

## Section 1. Definitions.

In these Terms and Conditions, the following terms shall have the following meanings:

“Supplier” means Schöck USA, Inc. d/b/a/ Schöck North America, 281 Witherspoon Street, Suite 100, Princeton, New Jersey, USA.

“Customer” means the customer of the Supplier.

“Contract” means any contract for the supply of Goods by the Supplier to the Customer including, but not limited to, Quotations or Purchase Orders signed or acknowledged by Customer.

“Confidential Information” means information including, without limitation, all Supplier data, patterns, materials, drawings, specifications, Contracts, Quotations, Purchase Orders, pricing information, intellectual property (including, but not limited to, patents, moral rights, trade dress, institutional knowledge, copyright and registered designs arising from the execution of any Contracts, Quotations, or Purchase Orders), computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and information marked “Confidential”, or if disclosed verbally, is identified by Supplier as confidential at the time of disclosure. In addition to the foregoing, Confidential Information shall include any third party Confidential Information that Supplier may provide to Customer under the terms of a Contract, Quotation, or Purchase Order, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor.

“F.O.B.” means “Free on Board Delivery Point”, and means that Customer takes delivery of Goods being shipped to it by Supplier once the Goods are delivered to Customer at the address specified in a Contract, Quotation, or Purchase Order.

“Goods” means any goods, including parts and components of, or materials incorporated in them, supplied by the Supplier to the Customer.

“Input Material” means any documents or other materials, and any data or other information provided by the Customer relating to the Goods.

“Price” means the price as detailed in the Quotation or as otherwise agreed in writing between Supplier and the Customer.

## Section 2. Quotation.

Quotations by the Supplier, unless otherwise stated therein, shall be open for acceptance within 30 days of the date of the Quotation.

## Section 3. Prices.

3.1 The Price for the Goods is F.O.B. and applicable taxes (e.g. sales tax) shall be added to each order.

3.2 Unless otherwise agreed to by Supplier in writing, Supplier shall have the right to adjust its prices for any increase in the price of materials, parts, labor, transport, change orders, changes in work or delivery schedules or quantities, or any other costs of any kind arising for any reason after the date of the Contract by giving Customer not less than two weeks’ notice in writing.

3.3 Unless otherwise agreed to by Supplier in writing, Price changes shall take effect as of the date of notice of the change.

## Section 4. Payment.

4.1 Unless agreed otherwise in writing, such as where Supplier requests an initial down-payment, all invoices are payable in U.S. Dollars within 30 days of the date of the invoice and, under no circumstances, shall Customer be entitled to make any deduction or withhold payment for any reason at all.

4.2 Without prejudice to any other rights of Supplier, if Customer fails to pay an invoice price by the due date, Customer shall not be allowed any discount given in that invoice or in any other way agreed, and Customer shall pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 4.0 % per annum over the U.S. Prime Rate of Interest (as applicable), and Customer shall reimburse Supplier for all costs and expenses (including reasonable legal fees/attorneys’ fees and costs) incurred in the collection of any overdue amount.

4.3 Supplier reserves the right to refuse to execute any order or contract if the arrangements for payment or Customer’s credit are not satisfactory. In the case of: non-payment of any account when due; or in the case where there shall be any default or refusal on the part of Customer to take due delivery of any Goods; or in the case of death, incapacity, bankruptcy or insolvency of Customer; or when Customer is a company in the case of liquidation or the appointment of a Receiver, Administrative Receiver, Administrator or nominee under a voluntary arrangement with creditors, then the purchase price of all Goods and/or work invoiced and/or delivered to Customer to date shall immediately become due from and payable by Customer. In addition, Supplier shall have the right to cancel every contract made with Customer or to suspend or continue delivery of Goods at Supplier’s sole discretion, without prejudice to Supplier’s right to recover any loss sustained.

## Section 5. Title and Risk of Loss.

5.1 Supplier shall transfer only such title or rights in respect of the Goods as Supplier has and, if the Goods are purchased from a third party, Supplier shall transfer to Customer only such title or rights as that third party had and has transferred to the Supplier.

5.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with Supplier and shall not pass to Customer until all amounts due under the invoice for them (including interest and costs) have been paid in full.

5.3 Customer shall, until title passes to Customer, hold the Goods as bailee for Supplier and shall store or mark them so that they can at all times be identified as the property of Supplier.

5.4 Supplier may maintain an action for the price of any Goods notwithstanding that title in them has not passed to Customer.

## Section 6. Risk, Delivery and Performance.

6.1 The Goods are delivered to Customer when Supplier makes them available to Customer or to any agent of Customer or to any carrier (who shall be Customer’s agent regardless of the person or entity that pays said carrier’s fees and charges) at Supplier’s premises or other delivery point agreed to by Supplier in writing. The Goods shall be delivered F.O.B. to the address Customer provided to Supplier. Customer understands and acknowledges that the Goods may shift in transit and that Customer is solely responsible for unloading the Goods and shall be solely responsible for any injuries that may occur during the unloading process. Customer agrees and acknowledges that Supplier shall not be responsible, in any way, for any injuries, to any person, that may occur in connection with unloading the Goods.

6.2 Risk in the Goods passes when they are delivered to Customer in accordance with Section 6.1 of these Terms and Conditions. Notwithstanding the foregoing, Customer is responsible for liability associated with, and accepts all risk associated with, unloading Goods.

6.3 Supplier may, at its sole discretion, deliver the Goods in installments, in any sequence.

6.4 Where the Goods are delivered in installments, no default or failure by Supplier in respect of any one or more installments shall vitiate the Contract with respect to any Goods previously delivered or with respect to any undelivered Goods.

6.5 Supplier may deliver to Customer, and Customer shall accept in satisfaction of the Contract, a lesser quantity than the quantity of Goods ordered. Customer's signing a Proof of Delivery constitutes Customer's acknowledgment that Supplier delivered the number and type of Goods listed thereon.

6.6 Any dates quoted by Supplier for the delivery of the Goods are approximate only, and shall not form part of the Contract. Customer agrees and acknowledges that, with regard to the performance expected of Supplier under the Contract, no reliance has been placed on, and no regard has been paid to, any quoted delivery dates.

6.7 Supplier shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all, nor shall any such delay or failure entitle Customer to: (i) refuse to accept any delivery or performance of the Contract; or (ii) repudiate the Contract.

6.8 Supplier's responsibility is limited to bringing Goods to the site specified by Customer. Customer is responsible for unloading Goods from any transport vehicle used by Supplier to bring the Goods to Customer's specified location, and Supplier's obligation is to deliver the Goods as near to site as a safe, hard road permits. If a vehicle used for performing the Supplier's obligations to the Customer delivers or collects Goods to or from a place off the public road, the Customer shall be solely responsible for any resulting accidents or damage to persons or property. Customer shall provide, free of charge to Supplier, any labor necessary for unloading Goods when delivered. If Supplier's vehicle is kept on site for an unreasonable time or has to return to the depot without completing delivery through lack of assistance, or if additional staff have to accompany the Supplier's driver, an appropriate additional charge will be made. If Customer does not accept delivery of Goods ordered for any reason, Customer will be charged for any and all costs incurred by Supplier in connection therewith.

6.9 If Customer or Customer's agent or representative breaks bulk on delivery, or unloads the whole or any part of a shipment of Goods or materials, Customer is, and shall be, deemed to have accepted delivery of all such Goods.

6.10 Supplier shall not be liable in respect of defective or inadequate straps or packing provided by any third party to the Supplier for Goods sold by Supplier to Customer. Customer or its agent are responsible for verifying the safety and adequacy of all packing materials.

#### **Section 7. Sales by Description.**

Customer accepts sole responsibility for the suitability of the Goods ordered. In particular, illustrations or descriptions of Goods or services provided in catalogues or trade literature must be considered as showing type or class only, without warranty as to substance, performance, color, size or shape.

#### **Section 8. Claims Notification.**

8.1 Customer shall notify Supplier in writing, within three days of delivery, of any claim that any Goods (i) have been delivered damaged, or (ii) do not comply with their description. Customer's failure to so notify Supplier in writing shall preclude any claim by Customer for reimbursement or repudiation of the Contract.

8.2 Customer shall notify Supplier in writing, within three days of delivery, of any alleged defect in all or any portion of the Goods. In the case of any defect that is not reasonably apparent on inspection, Customer shall notify Supplier in writing within three days of the defect coming to Customer's attention; provided, however, that no claim of defect shall be raised more than 10 days after the delivery of any Goods.

8.3 Any claim of damage or defect with regard to any Goods must be submitted by Customer to Supplier in writing, and must contain full details of the claim, including the part numbers of any allegedly defective Goods.

8.4 Supplier shall be afforded reasonable opportunity and facilities to investigate any damage or defect claims made with regard to any Goods or products, and Customer shall, if so requested by Supplier in writing, promptly return to Supplier, any Goods that are the subject of any such damage or defect claim. In connection with any such Goods being returned to Supplier, Customer shall include any packing materials, and the Goods shall be packed securely sent, at Customer's expense, to Supplier for examination.

8.5 Customer agrees that Supplier shall have no liability with regard to any claim in respect of which Customer has not complied with the claims procedures set forth in this Section 8.

#### **Section 9. Scope of Contract.**

Under no circumstances shall Supplier have any liability of whatever kind for:

9.1 Any damage or defects in or to the Goods resulting from: wear and tear; accident; Customer's improper use of Goods or Customer's use of Goods in a manner other than in accordance with the instructions or advice of Supplier or the manufacturer of any Goods with regard to the storage, handling or installation of the Goods including, but not limited to Customer's failure to install Goods in accordance with stamped and signed shop drawings; neglect; or from any instructions or materials provided by Customer;

9.2 Any Goods which have been adjusted, modified or repaired except by Supplier (or) in accordance with manufacturers' written recommendations;

9.3 The suitability of any Goods for any particular purpose or use under specific conditions or purposes not known by, or not communicated by Customer to, Supplier;

9.4 Any descriptions, illustrations, specifications, performance figures, drawings and/or particulars of weights and dimensions submitted by Supplier or contained in Supplier's catalogues, price lists or elsewhere (collectively referred to as "Descriptions") are merely intended to represent a general idea of the Goods, and are not meant to form, and shall not form, part of the Contract, or otherwise be treated as representations and warranties of the Supplier;

9.5 Any technical information, recommendations, statements or advice furnished by Supplier, its employees, representatives or agents that are not provided by Supplier to Customer in writing in response to a specific written request from Customer before the Contract is made;

9.6 Any variations in the quantities or dimensions of any Goods, or changes in or of their specifications, or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials or components are of a quality equal or superior to those originally specified; or

9.7 Any goods supplied by a third party, but Supplier shall, where possible, assign to Customer the benefit of any warranty, guarantee, or indemnity given by the third party supplying the Goods to Supplier.

## Section 10. Extent of Liability.

10.1 Supplier shall have no liability to Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or by reason of any misrepresentation (unless fraudulent) or any negligence, breach of statutory or other duty on the part of Supplier or in any other way out of, or in connection with, the performance or purported performance of, or failure to perform, the Contract except as expressly stated in these Terms and Conditions.

10.2 If Customer establishes that any Goods have not been delivered, have been delivered damaged, or do not comply with their description, Supplier shall, at its sole option: (i) replace with similar goods any Goods which are missing, lost or damaged, or do not comply with their description; or (ii) allow Customer a credit for their invoice value.

10.3 Where Supplier is liable, in accordance with this Section 10, with respect to only some portion or part of the Goods, the Contract shall remain in full force and effect with respect to the other portion or other parts of the Goods, and no set-off or other claim shall be made by Customer against, or with respect to, such other portion or other parts of the Goods.

10.4 Under no circumstances shall Supplier be liable for any damage resulting from the faulty use or incorrect installation of the Goods. No claim against Supplier shall be entertained: (i) for any defect arising from any design or specification provided by or made by Customer; or (ii) if any adjustments, alterations, or other work has been done to the Goods by any person other than Supplier.

10.5 Supplier shall have no liability to Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival; or any other fault of Customer.

10.6 Supplier shall not be liable where any Goods, the Price of which does not include transportation and delivery, are lost or damaged in transit and any and all claims by Customer shall be made against the carrier (transportation company) that delivered the Goods to Customer. Replacements for such lost or damaged Goods will, if available, be supplied by Supplier at the price(s) prevailing on the date(s) of delivery of such replacement Goods.

10.7 If, and to the extent that, any person who has supplied Goods to Supplier which Supplier in turn has supplied to Customer validly excludes, restricts, or limits its liability to Supplier in respect of such Goods, or of any loss or damage arising in connection therewith, Supplier's liability to Customer in respect of such Goods, or of any loss or damage arising in connection therewith, shall be correspondingly excluded, restricted, or limited. Any term warranty condition expressed or implied to the contrary is excluded. Supplier shall, upon request, supply Customer with details of any such exclusion, restriction, or limitation.

10.8 Under no circumstances shall Supplier's liability to Customer under this Section 10 exceed the total invoice value of the Goods.

10.9 Customer shall defend, indemnify, and hold Supplier harmless from any and all causes of action relating to or resulting from Customer's breach of these Terms and Conditions or relating to or resulting from Customer's failure to use or install the Goods in accordance with any written instructions provided by Supplier or in accordance with industry standards.

## Section 11. Product Safety.

The Goods may only be used for the purpose specified in Supplier's agreement with Customer or for the purpose for which the Goods are normally used. Customer is responsible for complying with: (i) the currently applicable building regulations and; (ii) with the requirements relating to design and areas of use referred to in the relevant stamped and signed shop drawings, tests and technical documentation. Customer shall at all times follow any instructions

relating to processing and installation that are supplied with or attached to the Goods or, to the extent that such instructions are not supplied with the Goods, Customer shall be responsible for using and installing the Goods in accordance with current industry norms. In any event, Customer shall be responsible for ensuring that the Goods are used in accordance with practices which are currently accepted within the construction industry and in conformity with any applicable United States Federal Standards and/or any applicable State/Municipal Standards.

## Section 12. General.

12.1 Customer shall not assign or (without first obtaining the Supplier's written consent) subcontract the Contract, in whole or in part, and it shall be a condition of any such consent to any assignment or subcontracting of the Contract that Customer shall:

- a. Ensure and be responsible for the compliance, by any assignee or sub-contractor, with the terms of the Contract;
- b. Include, in any assignment or subcontract, provisions consistent with these Terms and Conditions for the benefit of, and enforceable by, Supplier; and
- c. Furnish Supplier with copies of any assignment or subcontract upon Supplier's request, which request may be made by Supplier at any time.

12.2 Supplier may, at its sole discretion, suspend or terminate the supply of any of the Goods if Customer: (i) fails to make any payment when and as due, or otherwise defaults in any of its obligations under the Contract or any other document (e.g. a Quotation) with the Supplier; or (ii) becomes insolvent, has an administrative receiver of its business appointed, or is compulsorily or voluntarily dissolved, or Supplier reasonably believes that any of those events may occur. In case of any such termination of a Contract, Supplier may, at its sole discretion unless otherwise required by law, forfeit any deposit or down payment paid by Customer.

12.3 If the Goods are manufactured in accordance with any design or specification provided or made by Customer, Customer shall, in connection with such Goods, compensate Supplier in full, on demand, for all claims, expenses, and liabilities of any nature including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.

12.4 Except as otherwise agreed to by Supplier and Customer in writing, all tools, specifications Confidential Information, and other data provided by the Supplier are, and shall at all times remain, the property of Supplier.

## Section 13. Confidentiality.

Customer shall not, at any time whether before or after the termination of the Contract, use or divulge to any other party any Confidential Information, unpublished technical information deriving from Supplier or in relation to Supplier's business or affairs or method of carrying on its business.

## Section 14. Termination and Cancellation.

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other party if said other party:

- a. Commits any breach of these Terms and Conditions and (if capable of remedy) fails to remedy said breach within 30 days after being required by written notice to do so, or if the other goes into liquidation; or
- b. In the case of an individual or an entity, becomes bankrupt, makes a voluntary arrangement with its creditors, or has a receiver or administrator appointed.

## **Section 15. Force Majeure.**

Supplier shall not be liable for any failure in the performance of any of its obligations under the Contract, Quotation or Purchase Order caused by factors outside its control, such as natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of Supplier or other causes beyond Supplier's reasonable control (a "Force Majeure Event"). Supplier shall give Customer notice of a Force Majeure Event as soon as Supplier can reasonably do so. Upon Customer's receipt of such notice, all Supplier's obligations under a Contract, Quotation, or Purchase Order shall be immediately suspended.

## **Section 16. Miscellaneous.**

16.1 These Terms and Conditions (together with the terms, if any, set out in any Contract, Quotation or Purchase Order) constitute the entire agreement between the parties, supersede any previous agreement or understanding between the parties, and may not be changed or modified except in writing between the parties. All other terms and conditions, express or implied, by statute or otherwise, are excluded to the fullest extent permitted by law.

16.2 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been provided to the other party in writing for purpose of receiving such written notices.

16.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.

16.5 If the project for which Goods are supplied is located in the U.S.A., these Terms and Conditions shall be governed, construed and enforced in accordance with the laws of the United States of America and of the State of New Jersey. Any disputes relating to these Terms and Conditions shall be venued in the federal or state courts of New Jersey and any arbitration, mediation or alternate dispute resolution proceeding relating to these Terms and Conditions shall likewise take place in New Jersey. Remedies for enforcement or breach of Contract or breach of these Terms and Conditions are to be applied pursuant to and in accordance with the laws of the State of New Jersey. The Parties waive any rights they may have to contest exclusive New Jersey venue either via a motion alleging forum non-conveniens (inconvenient forum) or similar motion to transfer.

16.6 The parties hereby acknowledge that each of them, with the assistance of their respective counsel, actively participated in the negotiation and drafting of any Contract, Quotation or Purchase Order and waive the defense of contra proferentem, i.e. that the Contract, Quotation or Purchase Order or any part thereof may be ambiguous and, therefore, construed against any party as the drafter thereof.