

## Schaltbau North America Inc. Terms and Conditions of Sale

### 1. General

- a) Our Terms and Conditions of Sale apply exclusively; we acknowledge no terms of the Customer that conflict with or deviate from our Terms and Conditions of Sale, unless we have expressly agreed in writing to their application. Our Terms and Conditions of Sale also apply if we undertake delivery to the Customer without making any reservations in the knowledge that the terms of the Customer conflict with or deviate from our Terms and Conditions of Sale.
- b) All agreements made between us and the Customer for the purpose of performing this contract must be made in writing.
- c) Our Terms and Conditions of Sale apply only to merchants as defined in section 2-104 of the Uniform Commercial Code (UCC).
- d) The Customer undertakes not to pass on any data relating to our business relations to third parties. If there is a statutory obligation to transmit data to authorities or the courts, the Customer will pass on only the data that are absolutely necessary and notify us that it has passed on these data without delay.
- e) These Terms and Conditions of Sale apply not only to the present order but also to all future transactions with the Customer.

### 2. Quotations and Quotation Documents

- a) If the purchase order qualifies as an offer for the purposes of sec. 2-205 of the UCC, we may accept this offer within a period of two weeks.
- b) We reserve all title and copyright to illustrations, drawings, calculations and other documents. This also applies to written documents that are described as "confidential". The Customer must obtain our express written consent before passing the same on to third parties.

### 3. Delivery

- a) We are entitled to undertake partial-deliveries, provided that this does not result in any unreasonable additional expense for the Customer. If, after conclusion of the contract, we become aware of circumstances which give cause for doubt about the creditworthiness of the Customer and our receivables are thereby endangered, we may withdraw from the contract. This right of withdrawal is available in addition to the statutory rights.  
The delivery period we have quoted presupposes the prior clarification of all technical matters.
- b) Adherence to delivery periods depends on the timely receipt of all documents to be furnished by the Customer, in particular, plans, approvals and releases and adherence to the agreed terms of payment and to any other acts of preparation and cooperation to be undertaken by the Customer. If these requirements are not met, or if we are prevented from delivering by force majeure or similar events like, for example, labor disputes in our company or at our subcontractors or other unforeseeable obstructions beyond our control, the period for delivery is extended accordingly.
- c) If the Customer is in default with acceptance, the Customer is obliged to pay us storage charges of 0.5% of the price of the goods purchased, however, a maximum of 5%, beginning one month after notification of readiness for shipment. The contractual parties shall have the right to verify and to claim that storage costs were higher or lower. We reserve all further claims and rights available to us.
- d) If the Customer culpably breaches other duties of cooperation, we are entitled to claim compensation for the damages we have suffered in this respect, including any extra costs. We reserve all further claims and rights.
- e) If the circumstances of Para. (c) and/or (d) occur, the risk of accidental destruction or accidental deterioration of the purchased item passes to the Customer at the time the latter is in default with acceptance or is in debtor's default.
- f) We are liable in accordance with the statutory regulations insofar as the underlying contract of sale is a transaction for delivery on a fixed date as defined in sec. 2-307 of the UCC. We are also liable under the statutory provisions in the event that, as a consequence of a default in delivery for which we are responsible, the Customer is entitled to claim that it has ceased to have an interest in further performance of the contract. In these cases, our liability is limited to the foreseeable, typically occurring damages unless we are guilty of intent.
- g) We are liable, in the event of default in delivery, in the amount of 3% of the value of the delivery for each full week of default as liquidated default damages, however, a maximum of 15% of the value of the delivery.
- h) Subject to the limitation of liability under Article 14, this does not affect any more extensive statutory claims and rights of the Customer.
- i) The Customer is obliged to submit an end-use certificate for the goods delivered. In the event that the Customer submits no end-use certificate or breaches the export-control regulations, this gives us the right to refuse performance. The same applies in the event that the Customer deliberately remains silent on an intended military end-use for the goods ordered. The Customer remains obliged to comply with the valid export regulations. Our performance of the contract is conditional on there being no obstacles to performance by reason of national or international foreign-trade regulations or embargos, restrictions on trade and/or other sanctions.

### 4. Prices, Terms of Payment

- a) Unless expressly agreed otherwise in our confirmation of the order, our prices apply ex-works excluding packaging and insurance with addition of the relevant applicable statutory rate of sales tax. Applicable is the statutory rate on the date of issue of the invoice. The invoice amounts are payable without deduction at the latest 30 days after the date of issue of the invoice. However, we can also make delivery conditional upon immediate payment if we previously notify this fact in good time. Delivery to customers whose financial standing is unknown to us is made only in return for advance payment. We extend credit terms to Customers only after verifying credit references. In such cases, payment is deemed to have been received only after the relevant amount has been credited unconditionally to our account.
- b) The deduction of discount requires a special written agreement.
- c) Rights of set-off and rights of retention are available to the Customer only if the Customer's counter-claims are confirmed as final and non-appealable or are undisputed or recognized by us. Moreover, the Customer is entitled to exercise a right of retention only if, and to the extent to which, its counter-claim arises from the same contractual relationship.
- d) In the event of default in payment, the Customer is obliged to furnish securities to us. The property and rights of the Customer in our possession or at our disposal serve as security from this time onwards to safeguard our due receivables. We are entitled to disclose the security and to sell the items furnished as security to the public at the stock-exchange price or market price, unless sale by public auction is mandatory. Without prejudice to more extensive claims based on default in payment, interest must be paid on our receivables from the due date of payment at a rate of 5% p.a.

### 5. Passing of the Risk

- a) The risk passes as follows to the Customer:
  - for deliveries without assembly: when the goods leave the delivering works, are notified as ready for collection or shipment;
  - for deliveries with assembly: on the date of take-over on the Customer's premises.
- b) Unless otherwise stipulated in the confirmation of order, "delivery ex works" is agreed.

### 6. Safeguarding Reservation of Title

- a) We reserve title to the product sold until receipt of all payments arising from the business relations with the Customer. In the event of the Customer acting in breach of contract, in particular, default in payment, we are entitled to recover the purchased item. Our recovery of the purchased item constitutes withdrawal from the contract. We are entitled, after recovering the purchased item, to sell the same; the proceeds of sale must be taken into account against the accounts payable by the Customer, less any reasonable costs of sale.
- b) The Customer is obliged to treat the purchased item with care; in particular it is obliged to insure the same adequately for the new value at its own expense against damage by fire, water and theft. Where maintenance or inspection work is required, the Customer must perform the same in good time at its own expense.
- c) In the event of attachment or other intervention by third parties, the Customer must notify us in writing without delay so that we may bring a complaint action under sec. 2-703 of the UCC. If the third party is not in a position to refund the judicial and extra judicial costs of an action under sec. 2-703 of the UCC, the Customer is liable for the loss we have sustained.
- d) The Customer is entitled to resell the purchased item in the ordinary course of business; the Customer already now assigns all receivables up to the final amount invoiced (including applicable sales tax) of our receivables that accrue to it out of the resale against its purchaser or third party and this regardless of whether the purchased item was resold without or after processing. The Customer remains authorized to collect these receivables even after assignment. This does not affect our authority to collect the receivable ourselves. However, we undertake not to collect the receivable for as long as the Customer continues to meet its payment obligations towards us, does not default on payment and, in particular, no petition is made for the institution of composition or insolvency proceedings or the Customer has not ceased to make payments. If this is, however, the case, we may require the Customer to notify us of the receivables assigned and their debtors, provide all details required for their collection, hand over the associated documents and notify the debtors (third parties) of the assignment.
- e) The processing or transformation of the purchased item by the Customer is always undertaken on our behalf. If the purchased item is mixed with other goods that do not belong to us, we acquire co-ownership of the new thing in the relation of the value of the purchased item (final invoice amount including applicable sales tax) to the other items processed at the time of processing. The same applies to the thing produced by processing as for the purchased item supplied under reservation of title.
- f) If the purchased item is inseparably mixed with other goods that do not belong to us, we acquire co-ownership of the new thing in the relation of the value of the purchased item (final invoice amount including applicable sales tax) to the other mixed items at the time of mixing. If mixing occurs in a way that the thing of the Customer is to be regarded as the principal thing, it is deemed to have been agreed that the Customer

transfers a pro-rata share of title to us. The Customer safeguards the sole title or shared title thereby created on our behalf.

- g) In order to secure our receivables from the Customer, the Customer also assigns to us the receivables that accrue to it from a third party as a result of the linking of the purchased item with real estate.
- h) We undertake to release the securities available to us to the extent to which they exceed the realizable value of our receivables to be secured by more than 10%; the selection of the securities to be released is at our discretion.

#### **7. Rights to Tools/Apparatus**

The Customer does not acquire any rights to tools or apparatus by paying costs or a part of the costs. Unless otherwise agreed, these remain our property.

#### **8. Industrial Property Rights Copyrights, Defects of Title**

- a) Unless otherwise agreed, we are obliged to make delivery free of industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights"). The legal system of the country of delivery is solely determinant for the same. In the event of a third party bringing legitimate claims against the Customer based on the infringement of Property Rights resulting from the contractual use of deliveries made by us, we are liable to the Customer within the periods stipulated in Article 13 (d) as follows:
  - At our discretion and at our expense, we shall either procure a right of use for the deliveries concerned, modify them in such a way that the Property Right is no longer infringed or replace the same. If we are unable to do so under reasonable terms and conditions, the Customer shall have the statutory rights.
  - The above obligations exist only on condition that the Customer informs us without delay of any claims brought by third parties, that the Customer does not acknowledge any infringement, and that we reserve the right to conduct all defense measures or settlement negotiations. If the Customer ceases to use the delivery items in order to mitigate the damage or on other important grounds, the Customer is obliged to draw the third party's attention to the fact that the cessation of use does not represent any acknowledgement of an infringement of Property Rights.
- b) Claims of the Customer are excluded, if the Customer is responsible for the infringement of Property Rights.
- c) Claims of the Customer are also excluded if the infringement of Property Rights is caused by special specifications of the Customer, by a use that we could not have foreseen or because the Customer modified the delivery in breach of contract or used it together with products not delivered by us.
- d) Claims of the Customer against us or our employees or agents, based on an infringement of industrial Property Rights or other rights of third parties, that go beyond those or which differ from those covered by this Article, are excluded, unless we are guilty of intent.

#### **9. Goods-Testing and Acceptance**

- a) If the acceptance of our products/services under special test conditions has been agreed, the Customer or its agent must perform the acceptance on our premises. The Customer pays the costs of acceptance. If the Customer refrains from performing this test, the goods are deemed to be delivered in conformity with the contract when they leave our works.
- b) If we have asked the Customer to undertake acceptance after completion, this must take place within two weeks of the request at the latest. If the Customer refrains from cooperating, acceptance is nevertheless deemed to have taken place.

#### **10. Deviations in Dimensions, Weight or Quantity**

Unless contrary to generally accepted engineering standards or expressly derogating agreements exist, deviations in weight, quantity or dimensions of up to 10% are permitted without the Customer being entitled to withdraw from the contract or claim damages.

#### **11. Rights to Documents and Software**

- a) We reserve our rights of title and copyright to cost estimates, drawings and other documents that we have provided (hereinafter referred to as "Documents"). The Documents may be made accessible to third parties only with our prior written consent and may only be used for contractual purposes and must be returned to us on request.
- b) The Customer has a non-exclusive right to use the software delivered by us in unmodified form and with the agreed service characteristics on the agreed products. The Customer may also make up to two back-up copies without express agreement.

#### **12. Illustrations, Descriptions, Product Specifications**

- a) Illustrations and descriptions and specifications reflect the circumstances or intentions at the time that the list or other order documents went to print. We reserve the right to make changes of all kinds, insofar as they arise because of technical progress, modified design or similar, insofar as the changes are reasonable for the Customer after giving consideration to our own interests.
- b) We provide advice on application according to the best of our knowledge and belief. Details and information about the suitability and application of our products do not release the Customer from the obligation to undertake its own examinations. The Customer is responsible for adherence to statutory and official regulations in the use of our goods.

- c) The Customer is obliged to observe and adhere to the product specifications applicable to our products. These can be found on our webpage or will be made available by us on request. We are not liable for any defects or damages resulting from the use of our products not in conformity with our specifications.

#### **13. Liability for Defects**

- a) Claims of the Customer based on defects are conditional on the latter having duly performed the duties of examination and notification of defects incumbent upon the Customer under sec. 2-513 of the UCC.
- b) If there is a defect in the purchased item, the Customer is entitled, at our discretion, to subsequent performance in the form of elimination of the defects or delivery of a new item free of defects. In the event of elimination of the defect or replacement delivery, we are obliged to pay all expenses incurred for subsequent performance, in particular the transport and travelling expenses, labour and material costs, provided that these are not higher as a result of the purchased item having been taken to a place other than the place of performance.
- c) If subsequent performance fails, the Customer is entitled at its own discretion to withdraw from the contract or require a reduction in the selling price.
- d) The limitation period for claims based on defects is 12 months counted from the date of passing of the risk.
- e) The limitation period in the event of a right of recovery under secs. 2-725 of the UCC is four years counted from the date of delivery of the defective item.

#### **14. Limitation of Liability, Exclusion of Liability**

- a) In the event of malicious intent or gross negligence on our part, on the part of our employees, agents or representatives, we are liable in accordance with the statutory provisions. The same applies in the event of culpable breach of essential contractual duties. Unless we are guilty of a deliberate breach of contract, liability for compensation for damages is limited to the foreseeable damages that would typically have occurred.
- b) This does not affect liability based on culpable harm to life, physical injury or harm to health or liability under the Product Liability Act.
- c) More extensive liability than provided for above is excluded - regardless of the legal nature of the claim made. This applies in particular to claims to compensation for damages arising from fault at the time of concluding the contract, other breaches of duty or claims in tort for compensation of property damage under sec. 2-715 of UCC.
- d) The limitation under clause (c) also applies if the Customer claims compensation for wasted expenses instead of a claim for damages in lieu of performance.
- e) Where our liability to compensate for damages is excluded or limited, such exclusion or limitation also applies in respect of the personal liability to compensate for damages of our employees, representatives and agents.

#### **15. Place of Jurisdiction/Place of Performance**

- a) If the Customer is a registered merchant, our registered office is the place of jurisdiction; however, we are entitled to bring an action against the Customer also before the court of its place of residence or at the place of payment.
- b) These Terms and Conditions of Sale are governed by New York State law.
- c) Unless otherwise stated in the confirmation of order, our registered office is the place of performance.
- d) In the event of individual provisions of these General Terms and Conditions of Sale being legally invalid, the remaining parts shall continue to have binding effect. This does not apply if adherence to these Terms and Conditions of Sale would constitute unreasonable hardship for one of the parties.

Effective March 2014