

**Schaltbau North America**  
**Terms and Conditions of Purchase**

**1. General**

- a) Our Terms and Conditions of Purchase apply exclusively; we do not acknowledge any terms of the Supplier that conflict with, or deviate from, our Terms and Conditions of Purchase unless we have expressly agreed in writing to their application. Even if we accept a delivery or make payment against a delivery without attaching any conditions, this cannot be construed as an acceptance of any business terms that conflict with, or deviate from, our own.
- b) Agreements between us and the Supplier relating to the conclusion of a contract must be made in writing. Any alteration of the requirement for the written form must also be agreed in writing.
- c) Our Terms and Conditions of Purchase apply to suppliers who are merchants as per section 2-104 of the Universal Commercial Code (UCC).
- d) Our Terms and Conditions of Purchase also apply to all future transactions with the Supplier.

**2. Quotations and Quotation Documents**

- a) The Supplier is obliged to accept our order within 14 days. Order releases under blanket purchase orders become binding if the Supplier does not object within three working days of receipt of the release order.
- b) Unless expressly agreed otherwise, quotations and cost estimates of the Supplier are binding and free of charge. Unless otherwise agreed in the individual case, we accept no costs and pay no remuneration for visits, planning and other preparatory services provided by the Supplier.
- c) We reserve all rights of title and copyright to illustrations, drawings, calculations and other documents that we have forwarded to the Supplier. These documents may be made accessible to third parties only with our written consent. They must be used in accordance with our inquiry or purchase order. Such documents must be returned to us without delay on receipt of our written request. Unless the Supplier accepts the order within the period specified in Article 2 a), the written documents must be returned to us without delay and any data supplied must be deleted.
- d) The Supplier may not assign subcontractors or pass on our orders to third parties without our written consent; we will otherwise be entitled to withdraw from the contract or to terminate the same and claim damages.

**3. Delivery**

- a) The delivery dates and delivery periods specified in our purchase orders are binding. The timeliness of delivery is determined by the time of receipt at our notified reception point (or the time of acceptance for work performed). If goods are delivered earlier than agreed, we reserve the right to send back the goods at the Supplier's expense. If we do not return goods delivered early, we take them into stock at the expense and risk of the Supplier until the delivery date.
- b) If a delay in delivery or performance is recognisable or if circumstances occur that indicate that the stipulated delivery period or agreed delivery date cannot be adhered to, we must be notified thereof without delay and of the reasons for, and the probable duration of, the delay. This does not affect our right to withdraw from the contract or to claim damages as appropriate.
- c) If the Supplier is in default, we may require payment of a contractual penalty of 0.5% of the order value for each week commenced, however, a maximum of 5% of the order value. We may require payment of the contractual penalty if we reserve the right to do so at the latest by the end of the month after acceptance of the last deliveries and services to be performed for the order. This contractual penalty will be taken into account against any claims for damages.
- d) If we accept the delayed delivery or service without attaching any conditions, this does not constitute any waiver of the claims to compensation accruing to us by reason of the delayed delivery or service. This applies until we have made payment in full of the remuneration for the relevant delivery or services.
- e) We accept part deliveries only by express agreement. In the event of agreed part-deliveries, the amount of the back order must be shown. In the event of excess deliveries that exceed the usual commercial volumes, we reserve the right to return the excess goods delivered at the expense of the Supplier.
- f) The Supplier may only invoke the absence of necessary documents to be supplied by us if the Supplier has sent us a written reminder regarding the documents but failed to receive them within a reasonable period of time.
- g) The Supplier must supply all evidence (e.g. certificates of origin) that we require to satisfy customs requirements and/or obtain other favourable terms. If the origin of the goods differs from the Supplier's declaration in our possession, the change must be specifically mentioned on the delivery note and invoice and the country of origin stated.
- h) The Supplier is liable for the deliveries and services of its sub-suppliers to the same extent as for its own deliveries and services. The sub-suppliers of the Supplier are consequently deemed to be agents of the Supplier.

- i) If we have informed the Supplier of the intended purpose of the deliveries or services, or if the intended purpose is evident to the Supplier even without this express notification, the Supplier is obliged to notify us without delay if its deliveries or services are not suitable for this intended purpose.
- j) The Supplier is obliged to notify us in detail without delay in writing of any changes in the composition of the materials processed or in the design or workmanship compared to deliveries and services of a similar nature provided up to that date. Changes of this kind require our written consent. In the absence of such consent, deliveries and services by the Supplier are deemed to be defective.

**4. Acceptance of Deliveries and Services**

- a) Circumstances which were unforeseeable at the time of placing the order release us from our obligation to accept the goods for the duration of, and to the extent of, their effects, if we are unable to avert these circumstances by taking reasonable action.
- b) In the event of force majeure, the contractual parties are released from the obligations to performance for the duration of the disturbance and to the extent of its effects. The contractual parties are obliged to provide the requisite information without delay as far as reasonable and to adapt their obligations to the changed circumstances in good faith.
- c) We are released wholly or partly from the obligation to accept the delivery or service ordered and entitled to withdraw from the contract to this extent if, because of the delay resulting from force majeure or a labour dispute, the delivery or service ordered – giving consideration to commercial aspects – is no longer of any use to us.

**5. Passing of the Risk and Shipment**

- a) In the case of deliveries involving erection and assembly and for services, the risk passes at the time of acceptance; for other deliveries, the risk passes on receipt at our notified reception point.
- b) Unless otherwise agreed, the shipping and packaging costs, customs duties, fees, taxes and other duties are at the expense of the Supplier. The items for delivery must be properly packaged and shipped.  
For prices agreed ex works or ex sales warehouse, shipment must be made at the lowest cost unless we have specified a form of transport. We reserve the right to issue routing orders. The Supplier must pay the extra costs incurred due to failure to comply with a shipping or packaging regulation or costs for a faster mode of transport necessary to meet a delivery date.
- c) The advice notes, delivery notes and invoices must always show our purchase-order number, item number or reference number or account code. Deliveries made directly to our customers by the Supplier are admissible only if agreed accordingly and must be made in our name. We must be notified of such shipment on the date of shipment.
- d) Part-deliveries and back orders must be described as such in the shipping documents. The Supplier pays the additional costs incurred for making part-deliveries from aggregate units in the absence of our order or our release order. The Supplier is also liable for all costs that we incur due to the Supplier's failure to comply with the above provisions or due to the Supplier using an incomplete or wrong address for the delivery.
- e) We shall not pay the costs of insuring the goods, in particular freight-forwarding insurance. This cost agreement does not contain any instruction to the Supplier not to obtain insurance.

**6. Invoices**

Invoices must be issued in duplicate separately for each purchase order. They must show our purchase-order number, item number and reference number or account code. Sales tax, if applicable, must always be shown separately.

**7. Prices and Terms of Payment**

- a) The prices shown in the purchase order are binding.
- b) The period for payment begins to run as soon as the delivery or service has been provided in full and the duly issued invoice has been received. However, the period for payment does not begin before the agreed delivery date.
- c) Where the Supplier is obliged to provide test reports, quality documents, documentation or other records, receipt of these documents is a precondition for the completeness of the delivery and service.
- d) Place of performance for payments is the registered office of the relevant ordering company from the Schaltbau Holding AG Group.
- e) Payments cannot be construed as confirmation that deliveries or services are in conformity with the contract.
- f) Unless otherwise agreed in writing, payments are made 30 days net after commencement of the period for payment. The date of our check or the date of our electronic funds transfer by our bank determines the timeliness of payment.

## 8. Liability for Defects

- a) The deliveries or services must conform to the specifications and other details, such as standards and other documents, stipulated in the purchase order. The deliveries and services must in each case conform to the generally recognised rules of technology, statutory and official safety regulations and environmental-protection regulations.
- b) The Supplier is obliged to put in place, maintain and constantly review an outgoing goods inspection as part of its quality assurance that dispenses with the need for a good-received inspection on our part. Accordingly, a goods-received inspection takes place only in respect of obvious defects, transport damage, completeness and to identify the goods. We shall notify any such defects within five working days. Moreover, we shall notify any defects as soon as they are discovered in the course of normal business operations or by other means within five working days.
- c) The statutory rights in the event of defects are available to us without restriction. We have the right in each case to require the Supplier, at our discretion, to eliminate the defects or deliver a new item. We expressly reserve the right to claim compensation for damages, in particular damages in lieu of performance.
- d) If we incur costs as a consequence of the defective delivery of the contractual subject matter, including but not limited to, freight costs, travelling expenses, labour costs, material costs or costs for a goods-received inspection that goes beyond the usual extent, the Supplier must pay these costs.
- e) If the Supplier is in default with elimination of the defect, we have the right, at the Supplier's expense, to eliminate the defect ourselves or have it eliminated by third parties.

## 9. Limitation Periods

- a) Unless a longer period is provided by statute or the contract, the limitation period for material and legal defects is 3 years from the date of passing of the risk; the rights in particular to subsequent performance and damages or refund of wasted expenditure become time-barred after 3 years. The limitation period for rights based on defects is suspended as soon as the Supplier receives our notification of defect.
- b) If the Supplier meets its subsequent-performance obligations by delivering replacements, the limitation period for the replacement goods delivered begins anew after their delivery unless the Supplier expressly and appropriately reserved the right, at the time of subsequent delivery, to make delivery only on goodwill grounds or in order to avoid disputes.

## 10. Supply of Spare Parts

The Supplier is obliged, subject to reasonable terms and conditions, to deliver spare parts for the customary period of technical use of its delivery/service, however, for at least 10 years from the date of the last delivery of the relevant delivery item. If the Supplier ceases to deliver spare parts after expiry of the aforementioned period, or ceases to deliver the relevant delivery item during this period, we must be given the opportunity to place a last order or we must be given the relevant manufacturing documents free of charge.

## 11. Product Liability

- a) If the Supplier is responsible for damage caused by a product, the Supplier is obliged to indemnify us against claims for damages brought by third parties on first demand. Where the Supplier is liable, the Supplier is also obliged to refund any expenses under secs. 2-713 of the UCC arising from or in connection with any recall action that we undertake. As far as possible and reasonable, we shall notify the Supplier of the subject matter and extent of any recall actions to be undertaken and give the Supplier an opportunity to make a statement.
- b) The Supplier undertakes to maintain product-liability insurance with a lump-sum cover amount of \$5.0 million per personal injury/property-damage claim. This does not affect any claims to damages that we may have that exceed this amount. The Supplier is obliged to provide us on request with a copy of the product-liability insurance policy and verification of payment of the premiums.

## 12. Industrial Property Rights and Other Third-Party Rights

- a) The Supplier is liable for ensuring that the delivery items are delivered free of rights of third parties and that no proprietary rights of third parties are infringed in connection with the delivery.
- b) The Supplier indemnifies us against all claims brought against us for breach of an industrial property right or other third-party rights and pays the costs of preserving the rights if these claims are based on a culpable breach of duty by the Supplier. We shall notify the Supplier without delay in the event of a claim being brought.

## 13. Title to Customer-Supplied Items

- a) We retain title to the models, designs, manufacturing equipment, tools, gauging and testing equipment, materials supplied, drawings, factory-standard sheets, print copy and similar that we have supplied. The Supplier makes any

order-related manufacturing equipment and tools on our behalf. The Supplier shall store these items with the care of a prudent businessperson free of charge and separately from other items in its possession, mark them as our property and use them only for the purpose of providing deliveries and services to us. The Supplier pays the costs for the care, maintenance and renewal of parts of manufacturing resources which were provided by, or manufactured for, us. This manufacturing equipment may only be modified with our prior written consent. We may require the surrender of the manufacturing equipment if

- this has been agreed in a tooling contract
- the Supplier becomes unable to supply the parts made with the manufacturing equipment,
- the Supplier suffers a loss of assets, in particular if insolvency proceedings are opened on its assets or
- an application for the opening of such proceedings has been made or the business relations have ended.

The Supplier is obliged to insure the tools belonging to us, on request, for their new value at its own expense against damage by fire, water and theft. The Supplier already now assigns to us all indemnity claims to damages arising from this insurance and we accept this assignment.

- b) If the Supplier processes or transforms materials we have supplied, this work is done on our behalf. We will become the direct owner of the items thereby produced. If the materials we have supplied are processed with other goods that do not belong to us, we acquire a co-ownership share in the new item in the proportion of the value of our item (cost price plus applicable sales tax) to the other items processed at the time of processing.
- c) If the item supplied by us is inseparably combined or mixed with other goods that do not belong to us, we acquire a co-ownership share in the new item equal to the proportion of the value of our items (cost price plus applicable sales tax) to the other items combined or mixed at the time of combining or processing. If combining or mixing occurs in a way that items not owned by us are regarded as the principal item, it is deemed to have been agreed that the Supplier assigns a pro-rata share of title to us. The Supplier keeps the sole title or shared title safe on our behalf.
- d) Where the value of security rights accruing to us exceeds the cost price for all reserved-title goods still unpaid by more than 20%, we are obliged, if the Supplier so requests, to release security rights at our discretion.
- e) In the event that the Supplier breaches the prohibition of unauthorised use we are entitled, without prejudice to other rights, to withdraw from the contract or terminate the contract and claim damages.

## 14. Preservation of Secrecy/Prohibition of Advertising

- a) The Supplier is obliged to maintain secrecy about all information supplied to it, whether recorded in writing or given verbally or embodied in the objects given into the Supplier's possession and not to make the same available to third parties without our written consent. The duty of confidentiality continues to apply even after termination of this contract. The duty of confidentiality extinguishes if, and to the extent to which, the manufacturing know-how contained in the documents handed over has become general knowledge.
- b) Any reference to our business relations made by the Supplier for advertising purposes requires our express consent.
- c) Any subcontractors must be obliged in accordance with a) and b) above.

## 15. Assignment of Receivables/Set-Off

- a) The Supplier requires our written consent to assign accounts payable by us.
- b) The Supplier may only exercise set-off against undisputed and/or final and non-appealable claims.

## 16. Additional Set-off Possibilities

We are entitled to set-off accounts payable by Schaltbau Holding AG or its affiliated companies against the accounts receivable of the Supplier, independently of their due dates.

## 17. Place of Performance, Governing Law and Place of Jurisdiction, Miscellaneous

- a) Place of performance for deliveries and services is the place of destination. Otherwise, place of performance is our registered office.
- b) These Terms and Conditions of Purchase are governed by New York State law.
- c) Place of jurisdiction is, at our discretion, the registered office of the ordering company of the Schaltbau Holding AG Group or the competent court at the registered office of the Supplier.
- d) Any invalidity of individual provisions of these Terms and Conditions of Purchase does not affect the validity of the remaining provisions. The parties undertake in this event to replace the invalid provision by a valid provision that comes as close as possible to the economic purpose of the invalid provision.

Effective March 2014