

General terms of supply

As of February 2012

Drawn up taking into account the recommendations of the German Engineering Federation (VDMA).

I. Validity

1. All deliveries, services and offers are made solely on the basis of these General Terms of Supply. They are a component of all contracts that Schmitt+Sohn conclude with its contractual partners (hereinafter also known as "Clients") with regard to the supplies and services it offers. They also apply to all future deliveries, services and offers to the Client, even if they have not been agreed on again separately. They apply to maintenance contracts, insofar as they do not contradict the more specific contractual terms of Schmitt+Sohn.

2. Additional contractual terms or differently worded contractual terms of the Client or third parties do not apply. They only become the part of the contract when an order is accepted, if Schmitt+Sohn has separately expressly acknowledged them and has done so in writing.

II. Offer and conclusion of contract

1. All offers are subject to confirmation and non-binding unless they are expressly defined as binding or contain a term of acceptance.

2. A contract is only concluded once Schmitt+Sohn confirms the order in writing.

3. The written contract that has been concluded, including these General Terms of Supply, is solely decisive for the legal relationship between Schmitt+Sohn and the Client. It represents all agreements between the parties to the contract with regard to the subject of the contract. Addenda and amendments can only be undertaken by mutual agreement and require written confirmation from Schmitt+Sohn.

4. The property rights and copyrights of documents that Schmitt+Sohn has provided the client, such as images, drawings, samples and quotations and similar information, remain in the hands of Schmitt+Sohn. This information may not be reproduced, nor must third parties be made aware of it in any way, nor may it be used to manufacture the system or components. Technical documents relating to offers which do not lead to an order being placed must be returned without delay.

5. The documents relating to the offers, such as images, drawings, etc., as well as details regarding dimensions, weights, technical details and the like, are only approximate, unless they are expressly described as binding.

III. Scope of services, planning permission

1. Only the order confirmation issued by Schmitt+Sohn is decisive with regard to the scope of the contractually agreed performance.

2. After conclusion of the contract, the submission plan will be presented to the Client for his signed approval. The prerequisite for starting the job processing is the receipt of the express written consent of the Client. The Client must hand over to Schmitt+Sohn the construction plans required to prepare the submission plan in good time.

3. The plans approved by the Client are binding for the construction of the system.

4. Every subsequent change to the scope of services results in an adjustment of the price and time of delivery.

IV. Prices and payment

1. The prices apply to the scope of services and delivery listed in the order confirmation. Any additional and special services will be invoiced separately. The prices are free site, including packaging and installation, plus VAT.

2. In the absence of special payment terms, the following payment schedule applies:

30 % when placing the order

30 % upon notification of the start of production

30 % upon notification that the principal components are ready for dispatch

10 % upon official approval and release to operation

If the official release to operation does not take place for on-site reasons, the last instalment will fall due upon notification of the final assembly.

3. Invoice amounts must be paid strictly net within 14 days, unless otherwise agreed upon in writing. Receipt by Schmitt+Sohn is decisive for the date of the payment.

4. If the Client does not comply with the agreed terms of payment, Schmitt+Sohn is entitled, after a written reminder:

4.1 to refuse the performance of its own contractual obligations until the documented receipt of the delayed payment, as well as to invoice the costs associated with this (storage costs, etc.) and to charge an administrative expense amounting to 5% of this;

4.2 to apply an appropriate extension to the delivery period;

4.3 to demand immediate payment of the entire outstanding contract price;

4.4 to charge interest on the outstanding sums according to the legal specifications, but at least 11.19% p.a., and to claim dunning costs of EUR 5 for the first two reminders and EUR 10 for every further reminder; the enforcement of claims for further damages caused by delayed performance remains unaffected by this;

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4.5 to set an appropriate extension for payment and to withdraw from the contract upon the non-compliance, the Client being fully responsible for the payment in full of any compensation for damage;
4.6 to decommission the system until payment has been made in full; the Client will allow access to the system at any time for this purpose.

5. If several systems are involved, the agreed method of payment applies separately to each system.

6. Offsetting of counterclaims by the client or retention of payments due to such claims is only permitted to the extent that the counterclaims are uncontested or have been determined to be legally binding and are based upon the same contractual relationship.

7. The retention of payments because of on-site delays or due to force majeure or delays for which Schmitt+Sohn are not answerable (cf. point VI.) is not permitted.

8. Schmitt+Sohn is entitled to provide outstanding services only against prepayment or security if, after conclusion of the contract, it becomes aware of circumstances that significantly reduce the creditworthiness of the Client and which put the payment of the outstanding claims of Schmitt+Sohn that arise from the contractual relationship (including from other individual orders to which the framework agreement applies) at risk. The rights arising from Sections 648 and 648a of the German Civil Code (Bürgerliches Gesetzbuch – BGB) remain unaffected by this.

V. Delivery and installation periods

1. The delivery and installation periods require express written agreement and are based on the order confirmation from Schmitt+Sohn. The prerequisite for their validity and their commencement is the fulfilment of the contractually agreed services that the Client has to perform, in particular: complete clarification of all technical data, prompt approval of all system plans as well as prompt payment. The installation periods also presume the chance to start installation unhindered at the time originally specified. If the Client has to perform services and participate during installation, then the Client must do so in such a way that excludes obstructions or interruptions during installation.

2. The delivery and installation periods will be appropriately extended

2.1 if the Client subsequently changes technical data or does not perform on-site services, in particular those in line with point V. 1., in good time, therefore causing a delay in delivery or installation.

2.2. upon delays caused by force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. disruptions of all kinds, strikes, incorrect or non-timely delivery by suppliers) and for which Schmitt+Sohn is not answerable.

3. Agreed completion deadlines have been met if Schmitt+Sohn has given written notification of the completion of the lift system which is ready for acceptance. If the commissioning or the start of operation of the lift system is delayed on account of services not performed by the Client, this will not affect the compliance of the completion deadlines.

VI. Installation, repairs, rebuilding (modernisation)

1. Express reference is made to the on-site services specified in the offer made by Schmitt+Sohn. At the beginning of installation and during the period of installation, the Client must render all on-site services and influence the time schedule in such a way that unimpeded completion of the lift system without any interruptions is possible.

2. If installation is delayed or interrupted due to the noncompliance of obligations on the part of the Client, or if the completion of the work is delayed because of this and/or the acceptance by the appraiser of the technical inspection company, the additional costs arising to Schmitt+Sohn, in particular warehousing costs and increased personnel costs caused by waiting times or additional journeys, must be paid for separately by the Client.

3. If, during the work in the Kornburg plant or during the execution of conversion or repair work at the place where the lift system is in operation, it should turn out that further system parts not included in the offer have to be replaced, their supply and installation will incur extra costs. The same applies if, during acceptance by the appraiser of the technical inspection company, he demands the alteration or replacement of existing subassemblies. If such additional material and labour costs are ascertained, Schmitt+Sohn will immediately inform the Client.

4. If, at the Client's wish, work is done outside the normal working hours of Schmitt+Sohn, the negotiated surcharges for overtime, night-time work, and work done on Sundays and public holidays, including the full contractor surcharge, will be charged. Unless otherwise agreed, the extra staff required will be provided by the Client.

5. Parts that have been dismantled within the scope of the work and are no longer used for the lift system (old materials/scrap) will become the property of Schmitt+Sohn. Schmitt+Sohn will remove these parts and will leave behind a suitably clean installation site. This applies insofar as the Client has not expressly desired something to the contrary.

VII. Start of operation and acceptance

1. The Client is obliged to accept the system upon receiving notification of completion as specified in the contract. The system is also regarded as completed when it cannot be operated for on-site reasons (e.g. lack of power, lack of acceptance by the Technical Inspection Agency (TÜV), incomplete building). In such cases, the Client is not entitled to refuse or to delay acceptance.

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2. If the Client does not accept the system, despite receiving notification of completion and a reasonable deadline for acceptance (generally 2 weeks), the system will be regarded as accepted and the final payment is due without any deductions.
3. The Client cannot refuse acceptance on account of defects that do not impair the functionality of the system.
4. Unless otherwise agreed, the handover date of the system is the time of the positive acceptance by the technical inspection company. On-site defects or negligible defects in line with VII. 3 will not delay the handover.
5. If the system is put into operation before completion on account of on-site needs (operation as a building elevator), the operation and maintenance will exclusively take place at the risk and for the account of the Client. The transfer of risk to the Client will take place with the start of operation as a building elevator.

VIII. Warranty rights

Schmitt+Sohn will assume liability for material defects and defects in title as follows, to the exclusion of further claims, subject to point IX.:

Material defects:

1. All parts that turn out to be faulty due to circumstances occurring before transfer of risk must be remedied or replaced, free of defects, free of charge and according to the choice of the Client. Schmitt+Sohn must be immediately notified in writing that such defects have been ascertained. Replaced parts become the property of Schmitt+Sohn.
2. Following a corresponding agreement with Schmitt+Sohn, the Client shall grant the time and opportunity required for performing any rectification and replacement supplies Schmitt+Sohn deems necessary; otherwise Schmitt+Sohn will not be liable for any consequences resulting from this. The Client shall be entitled to rectify the defect himself or have it rectified by a third party and claim reimbursement of the associated expenditure from Schmitt+Sohn only in urgent cases where operational safety is at risk or disproportionately large damage has to be avoided.
3. A warranty claim does not arise if the defect is attributable to the natural and normal wear and tear of the service which has been provided free of defects. Furthermore, no liability shall be assumed for the following cases:
unsuitable or improper use, improper installation or commissioning by the buyer or a third party, faulty or negligent treatment, improper maintenance, unsuited operating supplies, defective construction works and building constructions, subsidence, chemical, electrochemical or electrical influences, influences of temperature and weather as well as other natural events – insofar as Schmitt+Sohn cannot be held responsible for them.
4. Schmitt+Sohn will not be liable for improper rectification by the Client or a third party and any consequences arising from this. The same shall apply to any changes made to the system without the prior consent of Schmitt+Sohn.

Defects in title:

5. Claims for defects of title are commensurate with legal provisions, unless otherwise determined in point IX.

IX. Liability

1. If the service cannot be used by the Client in conformity with the contract through the fault of Schmitt+Sohn because of neglected or faulty execution of proposals made and advice given prior to or after execution of the contract, or because of the violation of any other contractual accessory obligations – in particular in respect of the operating and maintenance instructions for the delivery item – the provisions of sections VI and IX. 2 shall apply accordingly to the exclusion of any other claims the Buyer may have.
2. Schmitt+Sohn will be liable – for any legal reason whatsoever – for damage which has not arisen to the system itself only
 - a) in cases of intent
 - b) in cases of gross negligence on the part of the owner/its executive bodies or senior managers.
 - c) in the case of negligent injury to life, body or health,
 - d) in case of defects which Schmitt+Sohn has fraudulently concealed,
 - e) within the framework of an assured warranty,
 - f) in case of defects of the system to the extent that Schmitt+Sohn is liable under the Product Liability Act for personal injury or damage to privately used items.

In case of culpable violation of essential contractual obligations, Schmitt+Sohn shall also be liable in case of gross negligence of non-managerial employees and of minor negligence. In the latter case, liability shall be limited to reasonably foreseeable damage that is typical of the contract. Any further claims shall be excluded.

X. Limitation of time

Any claims by the Client – for any legal reasons whatsoever – shall expire by limitation after 12 months. In respect of claims for damages pursuant to section IX. 2 a-d and f, the legal time limits shall apply. The same applies to defects in the construction work or to delivery items which were used for construction work in accordance with their normal method of utilisation and have caused their defectiveness.

XI. Software use

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If the scope of delivery includes software, the Client shall be granted a non-exclusive right to use the software supplied, including its documentation. It shall be transferred exclusively for use on the system for which it is intended. Any utilisation of the software on more than one system is not permitted.

2. The Client may copy, revise, translate or convert the object code into the source code only to the extent permitted under the law (§§ 69 a et seq. German Copyright Act). The Client undertakes not to remove identifications of the manufacturer – in particular copyright notices – or to change them without the prior written permission of Schmitt+Sohn.

3. Schmitt+Sohn or the software supplier retains all other rights in the software and documentation including copies thereof. The granting of sub-licenses is not permissible.

XII. Applicable law and court of jurisdiction

1. The law of the Federal Republic of Germany applicable to the legal relationships of domestic parties shall apply exclusively to all legal relationships between Schmitt+Sohn and the Client.

2. The court of jurisdiction is Nuremberg or the registered office of the branch which is the party of the contract, the choice of which is at the discretion of Schmitt+Sohn.