

In these conditions the "Company" means Schütz (UK) Limited and any subsidiary of the Company by which the Goods are sold and "Goods" means the subject matter of the contract including (but not limited to) raw materials, finished or semi-finished materials, or articles, machinery, parts, spares, commodities etc. and whether one or a number of items whether or not identical or similar.

## 1. GENERAL

- 1.1 The Company's quotations are not binding on the Company and a contract (the "contract") will only come into being upon acceptance by the Company of the Customer's order and the following conditions shall be deemed to be incorporated therein. The contract will be subject to these conditions. All terms and conditions appearing or referred to in the Customer's order or otherwise stipulated by the Customer shall have no effect. Any variation of the contract must be confirmed in writing by the Company.
- 1.2 Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery. Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted and unless the tender is withdrawn by the Company.
- 1.3 These conditions apply to services provided by the Company in the same way as they apply to Goods supplied by the Company.

## 2. PRICES

- 2.1 The price stated in the contract is based on the cost to the Company of raw materials, fuel and power, transport and labour and all other costs at the date of acceptance or the order or quotation (whichever is earlier). If at the date of despatch of the Goods from the Company's works, or, if later, at the date of carrying out the work, in either case there has been any increase in all or any of such costs the price payable for the Goods or services may at the request of the Company be increased accordingly.
- 2.2 Where the price for the Goods or services is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- 2.3 There shall be added to the price for the Goods or services any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods or performance of the services (whether initially charged on or payable by the Company or the Customer).
- 2.4 All Goods are sold "ex-works" unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery such costs shall be for the Customer's account and shall not affect the provisions of the contract as to the passing of risk.
- 2.5 Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and unless otherwise stated the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

## 3. TERMS OF PAYMENT

- 3.1 Prices quoted are net and are in Sterling unless otherwise agreed. All payments shall be made on the last day of the month following the month in which the Company issues its invoice to the Customer and shall be made without deduction or set-off. When deliveries are spread over a period each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the contract shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the Customer without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue accounts such interest to be calculated on a day to day basis on the amount outstanding at the rate of 4% above the arithmetic average for each day of the published base rate of Barclays Bank plc. The Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any Goods or services or any delivery or instalment as aforesaid, to suspend delivery or performance of any order or any part or instalment without liability until payment or satisfactory security for payment has been provided.
- 3.2 Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents, F.O.B. UK Port unless credit arrangements within the United Kingdom approved by the Company have been made.

## 4. TITLE TO THE GOODS

- 4.1 Legal and beneficial ownership of Goods shall remain with the Company until payment in full has been received by the Company:
  - 4.1.1 for those Goods;
  - 4.1.2 for any other Goods supplied by the Company;
  - 4.1.3 of any other monies due from the Customer to the Company on any account.
- 4.2 Until property in the Goods passes to the Customer under paragraph (a) above the Customer shall:
  - 4.2.1 be bailee of the Goods;
  - 4.2.2 keep the Goods separately and readily identifiable as the property of the Company;
  - 4.2.3 not attach the Goods to real property without the Company's consent.
- 4.3 Notwithstanding paragraph 4.1 above the Customer may (as between it and its Customer only) as principal in the ordinary course of its business sell the Goods by bona fide sale at full market value or in the ordinary course of its business use the Goods.
- 4.4 Goods shall be deemed sold or used in the order delivered to the Customer.

- 4.4.1 Any resale by the Customer of Goods in which property has not passed to the Customer shall (as between the Company and the Customer) be made by the Customer as agent for the Company.
- 4.4.2 If Goods in which property has not passed to the Customer are mixed with or incorporated into other Goods the property in those other Goods shall be held on trust by the Customer for the Company to the full extent of the sums recoverable by the Company under paragraph 4.1. above.
- 4.5 The proceeds of sale of any Goods and any other Goods referred to in paragraph 4.4.1 above shall be held by the Customer in trust for the Company to the full extent of all sums recoverable by the Company under paragraph 4.1 above. The Customer shall keep any proceeds of sale as referred to in paragraph 4.4.2 above in a separate account and the Company shall have the right to trace such proceeds.
- 4.6 Upon accounting to the Company for the entire proceeds of sales made under paragraphs 4.3 and 4.4.1 above, the Company will pay to the Customer a commission equivalent to the difference between the sums owed to the Company and the value of such proceeds.
- 4.7 The Customer assigns to the Company all rights and claims the Customer may have against its own customers and others in respect of Goods specified in paragraphs 4.3 and 4.4.1 above.
- 4.8 At any time prior to property in Goods passing to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company) the Company may without prejudice to any other of its rights:
  - 4.8.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises;
  - 4.8.2 require delivery up to it of all or any part of the goods;
  - 4.8.3 terminate the Customer's authority to resell or use the Goods forthwith by written notice to the Customer which authority shall automatically terminate (without notice) upon any insolvency of the Customer or it going into liquidation (as defined in the Insolvency Act 1986) or it having a receiver or administrative receiver appointed or calling a meeting of its creditors or any execution or distress being levied on Goods in its possession.
- 4.9 The Company may at any time appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation of the Customer.
- 4.10 Each paragraph and sub-paragraph of this clause is separate severable and distinct.

## 5. WARRANTY: LIMIT OF RESPONSIBILITY

- 5.1 The Company warrants that it will (at the Company's choice) either repair or replace or refund part of or the full purchase price of any Goods which are accepted by the Company as being defective or not in accordance with the contract or any express description or representation given or made by or on behalf of the Company in respect of the Goods within a period of three months from despatch of such Goods from the Company's works (the "Warranty Period") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third parties where the Customer's only remedy will be against that third party. In cases of complaint the Customer is obliged to deliver the defective Goods back to the Company's factory and if such complaint is justified then the Company undertakes to pay the cost of return delivery. The Customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or services or any workmanship in relation thereto (whether or not involving negligence on the part of the Company) shall in all cases be limited to repair or replacement or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period; and the Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any order or any part thereof shall not entitle the Customer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order, delivery or instalment.

## 6. DELIVERY AND COMPLETION DATE

- 6.1 The delivery dates or the dates for carrying out the services specified in the contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance. The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform.
- 6.2 No delay shall entitle the Customer to reject any delivery or performance or any further instalment of part of the order or any other order from the Customer or to repudiate the contract or the order.

## 7. DAMAGE, SHORTAGE, OR LOSS IN TRANSIT

- 7.1 Unless the contract otherwise stipulates, the risk in the Goods passes to the Customer when the Goods are despatched from the Company's works and the Company accepts no responsibility for any damage or loss in transit. Claims for damage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with.
- 7.2 Where the contract provides for delivery elsewhere than at the Company's works, risk will pass at the point specified in the contract and the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer:

7.2.1 gives written notice to the Company within 21 days of non-delivery or within 7 days of the delivery of the Goods in any other case; and where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

#### **8. DELAYED ACCEPTANCE**

8.1 If for any reason the Customer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Company may arrange storage of the Goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the Goods or pay for them in accordance with the contract.

#### **9. TERMINATION**

9.1 If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a Company) it shall pass a resolution or the Court shall make an order that the Customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Customer or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding up order or if the Customer takes or suffers any similar action in consequence of debt or if the financial responsibility for the Customer shall, in the opinion of the Company become impaired or if the Customer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies hereunder stop all Goods in transit and suspend further deliveries and by notice in writing to the Customer may forthwith determine the contract.

#### **10. HIREWORK**

10.1 Hirework and work involving the use of the Customer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during, or are caused by the work, however arising, even resulting from any fault or negligence or mistake of the Company. The Company gives no guarantee or warranty of any kind but subject to the availability of capacity and facilities it will endeavour to correct any such distortion, faults or defects at the Customer's expense and risk. The Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law. Unless it is otherwise expressly agreed in writing any waste material resulting from the performance of any hire work shall become the property of the Company but it is herein expressly agreed between the Company and the Customer that the Company may at any time order the Customer to remove any such waste material and the Customer hereby agrees that on receipt of any such order from the Company it will forthwith comply with such order. The Customer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company by the material supplied by the Customer to the Company. The Company will have a lien on all the Customer's Goods and materials in the possession of the Company for hire work in respect of all sums owing to the Company for such hire work.

#### **11. TOLERANCES AND TESTS**

11.1 Gauges, weights, chemical composition and analysis, quantities and sizes will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any Goods or to require replacement of any Goods on the ground that they are not precisely as specified. Unless otherwise specifically agreed all tests, test pieces and inspections whatsoever required by the Customer will be charged extra. All tests and inspections (whether or not being tests of chemical composition) shall take place under the Company's standard testing arrangements, and such tests shall be final. All tests are subject to analytical tolerances.

#### **12. SUB-CONTRACTING**

12.1 The Company shall be entitled to sub-contract any work relating to the contract without obtaining the consent of, or giving notice to the Customer.

#### **13. ASSIGNMENT**

13.1 None of the rights or obligations of the Customer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Company.

#### **14. HEALTH AND SAFETY AT WORK ETC**

14.1 The Customer agrees to pay due regard to any information supplied by the Company and relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleared or maintained by any person at work, and the Customer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as are mentioned above.

#### **15. APPLICABLE LAW**

15.1 The contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.