1. Area of validity

1.1 These Conditions of Sale and Delivery apply to all sales, delivery, and other transactions of the companies of the SCHARR Group (hereinafter referred to as “SCHARR” in each case), unless there are separate General Terms and Conditions for a specific functional area or a specific company of the SCHARR Group.

1.2 All deliveries and services provided by SCHARR (hereinafter referred to as “Services”) are subject exclusively to the Conditions of Sale and Delivery of the SCHARR Group. SCHARR does not recognize conflicting or deviating terms and conditions, nor terms and conditions of the customer that are not covered by these Conditions of Sale and Delivery, unless SCHARR has expressly agreed so in writing.

1.3 In business transactions, SCHARR’s Conditions of Sale and Delivery apply to all contracts with the customer, without requiring any explicit reference.

1.4 If construction services are the subject of the contract, the regulations of the VOB/B shall apply additionally, which are then attached to these Conditions of Sale and Delivery in regards to business transactions with consumers. If the regulations of the VOB/B and these Conditions of Sale and Delivery stand in contradiction, the regulations of the VOB/B take precedence.

2. Delivery time - delivery amount - location/method of carriage - transfer of risk

2.1 Information on the delivery time stated by SCHARR is fundamentally not deemed binding (§ 323 section 2 no. 2 German Civil Code, § 376 German Commercial Code). Partial deliveries are—informa as reasonable for the customer—permitted.

2.2 The commencement of the agreed time for the performance presumes that all technical issues have been clarified. Timely adherence to the obligations by SCHARR presumes moreover that the customer fulfills all cooperation duties in a timely and orderly manner. SCHARR reserves the right to raise the objection of an unfilled contract.

2.3 The customer must ensure that lines and connections are provided in a timely manner, must cooperate in the acceptance, and draw the attention of SCHARR to impaired delivery circumstances (poor roadway, long hose path, etc.) in a timely manner.

2.4 Unless otherwise agreed by the parties, the weight or volume of the goods determined at the place of delivery or ascertained by the customs authorities and noted on the delivery note shall be decisive, unless the weight or volume of the goods is determined at the place of receipt by means of calibrated measuring devices. Proof of delivery of a smaller or larger amount is permitted to both parties.

2.5 Insofar as the parties have not agreed a deviating condition, SCHARR determines the location and method of carriage.

2.6 Insofar as the parties have not agreed a deviating condition, the risk of accidental loss and accidental deterioration of the goods in business transactions is transferred to the customer when the goods are handed over to the transporting person; however, this shall not be later than when the goods leave the delivery warehouse.

3. Tax-supported deliveries

3.1 If the goods are tax-supported and a formal individual permission is required for the goods to be used on a tax-free basis, the customer must send SCHARR in a timely manner before the delivery a valid counterpart of the permit valid for the time of delivery. SCHARR is not duty bound to deliver the goods if there is not a valid permit.

3.2 In the case of a registered permit-waiver, the purpose for which the goods are to be used must be stated.

3.3 In the cases in which the customer is purchasing the goods in the tax-suspension procedure, the customer provides assurance that it is authorized to waive the permit by transmitting its excise duty no., which the customs authorities assigned to the customer to indicate that it has been assigned an individual permission.

3.4 SCHARR is not duty bound to scrutinize the validity of the permit or the excise duty no. and the presence of the statutory prerequisites for the tax-supported deliveries.

3.5 If the goods are determined for export outside of the territory, the customer is duty bound in the case of seUion to apply for the goods to be processed in a new shipping procedure for which provision is made in national or Community law in the name of the customer.

3.6 The customer must absolve SCHARR of any damage, expenses, costs, and disadvantages arising from any invalidity of the permit or the culpable contravention of other statutory regulations by the customer or the customer must reimburse SCHARR for this damage, expenses, and costs. The customer is particularly responsible for the goods being used only for the purpose for which provision is made and is permissible in tax and customs law; it must reimburse SCHARR with tax and/or customs duties that SCHARR has to pay due to non-compliant use.

4. Containers - inspection - duties as part of filling

4.1 If SCHARR provides the business customer with tank trucks, tank wagons, or tank ships as part of transporting the goods, the customer must empty them immediately. The business customer does not have a right of retention to these containers.

4.2 If SCHARR makes loaned containers available to the business customer during the transport of the goods, the customer must return them to the place designated by SCHARR or, if SCHARR has not stipulated otherwise, to the place from which they were sent, immediately after emptying and at his own risk.

4.3 If the tank wagons provided to the customer by SCHARR as part of transport are not returned to the railway company for return transport within 24 hours after their arrival at the place of reception of the customer, the customer must pay the usual rental fee for the tank wagons.

4.4 If the loaned containers made available to the business customer by SCHARR during transport are not returned within three months of receipt by the customer, the customer must pay an appropriate rental fee. If such loaned containers are damaged or not returned after emptying, SCHARR can refuse their return and demand the costs of a new purchase of a similar loan container instead. Further claims of SCHARR remain unaffected. Loaned containers provided by SCHARR may not be used for competitive products or for other purposes and may not be passed on to third parties.

4.5 If SCHARR makes containers available to the customer in which the goods remain until consumption (e.g., bottles), this shall be free of charge for the duration of normal emptying, unless the parties have agreed otherwise. Any endangerment of their return, whether in actuality or legally, must be immediately reported to SCHARR. This applies in particular to forescore measures.

SCHARR is entitled to demand a pledge as security for such containers. These containers may only be used for contractual consumption, filling with other goods is not permitted.

The customer must treat such containers with care and store them in such a way that they comply with commercial/police and other security regulations. The customer shall grant SCHARR access at any time on request. The customer is liable for all losses or damage to such containers for which he is responsible, taking into account the paid deposit.

4.6 If the customer provides the containers, he must transport them at his own risk and expense to the agreed destination on the agreed date in perfect condition suitable for immediate filling, unless the parties have agreed otherwise.

Damaged enclosures provided by the customer can be returned to the customer at the customer’s risk and expense, and instead SCHARR can use rented or own enclosures at an appropriate rental fee.

SCHARR is not liable for contamination of the goods as a result of unclean enclosures from the customer or for damage caused by defects of the enclosures.

4.7 SCHARR is not duty bound to scrutinize tanks, containers, or other storage vessels of the customer for conformity to statutory regulations or the presence of technical or other defects. SCHARR is not duty bound to investigate the brand and varietal purity of the tank content; however, it is authorized to secure the quality purity — upon consent of the customer — by advising brand seals. Before the goods are delivered, the customer must either personally or by way of a dependable appointee establish the quality of the tanks or other storage vessels, scope and type of their content, the state of the feed lines and connections to the transport vehicle, in addition to all other prerequisites of orderly filling, and to observe them during filling.

4.8 Transport leaders of SCHARR are instructed to observe exactly the required care in traffic and particularly the safety regulations for filling tanks and other storage vessels. SCHARR is liable for overfilling and mixing damage only in cases where and in the extent to which the customer fulfills its cooperation duty during filling. If a brand seal has been damaged without the consent of SCHARR, liability for mixing damage is obsolete. If SCHARR is not liable according to the aforementioned conditions or is only partially liable, the customer must absolve
SCHARR of all (more extensive) claims by third parties, damage, costs, and expenses asserted against SCHARR in this context, particularly those according to the German Federal Water Act, insofar as the customer has committed a culpable violation of duty. In the case of applicability of the aforementioned sentence of this point 4 B, the customer is duty bound also to reimburse SCHARR for all damage, costs, and expenses.

5.0 Extension of the delivery deadlines - impossibility of delivery - self-delivery reservation - delivery delay - increase in production costs

5.1 Force majeure events, i.e., unforeseen events over which SCHARR has no control and for which SCHARR is not responsible shall extend the delivery period accordingly, even if they occur during a delay in delivery. This includes the following, nonexhaustive list of examples: official measures and orders (irrespective of whether these are valid or invalid), fire, floods, storms, explosions, riots, natural disasters, war, and sabotage, industrial conflict (including lockouts and strikes).

5.2 If it is impossible due to events of this type to deliver the goods within a reasonable period, the customer and SCHARR have the right to withdraw from the contract, or if appropriate to withdraw from the non-fulfilled part of the contract. Claims for compensation based on such a withdrawal are ruled out.

5.3 SCHARR is absolved of its delivery obligation if SCHARR itself nonculpably does not take delivery of the correct ordered goods to fulfill the contract in a timely manner.

5.4 If the customer is in acceptance arrears or culpably violates other duties to cooperate, SCHARR shall be entitled to demand compensation for any damage incurred by SCHARR in this respect, including any additional expenses. Further claims or rights remain reserved.

5.5 If the customer is in acceptance arrears, SCHARR has the right to demand from the customer the costs arising from storage; however, this shall be at least 0.5 % of the invoice amount for each month or part thereof, up to a maximum of 5 % of the invoice amount in question. However, the customer may produce evidence that no storage costs whatsoever have arisen, or that the storage costs are significantly lower than the blanket amount. SCHARR may produce evidence that greater storage costs have arisen than the blanket amount. The statutory rights to withdraw from the contract or to demand compensation remain unaffected.

5.6 If force majeure events in commercial transactions lead to an increase in the production costs on the part of SCHARR or if SCHARR uses sources of supply to maintain the delivery and these sources were hitherto not used or not used to this extent and this leads to an increase in production costs on the part of SCHARR, SCHARR may raise the price accordingly, but SCHARR must inform the customer in advance. The customer may withdraw from the contract within a week of receiving the notification.

6. Payment - collateral - offsetting

6.1 Deliveries are to be settled immediately after invoicing without deduction. In the case of agreed payment terms, the period begins on the day of delivery. Payment is only considered to be timely if SCHARR can withdraw the money on the due date.

6.2 If there are actual indications that there is a deterioration in the financial situation after contract conclusion or if other facts are present or come to light after contract conclusion justifying the assumption that the entitlement of SCHARR to the consideration is endangered by a lack of capability on the part of the customer, SCHARR has the right to demand that a security is rendered and/or revoke granted periods of credit. For the case that the customer is not in a position to provide the demanded security within an appropriate period time, SCHARR has the right to withdraw from the contract. Any existing claims from rendered deliveries or due to arrears remain unaffected, as is the case for the rights of SCHARR from § 321 German Civil Code.

6.3 The customer may only assert offsetting rights if SCHARR has acknowledged its counterclaims, if these have been legally established or are undisputed.

7. Reservation of title

7.1 The delivered goods remain the property of SCHARR until full payment of the purchase price has been received.

In business transactions, the sold goods remain the property of SCHARR until all claims from the business relationship between the customer and SCHARR have been paid in full. This applies also in cases where the purchase price has been paid for certain goods deliveries denoted by the customer. In the case of a current account, the reserved property may apply as the security for the balance claim of SCHARR.

7.2 Insofar as the validity of this retention of title is linked to special conditions in the customer's country, the business customer is obliged to notify SCHARR of this and to ensure its fulfillment at his own expense.

7.3 In the case of noncontractually-compliant conduct by the customer, particularly in the case of payment arrears, SCHARR has the right to take back the goods. If SCHARR takes back the goods, this amounts to withdrawal from the contract.

7.4 Pledging, transferring of security of, or other disposals concerning the goods subject to reservation of title is prohibited. Access by third parties, e.g., attachments, must be communicated by the customer to SCHARR immediately and the third party informed about the reservation of title. The customer must send SCHARR a copy of the attachment record immediately. If SCHARR sustains damage, costs, or expenditure in exercising its property rights, the customer must reimburse for them insofar as the practicing third party cannot be held to account and the customer has committed a culpable violation of duty.

7.5 In the case of resellers, further selling-on as part of usual business dealings is permitted with right of revocation. The customer assigns to SCHARR with immediate effect the claims resulting from the resale or another legal basis regarding the goods forming the property or joint property of SCHARR to the extent of the invoice value of the delivery object in question. Upon demand by SCHARR, the customer is duty bound to provide written declarations of assignment. The customer is authorized as part of usual business transactions to collect the assigned claims for SCHARR in its own name; this may however be revoked. This collection authorization may be revoked particularly when the customer does not fulfill its payment obligations.

7.6 A connection, processing, or mixing of the delivered goods takes place always for SCHARR as a manufacturer, however without an obligation for SCHARR. If the ownership or joint ownership becomes absolute through connection, processing, or mixing, it is agreed now that the ownership or joint ownership of the new thing is transferred to SCHARR pro rata according to the ratio of the invoice amounts of the connected, processed, or mixed products. The customer stores the property or joint property of SCHARR gratuitously.

7.7 Upon demand of the customer, SCHARR will release securities insofar as they are no longer required to secure the demands of SCHARR not only temporarily. If the value of the securities existing for SCHARR exceeds the demands to be secured by more than 10 %, SCHARR will release the securities according to the choosing of SCHARR upon the demand of the customer.

8. Quality of the goods - claims for defects

8.1 All specimens and analysis data provide only non-binding indications for the average goods quality, unless the parties have agreed anything deviating from this.

8.2 In business transactions, claims for defects lapse within 12 months of the passing of risk. This does not apply if longer periods are prescribed by law in accordance with §§ 438 section 1 no. 2 BGB (buildings and objects for buildings), 479 section 1 BGB (right of recourse), 634 a BGB (construction defects) and § 438 section 2 BGB (fraudulent intent).

8.3 SCHARR must be notified of any complaints in business dealings without delay, but at the latest within seven days of delivery (obvious defects) or discovery of the defect.

8.4 The customer may demand compensation only according to the regulation of the following point 9.

9. Liability

9.1 SCHARR is liable for compensation and replacement of fruitless expenditure within the meaning of § 284 German Civil Code (hereinafter referred to as ‘compensation’) due to defective or delayed delivery or performance, in addition to violation of other contractual or extracontractual duties, particularly arising from unauthorized action, only in the case of intent or gross negligence. The aforementioned liability restriction does not apply to injury to life, body, or health, the assumption of a guarantee or a procurement risk, violation of fundamental contractual duties, in addition to liability according to the German Product Liability Act.

9.2 The compensation due to violation of fundamental contractual duties is restricted to compensation for such damage that SCHARR must have been able to anticipate upon contract conclusion due to the circumstances recognizable by SCHARR as a possible consequence, insofar as liability is not based on intent or gross negligence or due to an injury to life, body, or health, or the assumption of a guarantee or a procurement risk, in addition to liability according to the German Product Liability Act.

9.3 Typical damages for the contract as defined in the preceding point 9.2 in business transactions are:

a) per claim: a maximum of twice the net turnover of the order in connection with which the claim was caused,
b) In the case of multiple claims with respect to the same customer within a calendar year: a maximum of 50 % of the net sales to which the customer has purchased products from SCHRARR in the calendar year in which the claims occurred. The net sales are measured on the basis of the payments received by SCHRARR in the respective calendar year.

In any case, contractually typical damages within the meaning of point 9.2 are not indirect damages (such as loss of profit or damage resulting from interruptions in production).

9.4 Irrespective of the aforementioned points 9.1 to 9.3, the following is to be taken into account appropriately to the credit of SCHRARR when determining the level of the compensation claims against SCHRARR: the economic circumstances at SCHRARR, type, scope, duration of the business relationship; any cause and fault contributions by the customer pursuant to the regulation of § 254 German Civil Code. In particular, the compensation performance, costs, and expenditure SCHRARR is duty bound to bear must be proportionate to the value of the SCHRARR performance.

9.5 All liability restrictions apply in the same scope for vicarious agents and executing aides.

9.6 The aforementioned regulations do not amount to a reversal of the burden of proof to the detriment of the customer.

9.7 Fundamental contractual duties within the meaning of points 9.1 and 9.2 are such duties enabling orderly execution of the contract in the first place and which the customer has trusted and also was expected to trust would be observed.

10. Assignment

Assignment of claims against SCHRARR is permitted only upon prior written consent of SCHRARR. There is no entitlement to such consent being granted. § 354 a German Commercial Code remains unaffected.

11. Safety provisions - approvals - notice for tax-supported energy products

11.1 The customer is duty bound to read up on the valid safety provisions for the storage and use of the goods delivered by SCHRARR and to observe these provisions.

11.2 Any requisite official and other approvals must be obtained by the customer at its own cost. SCHRARR will provide the requisite documents for this to the customer upon request, insofar as SCHRARR has the documents at its disposal or can obtain them with reasonable effort.

11.3 Tax-supported energy products must not be used as fuel unless such a use is permitted pursuant to the German Energy Tax Act or the Implementing Ordinance on the German Energy Tax Act. Any other use as a fuel has taxbased and criminal law consequences! In cases of doubt, the customer should contact its main customs office.

12. Applicable law - place of performance - place of jurisdiction - conciliation body

12.1 The contractual relationships are subject only to the substantive law of the Federal Republic of Germany excluding the provisions on the collision of law. Place of performance for all deliveries and performance in business transactions is the delivery point of SCHRARR. This applies also to nonfreight deliveries.

12.2 The following applies to entrepreneurs, companies, merchants, legal entities under public law or special funds under public law: For legal disputes within the substantive competence of the local courts, the Stuttgart Local Court is agreed as the place of jurisdiction; for legal disputes within the substantive competence of the Regional Courts, the Stuttgart Regional Court is agreed as the place of jurisdiction.

12.3 SCHRARR is not obliged or prepared to participate in dispute resolution proceedings before a consumer arbitration board.

13. Data back-up and processing

The customer provides its consent to the personal data collected as part of contract conclusion being processed on an automated basis. SCHRARR will process and use this data only as part of and within the limits of the German Federal Data Protection Act. The data is forwarded to third parties only within the requirements of orderly order processing.

14. Right of revocation for private customers

You have the right to revoke this contract within fourteen days without providing a reason. The revocation period is fourteen days from the date on which you or a designated third party who is not a carrier took possession of the goods. However, the right of revocation according to § 312g section 2 no. 4 BGB expires prematurely if the goods are mixed with residual stocks in your tank upon delivery.

To exercise your right of revocation, you must inform us (name, address, telephone number if applicable, email address) by means of a clear declaration [e.g., a letter, fax, or email sent by mail] of your decision to revoke this contract. You can use the sample revocation form for this purpose, but this is not required. In order to comply with the revocation period, it is sufficient that you send the notice of the exercise of the revocation before expiry of the revocation period.

If you withdraw from this contract, we are obliged to immediately reimburse all payments that we have received from you, including delivery costs (except for additional costs arising from your selection of a method other than the cheapest standard delivery offered by us) and at the latest within fourteen days from the date on which the notification of your revocation of this contract was received. We will use the same means of payment for this refund as you used for the original transaction, unless expressly agreed otherwise; in no case will you be charged any fees for this refund. (For the sample revocation form, see www.scharrwaerme.de under the heading Service/Revocation)