

**Standard Terms and Conditions of Sale and Delivery  
of the Schwarzmüller Group**  
Version from 15th May 2018

**I. General conditions**

These Standard Terms and Conditions of Sale and Delivery shall apply, in particular, to Schwarzmüller Management- and Service GmbH (FN 112308 i) and Wilhelm Schwarzmüller GmbH Austria (FN 364874 f), Schwarzmüller Kft. Hungary (Cg: 13-09-068664), Schwarzmüller s.r.o. Czech Republic (IC 46885820), SCHWARZMÜLLER SR, s.r.o. Slovakia (31446175), Schwarzmüller Croatia d.o.o. Croatia (MBS:080224831), Schwarzmüller Polska Sp. z o.o. Poland (KRS 0000370208), Schwarzmüller d.o.o. Dobanovci Serbia and Montenegro (17408780), Schwarzmüller Romania SRL Romania (RO 14835621), Schwarzmüller Ukraine GmbH Ukraine (33296133), Schwarzmüller Bulgarien OOD Bulgaria (EIK 175119877), Schwarzmüller BH d.o.o. Bosnia-Herzegovina, (65-01-1099-12), all of them hereinafter referred to as „Schwarzmüller“, and are a mandatory part of every contract of which Schwarzmüller is a direct or indirect contractual partner. Any contrary or supplementary terms of the ordering party shall not apply unless confirmed by Schwarzmüller in writing.

The products offered in the Online Shop are exclusively for enterprises and natural or legal entities in exercise of their commercial or self-employed professional activity (entrepreneurs). Sales to private consumers are explicitly excluded.

**II. Conclusion and content of contract**

All offers on the Internet, in brochures, advertisements and other advertising material are subject to change and non-binding unless they are expressly marked as binding. Schwarzmüller accepts no liability for printing errors and mistakes.

The contract partner is bound to the order placed by it until it is accepted or rejected by Schwarzmüller. The order shall only lapse if no confirmation of order is given by Schwarzmüller by expiration of a grace period of 14 days set by registered letter.

A contracting relationship arises upon issue of the written order confirmation by Schwarzmüller.

The contract partner expressly acknowledges and agrees that the content of the contract is exclusively determined by the content of the written order confirmation. All orders and agreements are only effective if they have been accepted explicitly by Schwarzmüller in written form and signed by an authorised officer. They are binding/entitling only to the extent set forth in the written document. Orders placed verbally, and any subsequent alterations thereof, must be confirmed in writing by Schwarzmüller in order to become legally effective. The same applies to warranted characteristics of the supplied items. Absence of response does not under any circumstances constitute acceptance. Amendments and special terms only become valid when they have been agreed in writing and signed by an authorised officer, insofar as our own specific terms intended for this purpose do not exist or nothing to the contrary is derived from mandatory statutory provisions. The Standard Terms and Conditions of the contract partner are expressly excluded with regard to this legal transaction and the entire business relationship. This shall also apply when Schwarzmüller renders performance with full knowledge of conflicting terms and conditions of the contractual partner.

Schwarzmüller reserves the right to change the construction or form of the purchased article during the delivery period. The information in the product descriptions regarding capacities, weight, operating expenses, speed, etc. are to be considered as approximations.

**III. Prices**

All prices are net prices in Euro ex works, excluding VAT, discounts, freight, packaging, transfer, postage, customs duty and charges, as well as other public fees, and any insurance premiums for own damage / general liability. In the event of orders in a foreign currency, the currency prices provided for in the contract shall apply. Price increases due to an increase in actual costs will be invoiced.

If Schwarzmüller uses list prices for goods and these prices increase between contract conclusion and the date of delivery, Schwarzmüller shall be entitled to increase the agreed price by the amount by which the list prices have been increased during such period.

With regard to other goods, particularly goods made to specification, the price specified in the order confirmation shall apply, on the condition that Schwarzmüller shall be entitled to invoice the increase in actual costs between contract conclusion and delivery date, in addition to the agreed price.

Unless Schwarzmüller ships the goods itself, foreign customers must themselves provide the export certificate necessary for the purposes of exemption from VAT and must send it to Schwarzmüller. If such export certificate is not provided, the applicable VAT must be paid to Schwarzmüller, just as in the case of domestic customers.

If used vehicles are traded in as part exchange, their value ascertained on the day of handover shall apply in the case of damage or loss of value of the used vehicle between contract conclusion and delivery.

All ancillary contract expenses, such as the costs of financing, costs of securing the purchase price claim in the land register, fees, interest and similar shall be borne by the contract partner.

**IV. Payment conditions**

Payments to Schwarzmüller are to be made immediately upon receipt of invoice unless other payment conditions have been agreed in writing. All payments shall be made free of charges and without deductions. In case of default in payment, Schwarzmüller shall have the right to charge default interest at a rate of 8% above the respective base rate of the Austrian National Bank. In the case of a delay in acceptance of more than 14 calendar days following announcement of completion of the delivery item, Schwarzmüller will invoice all costs and expenses actually incurred.

Schwarzmüller may refuse payments made by cheque or bill of exchange without giving any reason.

Cheques and bills of exchange are only accepted upon special agreement and only on account of payment, not instead of payment. Collection and discounting charges shall be borne by the contractual partner. Further transfer and prolongation are not considered as settlement. Schwarzmüller accepts no liability for legal presentation, protest, notification and returning of these means of payment. If payment in instalments is agreed and the purchaser is late with payment of an instalment by more than eight days, this shall be deemed a failure to meet the payment target without a reminder, giving, in particular, Schwarzmüller the (unilateral) right to withdrawal from the contract and rescission.

The contractual partner is not entitled to the exercise of a right of retention and the charging of counterclaims; in particular, warranty claims shall not be considered reason for the retention of mature payments.

Payments with debt discharging effect may only be made to Schwarzmüller, or to designated representatives with an authority to collect issued by Schwarzmüller.

The contractual partner agrees that all payments made by it shall first be charged against interest and other ancillary fees, then against repair costs and amounts due for spare parts,

and finally to the goods ordered. If there are several contractual partners, they shall be jointly and severally liable.

#### **V. Right of retention**

Notwithstanding further statutory rights or other agreements to the contrary, we have a right of retention with regard to all objects to be or already supplied to the contractual partner and which are still our property or in our possession and/or have been assigned to us until settlement of all claims against the contractual partner resulting from the business relationship have been fulfilled.

#### **VI. Reservation of title**

Notwithstanding the payment obligation of the purchaser, Schwarzmüller retains title to all items purchased until complete payment of all claims arising from the contract. The reservation of title shall also apply to all claims that are related to the purchased item, i.e. claims arising from the provision of repairs, spare parts, accessories or operating supplies, costs of legal action and execution, adjustment and insurance costs.

The reservation of title may be recorded in the registration document (individual letter of permit) and on the vehicle itself. Schwarzmüller is entitled to retain the registration document (individual letter of permit) until all liabilities deriving from the purchase contract are fully covered by the contractual partner. If the vehicle should be seized by a third party, the contractual partner must immediately inform Schwarzmüller thereof by registered letter. The contractual partner is not allowed to lend the object of purchase to third parties, to sell or pledge it, without Schwarzmüller's written approval. The contractual partner must immediately inform Schwarzmüller of any change of residence or location, and of an attachment of the object of purchase. If claims against third parties arise for the contractual partner through acts committed by the contractual partner contrary to the contract, such as disposal of our property, such claims are already now assigned to Schwarzmüller.

During the retention of title period, the contractual partner shall, upon Schwarzmüller's request, insure the object of purchase to the full value against all risks, including fire, and to register the insurance sum in favour of Schwarzmüller.

The contractual partner shall be obliged, during the retention of title period, to keep the object of purchase in proper condition and to have any necessary repairs - apart from emergency cases - carried out by Schwarzmüller repair shops or repair shops approved by Schwarzmüller.

In the event that the object of purchase is resold with Schwarzmüller's consent before payment has been effected in full, the contractual partner hereby assigns to Schwarzmüller its rights and claims with regard to such sale (purchase price demands, reservations of title, etc.) against the third-party debtor. Both the third-party debtor and Schwarzmüller must be informed of such an assignment.

If the contractual partner fails to fulfil its contractual obligations, Schwarzmüller shall be entitled to assert any rights from reservation of title itself without using judicial assistance.

The contractual partner authorises Schwarzmüller, in particular, to retrieve the supplied item and acknowledges that such retrieval is not to be interpreted as a cancellation of the contract, but represents solely a measure to secure the supplied item, unless Schwarzmüller expressly states its intention to the contrary. No claims of the contractual partner against Schwarzmüller can arise from such retrieval.

In the event the supplied item is taken back, the contractual partner agrees to have the current value of the vehicle established by a legally sworn automotive expert to be appointed

by Schwarzmüller. If a resale of the supplied item should be necessary, the proceeds thereof, after deduction of the costs of such sale, e.g. commissions, valuation fees, repairs, etc., shall be credited to Schwarzmüller's claims against the contractual partner. The contractual partner hereby expressly waives any other sale of the retrieved delivery item and any further claims.

#### **VII. Delivery**

Unless expressly agreed as fixed, any agreed periods of delivery are not binding. The contractual partner can withdraw from the contract due to delayed delivery, in accordance with general statutory provisions, if the delivery period is exceeded by more than three months. Further claims are excluded.

Any specified delivery date shall only commence upon the contract becoming effective and a complete agreement regarding the modality thereof and on condition of timely adherence to the agreed payment terms in accordance with these Standard Terms and Conditions of Sale and Delivery. If prior to delivery, the contractual partner requires another version of the delivery item, differing in any respect, the originally agreed delivery period becomes void.

Schwarzmüller does not assume liability for cases of force majeure, e.g. breakdowns, strikes, lockouts, total or partial closure of Schwarzmüller's plants for whatever reason, the occurrence of such events in our suppliers' plants, civil unrest, war, and governmental orders.

Schwarzmüller reserves the right to withdraw from this contract or to demand payment in advance if, after order confirmation and prior to delivery, Schwarzmüller becomes aware of circumstances relating to the economic conditions of the contractual partner that lead it to believe that the fulfilment of the contract on the part of the contractual partner can no longer be adequately guaranteed.

#### **VIII. Transfer of risk**

The risk of total or partial loss, deterioration, damage or confiscation of the item of delivery shall pass to the contractual partner:

- a. For delivery ex works: with the notification that the item is ready for dispatch
- b. For shipment of the item of delivery with dispatch from the delivering plant, regardless of who performs the transport
- c. With the handover of the item of delivery to the contractual partner or a third party named or authorised by it.

#### **IX. Handover**

The contractual partner or a third party authorised by it may examine the item of delivery within eight days after receipt of notification of completion at the agreed place of acceptance. In the event of orders for servicing or repairs, the acceptance will take place immediately after completion of such work and notification of completion by Schwarzmüller. The right to examine is tacitly waived, if the examination is not done within the specified period or a shipping order is issued. In such a case, the item of delivery shall be regarded as duly delivered and accepted upon its handover to the contractual partner or a third party authorised by it.

The contractual partner is obliged to examine the item of delivery immediately and fully. Any defects identified during such examination must be communicated immediately in writing. If the contractual partner fails to do so totally, partially or in time, the assertion of any warranty claims, damages or further claims to compensation for such defects shall be ruled out. Defects that appear later must also be communicated to Schwarzmüller immediately in writing with the same legal consequences. The assertion of warranty claims is subject to the contractual partner observing Schwarzmüller's instructions in

full regarding the handling of the delivered item. The warranty is also conditional on the proper use and storage of the delivered item by the contractual partner who shall bear the burden of proof in the event of dispute.

If the contractual partner fails to fulfil the contract, in particular with regard to the payment of the purchase price or acceptance of the vehicle, Schwarzmüller may withdraw from the contract subject to a period of grace of 14 days, or demand damages due to non-fulfilment, including damages for lost profit, or a cancellation fee of 30% of the agreed purchase price. The right to have such matters moderated in court is expressly ruled out. In addition, the contractual partner shall be obliged to compensate Schwarzmüller's representative for the loss of the commission. Schwarzmüller may demand such provision on behalf of its representative in its own name or assert such claim by court action, if necessary.

Schwarzmüller may take spare parts back if a reason is given for their return within 14 days of their delivery. However, Schwarzmüller must have expressly declared its willingness to accept them, before the contractual partner may send such spare parts back. Schwarzmüller reserves the right to reduce the credit note by 10 % of the gross price invoiced to cover its administrative cost. Spare parts which have been made to specification upon request by the contractual partner will not be taken back.

#### **X. Liability and warranty**

Schwarzmüller's warranty is only extended to the original purchaser and only covers faultlessness in accordance with the current state-of-the-art with regard to materials and workmanship of Schwarzmüller trailers, upper bodies and special vehicles up to a mileage of 250,000 km and/or 2 years. Any warranty claims will expire within two years from the date of transfer of the vehicle. If the original purchaser has acquired additional warranty packages in excess of this period of time, the contractually agreed conditions of such packages shall apply.

In order to maintain warranty claims, a first service should be carried out no later than 5 weeks or 10,000 km from the date of transfer of the vehicle. Such first service may only be carried out by authorised technical staff. The vehicle owner is also entitled to carry out the first service and to sign the service booklet if it has an appropriate repair shop and staff with proven qualifications at its disposal. All service and maintenance items are listed in the service booklet and are thus available to the original purchaser and/or vehicle owner. After the first service, service inspections must be performed once a year. The yearly service interval is 12 months or 125,000 km from the date of transfer of the vehicle. The yearly service must be carried out by a service centre authorised by Schwarzmüller. The tolerance for the yearly service is 3 months or 30,000 km. This tolerance shall not apply to the first service (5 weeks or 10,000 km) and may not be transferred to the following year. All wear parts must be serviced separately, and checked for wear and replaced as necessary.

Only original spare parts from Schwarzmüller may be used. Any installation and use of spare parts which are not from original manufacturers (OE) and subsequent damages resulting thereof will be considered as improper maintenance repair, and the cost of their replacement and repair shall be borne by the customer.

Warranty claims must be made or asserted in a service centre authorised by Schwarzmüller within 8 days after the defect has been detected and are limited to defects that can be attributed to material, construction or manufacturing errors and are not due to normal wear and tear. When asserting

claims under warranty, the Schwarzmüller service booklet must be submitted. The customer shall only be entitled to the remedies of either repair of the parts sent free of postage or shipping costs or their replacement, at the discretion of Schwarzmüller. In legitimate warranty cases, only the defective material will be replaced. The wages and costs for removal and installation shall be borne by the contractual partner. Schwarzmüller does not assume liability for parts not produced by Schwarzmüller itself. Schwarzmüller is, however, prepared to assign its claims against their producer on account of the defect to the contractual partner. Glass breakage is not covered by the warranty.

Paintwork is only covered by the warranty if defects can be attributed to material or manufacturing errors.

The warranty will expire if the original purchaser does not observe Schwarzmüller's instructions on the correct use and/or operation of the vehicle (compare operator's manuals, supplementary documentation, service booklet). The warranty will expire, in particular, if:

- the instructions in the operator's manuals and service booklets were ignored
- if the vehicle has not been used as intended
- the permissible total weight or axle loads were exceeded
- the defective vehicle remains in service and the defect was not reported within 8 days after it had been detected
- the first service was not carried out
- during the first 2 months, the vehicle was cleaned using a high pressure water or steam cleaner
- the respective annual service was not carried out
- the service and maintenance work were not carried out by authorised service centres
- the service work has not been entered in the service booklet
- no warranty package was acquired for the relevant period
- the vehicle was modified by technicians not authorised to do so or non-certified spare parts were installed
- inadmissible modifications were carried out on the vehicle
- aggressive media (e.g. acids, lye, etc.) were transported without permit by Schwarzmüller.

There is no entitlement to conversion or price reduction. Claims for compensation against Schwarzmüller for direct or indirect damages are excluded. Usual wear and tear and damages which are attributable to negligence, incorrect handling or accidents are excluded from the warranty.

Any liability claims for used vehicles are excluded. Schwarzmüller or authorised repair shops will assume no liability for repairs.

If vehicles are resold to third parties during the warranty period, all warranty obligations are rendered invalid.

In the event of a dispatch ex works at the risk of the contractual partner upon its request, Schwarzmüller will assume no responsibility for the observance of the shipment instructions issued to Schwarzmüller.

Schwarzmüller will accept no liability for the spoilage, loss or damage of any items belonging to the ordering party by fire, water, burglary, theft, looting or any other cause not attributable to Schwarzmüller.

#### **XI. Compensation and product liability**

Schwarzmüller's liability for damages outside the scope of the Product Liability Act is limited to intention and gross negligence. The burden of proving gross negligence or intention shall rest with the contractual partner. Liability for slight negligence, damages for consequential loss and financial losses, savings not made, loss of interest and from damages resulting from third-party claims against the contractual partner and for indirect damages are expressly excluded. In the event of any

delay in delivery by Schwarzmüller, for whatever reason, an exclusion of liability, except for gross culpability, regarding any claims for damages and any other claims to be raised against Schwarzmüller shall be understood as agreed.

The object of purchase provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, rules of the supplier's works on the handling of the purchased object (operating instructions) - especially with regard to any possible inspections - and other instructions given.

It is expressly noted that any information in the product descriptions regarding capacities, weights, operating expenses, speed, etc. are to be understood as approximate values and hence not binding. In order to assess any claims with respect to damages or warranty, Schwarzmüller or a partner authorised by Schwarzmüller shall be entitled to analyse the measured data (e.g. reading of data recording media) required for this purpose. In return, the contractual partner undertakes to tolerate any investigative measures taken.

## **XII. Data protection**

The same principles apply to the confidentiality of the data transferred as to the other business transactions of the contractual parties. Schwarzmüller's employees are bound by the relevant national provisions on privacy. The contractual partner declares their consent to all personal data relating to them, which was gathered by Schwarzmüller as part of the contractual relationship, being processed (also through automated means), forwarded and saved. The purpose of the data processing and forwarding is the completion of the orders. Data may solely be used for the contractual purpose. Personal data will be retained for the duration of the contractual relationship and possibly beyond that for the statutory retention period, the assertion of claims or the defence of claims. The principles relating to orderly data processing and storage are to be adhered to. Data subject to data privacy laws should be handled accordingly

Personal data will be processed with respect to the EU General Data Protection Regulation and the statutory provisions. In its capacity as responsible body, Schwarzmüller grants the contractual partner a right to information, correction, deletion or objection as to usage of the personal data. We can be contacted at [gdpr@schwarzmueller.com](mailto:gdpr@schwarzmueller.com). With regard to further information on the right to protect personal data and the rights of those affected, please refer to our data privacy statement, which is accessible on our website: [www.schwarzmueller.com](http://www.schwarzmueller.com).

Schwarzmüller does not accept any responsibility for the data protection guidelines or measures of third parties whose websites or functions can be reached via links on our websites or via our apps.

## **XIII. Protection of property rights and intangible assets**

Schwarzmüller reserves all copyright and property rights to quotations, illustrations, plans, drawings, standards, charts, diagrams, photos, calculations, brochures, catalogues, models, tools and other documents and auxiliary material and to the trademark - whether on data carriers, in printed form or as material to be used for print preparation or printing - provided to the contractual partner. Without Schwarzmüller's express agreement, the contractual partner may not make these objects, or the content of them, accessible to third parties or make them known to third parties, or have them used or reproduced, either by itself or by third parties. At Schwarzmüller's request, these objects must be returned to Schwarzmüller in their entirety and, where applicable, any copies made of them

must be destroyed, if they are no longer needed by the contractual partner in the proper course of business or if negotiations do not result in the conclusion of a contract.

## **XIV. Final provisions**

The parties agree that the place of international jurisdiction for any disputes between the contracting parties shall be, depending on the sum in dispute, the court of the Republic of Austria legally responsible for the head office of Schwarzmüller Management- and Service GmbH (FN 112308 i) (Bezirksgericht Schärding or Landesgericht Ried im Innkreis).

Should any individual parts of these Standard Terms and Conditions of Sale and Delivery be or become ineffective or invalid, the remaining provisions shall remain unaffected thereby. By means of interpretation in accordance with Section 864 of the ABGB [Austrian Civil Code], such invalid provisions shall be replaced by such provisions which come as close as possible to the purpose originally intended. The legal validity, interpretation and fulfilment of these Standard Terms and Conditions of Sale and Delivery, including all legal relationships between Schwarzmüller and the contractual partner for the time being, in particular disputes arising of contracts, shall be formally and materially exclusively subject to Austrian law, to the exclusion of the conflict of laws rules of international private law and the UN sales law. The German language shall be considered the agreed contractual language.