

**General Terms and Conditions (AGB) of the  
Schaeffler Engineering GmbH  
(hereafter referred to as SEN)  
- Sales -**

**as of: 07/2003**

**1 Application**

- 1.1 The following conditions apply to all sales contracts, service contracts and other business, related to the carrying out of development, test, design, planning, documentation, manufacture and similar work leading to an obligation to deliver by SEN, including advisory service rendered.
- 1.2 These general terms and conditions also apply, without specific reference thereto, to continuing business relations and all business contacts, in particular in the case of verbal option and follow-up orders.
- 1.3 Should special conditions be agreed upon for specific orders or included therein, then the present terms and conditions are subordinate or supplementary thereto.

**2 Offer and Conclusion of Contract**

- 2.1 Offers by SEN are only binding if a resulting contract is concluded. The time period an offer is valid ends 6 (six) weeks after its preparation date, unless another agreement has been reached.
- 2.2 A contract is concluded only when confirmed in writing by SEN, or when the agreed upon service is provided.
- 2.3 Verbal orders, additional stipulations, additions or changes require written confirmation from SEN before they become binding.
- 2.4 Brochures and advertising claims are prepared in good faith; they contain no commitment or guarantee and can only become contractually binding when specifically confirmed by SEN.

**3 Delivery Conditions, Transfer of Risk and Delivery Time**

- 3.1 All deliveries including packing are prepared at the SEN plant. All shipments are at the expense and risk of the customer. This applies in particular to local import conditions, duties, taxes etc. Packing material does not go back to SEN. No reduction of price whatsoever will be made to cover the customer's pro-rata costs of recycling.
- 3.2 The risk is transferred to the customer at latest with the shipment of the delivery item; this also applies to partial shipments. If shipment is delayed due to conditions for which the customer is responsible, the risk is transferred at the moment the delivery is noted ready for shipment. Return shipments are made at the risk of the customer.
- 3.3 The delivery time begins when the order confirmation is sent by SEN or at the start of the agreed upon service, but not before final technical clarification of all implementation details or receipt of documents or parts to be supplied by the customer. Delivery time refers to the preparation at the SEN plant. If changes in the contract are later agreed upon, a new delivery time is also to be agreed upon.
- 3.4 There is no default in delivery when the delay is due to an Act of God or some unforeseen event - for example, energy or raw material shortage, equipment failure, strike or lock out, delay or non-arrival of parts from a

sub-contractor. This also applies when such things happen during a delay that already exists.

- 3.5 For the delivery time to be met, the customer must first fill all contractual obligations.
- 3.6 SEN expressly reserves the right to make a reasonable number of partial shipments.
- 3.7 The right to make changes in design, shape or colour during the delivery time is reserved, as long as the function of the delivery item is not changed. Changes due to technical progress are at all times possible and require no prior notification.

**4 Obligatory Inspection, Acceptance of Delivery and Guarantee**

- 4.1 Immediately on receipt of the delivery item, the customer is to examine it and within 8 (eight) work days to give full details in writing of any possible defects, errors, over or under deliveries. After this time period the delivery item is considered approved. The customer bears the burden of proof of hidden defects.
- 4.2 The customer is required, at his cost, to insure the delivery item against fire, water, and all other hazards, in particular against electronic and overvoltage damage.
- 4.3 If the customer desires a formal acceptance of delivery, it must specifically be requested in writing. This acceptance of delivery is done, at SEN's choice, either at the SEN plant or at the customer and must take place within two weeks following the receipt of the delivery item by the customer. For each acceptance of delivery there is a written acceptance of delivery report form, to be signed by both contract partners.
- 4.4 Formal acceptance of delivery is an extra cost. The price is the one valid on the day of the acceptance of delivery.
- 4.5 When no formal acceptance of delivery is requested, acceptance of delivery is considered to have taken place on the day the delivery item leaves the SEN plant.
- 4.6 The guarantee period for SEN depends on the legal regulation of law at the time of conclusion of the agreement, as long as no other contractual agreement has been made. The conditions are detailed in the separate "Terms of Guarantee of the Schaeffler Engineering GmbH" inclusive their "Exclusions from liability", which are included with every delivery. They can also be requested separately. They are an integral part of these "General Terms and Conditions".
- 4.7 For all calculations of time allowed, the delivery time of the goods at the place of destination, or the time of formal acceptance of delivery and the day of receipt of the written complaint at SEN are used.
- 4.8 Provided for the business of the bought, produced or repaired objects or official software, necessitates the obtaining of licence authorizations, for which the client must apply, with nothing else being generally regulated within the contract.

**5 Payment and Prices**

- 5.1 Payment for SEN services is made as established in the contract agreement. This is based on the SEN price list in its currently valid edition. Special conditions can be agreed upon that deviate from this, for example for large quotas or numbers. A discount scale, however, invariably requires written confirmation from SEN.
- 5.2 All agreed on prices are given in € (Euro) per item or per hour, as long as nothing else is stated, and are net prices without the legal value added tax (VAT, sales tax). This is to be paid separately to SEN.
- 5.3 Value added tax exempt billing to intra-Community customers can only be made when a tax declaration with EGVAT identification number is present. Charges or taxes not paid by the customer confers SEN the right to make an additional charge.
- 5.4 Deliveries to non intra-Community customers are VAT free. The customer is required to have the exit certified by the customs transit station responsible, and to send SEN the certificate within 14 (fourteen) days.
- 5.5 When filling the contract requires it, operating supplies (for example, fuel, oil, hydraulic fluid, antifreeze) and factory supplies (for example, project related special purchases), as used and at the current market price, will be added to the bill and shown separately.
- 5.6 Maintenance, repair and schooling will be billed according to their cost, as long as no specific maintenance or schooling contract has been agreed on.
- 5.7 A cost estimate will only be made when the customer specifically requests it. It is free of charge if a repair by SEN follows; if this is not the case, SEN has the right to charge you the global amount of 105,-- € per System.
- 5.8 When technical changes are made, SEN reserves the right to adjust prices. When price changes are announced, all previously given prices lose their validity.

**6 Conditions of Payment**

- 6.1 All payments are to be made immediately on receipt of the bill, non-cash, net cash. The calculation is made subsequent to the end of the month, depending on the service provided up until then, for spare parts, equipment or system orders also for partial shipments.
- 6.2 For orders, up from 100.000,00 € total net value, payment as follows:
- |                                                                 |      |
|-----------------------------------------------------------------|------|
| - on receipt of order                                           | 30 % |
| - on shipment                                                   | 60 % |
| - on acceptance of delivery<br>(at most 2 weeks after shipment) | 10 % |
- 6.3 If the payment period is not met, SEN bills interest for arrears at a rate of 12 % per annum. Credit for checks takes place subject to the availability date when SEN can touch the countervalue. For every reminder SEN bills processing costs at a rate of 8,-- €.

**7 Rented or Borrowed Items**

- 7.1 The customer is required to insure in due form the rented or borrowed items, for the term of the rent or loan, and pays all costs. All ownership and exploitation rights remain in the hands of SEN.
- 7.2 When items are rented, a separate rental contract is made that details the conditions.

**8 Copyright**

- 8.1 The supplied designs, samples, models, tools, plans, systems and similar things and also technical documents are the intellectual property of SEN and only meant for the internal use of the customer. Copying, reproduction and imitation even when a specific copyright does not exist, is only allowed with the written permission of SEN. Absence of such permission makes the customer liable for damages. All supplied items may only be used within the framework of the agreement made with SEN.
- 8.2 Copying of software developed by SEN, also remunerated and non remunerated transmission to third parties, also only of a part thereof, is not permitted. Unless otherwise noted, plan documents, software source code and exploitation rights of each and every type do not pass into the ownership of the customer. The conditions are detailed in the separate Software Licence Agreement of the Schaeffler Engineering GmbH, which are submitted to each licensee.

**9 Reservation of Ownership, Retention, Offset, Transferability**

- 9.1 SEN retains ownership of the supplied delivery item, also after taking of delivery, until complete discharge of all outstanding debts resulting from the business relationship with the customer, including ancillary debts.
- 9.2 The customer does not have the right to pledge the delivery item, or to transfer title as security, before he has fully acquired the ownership rights. In the case of resale of the delivery item the resulting claims against the buyer or third party are transferred to SEN, for reasons of security.
- 9.3 The customer cannot, because of any possible counterclaim, refuse or withhold payment or offset it with a counterclaim, unless the grounds and amount are undisputed or non-appealable set by law.
- 9.4 The customer is not authorized to transfer rights and/or obligations concerning SEN, or the exercise thereof, as contractually defined with SEN, to third parties without the aforementioned written permission from SEN.

**10 Withdrawal**

- 10.1 SEN reserves the right to withdraw from a contract after its conclusion, if prejudicial conditions become known concerning the liquidity or financial circumstances of the customer, and the latter refuses to provide security. In this case, all debts become due immediately. In addition, SEN is entitled to claim damages for non-fulfillment.
- 10.2 SEN is entitled to withdraw from a contract without liability for damages if fulfilling the contract becomes unreasonably difficult for reasons not due to SEN.
- 10.3 The customer can withdraw from the contract if before the passing of risk, providing the complete product/service becomes definitively impossible for SEN.
- 10.4 The customer is entitled to withdraw from the contract if through the fault of SEN, one of the deadlines to remedy defects, justifiably set by the latter, elapses twice without effect, or an attempt to remedy defects fails twice.

**11 Observance of Secrecy**

- 11.1 SEN commits itself to complete secrecy concerning documents or knowledge about objects, processes or know-how of the customer. The customer commits itself to a corresponding secrecy towards third parties.

**12 General Provisions**

- 12.1 The customer declares his consent to SEN using person related data obtained through the conditions of contract with the latter, in accordance with the Data Protection Act, for company internal purposes.
- 12.2 Should a provision of these General Terms and Conditions, in whole or part, be or become null and void then the next following provision becomes binding as agreed. The validity of the remaining provisions is in no way affected.
- 12.3 Specific conditions concerning the product liability law are stipulated in the separate SEN "Product Liability Law - General Terms of Business", which is a part of these General Terms and Conditions, which are also included with every SEN product delivery, and in addition available separately on request.

**13 Place of Fulfilment and Place of Jurisdiction**

- 13.1 The place of fulfilment for delivery and payment is Werdohl. Responsible for deciding all disputes, between both parties, resulting from the contractual relationship are at SEN's choice, the Altena district court and Hagen regional court, or to be brought by SEN before a court at the customer's head office or in the federal state/country where the customer has his head office.

**14 Legal Provisions**

- 14.1 Insofar as nothing else has been agreed, the legal provisions of the German Federal Republic (German Law) are irrevocably applicable. The provisions of the UN agreement of 11.04.80 on contracts concerning the international purchase of goods (CISG) are excluded.

**The following documents are also currently valid:**

Terms of Guarantee  
Product Liability Law - General Terms of Business  
Software Licence Agreement of Schaeffler Engineering GmbH