



Schoeller Allibert

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY SCHOELLER ALLIBERT SERVICES B.V.**

These General Terms and Conditions of Sale and Delivery have been filed with the Chamber of Commerce.

**1. GENERAL**

- 1.1. These General Terms and Conditions of Sale and Delivery of Schoeller Allibert Services B.V. ("**Supplier**") apply to and form an integral part of every quotation, offer, acceptance, confirmation and agreement concerning the sale and/or delivery of goods and services ("**Products**") by the Supplier to third parties ("**Customer**").
- 1.2. The applicability of any general purchasing or other conditions of the Customer is hereby expressly rejected.
- 1.3. Deviations from and additions to these General Terms and Conditions are only binding if they have been agreed between the Parties expressly and in writing.
- 1.4. In the event of a conflict between the Dutch text of these General Terms and Conditions and the translations thereof, the Dutch text will always prevail.
- 1.5. In the event of a conflict between these General Terms and Conditions and any order confirmation of the Supplier or an agreement between the Supplier and the Customer, such an order confirmation or agreement will prevail.

**2. OFFERS AND AGREEMENTS**

- 2.1. All offers made by the Supplier are without obligation, indicative and non-binding and can be withdrawn by the Supplier at any time.
- 2.2. An agreement between the Supplier and the Customer is only concluded if an order has been accepted by the Supplier in writing (including by e-mail) by means of an order confirmation or when the Supplier has actually commenced performance of its activities ("**Agreement**").

**3. DUTY OF DISCLOSURE**

- 3.1. The Customer will always provide all information that is useful and necessary for the performance of the Agreement and the Customer guarantees that the information provided is accurate and complete.
- 3.2. If the Customer fails to make the information described in article 3.1 available to the Supplier or fails to do so on time or not in accordance with the arrangements, the Supplier will have the right to suspend all or part of its performance of the Agreement.

**4. PRICES AND PAYMENT**

- 4.1. All prices are stated in euros, exclusive of VAT and other levies, and exclusive of packaging.
- 4.2. Payment by the Customer to the Supplier of the amounts that are payable, without any deduction,

discount or setoff, is to be made within thirty (30) days after the invoice date.

- 4.3. If the Customer fails to pay within the term provided for in article 4.2 of these General Terms and Conditions, the Customer will be in default by operation of law, all amounts owed will become immediately due and payable and the Supplier will have the right from that moment on to charge 1.5% interest per month or part of a month on the entire outstanding amount. The Customer is also obliged to compensate all reasonable judicial and extrajudicial collection and other costs incurred by the Supplier.
- 4.4. The extrajudicial collection and other costs are set at ten percent (10%) of the principal sum, to be increased by statutory commercial interest and VAT, without prejudice to the Supplier's right to claim the actual extrajudicial collection and other costs that exceed this amount.
- 4.5. If the Customer is in default or if the Supplier has reason to assume that the Customer will not comply with its obligations under the Agreement, the Supplier will have the right, without prejudice to any other rights that vest in the Supplier, to:
  - 4.5.1. demand that the Customer shall pay in advance, either fully or partially;
  - 4.5.2. to demand that the Customer provides security immediately in a form to be determined by the Supplier;
  - 4.5.3. suspend all or part of its obligations under the Agreement;
  - 4.5.4. terminate all or part of the Agreement;
- 4.6. After formation of an offer or conclusion of the Agreement, the Supplier has the right to charge an increase in its purchase prices or cost components to the Customer following a written notification thereof, provided the delivery of the Products to the Customer has not yet been completed.
- 4.7. The Supplier always has the right to perform the delivery of Products in parts and invoice these partial deliveries separately.

**5. DELIVERY**

- 5.1. All delivery and other terms mentioned by the Supplier are indicative and can never be considered to be final deadlines. Exceeding a delivery or other term does not lead to default on the part of the Supplier.
- 5.2. If the order confirmation states delivery on a call-off basis, the Customer will take full delivery of the Products within twelve (12) months after the formation of the Agreement.
- 5.3. Delivery takes place "ex works" at the Supplier's warehouse, in accordance with the ICC Incoterms

as adopted in 2010.

- 5.4. The Customer is obliged to take receipt of the Products at the agreed place and time failing which the Products will be stored for the account and risk of the Customer.
- 5.5. The Products are entirely for the risk of the Customer from the moment of delivery.

## **6. RETENTION OF TITLE**

- 6.1. All Products delivered and to be delivered remain the exclusive property of the Supplier until all claims as referred to in Article 3:92 paragraph 2 of the Dutch Civil Code (BW) the Supplier has or will acquire against the Customer have been paid in full.
- 6.2. As long as ownership of the Products has not passed to the Customer, it will not have the right to transfer the Products or grant third parties any limited or other right, unless such occurs within the context of the Customer's customary business operations, and it will only be allowed to pledge the provisional ownership of the Products.
- 6.3. The Customer is required to store the Products that were delivered subject to retention of title with the necessary care and identifiably as the property of the Supplier. The Customer is obliged to insure and keep insured the Products delivered subject to retention of title against fire, damage resulting from explosions and water and against theft. The Customer is obliged to enable the Supplier at its first request to verify whether these obligations have been complied with.
- 6.4. The Supplier has the right to claim the Products back, without prior written notification, if the Customer is in default. The Customer is obliged to return the Products to the Supplier at the Supplier's first request.

## **7. COMPLAINTS**

- 7.1. The Customer is obliged to check immediately after delivery whether the Products comply with the Agreement. If the Products display visible defects, the Customer will be obliged to submit a written complaint to the Supplier within eight (8) working days after delivery, while specifically stating the alleged defects.
- 7.2. If the Products do not display any visible defects, the Customer will be obliged to submit a written complaint to the Supplier within eight (8) working days after the defect was discovered or could reasonably have been discovered, and in any case within one (1) year after delivery, while specifically stating the alleged defects.
- 7.3. If the Products deviate from models, samples or examples provided previously or from the specifications in the offer or order confirmation to only a minor extent as regards their colour, composition, weight etc., the relevant Products will be deemed to comply with the Agreement. When assessing whether the Products deviate to a minor extent, a representative random sample must be taken and a deviation of 10% will be considered a minor deviation.
- 7.4. In the absence of any complaint submitted in the

manner and within the terms prescribed in articles 7.1 and 7.2 of these General Terms and Conditions, all statutory and contractual claims on the part of the Customer against the Supplier lapse and the Products will be deemed to have been accepted irrevocably by the Customer.

- 7.5. The Customer enables the Supplier to perform an investigation into the validity of the complaint. The Customer is required to demonstrate that the alleged defect already existed at the time the Products were delivered.
- 7.6. If the Supplier considers that a complaint is well-founded, the Supplier will at its discretion:
  - 7.6.1. remedy the defects;
  - 7.6.2. deliver replacement Products against the return of the defective Products;
  - 7.6.3. terminate the Agreement and refund the amounts already paid against the return of the Products.
- 7.7. Return shipments are only accepted following written approval by the Supplier and they will only be compensated if the Supplier considered a complaint to be well-founded.
- 7.8. Complaints concerning the conformity of Products that have been delivered do not give the Customer the right to suspend its payment obligations towards the Supplier.

## **8. LIABILITY**

- 8.1. Without prejudice to the provisions of article 7 of these General Terms and Conditions and with the exception of intent or wilful recklessness on the part of the Supplier or its managerial personnel:
  - 8.1.1. the Supplier is only liable towards the Customer for direct and foreseeable damage resulting from a specific attributable failure on the part of the Supplier to comply with its obligations under the Agreement.
  - 8.1.2. the Supplier's liability is in all cases limited to the amount that is paid out in the relevant case under the (liability) insurance taken out by the Supplier, to be increased by the applicable excess.
  - 8.1.3. if for any reason whatsoever the insurance does not entitle Supplier to a payment, the Supplier's liability is limited to at most the amount (exclusive of VAT) that was charged for the relevant Products to which the liability relates.
  - 8.1.4. the Supplier is never liable for indirect losses, including resulting losses, lost profit, missed savings, losses resulting from business interruption or for losses sustained by third parties of any kind whatsoever.
  - 8.1.5. the Supplier is never liable for any loss (i) relating to defects in respect of which the Customer did not complain or did not complain on time in accordance with articles 7.1 and 7.2 of these General Terms and Conditions, and/or (ii) if the Customer has processed all or part of the Products or has adjusted or modified them.

8.2. The Customer indemnifies the Supplier against all third-party claims for compensation of indirect losses, including resulting losses, lost profit, missed savings, losses resulting from business interruption, in connection with the Products without prejudice to any other rights of Supplier.

#### **9. CONFIDENTIALITY**

9.1. The Customer will treat in strict confidence and not disclose to third parties any information that concerns the Agreement with or offers and Products from the Supplier, unless: (i) it concerns information for which consent for disclosure to third parties was obtained from the Supplier, or (ii) it concerns information whose disclosure to third parties pursuant to statutory provisions or a legal dispute is necessary or mandatory, provided an attempt is made in that connection to prevent further dissemination as much as possible, and in both cases only following consultation with the Supplier (to the extent permitted by law) concerning the content, format and timing of the intended disclosure.

#### **10. INTELLECTUAL PROPERTY RIGHTS**

10.1. The Supplier and the Customer agree that all current and future intellectual property rights, including but not limited to: patent rights, copyrights, trademark rights and design rights, in respect of the Products vest and shall remain vested exclusively in the Supplier.

10.2. The Customer guarantees that the Products manufactured by the Supplier in accordance with the Customer's specifications do not infringe the intellectual property or other rights of third parties. The Customer indemnifies the Supplier against all third-party claims in this connection.

10.3. The Customer is not allowed to reproduce or have reproduced the Products or parts thereof, including but not limited to: software (including source code), drawings, printing plates, matrices and tools), in modified form or otherwise, including in the event the Products were created in consultation with, on the instructions of and/or for the account of the Customer.

10.4. The Customer notifies the Supplier immediately of (alleged) (imminent) infringements of the intellectual property and other rights relating to the Products or (alleged) (imminent) infringement by the Products of third-party intellectual property and other rights. At such times, the Parties will consult with each other and render to each other all cooperation in order to enforce or avert claims in court.

#### **11. FORCE MAJEURE**

11.1. In case of force majeure within the meaning of Article 6:75 BW, which includes in any event: war, disturbances, fires and other disasters, lack of raw and auxiliary materials, fuels, operational breakdowns, strikes, lockouts, government intervention, traffic breakdowns, also as a result of weather and other circumstances, irrespective of whether this takes place within the business of the

Supplier or at its suppliers or transport companies, and in all circumstances the Supplier was unable to prevent or avert, the Supplier's compliance with its obligations will be suspended in whole or in part for the duration of such force majeure, without the Supplier being obliged to pay any compensation.

11.2. If the Supplier is unable to comply with its obligations towards the Customer for an uninterrupted period of more than twenty-five (25) days as a result of force majeure, both parties will have the right to terminate all or part of the Agreement, in which case the Customer cannot claim any compensation.

11.3. In the event of such a change in circumstances that (further) performance on the part of the Supplier of its obligations under the Agreement becomes so onerous that performance cannot be expected, the Supplier will have the right to terminate all or part of the Agreement, without the Supplier being obliged to pay any compensation.

#### **12. TERMINATION**

12.1. The parties have the right to terminate all or part of the Agreement extrajudicially without any notice of default and without being obliged to pay any compensation if:

12.1.1. a party is declared bankrupt or an application to that effect is submitted, a suspension of payment is granted or an application to that effect is submitted;

12.1.2. a party ceases its business activities for a period exceeding three (3) consecutive months.

#### **13. APPLICABLE LAW AND DISPUTES**

13.1. Any offer from and all Agreements concluded with the Supplier are governed exclusively by Dutch law, with the exclusion of the Vienna Sales Convention.

13.2. All disputes concerning and arising from offers from and Agreements with the Supplier will be submitted exclusively to the competent court in Amsterdam without prejudice to the right to appeal and the right to submit an appeal to the Supreme Court.

#### **14. FINAL PROVISIONS**

14.1. The Customer's rights towards the Supplier cannot be transferred within the meaning of Article 3:83 paragraph 2 BW, unless and to the extent the Supplier has approved such a transfer in writing in advance.

14.2. The Supplier has the right, without the Customer's prior approval, to transfer all or part of its rights and obligations towards the Customer to its affiliates.

14.3. If a provision of these General Terms and Conditions should prove to be invalid or unenforceable, such will not alter the validity or enforceability of any other provision of these General Terms and Conditions. Such an invalid or unenforceable provision will be replaced or will be deemed to have been replaced with a provision that is deemed to be valid and enforceable and whose

interpretation approaches the purport of the invalid or unenforceable provision as closely as possible.

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