

## PURCHASE CONDITIONS

### of Schaltbau Holding AG and their associated companies

#### 1 GENERAL INFORMATION

- a Our Purchase Conditions apply exclusively. We do not recognise the supplier's conditions which are contrary to or diverge from our Purchase Conditions, unless we have explicitly approved their validity in writing. Acceptance of a delivery without formulating any reserves does not constitute recognition of opposing or diverging conditions.
- b Agreements concluded between ourselves and the supplier have to be in writing.
- c Our Purchase Conditions only apply as regards companies in accordance with article 310 I German Civil Code.

#### 2 OFFER/OFFER DOCUMENTATION

- a We are entitled to revoke our order if the supplier fails to accept it in writing within two weeks following receipt.
- b We reserve our right of ownership and copyright to illustrations, drawings, calculations and other documents passed on together with our order. They may only be made accessible to third parties subject to our explicit consent. They have to be used in accordance with our order. Following written request by ourselves, they have to be returned without delay. They have to be kept confidential in relation to third parties.

#### 3 DELIVERY

- a The agreed delivery date and the agreed delivery period are binding. Delivery in good time is subject to its receipt at the address named by the buyer and, as regards deliveries including installation or assembly as well as services to be performed, acceptance. In the case of earlier deliveries than agreed, we reserve the right to return them at the supplier's expense. In the case of a premature delivery which is not returned, the goods are stored by us until the delivery date at the supplier's expense and risk.
- b In the case of an anticipated delay in effecting a delivery or performing a service, as well as in the event of circumstances indicating that the agreed delivery time or the agreed delivery date cannot be complied with, we have to be notified and our decision has to be obtained immediately. This is without prejudice to our right to withdraw from the contract or to claim compensation.
- c In the event of the supplier being in default, we are entitled to claim a contractual penalty amounting to 0.5% of the order value per week or part thereof, but not exceeding 5% of the total order value. We are entitled to claim the contractual penalty provided we reserve the relevant right latest on expiry of one month following acceptance of the last delivery to be effected and service to be performed under the order.
- d Part-deliveries are only accepted following explicit agreement. In the case of agreed part-deliveries, the remaining quantity has to be stated. In the case of deliveries whose quantity exceeds the normal quantity, we reserve the right to return the excess goods at the supplier's expense.
- e The supplier is only able to invoke non-receipt of the required documentation to be supplied by ourselves, provided he has reminded us of the documentation in writing and has not received it within a reasonable period.
- f The supplier has to furnish all proofs (e.g. certificates of origin) required by ourselves to secure customs and/or other preferential treatment. If the origin of the goods differs from the supplier's declaration in our possession, attention has to be drawn to this fact in the delivery-note and invoice, also stating the actual country of origin. The passing on of orders to third parties is not permissible in the absence of our written consent and entitles us to withdraw from the contract or to serve notice of termination of it and to claim compensation.
- g The supplier is responsible for the deliveries and services of his sub-contractors in the same manner as for his own deliveries and services. The supplier's sub-contractors are thus deemed to be his servants.
- h If the buyer has informed the supplier of the purpose for which the deliveries or services are intended of if this purpose is apparent to the supplier also in the absence of an explicit reference, the supplier is compelled to inform the buyer immediately if the deliveries or services of the supplier are not suitable for this purpose. The supplier has to inform the buyer immediately of alterations in the type of composition of the processed material or the design in relation to similar deliveries effected or services performed for the buyer in the past. Alterations call for the buyer's written approval. In the absence of such approval, the supplier's deliveries and services are deemed to be defective.

#### 4 ACCEPTANCE OF DELIVERIES AND SERVICES

- a Circumstances which were unforeseeable at the time when placing the order release us from our acceptance obligation for the period and the extent of their effects, inasmuch as we are unable to prevent these circumstances with the aid of resources which we can be reasonably expected to afford.
- b We are released, wholly or partly, from our obligation to accept the delivery/service ordered and entitled to withdraw from the contract if, due to a delay caused by force majeure or industrial dispute at our works, duly allowing for economic aspects, the delivery/service can no longer be used.

#### 5 TRANSFER OF RISK AND DESPATCH

- a In the case of deliveries including installation and assembly and services to be performed, the risk reverts on acceptance, in the case of other deliveries on receipt by the consignee appointed by us.
- b Unless agreed otherwise, the cost of transport and packing, customs duties, charges, taxes and other levies are for the supplier's account. The goods to be delivered have to be properly packed and despatched, whereby at least the statutory stipulations of the Packing Decree have to be complied with.
- c If the price is understood ex works or ex sales depot, despatch has to be effected subject to the lowest cost, unless we have specified the type of transport. Mixed goods have to be sent by Deutsche Bahn AG, unless delivered by the supplier's own vehicles. We reserve the right to issue routing orders. Additional charges due to despatch or packing stipulations not complied with or due to express transport to comply with a contractual delivery date are for the supplier's account.
- d All despatch-notes, delivery-notes and invoices for every delivery have to state our order and item number, as well as the reference number respectively the account to which it is to be allocated. Direct deliveries to our clients have to be effected in our name. This has to be notified to us on the date of despatch.
- e Part-deliveries or final deliveries have to be marked as such in the despatch documents. In the case of part-deliveries of groups of assets not having been called forward by us, the additional charges are for the supplier's account. The supplier is also liable for all costs incurred by ourselves due to non-compliance with the above stipulations or to defective or incorrect address to which the consignment has been sent.
- f The cost of insurance of the goods, particularly forwarding agents' insurance, is not for our account. Please note that we explicitly waive the Carriers, Logistics and Store loss insurance policy pursuant to paragraph 29.1.2 of the General German Forwarding Agents' Conditions. This cost arrangement does not include any instructions to the supplier to abstain from insuring the goods.

#### 6 INVOICES

Invoices have to be submitted in duplicate, separately for every order. They have to state our order number and item number, as well as reference number or allocation to an account. Value added tax has at all times to be stated separately.

#### 7 PRICES AND DELIVERY CONDITIONS/TERMS OF PAYMENT

- a The prices stated in the order are binding. The delivery conditions mentioned by the order apply.
- b Payment is subject to the terms of payment stated by the order.
- c The payment period commences as soon as delivery has been effected or services performed in full and proper invoices have been received. However, the payment period does not commence before the contractual delivery date.
- d Inasmuch as the supplier has to make available test reports, quality certificates, documentation or other matters, completeness of the delivery and service also presupposes receipt of these documents. Furthermore, the delivery and service presupposes that existing defects have been made good, unless less than 50% of the delivery are affected by defects. In this case, we are authorised to withhold five times the amount of the anticipated costs of repair.
- e Cash discounts are also deductible in the case of a set-off on our part.
- f The place of performance for payments is the buyer's head-office.
- g Payments effected do not imply acknowledgment of the deliveries or services as being in accordance with the contract.

#### 8 LIABILITY FOR DEFECTS

- a All deliveries and services have to conform to the specifications and other conditions, such as official standards and other documents. Deliveries and services have to conform at all times to the generally recognised state of the art, the statutory and official safety and environmental protection regulations in force in Germany or which have been adopted subject to a transitional period. Furthermore, the supplier warrants the fact that his deliveries and services suffer no defects during the warranty period
- b We inspect the goods within a reasonable period in the form of random checks for quality and quantity discrepancies. Claims for defects are deemed to be asserted in good time provided they are discovered within two weeks following transfer of the risk or, if the defect is only discovered during manufacture or processing or utilisation, following its discovery.
- c If a defect is found on the occasion of the inspection of the goods on receipt, we are entitled to assert a claim pursuant to paragraph d with regard to the entire delivery or to inspect the whole of the delivery at the supplier's expense, following prior notice. The same applies if a defect is discovered during further processing.
- d We are entitled to the statutory claims for defects, without any reduction. We are in every case entitled to demand from the supplier, at our option, making good of the defects at the place of utilisation of the goods or to demand replacements. The expenditure incurred by us, in particular the costs of testing, transport, packing, labour and materials are for the supplier's account

in full. We automatically reserve the right to claim compensation, particularly indemnification of the service.

- e If repairs prove unsuccessful, if the supplier refuses to carry out repairs or to supply replacements or if he is in default regarding these acts, we have the right to claim compensation. Repairs are deemed to have failed if the first repair attempt proves unsuccessful.
- f In the event of the supplier failing to conform to his obligation to make good defects within a reasonable period set by ourselves, and in addition to the rights set out by paragraph d, we are authorised to take the necessary steps ourselves at his expense and risk or instruct a third party to do so. We are authorised to make good the defect ourselves at the supplier's expense if delay entails a risk or if there is a need for special urgency. In this case, we are able to charge the necessary expenses to the supplier. The same applies in the event of a risk of particularly substantial damage. If a quality control agreement has been concluded, this takes precedence.

## 9 PRESCRIPTION PERIODS

- a The prescription period for material and legal defects amounts to two years as from the transfer of risk (number 3, paragraph a) or, in the case of later commissioning to be evidenced by ourselves, as from the date of commissioning, unless the law or contract provides for a different period. Among other things, claims for subsequent fulfilment and claims for compensation or indemnification of expenditure incurred unsuccessfully, are prescribed after two years. Further more the regular prescription period of three years applies.
- b The prescription period is interrupted if and as long as we are negotiating with the supplier concerning the claim or the circumstances substantiating the claim. The interruption ends when the supplier or ourselves notify in writing that continuation of the negotiations is refused. Prescription occurs at the earliest three months following the end of the interruption. In the event of resumption of the negotiations concerning making good the defect, the prescription period is once again interrupted. Furthermore, prescription is interrupted in the cases set out by the law.
- c The supplier undertakes to supply subject to reasonable terms spare parts for the period of the ordinary technical lifetime, but at least for ten years following the last delivery of the goods concerned. If, following expiry of the above mentioned period, the supplier ceases to supply spares or delivery of the goods concerned during this period, he has to give the buyer an opportunity to place a last order or to make available the relevant manufacturing documentation, free of charge.

## 10 PRODUCT LIABILITY

- a Inasmuch as the supplier is liable for defective products, he is compelled to hold us harmless and indemnified in respect of compensation claims by third parties, upon first request. Furthermore, the supplier is compelled within the scope of his liability to indemnify us for any expenditure incurred pursuant to articles 583 and 670 German Civil Code, as well as pursuant to articles 830, 840, 426 German Civil Code as a result of or in connection with a recall action carried out by us. As regards the contents and extent of the recall measures to be taken, we undertake to inform the supplier, inasmuch as possible and reasonable, and to give him an opportunity to comment.
- b The supplier undertakes to take out a product liability insurance policy covering a sum insured of 5 million per bodily injury/property damage combined. This is without prejudice to any more far reaching compensation claims to which we are entitled.

## 11 INDUSTRIAL PROTECTION RIGHTS AND THIRD PARTIES' OTHER RIGHTS

- a The supplier warrants the fact that the goods to be delivered are free of third parties' rights and that no third parties' protection rights are infringed as a result of the delivery. In the event of an infringement of industrial protection rights, the supplier is compelled to hold us harmless and indemnified in respect of third parties' claims, upon first request. This obligation extends to all expenses necessarily incurred by us as a result of or in connection with the third party's claim
- b In the event of a claim being asserted on us by a third party, we are entitled, also following consultation with the supplier, to secure from the owner of such protection rights the necessary approval of delivery, commissioning, utilisation, resale etc. of the goods to be delivered.

## 12 TITLE TO OBJECTS MADE AVAILABLE BY US

- a Models, samples, manufacturing devices, tools, measuring and test instruments, materials, drawings, documentation, copy for printing etc. made available by us remain our property. Manufacturing devices and tools required by the order are reproduced for us by the supplier. These objects are in the safeguard of the supplier subject to the prudence of a good businessman, free of charge and separately from other objects in his custody, marked as being our property and solely used by the supplier for the purpose of his deliveries to be effected and services to be performed for us. The cost of care, maintenance and partial renewal of manufacturing devices made available by us or produced for us is for the supplier's account. These manufacturing devices may only be modified subject to our prior written consent. We are entitled to demand surrender of the manufacturing devices if agreed in the form of a tool contract, if the supplier is unable to deliver the parts produced with the aid of the manufacturing devices, if he experiences financial difficulties, particularly if bankruptcy or composition proceedings are instituted regarding his assets or if a petition on is filed for instituting such proceedings or if the business relationship has ended.

Following our request, the supplier undertakes to insure the tools belonging to us at their new value, at his own expense, against fire, water and theft

damage. At the same time, the supplier assigns to us already at this juncture the indemnification claim under this policy and we accept this assignment.

- b If the supplier processes materials made available by us or converts them, these activities are performed for the buyer. The latter becomes directly the owner of the objects thus produced. If the material provided by us is processed together with other objects not belonging to us, we acquire joint title to the new object in the ratio of the value of our object (purchase price plus value added tax) to the value of objects belonging to other parties at the time of processing.
- c If the object made available by us is combined with other objects belonging to third parties and can thus no longer be separated, we acquire joint title to the new object in the ratio of the value of our object (purchase price plus value added tax) to the value of the mixed or combined objects at the time of the mixing or processing. If the missing or combining takes place in such a manner that the object not belonging to us has to be considered to be the principal object, it is agreed that the supplier assigns to us the proportionate joint title. The supplier is the custodian of our sole or joint property.
- d Inasmuch as the value of the securities to which we are entitled exceeds the purchase price of all unpaid goods subject to retention of title by more than 20 %, and following request by the supplier, we are compelled to release securities at our option.
- e In the event of the supplier infringing the prohibition of unauthorised use, we are entitled to withdraw from the contract or to serve notice of it and to claim compensation, without prejudice to our further rights.

## 13 CONFIDENTIALITY CLAUSE/BAN ON PUBLICITY

- a The supplier is compelled to keep all information made available to him, either in writing or verbally or embodied in the objects made available to him, in strict confidence. The secrecy obligation continues to remain in force following completion of this contract and only expires if and inasmuch as the manufacturing know-how included in the information disclosed becomes public knowledge.
- b Reference to the existing business relationship for publicity purposes is only permissible subject to our explicit consent.
- c Sub-contractors, if any, have to be obliged accordingly.

## 14 ASSIGNMENT OF CLAIMS/SET-OFF

- a The assignment of the supplier's claims against ourselves calls for our consent.
- b The supplier is only able to set off our claims against his own claims which are uncontested or are in legal force.

## 15 EXTENDED SET-OFF FACILITIES

The buyer is authorised to set off claims by Schaltbau Holding AG or their associated companies within the meaning of paragraph 13 of the document, regardless of their due dates, against claims asserted by the supplier.

## 16 PLACE OF PERFORMANCE, LAW APPLICABLE AND JURISDICTION

- a The place of performance concerning deliveries and services is the place of destination. The remaining place of performance is our head-office. Orders are exclusively subject to the law of the Federal Republic of Germany.
- b The Convention of the United Nations concerning international purchases of goods does not apply.
- c Jurisdiction is, at our option, the buyer's head-office or the competent court of law at the supplier's head-office.

The buyer draws the supplier's attention to the fact that, pursuant to article 25 Federal Data Protection Act, he stores personal-related data.