

Wilhelm Schmidlin AG's General Terms and Conditions of Sale and Delivery

1. General

These General Terms and Conditions of Sale (these "Terms") govern the sale and delivery of bathtubs, washbasins, accessories and other products (the "Products") by Wilhelm Schmidlin AG ("Schmidlin") to its customers ("Customer").

No other terms or conditions shall be of any force or effect unless otherwise specifically agreed to by Schmidlin in writing. Any additional or different terms or conditions contained in Customer's order or response to Schmidlin's confirmation shall not be binding on Schmidlin. No general terms and conditions of Customer shall at any time form a part of any agreement between Customer and Schmidlin, even if such terms and conditions are not expressly rejected by Schmidlin.

Any communication or conduct of Customer which confirms an agreement for the delivery of Products by Schmidlin, as well as acceptance in whole or in part by Customer of any delivery of Products from Schmidlin, shall be construed as Customer's acceptance of these Terms. If Customer finds any provision in these Terms not acceptable, Customer must so notify Schmidlin immediately and must reject the Products delivered under these Terms. Deviations from these Terms require Schmidlin's prior written approval.

2. Offers, Orders and Confirmation

Schmidlin shall sell and deliver to Customer, and Customer shall purchase and accept from Schmidlin, the Products described in any order, agreement or quotation, or any combination thereof (an "Order").

All offers made by Schmidlin are revocable at any time and subject to change without prior notice to Customer. Schmidlin may refuse an Order for any or no reason. Information on the Products, such as specifications, measurements and descriptions, contained in catalogs, advertisements, handouts, solicitation letters, or other materials are not binding on Schmidlin, and may be changed by Schmidlin at any time without any liability to Customer. No Order is binding upon

Schmidlin until the earlier to occur of Schmidlin's acceptance of the Order in writing or the delivery of the Products by Schmidlin to Customer (a "Confirmed Order").

Each Confirmed Order shall be considered a separate agreement between the parties to purchase and sell Products, and any failure to deliver Products under any Confirmed Order shall have no consequences for other deliveries.

3. Prices

The price of the Products shall be as published in Schmidlin's price list in effect at the time of the Order unless otherwise quoted in writing by Schmidlin. Schmidlin's current price list is available on request. Unless otherwise agreed by Schmidlin in writing, all prices set forth in its price list are subject to change without prior notice to Customer. In the event of a price increase after the date of a Confirmed Order, such Confirmed Order shall be construed as if the increased price was originally inserted therein, and Customer shall be billed by Schmidlin on the basis of such increased price.

The price of Products shall not include packaging, sales or use tax or any other similar applicable federal, state, local or foreign taxes, duties, levies or charges in connection with the sale or deliver of the Products ("Taxes"). Taxes shall be payable by Customer and, if Schmidlin is responsible for the collection thereof, Taxes shall either be added to the price invoiced or be separately invoiced by Schmidlin to Customer.

4. Payment Terms

Unless otherwise agreed in writing by Schmidlin, the purchase price for the Products to be delivered under a Confirmed Order and all other amounts due in connection therewith shall be due and payable in US dollars within thirty (30) days following the date of Schmidlin's invoice for such Products without any discount, deduction or offset whatsoever. In no event shall any loss, damage, injury or destruction, Force Majeure Events (as defined below) or any other event beyond Schmidlin's control release Customer from its obligation to make the payments required under these Terms or the applicable Confirmed Order. Payment of all amounts due hereunder shall be made by

check, wire transfer, or as otherwise set forth on Schmidlin's invoice.

Time is of the essence for the payment of all amounts due to Schmidlin under any Confirmed Order or these Terms. If Customer fails to make payment of any amount when due, Customer shall pay interest to Schmidlin at the rate of one and one-half percent (1.5%) per month or such lesser amount as may be permitted by applicable law starting from the due date until payment of such amount in full.

If Customer fails to comply with these Terms or the terms of any Confirmed Order, or if Customer becomes insolvent, all balances then due and owing to Schmidlin shall become due immediately, notwithstanding any other payment terms. All costs and expenses incurred by Schmidlin with respect to the collection of overdue amounts (including, without limitation, reasonable attorneys fees, expert fees, and other expenses of litigation) shall be borne by Customer. Every payment by Customer shall first be applied to pay for Schmidlin's cost of collection, then interest owed by Customer, and then to the oldest outstanding amount.

5. Security Interest

Customer hereby grants to Schmidlin as security for the timely payment and performance of all of Customer's payment obligations to Schmidlin, a first priority security interest (the "Security Interest") in and to all of the rights, title and interest of Customer to the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, for as long as such Products shall not have been sold by Customer in the ordinary course of business (the "Collateral").

Schmidlin shall be entitled, and Customer hereby authorizes Schmidlin, to file any and all financing, continuation or similar statements under the Uniform Commercial Code in any jurisdiction, and take any and all other action necessary or desirable, in Schmidlin's sole and absolute discretion, to create, perfect, continue, preserve and protect the Security Interest in the Collateral. Customer agrees to take any and all actions and provide Customer with all information necessary

to enable Schmidlin to create, perfect, continue, preserve, protect and enforce the Security Interest in all jurisdictions and vis-à-vis any of Customer's creditors. The Security Interest shall remain in force until payment in full of the entire purchase price for the applicable Products and any other amounts secured by the Security Interest. Schmidlin may, without notice, change or withdraw extensions of credit at any time.

6. Delivery and Acceptance

Unless otherwise agreed in writing by Schmidlin, all deliveries of Products shall be made, for stock items, CIF (per Incoterms 2010) Schmidlin's warehouse, Miami FL, and for customized Products EX WORKS (per Incoterms 2010), Schmidlin's facility, Oberarth, Switzerland (each, a "Delivery Location"). If Customer requests that Schmidlin organize transportation on Customer's behalf, Schmidlin or its agent may select, without any liability to Customer, any commercial air, ship, motor or rail carrier or any combination thereof for the transportation of the Products and will notify Customer thereof in the Order Confirmation. Schmidlin shall not be responsible for any acts or omissions of any such carrier.

Any delivery times or dates communicated by or on behalf of Schmidlin are estimates and shall not be binding on Schmidlin. Schmidlin may make partial delivery of Products and invoice Customer separately for such partial deliveries. In no event shall Schmidlin be liable for any delay in delivery, and no delay in delivery of any Products shall relieve Customer of its obligation to accept delivery thereof and make payment of any amounts due under these Terms or any Confirmed Order.

If Schmidlin is unable to deliver the Products at the Delivery Location on the agreed delivery date due to Customer's acts or omissions, including without limitation Customer's failure to provide the necessary specifications, instructions, documents, or obtain the necessary permits, consents, licenses, or authorizations, Schmidlin, in its sole discretion, may (a) extend the period of delivery as Schmidlin may deem reasonable; (b) withhold or cancel delivery of any Products in whole or in part without any further obligations to Customer whatsoever, or (c) request that Customer pick up the

Products at Schmidlin's facility. Customer shall be responsible for any and all costs and expenses incurred or damages or losses suffered by Schmidlin in connection with any such delay, including without limitation storage fees and insurance.

7. Inspection and Non-Conforming Products

Customer shall inspect the Products within five (5) days from the date of receipt of such Products (the "Inspection Period"). Customer shall be deemed to have accepted the Products unless it has notified Schmidlin in writing of any Non-Conforming Products (as defined below) during the Inspection Period and furnished such evidence or other documentation related to such Non-Conforming Products as Schmidlin may reasonably require. "Non-Conforming Products" shall mean Products which (a) do not conform to the quantity or type of Product identified in the applicable Confirmed Order; or (b) fail to comply with the Limited Warranty (as defined in Section 8).

If Customer timely notifies Schmidlin of any Non-Conforming Products, Schmidlin shall, in its sole discretion, (i) replace such Non-Conforming Products with conforming Products, (ii) repair such Non-Conforming Products or (ii) credit or refund the price paid by Customer for such Non-Conforming Products. Following Schmidlin's prior written approval, Customer shall ship, at Schmidlin's cost and expense, the Non-Conforming Products to the location specified by Schmidlin. If Schmidlin exercises its option to replace a Non-Conforming Product, Schmidlin shall, after receiving Customer's shipment of the Non-Conforming Product, ship to Customer, at Schmidlin's cost and expense, conforming Products to replace the Non-Conforming Products at the Delivery Location of the Non-Conforming Product. If Schmidlin elects to refund to the Customer the price paid for any Non-Conforming Products, such price shall be the price paid by Customer for the Non-Conforming Product.

The obligations set forth in the foregoing paragraph shall be the sole liability of Schmidlin and the sole remedy of Customer with respect to any Non-Conforming Products.

8. Limited Warranty

Schmidlin warrants to Customer, for glazed steel Products for a period of twenty (20) years, and for all other Products for a period of one (1) year, from the date of delivery (the "Warranty Period"), that the Products will be free of defects in material and workmanship, and materially conform with the specifications of the Products set forth in the applicable Confirmed Order (the "Limited Warranty"). Unless expressly warranted in writing in any Confirmed Order, Schmidlin makes no warranty that the Products comply with applicable laws, rules, regulations or code in any jurisdiction in which the Products may be sold or marketed.

EXCEPT FOR THE LIMITED WARRANTY, SCHMIDLIN MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, AND ANY AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, WHETHER EXPRESS OR IMPLIED, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

Schmidlin shall not be liable for a breach of the Limited Warranty unless: (a) Customer has (i) given written notice to Schmidlin of any apparent defect within the time period set forth in Section 7 and of any latent defect within five (5) days from the time Customer discovers or should have discovered the defect, and (ii), in each case, furnished such evidence or other documentation related to such defective Products as Schmidlin may reasonably require; and (b) Schmidlin is given a reasonable opportunity after receiving such notice to examine such Products and Customer (if requested to do so in writing by Schmidlin) returns such Products to the location specified by Schmidlin at Schmidlin's cost and expense; and (c) Schmidlin has verified, in good faith, Customer's warranty claim. In no event shall Schmidlin have any liability for any warranty be made after expiration of the Warranty Period.

The Limited Warranty shall be void, and Schmidlin shall have no responsibility for any defective Products as a result of Customer's or a third party's (a) improper use, installation, storage, operation, handling, or maintenance of a Products= (including without limitation, the use, installation, storage, operation, handling

or maintenance of a Product contrary to written instructions and/or recommendations of Schmidlin) (b) unauthorized alteration, modification or repair of a Product, (c) any other acts or omissions of Customer or third parties following delivery of a Product, or (d) normal wear and tear.

Neither Customer nor any other party is authorized to make any warranties that are inconsistent with the Limited Warranty or any other warranty set forth herein, and no such other warranties shall be binding on Schmidlin.

9. Limitation of Liability

IN NO EVENT SHALL SCHMIDLIN BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, OR GOODWILL, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF SCHMIDLIN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANY OF THE TERMS CONTAINED HEREIN OR IN ANY CONFIRMED ORDER, SCHMIDLIN'S LIABILITY FOR ANY CLAIM – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE PRODUCT GIVING RISE TO SUCH CLAIM.

Customer hereby acknowledges and agrees that the provisions of these Terms fairly allocate the risks between Schmidlin and Customer, that Schmidlin's pricing reflects this allocation of risk, and, but for this allocation and limitation of liability, Schmidlin would not have entered into an agreement with Customer to sell Products to Customer.

In jurisdictions that limit or preclude limitations or exclusion of remedies, damages, or liability, such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth in these Terms are intended to apply to the maximum extent permitted by applicable law, and these Terms shall be deemed amended to

comply with such limitations or exclusions. Customer may also have other rights under applicable state law.

10. Indemnification

Customer shall indemnify and hold Schmidlin harmless for, any and all claims, including without limitation claims resulting from or in connection with (i) the improper use, installation, storage, operation, handling or maintenance of Products (including without limitation, the use, installation, storage, operation, handling or maintenance of Products contrary to written instructions and/or recommendations of Schmidlin), (ii) unauthorized alteration, modification or repair of Products, (iii) Customer's or a third party's failure to conform to Schmidlin's instructions and/or recommendations, or properly communicate Schmidlin's instructions, recommendations and warnings to users of the Products, or (iv) any design or specifications provided to Schmidlin by or on behalf of Customer or a third party not under Schmidlin's control.

11. Compliance with Law

Customer shall comply with all applicable laws, rules and regulations with respect to the Products, including but not limited to export and import laws. Customer shall obtain and maintain all permits, consents, licenses, and authorizations that it needs to sell the Products and carry out its obligations under these Terms.

12. Cancellation of Confirmed Orders; Suspension of Delivery

In addition to any other remedies available to Schmidlin, Schmidlin may, without any obligation to Customer, (a) cancel any Confirmed Order with immediate effect upon written notice to Customer, and/or (b) suspend any delivery of Products or performance of any of its obligations under these Terms or any Confirmed Order, if Customer (i) fails to pay any amount when due under these Terms or a Confirmed Order; (ii) otherwise fails to perform or comply with these Terms or any Confirmed Order in whole or in part, or (iii) becomes insolvent, files a petition for bankruptcy, or any proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors are commenced with respect to Customer. In any of these events, Customer shall be liable to Schmidlin for

any costs or expenses incurred by Schmidlin in connection with such cancellation, including but not limited to costs for raw materials and labor.

13. Confidential Information

All non-public, confidential or proprietary information of Schmidlin, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts disclosed by Schmidlin to Customer, whether disclosed orally or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise marked as “confidential”, in connection with these Terms or any Confirmed Order is confidential, and may not be disclosed or copied unless authorized in advance by Schmidlin in writing. Upon Schmidlin’s request, Customer shall promptly return all documents and other materials received from Schmidlin. Customer agrees that any breach of this Section 13 would cause substantial and irreparable harm, not readily ascertainable or compensable in terms of money, to Schmidlin for which remedies at law would be inadequate and that, in addition to any other remedy to which Schmidlin may be entitled at law or in equity, Schmidlin shall be entitled to temporary, preliminary and other injunctive relief in the event Customer violates or threatens to violate this Section 13, as well as damages and an equitable accounting of all earnings, profits and benefits arising from such violation, in each case without the need to post any security or bond. This Section 13 does not apply to information that is (a) in the public domain at the time of disclosure, or (b) known to or obtained by the Customer prior to the disclosure free of any obligation of confidentiality.

14. Entire Agreement; Conflicts.

These Terms and the applicable Confirmed Order constitute the entire and exclusive agreement of the parties regarding the subject matter hereof and supersede any and all prior or contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. In the event of a conflict between the provisions of these

Terms and the provisions of a Confirmed Order, except as otherwise set forth herein, the provisions of the Confirmed Order shall govern and control.

15. Modifications

Schmidlin may amend or modify these Terms at any time without prior notice and such amendment or modifications shall become effective without any further action by any party as to any Confirmed Orders after the effective date of such amendment or modification.

16. Applicable Law and Jurisdiction

These Terms and the Confirmed Orders shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would defer to or cause the application of the substantive laws of any jurisdiction other than New York.

Any dispute, controversy or claim arising out of or relating to these Terms and any Confirmed Order, including but not limited to the execution, performance or termination thereof or to any issue of liability arising out of the performance of these Terms or any Confirmed Order, which the parties have not been able to settle amicably shall be submitted to the exclusive jurisdiction of the state or federal courts with jurisdiction in the State of New York, City of New York, Borough of Manhattan. Each party hereby waives any and all claims, pleas or defenses (including without limitation a plea for *forum non conveniens*) that would permit such party to seek the jurisdiction of any courts or arbitration tribunals other than those set forth in the preceding sentence.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.

17. Force Majeure

Schmidlin shall not be liable or responsible to Customer or any third party, or be deemed to have breached these Terms or any Confirmed Order, in the event of any failure or delay caused by or resulting from events beyond Schmidlin’s control, including,

without limitation: (a) acts of Nature; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (d) governmental orders, laws, rules or regulations; (e) embargoes or blockades; (f) any other action by any governmental authority; (g) national or regional emergencies; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortages of adequate supplies, power or transportation capacity (each, a "Force Majeure Event").

18. Notices

All notices, consents, claims, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Confirmed Order or to such other addresses that may otherwise be designated by the parties in writing. All Notices shall be deemed to have been effectively made or given to the other party if in writing and personally delivered, mailed through any nationally recognized overnight courier or as certified or registered mail (in each case, return receipt requested, postage prepaid), or sent by electronic mail or other electronic communication (provided that the receipt of any notice by electronic mail or other electronic communication shall have been acknowledged in writing by the receipt thereof).

19. Severability

If any provision contained in these Terms or any Confirmed Order is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms or such Confirmed Order, and the remainder of these Terms or such Confirmed Order shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render such provision valid, legal and enforceable.

20. Assignment

Customer may not assign its right, interest or any obligation arising under these Terms or a Confirmed Order without Schmidlin's prior written consent. Any purported assignment or delegation in violation of this

Section 20 is null and void. No assignment or delegation relieves Customer of any of its obligations under these Terms or any Confirmed Order.

21. No Third-Party Beneficiaries

These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing therein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Waiver

Schmidlin's waiver of any breach or violation of these Terms or the provisions of any Confirmed Order by Customer shall not be construed as a waiver of any other present or future breach or breaches by Customer. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms or a Confirmed Order operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. Relationship of the Parties

The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.

24. Survival

The provisions of these Terms which by their express wording shall survive the cancellation of a Confirmed Order including but not limited to Section 8 (Limited Warranty), Section 9 (Limitation of Liability), Section 13 (Confidential Information), Section 16 (Applicable Law and Jurisdiction), Section 18 (Notices) and this Section 24 (Survival) shall continue in full force and effect after the cancellation of any Confirmed Order.