

General terms and conditions of delivery of goods and services

Schöck Nederland B.V. (version October 1st, 2021)



Article 1 - Applicability

- 1.1 These general terms and conditions apply to and form an integral part of all offers made by Schöck Nederland B.V., hereinafter to be referred to as: "Contractor", and to all agreements concluded with the other party, hereinafter to be referred to as: "Principal", and to all agreements that may result therefrom, and which agreements relate to the supply of goods and/or services by Contractor to Principal.
- 1.2 Stipulations deviating from these general conditions apply only if and insofar as these have been expressly accepted in writing by Contractor.
- 1.3 The applicability of any general or other conditions used by Principal is expressly rejected by Contractor.
- 1.4 By giving the order to Contractor and/or entering into an agreement with Contractor, Principal waives his general or other terms and conditions, acknowledges that he accepts these general terms and conditions and acknowledges that he has fully agreed to their contents.
- 1.5 Principal who has previously entered into agreements with Contractor to which these General Terms and Conditions applied is deemed to have tacitly agreed to the applicability of the General Terms and Conditions to subsequent agreements of Contractor.

Article 2 - Offers

- 2.1 All offers made by Contractor, also with regard to prices and delivery periods, are without obligation, are valid for a period of 30 days and lapse by operation of law in the absence of full acceptance thereof within that period, unless stated otherwise.
- 2.2 If Principal provides Contractor with drawings or any other type of information or data, Principal guarantees the accuracy thereof and Contractor will base its offer on these.
- 2.3 If examples, data, drawings, models, illustrations, catalogues, etc. have been shown or provided by Contractor, they should be deemed to have been shown or provided only by way of indication and/or clarification. The goods to be delivered may deviate from this, unless explicitly agreed otherwise between the parties in writing. Statements of dimensions, quality, etc. are only approximate unless explicitly stated otherwise in writing.
- 2.4 An agreement is only concluded when Contractor accepts the order from Principal to deliver goods and/or perform services, whether or not tacitly.
- 2.5 Tacit acceptance as referred to in article 2.4 exists if Principal (a) has not acted in writing by post or e-mail within 10 days after receipt of the order confirmation and/or (b) has permitted Contractor to commence the activities mentioned in the order confirmation, and/or (c) a down payment has been made by Principal.

Article 3 - Prices

- 3.1 The prices stated in Contractor's offer and all other prices agreed between Contractor and Principal are, in the case of delivery of goods, based on delivery "ex works" ("ex works" in accordance with Incoterms 2020). If the agreement or the relevant delivery of goods does not concern cross-border transport, the prices are also based on delivery "ex works".
- 3.2 Any waiting hours, as well as call-out costs and lost hours, if Contractor arrives in vain at the place where the delivery and/or work is to be carried out pursuant to the agreement, may be charged by Contractor to Principal.
- 3.3 Prices are in euros and exclusive of turnover tax, and/or other taxes and/or additional payment obligations, and exclusive of handling and freight costs, unless otherwise agreed in writing.
- 3.4 The manner of packaging and shipment - insofar as shipment is carried out by (a third party on behalf of) Contractor - is determined by Contractor, but is always carried out at the expense and risk of Principal, in accordance with the agreements made in this respect between Principal and Contractor.
- 3.5 Prices are at all times based on the number of goods and/or services delivered and not on the number of goods and/or services as stated in the offer, should that number deviate.
- 3.6 Contractor is at all times, after timely announcement, entitled to pass on an increase in the price-determining factors to Principal, even if a fixed price has been agreed with Contractor. Principal is in that case entitled to dissolve the agreement within one month after notification of the price increase by Contractor, without being able to claim any (damages) compensation. In that case, Article 14.2 of these General Terms and Conditions also applies.

Article 4 - Delivery time and transfer of risk

- 4.1 The agreed delivery time is an indication and never a deadline. Contractor is not liable for damage caused by late delivery, unless explicitly agreed otherwise in writing by Contractor and Principal.
- 4.2 The delivery time stated by Contractor commences at the time the agreement is concluded, and all data - necessary for the performance of the agreement - are in the possession of Contractor. The delivery time is extended by the time Principal remains in default of timely payment, as well as by the time Contractor has not (yet) received the requested data, drawings and other information for the purpose of the performance of the agreement.
- 4.3 Contractor has the right to execute an agreement in parts, in the sense that Contractor can deliver the goods and/or services to Principal in accordance with the degree to which the goods and/or services are ready. In this case, Contractor is entitled to invoice Principal immediately for goods and/or services already delivered.
- 4.4 Possible returns of goods by Principal to Contractor take place at the expense and risk of Principal and are at all times sent carriage paid by Principal stating the reasons for the return by Principal, all this with due observance of the provisions in this respect in article 9 of these General Terms and Conditions.
- 4.5 If delivery of ordered goods does not take place at the agreed time, or within the agreed period, Contractor is entitled to a subsequent delivery period of three months. This period commences on the day of receipt of Principal's written notice of default, but not earlier than the day following the end of the delivery time, or the delivery period agreed when the agreement was concluded.
- 4.6 If it has been agreed that Contractor is to assemble and/or install a good to be delivered by him at a location agreed with Principal, the risk of the good transfers to Principal as soon as the good has been delivered to Principal, regardless of Contractor's obligation to take care of assembly and/or installation.

Article 5 - Uncollected goods

- 5.1 Principal is obliged to take delivery of the purchased goods within the agreed period of time. If the item has not been taken delivery of after the expiry of the delivery period, it will remain available to Principal, and may be stored at Principal's expense and risk. In this case Contractor is furthermore entitled to dissolve the agreement without notice of default and, in addition to the purchase price, to claim payment of damages suffered, including (storage) costs and interest and/or to make use of its authority to sell the purchased good.

Article 6 - Information and intellectual property

- 6.1 Contractor retains the copyrights and all intellectual property rights to the offers made by Contractor, designs, illustrations, (technical) drawings and descriptions, (trial) models, size specifications, calculations, or other information produced by Contractor and/or supplied to Principal, in the broadest sense of the word. Regardless of whether Principal has been charged by Contractor for the production thereof, unless explicitly agreed otherwise in writing between Principal and Contractor.
- 6.2 Principal is prohibited from reproducing, disclosing or exploiting the information referred to in Article 6.1 without the express permission of Contractor. All this in the broadest sense of the word. Furthermore, Principal is forbidden, without the prior written permission of Contractor, to make use of the trademarks, trade names and/or other intellectual property rights belonging to Contractor, including - but not limited to - the trademark(s) mentioned in the offer. In the event of any breach of this provision, Principal will owe Contractor, without further notice of default being required, a penalty of EUR 100,000.00 per day, without prejudice to Contractor's rights to additionally recover the damage actually suffered by Contractor from Principal.
- 6.3 Principal is obliged to return the information provided by Contractor to Principal as referred to in Article 6.1 and Article 6.2 within the term set by Contractor, without withholding copies and/or copies thereof. At the end of the Agreement, Principal is obliged to return the information provided to Contractor without delay, without withholding original copies and/or copies thereof. In the event of any breach of this provision, Principal will owe Contractor, without further notice of default being required, a penalty of EUR 5,000.00 per day, without prejudice to Contractor's rights to additionally recover from Principal the damage actually suffered by Contractor.

Article 7 - Liability

- 7.1 Contractor can only be held liable for direct damage suffered by Principal if Principal demonstrates that this damage is the direct and exclusive consequence of a shortcoming attributable to Contractor, with due observance of the provisions of Article 7.2.
- 7.2 Contractor can never be held liable for direct damage suffered by Principal and/or third parties as a result of a shortcoming attributable to Principal:
 - A. incorrect or incomplete information provided by Principal before, during, or after, entering into the agreement with Contractor;
 - B. incorrect or injudicious use of the good by Principal and/or third parties in constructions, working methods or materials, or use of the good by Principal and/or third parties in a manner which deviates from the product specifications, installation instructions, building regulations, certificates, research reports and/or any other technical documentation provided by Contractor, a defective method of storage, insufficient maintenance, modification and/or repair of the good by Principal and/or third parties, re-use of the good by Principal and/or third parties, or use of the good by Principal and/or third parties in a manner that deviates from the current state of technical knowledge;
 - C. defects to the good that are the result of normal wear and tear;
 - D. a defect in the good or a shortcoming in the service provided as a result of force majeure. Without prejudice to the relevant provisions of the law, force majeure is understood to mean: every circumstance beyond the control of the Contractor. As a result of which the fulfillment of the Contractor's obligations towards the Principal is obstructed, delayed or made uneconomical. Or as a result of which the fulfillment of these obligations can no longer be reasonably required of the Contractor.
- 7.3 Contractor can never be held liable for indirect damage on the part of Principal and/or third parties, including - but not limited to - consequential damage, trading loss, individual damage, loss of profit, stagnation damage, supervision damage and damage caused by intent or recklessness on the part of Contractor's auxiliary persons. Supervision damage is understood to include - but not limited to - the damage caused by, or during, the performance of the agreement to goods on which work is being carried out, or to goods located in or near the place where work is being carried out.
- 7.4 The total direct damage to be compensated by Contractor is at all times limited to the amount of the delivered goods and/or services under the agreement prior to the occurrence of the harmful event. Or if less, the lowest amount of (1) the maximum amount paid by Contractor's insurer in the case concerned, or (2) € 50,000. Contractor's insurance terms and conditions are available for inspection by Principal at Contractor's office and can be sent to Principal on first written request.
- 7.5 Principal indemnifies Contractor against all damage of third parties in connection with the goods and/or services supplied by Contractor, including - but not limited to - damage on the grounds of infringement by Contractor of rights of third parties - including - but not limited to - rights of intellectual property - and/or damage on the grounds of product liability as a result of a defect in the good supplied by Principal to a third party, of which the good supplied by Contractor forms a component. Except if and insofar as Principal proves that the damage was caused exclusively by the good supplied by Contractor to Principal.
- 7.6 Principal is at all times responsible for and liable by virtue of compliance with the statutory and related permits and requirements with respect to, among other things - but not exclusively - the building regulations, requirements of use and design and (other) technical requirements or industrial standards. All this in the broadest sense of the word, and insofar as it relates to the goods and/or services supplied by Contractor under the Agreement.
- 7.7 If Contractor fails to make use of any right or legal remedy pursuant to these general conditions and/or the agreement, this may not be interpreted by Principal as a renunciation of right or legal remedy by Contractor, irrespective of whether it concerns present or future rights and/or legal remedies. Neither the receipt by the Contractor of payments from Principal, nor the trust placed by the Contractor in the actions of (persons on behalf of) the Contractor, can be regarded as a waiver of that right or legal remedy.
- 7.8 The limitations of liability set out in these General Terms and Conditions do not apply in the event of intent or willful recklessness on the part of Contractor.

Article 8 - Warranty

- 8.1 The goods delivered by Contractor may deviate from the description in the offer if and insofar as it concerns minor differences in size and weight and/or minor changes in constructions or parts, which are necessary for the proper performance of the agreement.
- 8.2 If it appears that the good is not sound, it must be returned to Contractor carriage paid within three days, on pain of forfeiture of rights in this respect on the part of Principal. After the return by Principal, Contractor has the right to choose whether or not to:
 - replace the goods;
 - repair the goods;
 - credit Principal for a proportional part of the invoice.
- 8.3 No guarantee is given by Contractor for defects in goods resulting from a circumstance as referred to in article 7.2 under A through D.

Article 9 - Advertising

- 9.1 Principal can no longer rely on the fact that what has been supplied with goods and/or services by Contractor is not in accordance with the agreement, if Principal has not informed Contractor of the defect by registered letter within 14 days after Principal has discovered the defect, or should reasonably have discovered it.
- 9.2 Any right and defence on the part of Principal, based on the fact that the supplied goods and/or services do not comply with the agreement, will in any case lapse six months after delivery of the goods or provision of the service.
- 9.3 The Principal's right to complain in the event of delivery of goods will in any case lapse if the goods have been processed in whole or in part by the Principal or passed on to third parties.

Article 10 - Payment

- 10.1 Payment for delivered goods and/or services is made by Principal without any discount and/or deduction to a bank account designated by Contractor.
- 10.2 Unless otherwise agreed, payment takes place within 30 days after invoice date (net). This concerns a fatal deadline.
- 10.3 Irrespective of the agreed payment conditions, Principal is obliged at Contractor's first request to provide adequate security for payment, in the opinion of Contractor. If Principal fails to do so within the set term, Principal is immediately in default. In that case, Contractor is entitled to dissolve the Agreement and to recover the damage suffered and to be suffered from Principal.
- 10.4 The right of Principal to set off its claims against Contractor is excluded, unless in case of bankruptcy of Contractor.
- 10.5 The full claim of Contractor for payment by Principal is immediately due and payable if:
 - a payment term has been exceeded;
 - Principal has gone bankrupt or has applied for suspension of payment;
 - goods or claims of Principal are seized;
 - Principal's business is dissolved or liquidated.
- 10.6 If payment by Principal has not taken place within the agreed payment term, Contractor is entitled to charge interest to Principal. The interest amounts to the statutory commercial interest + 2% penalty interest per annum. In the calculation of interest, part of a month is regarded as a full month. In the event of late payment, the Principal may no longer claim any discount granted by

Contractor. In the event that the Principal fails to pay or pays late, the contracting party is under no obligation to continue supplying goods and/or services to the contracting party until complete and timely payment has been made by the contracting party.

In the event of non-payment to Principal, Principal owes Contractor 15% extrajudicial collection costs over the principal sum. With a minimum of EUR 100, as well as the judicial costs reasonably incurred. Including the costs to be incurred by Contractor for legal assistance in legal proceedings.

Payments made by Principal first serve to settle all interest and costs owed and then to settle due and payable invoices that have been outstanding the longest, even if Principal states that the payment relates to a later invoice.

Article 11 - Retention of title

- 11.1 The ownership of goods delivered by Contractor transfers to Principal only after the Principal has paid Contractor all that Principal owes Contractor in respect of the delivery of the goods and/or services.
- 11.2 If Principal has delivered the goods before the transfer of ownership to Principal, Principal becomes the custodian of the goods on behalf of Contractor. Principal is obliged to make Contractor's reservation known to third parties upon re-delivery. As long as ownership has not been transferred to Principal, Principal is not permitted to pledge the goods or grant third parties any other right thereto. If third parties wish to assert any right to the goods delivered subject to retention of title, Principal is obliged to immediately notify Contractor of this in writing.
- 11.4 If Principal proves to be negligent in his obligations, or if Contractor has good reason to believe that Principal will be negligent towards Contractor, Contractor is authorised to reclaim the delivered goods as his property from Principal, or from third parties in the event of onward delivery. Or if they have been mounted on movable or immovable property, to dismantle and take back the goods. Principal is obliged to render all cooperation to this end.
- 11.5 If the good has been supplied by Principal and processed by third parties, Contractor remains the owner of the processed good, even if a new good is created by or after processing.
- 11.6 When Contractor takes back his goods on the basis of the provisions of this article, this does not result in any obligation to pay damages to Principal. Principal agrees in advance with the valuation which is reasonably determined by Contractor for the goods taken back at the time of taking back. The amount will be deducted from the invoice after deduction of the costs of transport, inspection and storage made by Contractor.

Article 12 - Engineering activities

- 12.1 In addition to the supply of goods, Contractor may also provide services to Principal, including - but not limited to - engineering work.
- 12.2 Engineering activities are understood to include: the design, elaboration and drawing of illustrations, the making of (technical) drawings and descriptions, (trial) models, dimensional specifications and calculations by Contractor on behalf of Principal.
- 12.3 When carrying out engineering activities, Contractor will make every effort to perform the work to the best of his ability, taking into account the care that may reasonably be expected of Contractor.
- 12.4 The provisions of these General Conditions as well as the provisions of the DNR 2011, revision July 2013 (hereinafter: "DNR") apply in full mutatis mutandis to the (provision of) engineering activities and the provision of other services under the agreement by Contractor to Principal. With the exception of those provisions which, as evidenced by the wording, specifically relate to the delivery of goods and for which these General Conditions take precedence over the DNR.

Article 13 - Remuneration

- 13.1 Contractor is entitled to charge for engineering work by multiplying the time spent on that work under the agreement by the rate per time unit set by Contractor.
- 13.2 Time spent means: the total of the hours spent by Contractor on the performance of the work under the agreement and the travelling time required for the performance of the work at the request of Principal. Contractor can provide a specification of the time spent.
- 13.3 The hourly rate for the engineering work is on request, but will at all times at least be in accordance with the market.
- 13.4 In addition to the consultancy costs as described in Article 13.1, Principal must pay Contractor the additional costs as described in Article 50, paragraph 4 DNR. Contractor may also claim reimbursement of the costs of third parties engaged by Contractor for the purpose of the agreement.

Article 14 - Interim termination of the agreement

- 14.1 Contractor may dissolve the agreement with Principal in the event of force majeure and in the event of an attributable shortcoming on the part of Principal, whereby Principal fails to remedy this shortcoming within a reasonable term following a notice of default by Contractor. Contractor may also terminate the assignment prematurely for compelling reasons. In the aforementioned cases Principal must fully respect the intellectual property rights of Contractor in accordance with the provisions of Article 6 of these General Terms and Conditions.
- 14.2 If Contractor makes use of its power of dissolution and/or power of termination as referred to in Article 14.1, Principal is obliged to compensate Contractor with:
 - the amounts according to the state of the work and/or the goods delivered;
 - the reasonable costs arising from any obligations Contractor may have entered into with third parties for the performance of the services and/or the delivery of goods under the agreement;
 - the additional other costs reasonably incurred by Contractor;
- 14.3 In the event of dissolution by Contractor on the grounds of an attributable shortcoming on the part of Principal, Contractor is also entitled, in addition to the claims as stated in article 14.2, to recover in full from Principal the damage suffered as a result.

Article 15 - Other provisions

- 15.1 Should any provision of these General Terms and Conditions be void or voidable, this will not affect the validity and enforceability of these General Terms and Conditions insofar as other provisions than the invalid provision are concerned. In such a case Principal and Contractor will take all necessary action to enable the execution of these general conditions and, if necessary, to reach agreement on an amended text of the relevant invalid or annulled provision. Contractor and Principal will, in the situations referred to above, act as far as possible in the spirit of the void or annulled provision.
- 15.2 Principal is not permitted to transfer the rights and obligations from these general conditions and/or the agreement to a third party without the permission of Contractor.
- 15.3 Contractor is entitled to outsource (part of) the agreement - whether or not via subcontracting - to third parties.
- 15.4 Principal is obliged to keep confidential all business-sensitive, or other confidential information which it receives from Contractor, either verbally or in writing, both during the term of the agreement and afterwards, and with due observance of the provisions of Article 6 of these General Terms and Conditions.

Article 16 - Applicable law and choice of court

- 16.1 All offers made under these General Terms and Conditions, agreements entered into and agreements that (may) be the result thereof, as well as these General Terms and Conditions themselves, are exclusively governed by Dutch law.
- 16.2 Only the court in Zutphen is authorised to take cognizance of disputes, unless this is contrary to mandatory law. Contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.