Schäfer Trennwandsysteme GmbH accepts this assignment. The customer shall remain entitled to collect the assigned claim.
4. The customer shall not be entitled to use the goods subject to retention of title within the scope of global assignments to financing institutions or similar institutions or to pledge them in any other way. In the event of seizure or other interventions by third parties, the customer shall notify Schäfer Trennwandsysteme GmbH in writing without delay so that Schäfer Trennwandsysteme GmbH is in a position to assert its rights in accordance with § 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse Schäfer Trennwandsysteme GmbH for the judicial or extrajudicial costs of an action pursuant to § 771 ZPO, the Customer shall be liable for the resulting damage.
5. In the event of conduct by the Customer in breach of the contract, in particular in the event of default in payment, Schäfer Trennwandsysteme GmbH shall be entitled to withdraw from the contract and to take back the delivery item. The Customer agrees to this already now. After taking back the delivery item, Schäfer Trennwandsysteme GmbH shall be entitled to dispose of it, whereby the damage incurred shall be settled analogously to the provision in § 4 of the special terms and conditions for purchase contracts.
6. If the value of the securities of Schäfer Trennwandsysteme GmbH exceeds the actual claims by more than 20 %, Schäfer Trennwandsysteme GmbH shall, at the request of the customer, release the excess securities at its discretion.

II.

Special Conditions for Contracts for Work and Services

§ 1

The rules of the German Contracting Rules for the Award of Public Works Contracts (VOB/B) in the version applicable at the time of conclusion of the contract shall apply as contractual conditions in conjunction with the following regulations.

§ 2 Place of performance

The place of performance shall be the location of the construction project.

§ 3 Special Terms and Conditions of Assembly

1. In addition to the agreed remuneration of all necessary ancillary costs, the Customer shall bear the travel expenses, costs for the transport of tools, the personal luggage of the fitters and their allowances.
2. The client has to provide the following services at his own expense in due time at the beginning of the assembly:
 - a. Energy and water at the place of use including connections, heating and lighting
 - b. sufficiently large, suitable, dry and lockable rooms at the installation site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the installation personnel, including sanitary facilities appropriate to the circumstances; in all other respects, the Customer shall take suitable measures to protect the property of Schäfer

Trennwandsysteme GmbH and the installation personnel at the construction site which it would take to protect its own property.

3. Prior to the start of the installation work, the customer shall provide the necessary information on the location of concealed electricity, gas and water lines or similar installations as well as necessary static documents without being asked to do so.
4. Before the start of the installation work, all materials and objects required for the start of the work must be available at the installation site. All preparatory work must have progressed to such an extent prior to the start of the installation that the installation can be started as agreed and can be carried out without interruption. Access roads and the assembly site must be leveled and cleared.
5. If assembly or commissioning is delayed due to circumstances for which Schäfer Trennwandsysteme GmbH is not responsible, the customer shall bear the costs for waiting times, work stoppages and additional travel by the assembly personnel.
6. The Customer shall be obliged to confirm to Schäfer Trennwandsysteme GmbH on a weekly basis the duration of the working time of the installation personnel on the installation certificates submitted. This shall also include confirmation of the completion of assembly or commissioning.

§ 4 Acceptance

1. Schäfer Trennwandsysteme GmbH shall be entitled to demand acceptance of the work performance within a period of 12 working days after receipt of the request for acceptance.
2. In the case of self-contained partial performances (e.g. floors) Schäfer Trennwandsysteme GmbH shall be entitled to demand acceptance in accordance with clause.
3. Alternatively, Schäfer Trennwandsysteme GmbH shall have the right to notify the customer in writing of the completion of the performance with the sending of the final invoice with the legal consequence of § 12 para. 5 no. 1 VOB/B.
4. In the event of insignificant defects, there shall be no right to refuse acceptance.

§ 5 Transfer of risk

The risk shall pass upon acceptance or the effects of acceptance in accordance with § 12 Para. 5 No. 1 VOB/B or if the Customer fails to carry out acceptance within the set period (default of acceptance).

§ 6 Warranty

1. The warranty shall be governed by § 13 VOB/B. Schäfer Trennwandsysteme GmbH shall have the right to provide warranty for all defects occurring within the warranty period in the form of rectification of defects within a reasonable period of time.
2. Schäfer Trennwandsysteme GmbH shall have two attempts at rectification. If these are not successful, the customer shall be entitled to the further statutory warranty rights.
3. Also in the event that the contract for work and services concluded between the parties is to be classified as a BGB contract, it shall apply in deviation from § 634a para. 1 no. 2 BGB that for mechanical and electrotechnical/electrical systems where maintenance has an influence on safety and functionality, the limitation period for claims for defects for this part of the system shall be 2 years if the customer has decided not to assign maintenance to the contractor for the duration of the limitation period.
4. In the event of justified notices of defect, the Customer may withhold payments only to an extent that is in reasonable proportion to the defects that have occurred and the costs of rectification required for this.

5. If claims for defects are wrongfully raised, Schäfer Trennwandsysteme GmbH shall be entitled to demand reimbursement from the contractor for the expenses incurred in investigating the claims.
6. If subsequent performance by Schäfer Trennwandsysteme GmbH fails, the customer shall not be entitled to assert any further claims, irrespective of the legal grounds, including tortious ones, beyond the rights under § 634 para. 2, 3 and 4 BGB. Schäfer Trennwandsysteme GmbH shall not be liable for any damage that has not occurred to the delivery item itself, nor for any loss of profit or other financial loss of the customer. Insofar as the liability of Schäfer Trennwandsysteme GmbH is excluded or limited, this shall also apply to the personal liability of its legal representatives, salaried employees, employee representatives and vicarious agents. The exclusion of liability shall not apply to injury to life, body or health, if damage has been caused intentionally or by gross negligence or if Schäfer Trennwandsysteme GmbH has assumed a guarantee of quality or if Schäfer Trennwandsysteme GmbH can be accused of fraudulent conduct. Furthermore, it shall not apply to claims pursuant to §§ 1, 4 of the Product Liability Act. Insofar as Schäfer Trennwandsysteme GmbH has negligently breached a primary obligation or other material contractual obligation, the obligation to pay compensation shall be limited to the foreseeable damage typical for the contract; in the case of slight negligence, it shall be limited to 50% of the foreseeable damage.

§ 7 Consulting

If Schäfer Trennwandsysteme GmbH or its employees provide advice or information or make recommendations before, during or after the conclusion of a contract or in any other context, Schäfer Trennwandsysteme GmbH shall only be liable therefor if a special fee has been agreed for such services.

III.

Special provisions for contracts of sale

§ 1 Place of Performance

The place of performance shall be the registered office of Schäfer Trennwandsysteme GmbH. Delivery and shipment of the goods shall be made from the delivery warehouse at the expense of the Purchaser. Schäfer Trennwandsysteme GmbH shall be entitled to notify the Buyer of a place other than the agreed place of performance (place of delivery). In the event that a foreign place of performance is chosen, the provisions of §§ 4 and 5 of the General Terms and Conditions of Contract shall apply with regard to the applicable law and the place of jurisdiction.

§ 2

Schäfer Trennwandsysteme GmbH shall be entitled to make partial deliveries and to invoice these separately.

§ 3 Delivery time

1. Compliance with agreed deadlines for deliveries shall be subject to compliance by the Buyer with the terms of payment agreed in § 2 of the General Contract Execution. If these preconditions are not met in time, the periods shall be reasonably extended unless Schäfer Trennwandsysteme GmbH is responsible for the delays.
2. The day on which the goods are handed over to the commissioned transport company shall be decisive for the timeliness of the delivery. If, due to the fault of Buyer, acceptance does not take place in due time, Schäfer Trennwandsysteme GmbH shall have the right, at its option, after setting a grace period of ten days, either to demand immediate payment of the purchase price (invoice for arrears), with the payment period being cancelled, or to rescind the contract and claim damages for non-performance. In all other respects, § 4 para. 3 of the General Contract Terms shall apply.

§ 4 Subsequent delivery period and damage caused by delay

1. After expiry of the agreed delivery period, a subsequent delivery period of 12 days shall be set in motion without further explanation. After expiration of this additional delivery period, Buyer shall be entitled to set Schäfer Trennwandsysteme GmbH a grace period of 4 weeks in writing. After expiry of this period, the purchaser shall be entitled to withdraw from the contract if he has threatened to do so when setting the grace period. In the absence of such a declaration when setting the period of grace, Schäfer Trennwandsysteme GmbH shall be released from the obligation to deliver after the expiry of this period at its discretion if the purchaser, upon request, does not state within the period of grace whether it insists on performance of the contract.
2. Transactions for delivery by a fixed date will not be made.
3. Schäfer Trennwandsysteme GmbH shall only be liable for damages claimed by Buyer in the event of a delay in delivery, including claims for reimbursement of expenses pursuant to § 284 BGB (German Civil Code), if the delay in delivery was caused intentionally or by gross negligence. This limitation of liability shall not apply in the event of injury to life, body or health, breach of legally binding assurances as well as fraudulent conduct and gross negligence. In all other respects, claims for compensation in the event of breach of material contractual obligations shall be limited to the foreseeable damage typical of the contract; in the event of slight negligence to 50% of the foreseeable damage; unless Schäfer Trennwandsysteme GmbH was advised of the possibility of damage exceeding this amount when the order was placed.

§ 5 Acceptance obligation

If Buyer does not accept the goods, has already announced his refusal to accept the goods prior to delivery or returns delivered goods without justification, or if Schäfer Trennwandsysteme GmbH is entitled to make a subsequent delivery, Schäfer Trennwandsysteme GmbH shall be entitled to request Buyer to perform the contract within a period of twelve days. After expiry of this period, Schäfer Trennwandsysteme GmbH shall be entitled to dispose of the goods otherwise and to charge a flat rate of 33 % of the agreed purchase price for the damage incurred by it or, at its option, to claim the reduced proceeds which can be proven to have actually arisen. The Purchaser shall be entitled to prove that a lesser loss has actually been incurred.

§ 6 Liability for defects

1. There is an obligation to inspect the goods for defects in accordance with § 3 of the general terms of contract.
2. Customary or minor, technically unavoidable deviations in quality, dimensions or weights shall not be deemed to be defects. Public statements, recommendations or advertisements of the manufacturer shall not be deemed to be an agreement on quality.
3. Claims for material defects shall not exist in the case of natural wear and tear of the object of purchase or damage that occurs after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating materials or due to special external influences that are not assumed under the contract. If improper modifications or repairs are carried out by the purchaser or by third parties, there shall also be no claims for material defects for these and the resulting consequences. The following further circumstances shall lead to the exclusion of warranty and liability claims:
 - improper use of the object of purchase
 - improper assembly, commissioning and operation as well as maintenance of the object of purchase
 - non-observance of the instructions in the operating manual with regard to transport, storage, assembly, commissioning, operation, maintenance

- unauthorized structural changes
 - effects due to force majeure
4. If it turns out that a notice of defect was unfounded, the Buyer shall be obliged to reimburse the expenses incurred thereby (transport costs, inspection costs, etc.).
 5. If the Buyer has installed the defective item in another item or attached it to another item in accordance with its type and intended use, Schäfer Trennwandsysteme GmbH shall be entitled to refer the Buyer to reimbursement of expenses in accordance with § 439 para. 3 BGB (German Civil Code) in addition to the liability for the defective purchased item. Any reworking by the Seller instead shall require the consent of the Buyer. Expenses within the meaning of § 439 para. 3 BGB shall not include expenses incurred due to the fact that other parts not belonging to the delivery item were destroyed in whole or in part in the course of installation and removal; unless the Seller can be proven to have acted culpably in the sense of intent or gross negligence.
 6. In the event of disproportionate costs for subsequent improvement, Schäfer Trennwandsysteme GmbH shall be entitled to refuse subsequent performance or the type of subsequent performance as well as the resulting claim for reimbursement of expenses in accordance with § 439 para. 4 BGB.
 7. If transport, travel, labor and material costs increase due to the fact that the purchased item has been taken to a place other than the contractually agreed destination, the resulting increase in expenses shall not be borne by Schäfer Trennwandsysteme GmbH.
 8. Warranty claims shall not exist for parts subject to wear and tear.
 9. The warranty period for new goods shall be 1 year, calculated from the transfer of risk. This period is a limitation period and shall also apply to the assertion of claims for damage which did not occur to the delivery item itself; provided that liability can be assumed in this respect at all in accordance with para. 4. In the case of claims arising from tort or fraudulent intent alleged against Schäfer Trennwandsysteme GmbH, the statutory limitation provisions shall apply. In the case of used or regenerated purchased goods, a warranty shall only exist if it has been individually agreed; otherwise it shall be excluded. If the law, for example in § 438 BGB, prescribes longer warranty periods, these shall apply.
 10. In the event of justified notices of defects, the Buyer may withhold payments only to an extent that is in reasonable proportion to the defects that have occurred and the costs of rectification required for this purpose. If payment obligations beyond this are not fulfilled,
 - Schäfer Trennwandsysteme GmbH shall be entitled to refuse subsequent performance until payment of the justified claim;
 - a right of recourse according to § 478 BGB is excluded.

§ 7 Limitation of liability

The regulations in § 6 para. 6 of the general regulations for contracts for work and services shall also apply to purchase contracts.

IV.

General Contract Execution

§ 1 Payment

1. All prices are net prices; the applicable statutory value added tax shall be added.
2. In the case of work and services, the deadlines of § 16 VOB/B shall apply.

In the case of purchase contracts, the invoice shall be issued on the day of delivery. Such invoices shall be payable within 14 days from the date of invoice without any deductions, unless another due date has been agreed in the contract.

3. In the case of payments by check, the date on which the check is cashed, in the case of bank transfers, the date on which the amount is credited to the account of Schäfer Trennwandsysteme GmbH shall be decisive. The acceptance of bills of exchange requires a special agreement.
4. Payments shall always be charged to settle the oldest claim due plus the interest on arrears accrued thereon.
5. Price changes are permissible if there are more than three months between the conclusion of the contract and the agreed delivery date. If wages, material costs or market cost prices increase until completion of the delivery, Schäfer Trennwandsysteme GmbH shall be entitled to increase the price appropriately in accordance with the cost increase. The Purchaser shall only be entitled to withdraw from the contract if the price increase exceeds the increase in the general cost of living between the time of the order and the time of delivery by more than an insignificant amount.

§ 2 Default of payment

1. In the event of default in payment, Schäfer Trennwandsysteme GmbH shall be entitled to charge interest on arrears at a rate of 9 percentage points above the base interest rate or a demonstrably higher default damage.
2. In the event of default in payment by exceeding the payment deadline Schäfer Trennwandsysteme GmbH shall be entitled to the following further rights:
 - a. Schäfer Trennwandsysteme GmbH shall be entitled to refuse further deliveries under current contracts. Delivery periods for current contracts which have not yet been fulfilled shall be interrupted retroactively by the period from the delay in payment until full payment has been made, without this requiring any special notification.
 - b. Schäfer Trennwandsysteme GmbH shall be entitled to demand immediate payment prior to delivery of the goods for any outstanding deliveries under all current contracts, with the payment period being cancelled.
3. Schäfer Trennwandsysteme GmbH shall be entitled to exercise the rights agreed in § 5 of the General Contract Terms (retention of title) and/or to withdraw from all existing contracts in whole or in part.
4. The same rights shall accrue to Schäfer Trennwandsysteme GmbH if there is a significant deterioration in the financial circumstances of the purchaser (e.g. cessation of payments elsewhere, application for insolvency, compulsory enforcement measures, closure of business).
5. In the event of default of payment, Buyer shall bear the costs and fees incurred by Schäfer Trennwandsysteme GmbH. In addition, Buyer shall pay all costs incurred by Schäfer Trennwandsysteme GmbH through the commissioning of a German or foreign lawyer, including a correspond

§ 3 Offsetting and retention

The Customer may only set off counterclaims that are undisputed or have become res judicata. The same applies to a right of retention, provided that the client is a merchant. If this is not the case, a right of retention can only be asserted if the counterclaim is based on the same contractual relationship.

§ 4 Applicable law

The law of the Federal Republic of Germany shall be deemed agreed for all legal transactions. The provisions of the uniform international UN Convention on Contracts for the International Sale of Goods are expressly excluded.

§ 5 Place of Jurisdiction

If the Customer is a merchant, the place of business of Schäfer Trennwandsysteme GmbH shall be agreed as the place of jurisdiction, also for actions on bills of exchange and checks. However, Schäfer Trennwandsysteme GmbH shall also be entitled to sue the Customer at its place of business.

§ 6 Partial invalidity and collateral agreements

1. Should individual provisions of these terms and conditions be wholly or partially invalid or later lose their validity, this shall not affect the validity of the remaining provisions of the contract. This also applies if it turns out that the contract contains a loophole. In place of the invalid or unenforceable provision or to fill the loophole, a provision shall apply that best corresponds to the invalid or unenforceable provision from an economic point of view within the scope of what is legally permissible or, in the case of the loophole, takes into account what the contracting parties would have intended according to the meaning and purpose of the contract if they had reconsidered the point when concluding this contract or when subsequently including a provision.
2. Subsidiary agreements with persons whose authority to represent Schäfer Trennwandsysteme GmbH does not result from the commercial register shall be invalid unless they are expressly confirmed in writing by Schäfer Trennwandsysteme GmbH.
3. Oral collateral agreements shall not be effective.
4. If a contract or legal declarations are translated into another language, the German version shall prevail in the event of contradictions and doubts of interpretation.