



## **Schoeller Werk GmbH & Co KG General Terms and Conditions of Purchase for Services**

### **Sec. 1 Scope of application**

(1) These Terms and Conditions of Purchase for Services shall apply to the procurement of deliveries and services of all kinds (hereinafter referred as "Services"), irrespective of the type of contract chosen by the Purchaser. The General Terms and Conditions of Purchase for Services shall apply in addition to and subordinate to the Purchaser's individual contractual provisions with the Supplier.

(2) In relation to General Terms and Conditions or other terms of the Supplier, the "General Terms and Conditions of Purchase for Services" shall apply exclusively, this also applying if the Purchaser does not expressly object to the Supplier's conditions. Any terms and conditions of the Supplier that conflict with or deviate from the purchase order or the General Terms and Conditions of Purchase for Services will not be acknowledged or included unless inclusion was expressly agreed.

(3) These Terms and Conditions shall be acknowledged unconditionally when the quote is submitted, but no later than when the purchase order is carried out.

### **Sec. 2 Offers, purchase orders and other declarations**

(1) All offers and cost estimates shall be free of charge and non-binding for the Purchaser.

(2) Legally binding purchase orders, engagements and other declarations of intent of the Purchaser aiming at establishing, amending or terminating contracts are reserved exclusively for the Purchaser's purchasing department and, for reasons of proof, must be made in writing. Oral purchase orders, engagements or other contracts entered into by employees or agents of the Purchaser shall require the Purchaser's written confirmation to be effective unless the declarations were made by members of the executive body. The Supplier shall immediately inform the Purchaser's purchasing department of any engagements, purchase orders, conclusions of contracts or other activities or impairments relevant to remuneration by other employees or agents of the Purchaser. If the Purchaser does not respond to offers, including any offers submitted in electronic form, this shall not be deemed acceptance.

(3) All documents, including documentation, shall be prepared in German.

### **Sec. 3 Scope of services and place of performance**

(1) All of the Supplier's services must correspond to the contractual scope of services and, in particular, must correspond unconditionally to the essential properties specified therein, and must be fit for the normal service life and purpose assumed according to the contract, for the usual purpose. The agreed date of inspection and acceptance, shall be decisive for the obligations.

(2) The Supplier shall perform the services due under the contract itself, on its own responsibility and fully in accordance with the generally recognised rules of the trade and construction, and in the case of services on machines, installations and equipment, additionally in accordance with the manufacturer's instructions or other documentation relating to installations that we provide.

(3) The Supplier undertakes to provide the scope of deliveries and services in accordance with the valid European and German legal provisions. Notwithstanding any further statutory provisions, the scope of deliveries and services shall be provided in such a way that the requirements of occupational safety, risk prevention and environmental protection are met.

(4) The Supplier shall inform the Purchaser in good time and in detail if and to the extent that the scope of services must be changed in order to fulfil the contract. Furthermore, the Supplier shall raise any objections against the intended or prescribed manner of execution or against the Purchaser's instructions and orders without delay.

(5) The version of the Incoterms valid at the time of entry into the contract shall apply for the interpretation of the commercial terms.



#### **Sec. 4 Prices, Billing, Invoicing, Set-off and retention by the Supplier**

(1) The agreed prices are fixed prices. All prices are subject to the applicable statutory value added tax. The prices include everything that the Supplier must do at the agreed place of performance in order to meet its obligation to provide services. For example, all costs for technical processing, implementation documents and contract-specific resources of the Supplier, materials to be supplied, wages and non-wage labour costs, set-up, monitoring, provision and proper clearance of the construction site, arrangements for and provision of all equipment, scaffolding, tools, safety precautions, barriers, etc., as well as operating materials and consumables required for assembly equipment and cutting gases. Furthermore, the price includes any and all costs and fees for any necessary test certificates, technical inspection and acceptance, appraisals, clearance certificates or similar by experts, testing organisations and authorities.

(2) If the parties have agreed to bill services using hourly rates, the Supplier shall be remunerated for the effective hours worked and confirmed by the Purchaser after deducting breaks and set-up times, whereas the obligation to pay remuneration shall be limited to the objectively required number of hours by experienced and qualified workers. Travel times and expenses will only be reimbursed if this has been expressly agreed. A quarter of an hour or part thereof shall be the smallest billing unit.

(3) The Supplier must generally report to the Purchaser's representative before commencing work and after completing the work.

(4) The working hours shall be recorded on the forms provided by the Purchaser and submitted daily for countersigning to the Purchaser's representative in charge immediately after the end of the working hours. The work time records shall include the Purchaser's order number, the services carried out and the periods of work, along with the first names, middle names, surnames and functions of all employees used to fulfil the order.

(5) The invoice must comply with the requirements of the German Value-Added Tax Law (UStG), be auditable and list the services provided in a clear and comprehensible manner, stating the order number. The respective amounts of agreed payments shall be requested from the Supplier. Payments do not constitute an acknowledgement of the correctness of the invoice and/or the conformity of the services with the contract, but rather are issued subject to subsequent verification.

(6) Unless otherwise agreed, an interest rate per annum of 5% above the base rate according to Section 247 German Civil Code (BGB) shall apply in the event of default on the part of the Purchaser. The Purchaser shall pay by bank transfer or cheque at its discretion. Payment shall be deemed to have been made in due time if the transfer order or cheque has demonstrably been sent by the payment date.

(7) The Supplier may only offset against undisputed or legally established claims. It shall only be entitled to rights of retention insofar as they are based on the same contractual relationship.

#### **Sec. 5 Addendum and Deviations**

(1) Services of the Supplier deviating from the contract shall require a prior amendment to the contract (addendum).

(2) In the event that the Supplier deems modified or additional services to be necessary or services requested by the Purchaser to not be included in the scope of the contract, it shall submit a written supplementary offer using the price basis of the contract without prompting and without delay, in which case any reduced services arising from the contract shall be taken into account. The supplementary offer must include all technical and economic consequences and consequences in terms of construction time resulting from the deviating services. Preparation of supplementary offers shall be free of charge for the Purchaser.

#### **Sec. 6 Packaging and Waste**

Disposal of the Supplier's waste materials resulting from work shall also form part of the scope of services and be covered by the agreed prices in addition to the foregoing services. Packaging materials shall remain the Supplier's property unless otherwise agreed. The Supplier shall be responsible for proper disposal of the packaging materials and shall bear the expenses of such disposal. Components of old installations, replaced parts and scrap from installations and electrical scrap shall remain the property of the Purchaser.

### **Sec. 7 Obligation to inform and Execution**

- (1) The Supplier undertakes to inspect the locations and structures, access routes, installation sites for work machines, and other affected facilities and items that are relevant to the provision of services before the contract is entered into and to familiarise itself with the local conditions and resolve any ambiguities with the Purchaser.
- (2) All devices, tools, resources and operating materials, consumables, as well as professional clothing, including the necessary protective equipment required to execute the order, shall be provided by the Supplier without charge.
- (3) All the items provided by the Purchaser shall only be used to execute the contract. They shall be returned undamaged afterwards without delay. Excessive wear and tear or damage shall be borne by the Supplier.
- (4) The Purchaser will only accept the Supplier's implementation documents for inspection. By signing the documents, the Purchaser merely confirms that it has taken note of the documents.
- (5) All items brought onto the Purchaser's premises are subject to factory inspection and must be marked with the Supplier's name or company logo in advance. When the items are delivered and removed, a written list of these items must be submitted to the plant security staff for approval and deposited with them.
- (6) If a defect or damage is suspected in connection with supplied parts of the contractual services or sub-supplier services, the Supplier shall be obliged to provide the Purchaser with information about the sub-supplier, intermediate supplier or subcontractor and to provide all the information needed to assert claims against them. All knowledge of business secrets acquired during the inspection or from documents and other information must be treated confidentially by the Purchaser.
- (7) The Purchaser may deny access to its plant to certain persons working for the Supplier for good cause.
- (8) The Supplier shall bear full responsibility and risk with regard to all risks (e.g. theft, fire) for all items brought onto the Purchaser's premises or delivered to the Supplier by the Purchaser for the provision of the services.

### **Sec. 8 Work in the Purchaser's plant area and sub-suppliers**

- (1) During work/stays in the works/buildings of the Purchaser, the Supplier shall comply with the laws, rules and regulations concerning the health and safety of employees, protection of the environment, transport of hazardous goods and fire protection, including the bulletins of the employers' liability insurance associations and the association of property insurers, insofar as they are relevant for the provision of the deliveries/services. Details are dealt with in the currently valid construction site regulations, which the Supplier shall request from the person in charge of the Purchaser
- (2) The Supplier shall generally provide the contractual services through its own company and may only use sub-suppliers listed in the offer with regard to the essential components of its services. The Purchaser's prior consent shall be required to replace sub-suppliers or use additional sub-suppliers. The Purchaser reserves the right to make the consent dependent on certain qualifications. Furthermore, the Purchaser reserves the right to prohibit the use of the sub-supplier in the event of persistent unreliability or if a required qualification ceases to exist, a criminal or administrative offence is committed or if the workplace harmony is disturbed. If contractually due services of the Supplier are provided by sub-suppliers, the Purchaser may request to be present at technical coordination meetings with the sub-supplier. The Supplier shall be liable for sub-suppliers and subcontractors just as it is for its own culpability.
- (3) All the Supplier's employees used to fulfil this order must be duly registered for social insurance and have a social insurance card. The Supplier shall pay the income tax and all social insurance contributions for these employees in the proper manner. Foreign employees that are used must have the necessary work permit. The Supplier hereby undertakes to comply with all relevant regulations relating to trade, accident prevention regulations and other occupational safety regulations as well as the working time regulations, and further declares that it is aware of the regulations relevant to its services and that the Supplier's employees have been instructed with regard to the relevant occupational safety regulations.
- (4) The Supplier warrants that sub-suppliers will also comply with the above provisions. If the Supplier employs persons not subject to social insurance contributions, such as freelance workers, as sub-suppliers, the Supplier shall also ensure



that they have sufficient accident and health insurance coverage and, if they are engaged in a trade, that they have met the obligation to notify under the trade laws (Sections 14, 15 (1) German Industrial Code (GWO)). A certificate of receipt of the business registration must be presented to the Purchaser's plant security staff in order for company ID cards to be issued.

(5) The Purchaser may request proof of compliance with the foregoing obligations at any time. If the Supplier fails to comply with the foregoing obligations in whole or in part, the Purchaser may, with immediate effect, withdraw the order from the Supplier in whole or in part and demand compensation for any damages incurred.

### **Sec. 9 German Posted Workers Act (AEntG) and German Minimum Wage Act (MiLoG)**

(1) The Supplier undertakes to comply with the provisions of the German Posted Workers Act (AEntG) and the German Minimum Wage Act (MiLoG) within the scope of application of the aforementioned laws and shall guarantee that the working conditions arising from the aforementioned laws and the statutory regulations issued in connection with the applicable collective labour agreements are observed and that at least the prescribed minimum wages are paid, this being with regard to all employees used to fulfil the order and notwithstanding whether they are employees of the Supplier, of a sub-supplier properly engaged by the Supplier or of a leasing company contracted by the Supplier or sub-supplier.

(2) The Supplier shall indemnify the Purchaser from any claims made against it on account of a violation of the provisions of the German Posted Workers Act (AEntG) and German Minimum Wage Act (MiLoG) by the Supplier, a sub-supplier engaged by the Supplier or a leasing company contracted by the Supplier or sub-supplier.

(3) The Supplier shall, on request, appropriately provide the Purchaser with information and evidence that compliance with the laws referred to in paragraph 1 is ensured in its business within 7 days.

### **Sec. 10 Dates, hindrances and disturbances to the provision of services**

(1) The contractually agreed date of inspection and acceptance or of overall completion and other dates or deadlines shall constitute binding dates and deadlines, with the culpable failure to meet same constituting a default.

(2) If the Supplier feels hindered by circumstances arising from the Purchaser's sphere of services or risks, or if such circumstances are imminent, the Supplier shall immediately notify the Purchaser in order to give the Purchaser the opportunity to remedy the situation. The foregoing shall be without prejudice to the provisions of Sections 642, 645 German Civil Code (BGB).

(3) If circumstances arise at the Supplier's as a result of its own sphere of services or risks, which have or may have a negative effect on the provision of services or the schedule, the Supplier shall notify the Purchaser of such circumstances without delay.

(4) Work on Sundays and public holidays needed to meet deadlines shall require official approval, which must be obtained by the Supplier.

(5) The consequences of default shall be calculated in accordance with statutory provisions. . If the other conditions for the right of withdrawal are met, the Purchaser can limit the withdrawal to the part of the services that has not been provided or has not been provided properly, regardless of whether it is a self-contained or delimitable part of the service. Instead of exercising the right of withdrawal, the Purchaser may terminate the contract with regard to the outstanding services for good cause, without prejudice to its other legal claims.

(6) After the Purchaser has exercised its right of withdrawal, the Supplier shall provide the Purchaser with the plans, drawings, calculations, software documents, industrial property rights, documentation and specifications prepared by the Supplier for the provision of the services due before the exercise of the right of withdrawal in return for appropriate remuneration, so that the Purchaser can procure the service elsewhere, in which respect the Purchaser will have a right of choice. Furthermore, the Supplier shall also be obliged to provide the Purchaser with information regarding the services provided by the Supplier to the extent necessary free of charge after the right to withdraw from the agreement has been exercised.

### **Sec. 11 Force majeure**

(1) Force majeure events shall entitle the respective contracting party to postpone the fulfilment of obligations assumed or, if performance of the contract becomes unreasonable in whole or in part, to withdraw from the contract in this respect without the other contracting party being entitled to claim damages. Force majeure shall be deemed to be all events that occur unexpectedly and are not culpably caused by either of the contracting parties, in particular natural disasters, fire, lightning, explosion, poison or gas leakage, flooding, general supply disruptions or comparable effects, industrial disputes in either or both parties' own companies or other companies, as well as interventions by public authorities.

(2) Force majeure shall be deemed to include equally serious operational disruptions that result in a restriction or cessation of operations and other circumstances that make the fulfilment of obligations unreasonably difficult or impossible, irrespective of whether they occur at a contracting party or third party, but only if the contracting party or third party is not responsible for same.

### **Sec. 12 Industrial property rights**

(1) The Supplier shall be liable for ensuring that the industrial property rights of third parties are not infringed by its provision of services and the use of same by the Purchaser in accordance with the contract and the intended purpose. If necessary, the Supplier shall enable the Purchaser to use the object of the services by satisfying the third party asserting its rights or by modifying the object of the services in accordance with its intended purpose.

(2) Notwithstanding statutory claims, the Supplier shall indemnify the Purchaser from all claims of third parties and all damages, expenses and other disadvantages incurred by the Purchaser as a result.

(3) If the Supplier is unable to make it possible for the Purchaser to use the object of the services, in particular because the third party insists on decommissioning of the object of the services, and if it becomes evident that it cannot be modified appropriately for the intended purpose, the Supplier shall remove the object of the services at its own expense, in which case the remuneration received shall be returned, in addition to interest at a rate of five percentage points above the base rate in accordance with Section 247 German Civil Code (BGB). The foregoing shall be without prejudice to further legal claims.

(4) Upon purchase of the object of the services, the Purchaser shall also acquire the right to procure accessory installations, carry out maintenance and repair work, make subsequent modifications and produce spare parts and replacement parts itself or have same produced by third parties. These rights may not be impaired by the Supplier's industrial property rights. The Supplier warrants that there is no conflict with industrial property rights of third parties in this regard.

### **Sec. 13 Inspection and Acceptance**

(1) Unless otherwise stipulated in the contract, the Supplier's provision of services shall require formal inspection and acceptance with the inspection and acceptance being the prerequisite for the Purchaser's claim for remuneration to fall due for all contracts based on these terms and conditions. The Purchaser shall inspect and accept the services at the place of performance as soon as the Supplier has requested this in writing after completion and after all the acceptance requirements have been met. As an absolutely necessary prerequisite for acceptance, a record shall be prepared on the Purchaser's form, which both parties to the contract shall sign. Any oral acceptance or implied acceptance by commissioning is excluded. If the contract only provides for a "notification of completion" to be sent by the Supplier to the Purchaser after complete provision of the services, the effects of inspection and acceptance shall be deemed to have occurred four weeks after receipt of the notification of completion by the Purchaser unless the Purchaser has raised objections or requested formal inspection and acceptance within this period.

(2) The Supplier shall remedy any minor defects detected during inspection without delay. . The successful removal of the defect must be documented and causes the limitation period for same to begin.

### **Sec. 14 Defects and Limitations**

(1) The Supplier warrants that its services are free of defects and complete and, in particular, that they have the essential properties agreed as such in the contract and are suitable for the intended purpose under normal operating conditions.

(2) In the event of material defects and defects of title in the Supplier's services, the Purchaser shall be entitled to its statutory rights. The Purchaser shall grant the Supplier an opportunity for subsequent fulfilment. To this the Purchaser will be entitled to assign the Supplier a period of a scheduled facility shutdown if the implementation of subsequent fulfilment measures would otherwise unreasonably impair the Purchaser's operations. The Purchaser is entitled to set a reasonable deadline for subsequent fulfilment. The reasonableness shall also be assessed according to the Purchaser's operational interests. In case of unreasonableness, the Purchaser shall be entitled to refuse the subsequent fulfilment. Irrespective of statutory provisions, unreasonableness may exist in particular if the subsequent fulfilment leads or may lead to an unreasonable delay or to uncertainty as to a successful outcome in terms of devices, installations or equipment that are relevant to safety or necessary for maintaining operation, production or business processes.

(3) If the other prerequisites of the right of withdrawal are fulfilled, the Purchaser may limit the withdrawal to the part of the services that has not been provided or has been provided incorrectly, irrespective of whether it is a self-contained or delimitable part of the services. Instead of exercising the right of withdrawal, the Purchaser may terminate the contract with regard to the outstanding services for good cause, without prejudice to its further legal claims.

(4) In the event that a return of the object of the services after the right of withdrawal is exercised causes disproportionately large damage to the Purchaser, the Purchaser may request to be permitted to temporarily use the object of the services at its own risk and for an appropriate usage fee for the purpose of reducing damage, but no longer than until the replacement item is procured or ready for operation, as applicable.

(5) In the case of material defects, the Purchaser shall be entitled to remedy the defects itself in accordance with Section 637 German Civil Code (BGB) after the fruitless expiry of a deadline set for subsequent fulfilment, this being without prejudice to statutory claims and also applying in the case of contracts for work and materials.

(6) If the Purchaser has a duty to inspect and give notice of defects in accordance with Section 377 German Commercial Code (HGB), the period of notice shall be two weeks from delivery in the case of obvious defects and two weeks from discovery of the defect in the case of defects that are not clearly detectable.

(7) The statute of limitations for claims due to services not provided or not properly provided shall be based on statutory provisions. It shall begin with acceptance. Notwithstanding the above, the statutory limitation for replacement parts and spare parts shall not commence until they are installed, commissioned or used and shall end no later than five years after the provision of services

### **Sec. 15 Limitation of liability**

(1) Unless otherwise agreed in individual contracts, the parties' liability for damages and/or reimbursement in their mutual relationship shall be determined in accordance with statutory provisions.

(2) If special or more extensive insurance obligations are agreed in individual contracts, the obligated party will not invoke limitations of liability within the scope of the coverage available there.

(3) The Supplier shall take out and maintain throughout the entire contractual period normal business liability insurance that is appropriate for the provision of services with a minimum coverage of EUR 2,5 million for damage to property and personal injury, as well as coverage for financial losses of EUR 100,000 unless other amounts of coverage are stipulated in the contract. The existence and scope of the insurance coverage shall be proven on request by presenting a certificate from the insurer.

(4) If the Supplier does not meet the insurance obligations arising from the above paragraph 3 or other insurance obligations arising from the contract, it shall ensure that the Purchaser is in the same position as if the insurance coverage owed under the contract had been established and/or maintained.

### **Sec. 16 Assignment, provision of security, contract transfer and company change**

(1) The Supplier may not assign claims against the Purchaser, either in whole or in part, without the Purchaser's prior written consent. The Purchaser shall not refuse this consent without good cause.



(2) The Purchaser hereby consents to assignments that are made on the basis of an extended reservation of title subject to the condition that it reserves all rights against the assignee that it would be entitled to against the Supplier without the assignment.

(3) If the Purchaser makes down payments or advance payments on its order, the Purchaser shall be entitled at any time to demand a corresponding guarantee according to its text and/or the assignment of corresponding materials as security, in particular of the ordered items being processed.

(4) The Supplier shall notify the Purchaser without delay of any transfer of the contract that occurs by operation of law and of any change to its company or the company's legal form or registered office.

(5) If an application for insolvency proceedings is filed with regard to the Supplier's assets or if there are sufficient indications that the prerequisites for filing for insolvency proceedings are met or that there are insufficient assets, the Purchaser shall have an immediate right of termination for cause, excluding any claims for compensation on the part of the Supplier.

#### **Sec. 17 Secrecy**

The Supplier and its vicarious agents must observe secrecy with regard to any implementation documents and informations of the Purchaser of which they obtain knowledge, regardless of their type and origin. The informations and documents may not be published, reproduced, made available to third parties or used for any other purpose than that originally intended without the prior written consent of the Purchaser. All orders may not be used or published beyond the scope of the order without the prior written consent of the Purchaser. The Supplier shall pass on the above obligations to the vicarious agents working for the Supplier.

#### **Sec. 18 Partial invalidity, advertising ban and data protection**

(1) These terms and conditions shall remain in full force and effect, even if individual parts are legally invalid.

(2) Our inquiries and orders may not be used for advertising purposes.

(3) Data arising in connection with the business relationship shall be stored and transmitted in files by the Purchaser.

#### **Sec. 19 Applicable law, place of jurisdiction and place of performance**

(1) Only the law applicable to the legal relations of domestic parties at the registered office of the ordering company, excluding foreign law, shall apply to all legal relations between the parties to the contract. The uniform UN Convention on Contracts for the International Sale of Goods shall not apply.

(2) The competent local court or regional court at the Purchaser's registered office shall be the place of jurisdiction for both parties. Aside from this, the Purchaser is entitled to choose the Supplier's general place of jurisdiction.

(3) The respective administrative seat of the Purchaser shall be the place of performance for payment claims of the parties and the respective place of receipt specified in the Purchaser's order form under "Shipping address" shall be the place of performance for all other claims.