

SCHOETTLI MAGOR

General

Terms and

Conditions

February 2016

| Table of contents

- 1 | General
- 2 | Scope of Supply
- 3 | Plans and technical documents – Intellectual property laws
- 4 | Prices
- 5 | Terms of payment
- 6 | Retention of Title
- 7 | Period of delivery
- 8 | Packaging
- 9 | Shipping, transport and insurance
- 10 | Inspection of deliveries after receipt
- 11 | Warranty, liability for defects
- 12 | Limitations on Liability
- 13 | Cancellation of the contract by the Supplier
- 14 | Confidentiality
- 15 | Reverse Engineering
- 16 | Applicable Law and Place of Jurisdiction
- 17 | Entire Agreement

1 | General

1.1

All orders received and sales made for equipment and/or services (“Equipment”) provided by SCHÖTTLI MAGOR or its affiliates (collectively referred to as “Supplier”) are conditioned on Purchaser’s acceptance of these terms and conditions (these “T&Cs”) and Supplier’s quotation (“Quote”).

1.2

Supplier rejects any additional or conflicting terms, including but not limited to those in any Purchaser’s purchase order or acceptance, previously or hereafter proposed by Purchaser unless expressly agreed to in writing by Supplier. Acceptance by Purchaser of any products and/or services will constitute acceptance of these T&Cs.

1.3

All agreements and legal declarations by the parties to the contract must be in writing to be valid.

1.4

Quotes are valid for 60 days unless otherwise stated. Purchase orders are subject to our confirmation of the order and credit approval.

2 | Scope

2.1

The products and/or services to be provided by Supplier under this agreement are listed exhaustively in the Quote including any annexes (the “Scope”). The Supplier is entitled to make changes which lead to improvements as long as these do not entail a price increase.

2.2

If the Purchaser places an order on hold, or cancels or changes the order, the Purchaser will be responsible for any additional expenses including an interruption or cancellation charge on all or part of the order to cover production rescheduling, additional set-ups, handling, storage, inventory costs, obsolescence, etc. to change, interrupt or cancel the original order.

2.3

Supplier will use all reasonable efforts to complete the manufacturing of the Equipment and/or perform the services described in the Quote within the timeframe estimated. Any changes to the Purchaser’s order by Purchaser, Purchaser’s representatives, advisors or agents may affect Price and Supplier’s timely performance.

3 | Plans and technical documents – Intellectual property laws

3.1

Brochures and catalogues are not binding unless agreed otherwise. Information in technical documents is only binding if it has been confirmed in writing.

3.2

The technical configuration/ design of the Equipment provided by Supplier remains expressly the intellectual property of the Supplier. Each party to the contract further retains the right to all plans and technical documents which it made available to the other party. The party to the contract receiving such material acknowledges these rights and will not make the documentary material wholly or partially accessible to third parties or utilize it for purposes other than those for which it has been made available without obtaining the prior written authorization of the other party to the contract. This commitment also applies to any sub-suppliers and employees of the parties to the contract.

4 | Prices

4.1

The purchase price is set out in Supplier's Quote unless otherwise agreed to in writing by Supplier. In addition to such purchase price, Purchaser agrees to pay Supplier the amount of all governmental taxes, excises and/or other charges that Purchaser may be required to pay with respect to the sale and transportation of any product delivered hereunder.

If there is no other agreement, all prices are net, free carrier (FCA) at Supplier factory, with standard packaging.

All additional costs, e. g. for freight, insurance, export, transit, import and other permits, as well as certificates, are at the Purchaser's expense.

5 | Terms of payment

5.1

The payment terms are set out in the Supplier's Quote.

5.2

Payment dates must be adhered to even if works acceptance, delivery, transport, assembly, Start-up or services are delayed or made impossible for reasons beyond the Supplier's control, or if unimportant parts are lacking or if retouching work is proved to be necessary which does not render the Equipment delivered unusable.

5.3

If the down payment or the security to be deposited with the order have not been provided in accordance with these terms, the Supplier is entitled to delay or withdraw from the order, and in both cases is entitled to demand compensation. If the Purchaser is in arrears with a further payment for any reason whatsoever, or if the Supplier, due to some circumstance which has arisen since the contract was signed, has a good reason to seriously doubt that the payments will be executed in full or on time by the Purchaser, the Supplier is entitled, without affecting his statutory rights, to stop execution of the contract and to keep back Equipment ready for delivery. This applies until new payment and delivery terms have been negotiated and the Supplier has received sufficient security. If such an agreement cannot be reached within a reasonable period or if the Supplier does not receive sufficient security, he is entitled to withdraw from the order and to demand compensation.

6 | Retention of Title

Title to the Equipment remains with the Supplier and shall not pass to the Purchaser until all amounts owing by the Purchaser to the Supplier under this order have been settled in full.

7 | Period of delivery

Unless otherwise stated in writing by Supplier, any product shall be shipped in accordance with the Incoterms set out in the Quote, where applicable, with each party agreeing to bear the risk of loss or damage to the product in accordance with the Incoterms provided set out in the Quote.. If a delivery date is specified by Purchaser, Supplier will use commercially reasonable efforts to deliver the product to a carrier for shipment by the specified date, but Supplier will have no liability for delays after the product has been delivered to a carrier.

The manufacturing period begins as soon as the Purchaser has issued the signed purchase order, the payments and any security required on placing the order have been received, a signed part drawing and the main technical points have been clarified and confirmed by Supplier. The period of manufacturing is deemed to have been completed when the object of the contract is ready for the first test run by the given date and notified to the Purchaser.

Supplier will have no liability for delays or failure to perform any obligations if such delay or failure to perform results from a cause beyond Supplier's reasonable control, including, without limitation, power interruption, war, fire, flood, natural disaster, strike or other labor dispute, civil unrest, act of government authority, act of God, failure or delay of transportation or supply or raw materials shortage that are beyond the reasonable control of Supplier.

8 | Packaging

Unless otherwise agreed, all special packaging will be invoiced separately by the Supplier and will not be taken back. However, if it is marked as being the property of the Supplier, it must be returned by the Purchaser carriage paid to the place of dispatch.

9 | Shipping, transport and insurance

9.1

Special requests regarding shipping, transport and insurance must be made known to Supplier in good time, but at least one month before the shipping date. Transport is at the expense and risk of the Purchaser. Complaints relevant to shipping or transport should immediately be addressed to the last carrier by the Purchaser on receipt of the deliveries or the freight documents.

10 | Inspection of deliveries after receipt

Supplier will inspect the Equipment and services in the customary way before shipping. If the Purchaser requires more detailed inspections, these should be agreed separately and paid for by the Purchaser.

11 | Warranty, liability for defects of Supplier Manufactured Equipment

11.1 Warranty period

If, within the first twelve months after leaving the Supplier's works, breakages appear in individual metal parts which are proved to be due to defects in the material and/or defects in design, these will be replaced by the Supplier at no cost. Parts replaced or repaired during the warranty period continue to be covered under the original mold warranty. A replaced or repaired part has a minimum coverage of six months after delivery regardless of the prior termination of the original mold warranty. If the replaced parts cannot be fitted in the Purchaser's plant, the relevant transport cost of the tool will be paid by Supplier. Supplier assumes transport costs for replacement parts resulting from warranty claims, but not import charges or other charges.

The warranty is invalidated if the Purchaser or a third party makes modifications or performs repairs or if the Purchaser fails, when a defect occurs, to immediately take appropriate action to minimize the damage and give the Supplier the opportunity to remedy the defect.

11.2 Liability for warranted characteristics

Warranted characteristics are only those which were expressly mentioned as such in the order confirmation (with a tolerance usual in the trade). For warranted characteristics, para. 11.1 and para. 11.3 to 11.5 apply analogously. The Purchaser must give the Supplier the time and opportunity to do any retouching work agreed upon.

11.3 Disclaimer of liability

Damage which cannot be proved to have occurred due to defective materials, faulty design or poor workmanship, i.e. damage due to normal wear and tear, insufficient maintenance, disregard of operating instructions, excessive stress, unsuitable operating materials, chemical or electrolytic influences, conversion or assembly work not carried out by the Supplier as well as other reasons for which the Supplier cannot be held responsible, is excluded from the warranty and the Supplier's liability.

11.4. Deliveries and services rendered by third party suppliers:

The Supplier does not assume any warranty commitment for deliveries and services rendered by third party suppliers. When requested, Supplier will request any third party supplier to transfer the related warranty directly to Purchaser.

11.5 The warranty provision contained in this section 11 only applies to Supplier Manufactured Equipment. Notwithstanding anything provided in the Quote, the Supplier does not assume any warranty commitment for any third party equipment or service.

11.6

Except as set forth above in this section 11, Supplier makes no additional warranties, whether express, implied or statutory. Supplier specifically disclaims any warranty for merchantability or fitness for a particular purpose. The products and/or services will conform to Supplier specifications set forth in the Quote.

12 | Limitations on Liability

Purchaser agrees to waive, indemnify, defend and hold harmless Supplier, its affiliates, and respective officers, directors, employees and agents, from and against any and all claims, actions, damages, liabilities, costs and expenses, including legal fees and expenses, arising out of or in any way connected with (a) its operation and use of Supplier products, including, but not limited to, any act or omission by Purchaser, (b) any action of infringement of any intellectual property rights of third parties due to Supplier's satisfaction of Purchaser's requirements, based or derived from the design or performance specifications provided or requested by Purchaser, or resulting from the Purchaser combining Supplier's products with other products or combining the process of using Supplier's products with another process, (c) damage to Purchaser's property, (d) injury to Purchaser's employees, (e) to the extent part design services are provided by Supplier any and all claims including but not limited to product liability or intellectual property claims relating directly, or indirectly, to any part design service or resulting plastic part provided by Supplier under this Contract, (f) any advice or services provided or any acts or omissions of any service provider or manufacturer referred to Purchaser by Supplier, or (g) claims, actions, damages, liabilities, costs and expenses, including legal fees and expenses, arising out of or in any way connected to third party equipment.

To the extent permitted by applicable law, under no circumstances will Supplier be responsible for indirect, consequential, incidental, special, collateral, punitive or exemplary damages, including without limitation, loss of goodwill, loss of profits or revenues. Any and all legal actions and claims by Purchaser against Supplier shall be barred unless written notice thereof is received by Supplier within 180 days of the date of the event giving rise to such action or claim. Any liability that Supplier may have to Purchaser relating to services provided by Supplier will not exceed the value of the service that is the subject of the action, claim, loss or damage.

13 | Cancellation of the contract by the Supplier

Where unforeseeable events considerably alter the economic significance or the content of the deliveries or services or have a profound effect on the Supplier's work, or where an execution of the work is subsequently rendered impossible, the contract is to be modified accordingly. If this is economically not viable, the Supplier has the right to cancel the contract or the parts of the contract involved.

If the Supplier wishes to cancel the contract in this way, it must inform the Purchaser immediately on realizing the extent of the situation, even in the case where an extension of the delivery period was meanwhile agreed upon. In the case of contract cancellation, the Supplier is entitled to payment for those deliveries and services already provided. No claims for compensation on the part of the Purchaser due to such a contract cancellation will be entered into.

14 | Confidentiality

Purchaser and Supplier agree to take reasonable steps to maintain the confidentiality of any proprietary or confidential information of the other within each of their respective organizations.

Supplier will, at Purchaser's request, transmit information to Purchaser by e-mail, over the Internet. Should any confidentiality breach (es) occur because of data transmission over the Internet pursuant to Purchaser's request, Purchaser agrees that this will not constitute a breach of any obligation of confidentiality owed to Purchaser by Supplier. If Purchaser wishes to limit such transmission to information that is not highly confidential, or seek more secure means of communication for highly confidential information, Purchaser should inform Supplier accordingly.

15 | Reverse Engineering

Purchaser will not reverse engineer or assist any other party with reverse engineering Supplier's Equipment, and will notify Supplier upon becoming aware of any party having reverse engineered any of Supplier's Equipment.

16 | Applicable Law and Place of jurisdiction

These T&Cs shall be governed and construed according to the laws of Illinois and the Courts of Illinois shall have exclusive jurisdiction to resolve any disputes. The U.N. Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or related transactions.

17 | Entire Agreement

These T&Cs set out the final terms and conditions of our understanding and supersedes any previous understanding, agreements or representations whether made orally or in writing, unless Supplier and Purchaser execute an Equipment Sale and Security Agreement or an Equipment Loan Agreement, in which case such agreement shall remain in effect in accordance with its terms. No waiver, termination, modification or amendment of any term will be effective unless in writing and signed by the party against whom it is asserted. If any provision of these T&Cs is invalid or unenforceable, such provision will be ineffective only to the extent of such invalidity or unenforceability, without invalidating the remaining provisions of these T&Cs. These T&Cs shall not be modified except by written agreement of the parties. Purchaser agrees not to assign any of Purchaser's rights or delegate any of Purchaser's obligations under these T&Cs without the prior written consent of Supplier. Any protection granted by these T&Cs will inure to the benefit of each of Supplier's corporate affiliates and successors. Supplier will comply with all applicable export control laws in the performance of this contract and accordingly, Supplier's obligations under this contract are subject to compliance with all such laws. Supplier shall provide all services as an independent contractor and nothing shall be construed to create a partnership, joint venture or other relationship.