

## General Terms and Conditions of Purchase

### 1. General

- 1.1 These General Terms and Conditions of Purchase (**Conditions**) are the only conditions upon which Schulthess Produktion AG (**Buyer**) is prepared to purchase the goods (**Goods**) specified in Buyer's purchase order from the company described therein (**Seller**) and they shall govern the corresponding supply agreement between the aforementioned parties (**Contract**) to the entire exclusion of any other terms or conditions submitted unless otherwise agreed in writing for example in subsequent agreements such as equipment lease agreements or quality assurance agreements.
- 1.2 No terms or conditions endorsed upon delivery or contained in Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 1.3 These Conditions apply to any of Buyer's purchases of the Goods and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer.
- 1.4 Buyer's purchase order (**Order**) shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order, in whole or in part accepts the offer. The Order will lapse unless accepted by the Seller within ten (10) days of the date of its receipt by the Seller.
- 1.5 Delivery terms like FCA, DAP, DDP, FOB and CIF shall be interpreted in accordance with Incoterms 2020, as indicated in the Order.

### 2. Specification

- 2.1 The quantity, quality and description of the Goods shall, subject to the provisions of these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.
- 2.2 If a standard of performance is specified, the Goods should be capable of the required performance and where applicable, Test Certificates, Certificates of Conformity including EC Declarations of conformity regarding EMC, Low Voltage or Machinery and the relevant Installation Instructions regarding such Directives and/or material Analysis Certificates and as specified in the Order will be required to be provided by the Seller to the Buyer.
- 2.3 At any time prior to delivery of the Goods the Buyer shall have the right to inspect and test the Goods. The Buyer will be entitled to inspect and test the Goods during manufacture, processing and storage. The Buyer's representatives, or the agent of any government department or other customer concerned, shall be allowed to visit the Seller's premises where the Goods are being manufactured, processed or stored at any reasonable time to inspect the progress of the Goods.
- 2.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods do not conform, or are unlikely to conform, with the Order or to any specifications supplied or advised by the Buyer to the Seller, the Buyer shall inform the Seller and the Seller shall immediately at its cost take such action as is necessary to ensure conformity. Any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract or imply acceptance of the Goods pursuant to an Order.

### 3. Compliance with Laws

- 3.1 For the purpose of this Clause 3, **Applicable Laws** shall mean all applicable laws, rules, regulations, ordinances and codes of practices including, but not limited to, the following: (a) manufacture, packaging, packing and delivery of the Goods; (b) employment rights; (c) all import/export laws, rules, regulations and requirements; and (d) environmental laws; and **undertakes** shall mean represents, warrants, certifies and covenants.
- 3.2 The Seller undertakes that it shall fully comply with all Applicable Laws in the performance of the Contract. If the Goods are manufactured in a country other than the country in which the Goods are delivered to the Buyer, the Seller will mark the Goods "Made in (country of origin)". Upon the Buyer's request, the Seller shall promptly furnish any reports, required information, and/or certifications required under such Applicable Laws.
- 3.3 The Seller undertakes that the Goods fully comply with all Applicable Laws in locations in which the Goods are likely to be used or sold and shall provide for any of the Goods, upon request, all reports and required information including, but not limited to, certifications, component natural resources, confirmation that the 2008 EU Regulation for Classification, Labelling, and Packaging (CLP) and the 2002 EU Regulation for Control of Substances Hazardous to Health Regulations (or local equivalent regulation) have been complied with as required under such Applicable Laws.

The Seller shall maintain and retain sufficient documentation to enable the country of origin of the Goods to be traced within the Goods sold to the Buyer.

- 3.4 The Seller undertakes that the Goods have not and will not be produced or supplied (by the Seller or its suppliers) in segregated facilities or any location in which segregated facilities are maintained; by using forced, indentured, convict or child labour; in violation of minimum wage, hour of service or overtime laws of the country of manufacture or in any jurisdiction in which the Goods are provided; or in non-compliance (without limitation) with the following Directives and Regulations: (a) EU Directive 2011/65/EU (RoHS Directive); (b) EU Directive 2012/19/EU on Waste and Electronic Equipment (WEEE); (c) The Electronic Waste Recycling Act (California SB20/50) (where relevant); and; (d) EU Regulation 1907/2006 (REACH Regulation); each as amended at the time of any Contract, unless expressly agreed in writing by the Buyer.

#### **4. Price and Payment**

- 4.1 The price of the Goods shall be as stated in the Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges. No variation in the price nor extra charges can be made without the prior consent of the Buyer in writing.
- 4.2 Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods to the Seller within thirty (30) days after the receipt at the Buyer's invoice address of a correctly submitted and undisputed invoice, or if later, the acceptance of the Goods by the Buyer.
- 4.3 The Buyer may set-off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under the Contract.

#### **5. Documents, Packaging, Marking**

All advice notes, invoices and delivery notes shall quote the number of the Order, the date of the Order, the article number, and shall include a description of the Goods. Unless otherwise specified in the Order: (a) all Goods shall be properly packed, marked and dispatched at the Seller's expense in accordance with the requirements of the Buyer; (b) the Seller shall mark the outside of each package with his name and with full details of the destination and include a packing note stating the contents and reference number of the Buyer's Order; and (c) the Buyer shall not be liable to pay for or return to the Seller any packaging or crating.

#### **6. Delivery**

- 6.1 Unless otherwise stated in the Order, the Goods shall be delivered DDP to the delivery address stated on the Order, or to such other place of delivery as is notified in writing by the Buyer to the Seller prior to delivery of the Goods. All deliveries shall be made during the Buyer's usual business hours.
- 6.2 The date for delivery shall be specified in the Order. Time for delivery shall be of the essence.
- 6.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, in addition to the requirements set out above, the number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.4 If the Goods are not delivered by the agreed due date then, without prejudice to any other rights which the Buyer may have, the Buyer reserves the right to: (a) cancel the Contract in whole or in part; (b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (c) deduct from the price of the Goods (or if the Buyer has already paid the price) to claim from the Seller by way of liquidated damages for delay, one (1)% of the purchase price for every week's delay, up to a maximum of ten (10)%; and (d) claim damages for any costs, loss or expenses incurred by the Buyer and not compensated by the liquidated damages, which are in any way attributable to the Seller's failure to deliver the Goods on the due date.
- 6.5 Where an Order is for scheduled deliveries over a specific period, the Buyer may on reasonable notice to the Seller, amend the design or specification of the Goods ordered for any remaining deliveries.
- 6.6 The Buyer shall be entitled to reject Goods that are not in accordance with the Contract and shall not be deemed to have accepted the Goods until it has had fourteen (14) days to inspect them following delivery. The Buyer shall also have the right to reject the Goods at any time during the warranty period if any latent defect in the Goods is discovered.

## **7. Risk and Property**

Without prejudice to any right of rejection which may accrue to the Buyer under these Conditions, the Goods shall remain at the risk of the Seller until delivery to the Buyer is completed acc. Incoterms (1.5) at which point ownership and risk of the Goods shall pass to the Buyer. If the Goods are rejected by the Buyer, ownership and risk shall re-pass to the Seller within forty-eight (48) hours of notice of such rejection being given by the Buyer to the Seller.

## **8. Spare Parts**

The Seller shall supply the Buyer with spare parts for the Goods (where applicable), or provide equivalent sources of supply, for a period of ten (10) years.

## **9. Warranty**

The Seller warrants that the Goods supplied shall, under normal conditions of use, be: (a) free from defects in design, material and workmanship; and (b) be new; not refurbished or reconditioned; (c) conform to the specification in the Contract, and if provided, any parts per million quality levels; (d) are appropriate in form, fit, and function for the purpose intended; and (e) do not infringe any third party intellectual property rights; for a period of twenty-four (24) months from delivery. The Seller also warrants that any services performed in the provision of the Goods shall be rendered in a good and workmanlike manner by skilled personnel. The aforementioned warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Buyer. The Buyer shall on discovery of a defect in the Goods notify the Seller without undue delay, however, the Buyer shall normally not be obliged to inspect the Goods upon delivery.

## **10. Remedies**

Without prejudice to any other right or remedy which the Buyer may have and regardless whether or not any part of the Goods have been accepted by the Buyer; if any of the Goods are not supplied in accordance with the Contract, or the Seller fails to comply with any of the terms of the Contract, the Buyer at its discretion is entitled to avail itself of any one or more of the following remedies: (a) to require the Seller to repair the Goods or to supply replacement Goods (at Seller's cost and expense) within fourteen (14) days of receipt of notice from the Buyer; (b) to refuse to accept any further deliveries of the Goods but without any liability to the Seller, (unless the Seller can prove that the further deliveries fully comply with the Contract); (c) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller; and (d) to claim damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## **11. Indemnification**

The Supplier shall indemnify and hold harmless the Buyer against any and all liabilities, losses, damages and expenses (including reasonable attorney's fee) which are awarded against or incurred by the Buyer in connection with any breach of the Supplier against these Conditions.

## **12. Insurance**

The Seller undertakes to effect and maintain adequate insurance cover to meet the risks specified under Clause 10 above to the reasonable satisfaction of the Buyer, and will upon request from the Buyer, provide to the Buyer the relevant policy and evidence of payment of the current premium.

## **13. Intellectual Property Rights**

- 13.1 Any software or firmware incorporated into Goods is supplied under licence for the use of the software only, and all other exploitation rights are retained by the Seller. The Seller grants to the Buyer a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their intended purposes. The licence shall include a right to grant sub licences to the extent required lawfully to sell the Goods. The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.
- 13.2 To the extent that any Goods are created or modified in accordance with Buyer's specific requirements and/or technical or functional specifications and/or any tools or equipment provided by the Buyer, then any intellectual property arising out of or created during the performance of the Order shall be the sole property of the Buyer.

The Seller shall (at Buyer's reasonable expense) execute such documents as are required to give effect hereto and shall assist in the defence of any proceedings against the Buyer.

#### **14. Confidentiality**

- 14.1 For the purpose of this Clause 13, **Confidential Information** means the disclosing party's information in any form whether oral, documentary, magnetic, electronic, graphic or digitised, relating to the disclosing party's business and including information relating to patents, trademarks, registered/ unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, manufacturing methods, analytical and quality control methods, sales data, anticipated sales volumes, information relating to potential or actual customers, business structure, assets, liabilities, operations, budgets and strategies.
- 14.2 The receiving party will not divulge or communicate to any person without the prior written consent of the disclosing party any Confidential Information and shall not use the Confidential Information for any purpose other than the manufacture and purchase of the Goods under these Conditions.
- 14.3 The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of 5 years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party or is disclosed subject to a legal or regulatory requirement.
- 14.4 Each disclosing party shall have the right, immediately upon expiration or earlier termination of the Contract (for any reason whatsoever), to request the other receiving party to return all Confidential Information in its possession.

#### **15. The Buyer's Property**

Save as otherwise provided in a separate equipment lease agreement, any materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods, shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.

#### **16. Termination**

- 16.1 The Buyer shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation on a pro-rata Contract price basis for work-in-progress at the time of termination.
- 16.2 A party may immediately terminate a Contract by giving prior written notice to the other party, if the other party: (a) commits a material breach of the Contract which is not capable of remedy, (b) commits a continuing breach of the Contract and fails to remedy it within fifteen (15) days of a written notice requiring the breach to be remedied; (c) is dissolved, becomes insolvent, is over indebted, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy; has a resolution passed for its winding up or liquidation; seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (d) ceases or threatens to cease to carry on business.
- 16.3 No notice of termination may be given by either party except in accordance with the express provisions of these Conditions.
- 16.4 The termination of the Contract, however arising, shall be without prejudice to: (a) the rights and duties accrued prior to termination; and (b) any obligations contained herein which survive the termination or expiry of the Contract.

#### **17. Assignment**

The Buyer may assign the rights and benefits of any Contract or any part of it to any of its Affiliates. Any other assignment of this Contract shall not be permitted unless the other party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).

**18. Force Majeure**

The Buyer may partially or wholly suspend the delivery of Goods ordered due to any accident, industrial dispute, war, acts of God, environmental conditions, or any restriction, regulation, order, act or omission by any local or governmental authority or to any other cause whatsoever beyond the control of the Buyer. In the event of such suspension the period of delivery or performance shall be extended by an amount of time corresponding to that of the suspension period. The Buyer shall not be liable for any expenses or loss whatsoever incurred by the Seller in respect of such suspension.

**19. Miscellaneous**

- 19.1 Each right or remedy of a party under the Contract is without prejudice to any other right or remedy of the party whether under the Contract or not.
- 19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.3 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 19.4 Any waiver by a party of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.5 Notices must be in writing and delivered by hand, first class post, or facsimile to the other party at its registered office or trading address at the date of the Contract.
- 19.6 These Conditions shall be governed by and construed in accordance with the laws of Switzerland without regard to its conflict of laws provisions. The parties submit to the exclusive jurisdiction of the Courts of Zurich, Switzerland.
- 19.7 The United Nations "Convention on Contracts for the International Sale of Goods" shall not apply to these Conditions.