

# Schöck Limited Terms & Conditions of Sale

## 1 Definitions

In these conditions the following terms shall have the following meanings:

### 'Supplier'

Schöck Limited company number 05622775 whose registered office is at 61 Station Road Sudbury Suffolk CO10 2SP

### 'Customer'

means the customer of the Supplier.

### 'Contract'

means any contract for the supply of Goods by the Supplier to the Customer.

### 'Goods'

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

### 'Price'

means the price as detailed on the order confirmation attached hereto.

### 'Specification Sheet'

means the sheet to which these conditions are appended or the sheet signed by the parties before the placing of the Contract.

### 'Input Material'

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

## 2 Quotation

Quotations by the Supplier unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation.

## 3 Existence of contract

3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:

- the Supplier's order confirmation; or
- delivery of the goods; or
- the Supplier's invoice.

3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.

3.3 Except as expressly provided for in these terms and conditions no variation or amendment of the Contract or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

## 4 Prices

4.1 The Price for the Goods is ex-works and excludes insurance and carriage, VAT and other taxes or duties unless stated otherwise in our offer. The Price invoiced is calculated in respect of the quantity of Goods actually delivered irrespective of the quantity in respect of which any quotation was issued.

4.2 The Supplier shall have the right to adjust its prices for any increase in the price of materials, parts, labour, transport, 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 not less than four weeks' notice in writing to the Customer.

4.3 Price changes shall take effect as from the date of expiry of the notice of the change.

## 5 Payment

5.1 All invoices are payable unless agreed otherwise in writing in pounds sterling within by the last day of the month following the date of invoice stated on the Supplier's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.

5.2 Without prejudice to any other rights of the Supplier if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date of which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 4 % p.a. over the base rate from time to time quoted by Barclays Bank plc and reimburse to the Supplier all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

5.3 The Supplier reserves the right to refuse to execute any order or contract if the arrangements for payment or the 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 the Customer to take due delivery of any Goods or in the case of death, incapacity, bankruptcy or insolvency of the Customer or when the Customer is a limited 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 the Customer to date shall immediately become due and payable from the Customer.

In addition the Supplier shall have the right to cancel every contract made with the Customer or to suspend or continue delivery of Goods at the Supplier's option without prejudice to the Seller's right to recover any loss sustained.

## **6 Title**

6.1 For the purpose of section 12 of the Sale of Goods Act 1979 the Supplier shall transfer only such title or rights in respect of the Goods as the Supplier has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Supplier.

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

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

6.4 The Supplier may at any time before title passes and without any liability to the Customer:

- repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and
- for that purpose (or determining what if any Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

6.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Supplier and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as the Supplier's money.

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

## **7 Risk, delivery and performance**

7.1 The Goods are delivered to the Customer when the Supplier makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays its charges) at the Supplier's premises or other delivery point agreed by the Supplier.

7.2 Risk in the Goods passes when they are delivered in accordance with clause 7.1.

7.3 The Supplier may at its discretion deliver the Goods by instalments in any sequence.

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

7.5 The Supplier may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser quantity than the quantity of Goods ordered.

7.6 Any dates quoted by the Supplier for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Supplier no regard has been paid to any quoted delivery dates.

7.7 The 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 the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

7.8 When the Goods are offered for delivery to site the Supplier's obligation is to deliver 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 accident or damage resulting. The Customer shall provide free of charge any labour necessary for unloading goods when delivered and the Supplier's responsibility is limited to handling goods off the vehicle. If the 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 the Customer does not accept delivery of goods ordered for any reason costs incurred will be charged.

7.9 If the Customer or the Customer's consignee breaks bulk on delivery or unloads the whole or any part of a consignment of goods or materials the Customer is deemed to have accepted delivery.

7.10 Some Goods sold by the Supplier can be dangerous and cause risk to health and safety. Customers should ask the Supplier for health and safety information about the transport, storage and use of any such Goods.

7.11 The 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 the Supplier to the Customer. The Customer shall verify the safety and adequacy of all packing materials.

## **8 Sales by description**

The Customer shall accept sole responsibility for the suitability of the Goods ordered. In particular, illustrations or descriptions given in catalogues or trade literature must be considered as showing type or class only without warranty as to substance performance colour size or shape.

## **9 Claims notification**

9.1 Any claim that any Goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Supplier within three days of their delivery.

9.2 Any alleged defect shall be notified by the Customer to the Supplier in three days of the delivery of the Goods or in the case of any defect which is not reasonably apparent on inspection within three days of the defect coming to the Customer's attention.

9.3 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.

9.4 The Supplier shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall, if so requested in writing by the Supplier, promptly return any Goods the subject of any claim and any packing materials securely packed and carriage paid to the Supplier for examination.

9.5 The Supplier shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions. Where the Customer deals as a consumer, the Customer's statutory rights remain unaffected by the provisions of these conditions.

## **10 Scope of contract**

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

10.1 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Supplier or the manufacturer of any Goods or neglect or from any instructions or materials provided by the Customer;

10.2 any Goods which have been adjusted, modified or repaired except by the Supplier (or) in accordance with manufacturers written recommendations;

10.3 the suitability of any Goods for any particular purpose or use under specific conditions or purposes not known or not communicated to the Supplier;

10.4 any substitution by the Supplier of any materials or components not forming part of any specification of the Goods agreed in writing by the Supplier;

10.5 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Supplier contained in the Supplier's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;

10.6 any technical information, recommendations, statements or advice furnished by the Supplier, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made;

10.7 any variations in the quantities or dimensions of any Goods or changes 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

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

10.9 Where the Customer deals as a consumer, the Customer's statutory rights remain unaffected by the provisions of these conditions.

## **11 Extent of liability**

11.1 The Supplier shall have no liability to the 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 the 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:

- for death or personal injury resulting from the Supplier's negligence; and
- as expressly stated in these conditions.

11.2 If the Customer establishes that any Goods have not been delivered, have been delivered damaged or do not comply with their description the Supplier shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods.

11.3 If the Customer establishes that any Goods are defective the Supplier shall, as its option, replace with similar goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Supplier's manufacture, assign to the Customer (so far as the Supplier is able to do so) any warranties given by the manufacturer of the Goods to the Supplier.

11.4 The delivery of any repaired or replacement Goods shall be at the Supplier's premises or other delivery point specified for the original Goods.

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

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

11.7 The Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the 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 the Customer.

11.8 The Supplier shall not be liable where any Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Supplier at the prices ruling at the date of despatch.

11.9 If and to the extent that any person who has supplied Goods to the Supplier which the Supplier in turn has supplied to the Customer validly excludes, restricts or limits his liability to the Supplier in respect of such Goods or of any loss or damage arising in connection therewith the Supplier's liability to the 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. The Supplier shall, upon request, supply the Customer with details of any such exclusion restriction or limitation.

11.10 In no circumstances shall the liability of the Supplier to the Customer under this condition exceed the total invoice value of the Goods.

11.11 Where the Customer deals as a consumer, the Customer's statutory rights remain unaffected by the provisions of these conditions.

## **12 Product safety**

The Goods may only be used for the purpose specified in the agreement with the Customer or for the purpose for which the Goods are normally used. The Customer is responsible for complying with the currently applicable building regulations and for the requirements relating to design and areas of use referred to in the relevant consents tests and technical documentation. The Customer shall at all times have regard to the instructions relating to processing and installation which are supplied with or attached to the Goods or to the extent that such instructions are not supplied the Customer shall be responsible for using the Goods in accordance with current industry norms. The Customer shall in any event 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 British Standards.

## **13 General**

13.1 The Supplier may sub-contract the performance of the Contract in whole or in part.

13.2 The Customer shall not assign or (without first obtaining the Supplier's written consent) sub-let the Contract in whole or in part and it shall be a condition of any such consent to any sub-letting of the Contract that the Customer shall:

- ensure and be responsible for the compliance by any sub-contractor with the terms of the Contract;
- include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Supplier; and
- furnish the Supplier with copies of any sub-contract upon the Supplier's request at any time.

13.3 The Supplier shall have a lien on all the Customer's property in the Supplier's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days' notice in writing in the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Supplier and the costs of sale or disposal the Supplier shall be discharged of any liability in respect of the Customer's property.

13.4 The Supplier may at its discretion suspend or terminate the supply of any of the Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other (document) with the Supplier or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Supplier bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

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

13.6 Except for any which is expressly agreed to be included in the (subject - matter) all tools, patterns, materials, drawings, specifications and other data provided by the Supplier shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Supplier.

#### **14 Confidentiality**

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

#### **15 Termination and cancellation**

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.

#### **16 Force majeure**

The Supplier shall not be liable for any failure in the performance of any of his obligations under the Contract caused by factors outside his control.

#### **17 Miscellaneous**

17.1 These Conditions (together with the terms, if any, set out in any Specification attached hereto) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied 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.

17.2 Any notice required or permitted to be given by either party to the other under these 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 notified pursuant to this provision to the party giving the notice.

17.3 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.

17.4 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 Conditions and the remainder of the provision in question shall not be affected.

17.5 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

Schöck Ltd  
Sudbury, April 2019

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