

Schaltbau France Terms and Conditions of Purchase

1. General

- a) Under the present Terms and Conditions of Purchase :
- “we”, “us” or “our” refers to SCHALTBAU France, a French Société par actions simplifiée à associé unique, registered under SIREN n°316 223 932 Pontoise, whose registered office is located 10, rue Désiré Granet, Argenteuil (95100),
 - “the Supplier” refers to our contracting partner (framework agreement, order, etc.),
 - “the Parties” refer to both us and the Supplier,
 - “third party” or “third parties” refer to any individual or legal entity external to the Parties.
- b) As it is specifically acknowledged in our order, the Parties agree, following the negotiations between them in this respect, that the terms and conditions of the Supplier and all other similar documents shall not prevail over the present Terms and Conditions of Purchase. By mutual agreement, only our present Terms and Conditions of Purchase shall thus apply to all our orders to the Supplier.
- c) Agreements between us and the Supplier must be made in writing.
- d) Our Terms and Conditions of Purchase apply only to professional Suppliers.
- e) The English translation of the present Terms and Conditions of Purchase is performed only for convenience. The Parties agree that in the event of any difficulty as to the meaning to be given to all or part of these Conditions, the French version shall prevail.

2. Orders and order documents

- a) All our orders that are not rejected by the Supplier within seven (7) days as from the issuance of the orders are deemed accepted by the Supplier. Orders that are pursuant to a framework contract are deemed accepted by the Supplier if not rejected by the Supplier within three (3) days of issuance.
- b) Unless expressly agreed otherwise, quotations and cost estimates of the Supplier are binding for the Supplier and free of charge.
Unless otherwise agreed, we accept no cost and pay no remuneration for visits, planning and other preparatory services provided by the Supplier.
- c) We reserve all rights of title and copyright to illustrations, drawings, calculations and other documents that we have forwarded to the Supplier. These documents may be made accessible to third parties only with our written consent. They must be used in accordance with our inquiry or purchase order. Such documents must be returned to us without delay on receipt of our written request. Unless the Supplier accepts the order within the period specified in Article 2 a), the written documents must be returned to us without delay and any data supplied must be deleted.
- d) It is expressly agreed between the Parties that our order to the Supplier is made in consideration of the specific qualities of the latter. The order is passed on a personal basis and therefore shall not be transferred to any subcontractor or transmitted to any third party without our prior written consent. Otherwise, we reserve the right to terminate the order and claim damages.
- e) We reserve the right to assign all or part of any order to any company of SCHALTBAU Group, subject to written notification addressed to the Supplier fifteen (15) days prior to such assignment.

3. Delivery

- a) The delivery dates and delivery periods specified in our orders are binding.
- b) Timeliness of delivery is determined, with respect to any product, by the time of reception, at the reception location specified by us. All deliveries made before the agreed date of delivery may result in the return of the product to the Supplier, at the expense of the latter. If we do not return the products delivered in advance, we shall store such product at the sole expense and risk of the Supplier, until the agreed delivery date.
For services or work provided by the Supplier, timeliness of delivery is determined by the date of reception without reserve of such services or work.
- c) We do not accept early delivery. We reserve the right to refuse any early delivery of products and services. In any event, the Supplier shall assume all direct and indirect financial consequences of any sort incurred by us due to any early delivery by the Supplier. In case of early delivery, the Supplier undertakes to compensate us upon presentation of our relevant evidence.
- d) Any event that may affect the delivery of products or services, or delay such delivery, shall be immediately notified to us, in writing, by the Supplier. The Supplier shall inform us of the probable duration of the event and its effects on the delivery of the product or service. This information is required without prejudice for us to wholly or partially terminate the order and claim damages against the Supplier.
- e) If the Supplier is in default, we may require the payment of a penalty of 0.5% of the product or service subject of the delay, for each week commenced. This penalty is limited to ten percent (10%) of the invoice amount, without prejudice for us to claim damages.
- f) Our unconditional acceptance of any delayed delivery of a product or service shall not constitute any waiver of all damages to which we are entitled to claim, because of the delay.

- g) We accept part deliveries only upon our express consent. In case of part deliveries accepted by us, the back order must be specified. In case of excess deliveries, we reserve the right to return the excess products at the sole expense of the Supplier.
- h) The Supplier may only invoke the absence of necessary documents supplied by us if the Supplier has sent us, within reasonable time, a written reminder.
- i) The Supplier must provide us with all supporting documents (e.g. the certificate of origin) that we could require, particularly in our order that are needed to comply with customs requirements and/or other conditions. If the origin of the goods differs from the Supplier's declaration in our possession, the change must be specifically mentioned on the delivery note and invoice and the country of origin stated.
- j) The Supplier is liable for the deliveries and services of its subcontractors to the same extent as for its own deliveries and services.
- k) If we have informed the Supplier of the intended purpose of the deliveries or services, or if the intended purpose is obvious to the Supplier even without this express notification, the Supplier is obliged to notify us without delay if its deliveries or services are not suitable for this intended purpose.
- l) The Supplier is obliged to notify us in detail without delay in writing of any changes in the composition of the materials processed or in the design or workmanship compared to deliveries and services of a similar nature provided up to that date. Changes of this kind require our written consent. In the absence of such consent, deliveries and services by the Supplier are deemed to be defective and can be rejected by us.

4. Acceptance of deliveries and services

- a) Any occurrence of cases of force majeure as defined by French Case Law releases the Party affected by the event for its duration and within the scope of such event. The Parties are required to provide the requested information without delay and to a reasonable extent and adapt, in good faith, their obligations to the changed circumstances.
- b) In the event where, because of a delay due to cases of force majeure, the product or service ordered is not of any use to us anymore for any commercial or technical reasons, we shall be entitled to refuse, wholly or partially, the product or service ordered.

5. Transfer of risks and shipment

- a) In the case of deliveries involving erection and assembly and for services, the risk passes at the time of our acceptance without reserve. For other deliveries, the risk passes on reception at our notified reception location.
- b) Unless otherwise agreed, the shipping and packaging costs, customs duties, fees, taxes and other duties are at the expense of the Supplier. The items for delivery must be properly packaged and shipped, at least in compliance with the Laws and Regulations of the country in which the product is delivered.
For prices agreed “Ex Works” or “Ex Sales Warehouse”, shipment must be made at the lowest cost unless we have specified a form of transport. We reserve the right to issue routing orders. The Supplier must pay the extra costs incurred due to failure to comply with a shipping or packaging regulation or costs for a faster mode of transport necessary to meet a delivery date.
- c) The advice notes, delivery notes and invoices must always designate our purchase order number, item number or reference number or account code. Deliveries made directly to our customers by the Supplier are admissible only if agreed accordingly in written by us and must be made in our name. We must be notified of such shipment on the date of shipment.
- d) Part deliveries and back orders must be described as such in the shipping documents. The Supplier shall solely support the additional costs incurred for non compliance of the above mentioned obligations or for the indication of an incomplete or incorrect delivery address.
- e) We shall not pay the costs of insuring the goods, in particular freight-forwarding insurance. We expressly waive the liability insurance of the General Terms and Conditions of the Fédération française des commissionnaires et auxiliaires de transport, commissionnaires en douane transitaires, agents maritimes et aériens. The above provisions do not contain any instruction to the Supplier not to subscribe insurance.

6. Invoices

Invoices must be issued in duplicate separately for each order. They must mention our order number, item number and reference number or account code. Value Added Tax must always be shown separately.

7. Prices and Terms of payment

- a) The prices mentioned in our order are binding.
- b) Each invoice will be issued no earlier than on the date of delivery of products or, for services, on date of reception without reserve
- c) Where the Supplier is obliged to provide test reports, quality documents, documentation or other records, receipt of these documents is a precondition for the completeness and compliance of the delivery and service.
- d) Place of performance for payment is at the registered office of SCHALTBAU France.

- e) Payments shall not be construed as confirmation that the products delivered or the services are compliant.
- f) Unless otherwise agreed in writing, payments are made sixty (60) days from the date of issuance of the invoice. Payment in due time shall depend on the date of reception of any bank transfer order.

8. Warranties and liability for defects

- a) The products or services must conform to the specifications and other details, such as standards and other documents, stipulated in the order or applicable to the order, even if not expressly mentioned in such order. The products and services must in each case conform to the generally recognised rules of technology, statutory and official safety regulations and environmental protection regulations that apply in France or have already been passed with a period of transition.
- b) The Supplier is obliged to put in place, maintain and constantly review an outgoing product inspection as part of its quality assurance that dispenses with the need for a good-received inspection on our part. Accordingly, a products-received inspection is carried out by us only in respect of obvious defects, transport damage, completeness and to identify the products. We shall notify to the Supplier, within fifteen (15) working days of the reception of the product or service, a warning for any defects discovered in the normal course of our business, or in any other way.
- c) In accordance with Articles 1641 and following of the French Civil Code, we are entitled to require the Supplier, at our discretion, to eliminate any defects or deliver a new product or perform a new service. We expressly reserve the right to claim any compensation for damages incurred from any latent defects of the product or services.
- d) The Supplier shall bear the potential additional costs caused by the product or service with a latent defect, including, but not limited to, transport costs, travel expenses, personnel costs, material costs or costs for control of products.
- e) The supplier expressly undertakes to correct or replace, at its sole expense, any defect, non-conformity or latent defect that we notify in writing within eight (8) working days of such notification.
- f) Should the Supplier fail to remedy the defect, non-conformity or latent defect within the said eight (8) working days, we shall be entitled to remedy them ourselves or have them remedied by any third party of our choice, at the sole and exclusive expense of the Supplier.
- g) Without prejudice to applicable Laws and regulations, including Articles 1641 and following of the French Civil Code, the Supplier guarantees the products and services provided against defects of any kind whatsoever, for a period of two (2) years as from delivery as defined in Article 3 (b) of the present Terms and Conditions of Purchase.
- h) Endemic defects. An endemic defect refers to the same defect affecting at least five percent (5%) of a type of product delivered by the Supplier, measured on a continuous period of twelve (12) consecutive months from delivery of the first product, up to three (3) years after the date of delivery of the final product. Notwithstanding the other provisions of Article 8 of the present Terms and Conditions of Purchase, the Supplier expressly undertakes to present an analysis and an action plan, in the format defined by us, to correct any endemic defect that is notified by us within seven (7) working days of our notification. The action plan shall be implemented under a deadline that will be mutually defined by the Parties, depending on the nature of the endemic defect. Failing an agreement between the Parties, implementation of the action plan shall be carried out by the Supplier within seven (7) working days of the presentation of the action plan. If an endemic defect affects the same product under one or more orders, the Supplier shall replace all identical products mentioned in the order(s). In all cases, the Supplier shall solely bear the costs including, but not limited to, cost of logistics and cost of possible dismantle / removal and mounting of the products. In case of repair of an endemic defect on a product, the remaining warranty period for said product will be extended for a period of twelve (12) months from the reception by us of the product repaired.

9. Supply of spare parts

The Supplier is obliged to deliver spare parts for the customary period of technical use of its product or service for at least 10 years from the date of the last delivery of the relevant item. If the Supplier ceases to deliver spare parts after expiry of the aforementioned period, or ceases to deliver the relevant item during this period, we must be given the opportunity to place a last order or we shall be given, by the Supplier, the relevant manufacturing documents free of charge.

10. Product liability

- a) The Supplier must guarantee us for any compensation claim brought on the basis of Articles 1386-1 to 1386-1 of the French Civil Code, either by us or by any third parties, upon first request for damage caused by any product delivered. Should the Supplier be liable, the latter shall reimburse any expenses arising out of, or in connection with, the recall of our products. We are entitled to notify the Supplier the object and scope of all reminders of our products, to enable the latter to make any insurance claim with its insurer.
- b) On the date of acceptance of the order, the Supplier agrees to provide us with all insurance certificates guaranteeing its civil liability for products, with a fixed coverage amount of 5 million Euros per claim, covering personal injury, as well as material damage. The Supplier shall undertake to maintain its insurance obligations for the entire product warranty period, or during ten (10) years after its release.

11. Intellectual Property Rights and third party rights

- a) The Supplier is liable for ensuring that the products and services are delivered free of rights of third parties and that no proprietary rights of third parties are infringed in connection with the delivery.
- b) The Supplier undertakes to guarantee us against all claims brought against us for infringement of intellectual and industrial property rights. In case of a claim based on the breach of an obligation of the Supplier to respect the Intellectual and Industrial Property Rights of third parties, any and all costs incurred by us shall be fully borne by the Supplier.

12. Title to customer-supplied items

- a) We retain title to, without the list being exhaustive, the models, designs, manufacturing equipment, tools, gauging and testing equipment, materials supplied, drawings, factory standard sheets, print copy and similar that we have supplied. The Supplier makes any order-related manufacturing equipment and tools on our behalf. They are our property. The Supplier shall store these items with the care of a prudent businessperson, free of charge, and separately from other items in its possession, mark them as our property and use them only for the purpose of providing deliveries and services to us. The Supplier pays the costs for the care, maintenance and renewal of parts of manufacturing resources which were provided by, or manufactured for us. The manufacturing equipment may only be modified with our prior written consent. We may require the restitution of the manufacturing equipment if:
 - this has been agreed in a tooling contract,
 - the Supplier becomes unable to supply the parts made with the manufacturing equipment,
 - the Supplier is insolvent,
 - business relations have ended.The Supplier undertakes to provide us, at the date of acceptance of the order, with an insurance certificate guaranteeing the tools belonging to us for their value as new, especially against damage caused by fire, water and theft. The Supplier already now assigns to us all indemnity claims to damages arising from this insurance and we accept this assignment.
- b) If the Supplier processes or transforms materials we have supplied, this work is done on our behalf. We will become the direct owner of the items thereby produced.

13. Preservation of secrecy / prohibition of Advertising

- a) The Supplier is obliged to maintain secrecy about all information supplied to it, whether recorded in writing or given verbally or embodied in the objects given into the Supplier's possession and not to make the same available to third parties without our written consent. The duty of confidentiality continues to apply even after termination of the Parties' relationship.
- b) Any reference to our business relations made by the Supplier for advertising purposes requires our express consent.
- c) The Supplier shall ensure such compliance, by its own subcontractors, as set out in a) et b) above.

14. Termination

In addition to the termination of the order as specifically provided in the various Articles of the present Terms and Conditions of Purchase, we shall be entitled to automatically terminate the order, eight (8) working days after notice by registered letter with acknowledgment of receipt without response by the Supplier, by registered letter with acknowledgment of receipt, without any compensation to the Supplier and without prejudice to compensation we could claim against the Supplier, in case:

- the Supplier fails to fulfill any of its obligations under the order and does not remedy its failure after our notice,
- of a breach, by the Supplier, of its own quality system.

15. Assignment of receivables/set-off

- a) The Supplier requires our written consent to assign accounts payable by us.
- b) The Supplier may only exercise set-off against undisputed and/or final and non-appealable claims.

16. Additional set-off possibilities

We are entitled to offset receivables from the Supplier with ours.

17. Personal Data protection

- a) The Parties expressly undertake to comply with French Data Protection Act of January 6th, 1978 ("Data Protection Act").
- b) The Parties shall take all measures required by their National Laws and regulations which are respectively applied to protect the Personal Data processed in the framework of the order. (c) Each Party shall bear alone the consequences of not meeting its obligations regarding the protection of Personal Data.

18. Storage of e-mail correspondance

In order to comply with our obligations to retain data, notably in fiscal and commercial matters, we store the e-mails and documents exchanged with us for a ten years period. Schaltbau Holding AG and Schaltbau GmbH are the recipients of the data. It is administered by the Schaltbau GmbH IT Manager based in Munich ... , to which Schaltbau France's contacts may refer if they wish to have access to the data or challenge its use for reasonable cause in accordance with the French law of 6 January 1978.

19. Place of Performance / Governing Law and Jurisdiction / Miscellaneous

- a) Place of performance for delivery of products and services is the place of destination. Otherwise, place of performance is our registered office.
- b) The Laws of France apply exclusively to the present Terms and Conditions of Purchase. The application of the UN Convention (Vienna Sales Convention) on contracts for the international sale of goods is excluded.
- c) Disputes which may arise about the validity, interpretation, performance, non-performance, termination and the consequences of termination of all orders will be submitted, first of all, to mediation in accordance with mediation Rules of the Mediation and Arbitration Center of Paris (CMAP), to which the Parties declare their adherence, to seek an amicable solution.
- d) Any dispute which has not found an amicable solution will be submitted to the exclusive jurisdiction of the Commercial Court of NANTERRE, even in case of multiple defendants.
- e) Any invalidity of individual provisions of the present Terms and Conditions of Purchase does not affect the validity of the remaining provisions. The Parties undertake in this event to replace the invalid provision by a valid provision that comes as close as possible to the economic purpose of the invalid provision.

Effective: May 24th 2017