



Schoeller Allibert

GENERAL PURCHASE CONDITIONS OF SCHOELLER ALLIBERT SERVICES B.V.

These General Purchase Conditions have been filed with the Chamber of Commerce.

CLAUSE 1 DEFINITIONS

- 1.1. **Agreement:** all agreements, appendices, annexes, supplements, additions thereto and renewals thereof, etc. between Schoeller Allibert and Supplier concerning the Supply.
- 1.2. **Confidentiality Agreement:** the confidentiality agreement, including additions, renewals, etc. between Schoeller Allibert and Supplier, which forms an integral part of the Agreement.
- 1.3. **Delivery Date:** the date on which Supplier has to deliver the Supply at a location designated by Schoeller Allibert.
- 1.4. **General Conditions:** these General Purchase Conditions of Schoeller Allibert.
- 1.5. **Party/Parties:** Schoeller Allibert and/or Supplier.
- 1.6. **Purchase Order(s):** orders, including new orders, additions or amendments thereto, etc. issued by Schoeller Allibert with Supplier for the production and delivery of the Supply.
- 1.7. **Schoeller Allibert:** the limited liability company, Schoeller Allibert Services B.V., with its statutory seat in Amsterdam, and its registered office in (2132 LS) Hoofddorp at the Taurusavenue 35 (Zuidtoren, 17th Floor), registered in the Trade Register of the Chamber of Commerce under number 57193118, including all its subsidiaries, affiliates and branches.
- 1.8. **Specifications:** the specifications, including drawings (if applicable), which form an integral part of the Agreement and/or Purchase Order.
- 1.9. **Supplier:** the counterparty of Schoeller Allibert in respect of the Agreement.
- 1.10. **Supply:** the goods and/or services as described in the Agreement and/or Purchase Order to be delivered by Supplier under the Agreement.
- 1.11. **Test(s):** tests/test runs of Supplier or Schoeller Allibert to determine and ensure that the Supply is in accordance with the Agreement, Purchase Order(s), Specifications and/or other requirements of Schoeller Allibert.

CLAUSE 2 APPLICABILITY GENERAL CONDITIONS AND AGREEMENT

- 2.1. These General Conditions form an integral part of and are applicable to every Agreement, Purchase Order, and any Specifications and Tests in connection to the Supply and every (other) agreement between Schoeller Allibert and Supplier, unless expressly agreed otherwise in writing.
- 2.2. A reference to the Supplier's own general terms and conditions and/or to other terms and conditions of Supplier are explicitly declined and have no effect. In case Supplier expressly declines the General Conditions, no Agreement will be concluded before consent of Parties with regard to the applicable terms and conditions.
- 2.3. Offers requested by Schoeller Allibert are not binding on Schoeller Allibert. An offer of Supplier is deemed irrevocable, unless it is expressly stated otherwise.

- 2.4. An Agreement is only formed upon: (i) Schoeller Allibert's issuance of a Purchase Order and the Supplier's acceptance of such Purchase Order, or (ii) the conclusion of any other agreement in writing by signature of both Parties.
- 2.5. Should commencement of the performance take place before an Agreement is formed, these General Conditions shall be deemed to be accepted by Supplier, without Schoeller Allibert being bound by Supplier's offer.

CLAUSE 3 RIGHTS AND OBLIGATIONS

Quality and inspection

- 3.1. Supplier shall ensure that the quality of the Supply complies with the Agreement, Purchase Order and the Specifications and any (other) requirements as agreed upon between Parties.
 - 3.2. Supplier shall ensure that the Supply, all materials used and the production thereof comply with all applicable legislation, regulations and/or standards, including – without limitation – Directive 2004/12/EC on packaging and packaging waste, ISO standard 14001, EN-Norms, British Standards and American Standards. Any modification, documentation, approval or procedure required by applicable legislation, regulations and/or standards shall be Supplier's responsibility.
 - 3.3. Schoeller Allibert is at all times entitled to inspect, study, audit and/or test the Supply, processes, materials and/or components used by Supplier and to witness any Test(s), which inspection, study, audit, test and/or witness shall be at Supplier's expense. This right of Schoeller Allibert is not affected by the location of the Supply at that time and Supplier shall provide Schoeller Allibert access to the relevant location for these purposes.
 - 3.4. If an inspection, study and/or Test shows that the Supply does not comply with the Agreement, Purchase Order and/or Specifications, and/or with applicable legislation, regulations and/or standards, the Supply will be unconditionally rejected by Schoeller Allibert. Supplier shall redeliver and/or repair the Supply within a reasonable period of time, at its own expense, without prejudice to Schoeller Allibert's right to claim damages or any other rights of Schoeller Allibert.
 - 3.5. If Schoeller Allibert rejects the Supply, the Supply must be collected by the Supplier within three (3) days after Schoeller Allibert's notice of rejection. If Supplier fails to collect the Supply within three (3) days, the Supply will be returned to the Supplier by Schoeller Allibert at Supplier's risk and expense.
- Delivery**
- 3.6. Unless otherwise agreed in writing, deliveries take place 'DDP', Delivered Duty Paid, as defined in the ICC Incoterms 2010, or the version of the Incoterms in effect at the time the Agreement is concluded. Delivery will take place at a delivery address designated by Schoeller Allibert.

- 3.7. The Delivery Date shall be considered a final deadline. If Supplier does not deliver the Supply on the Delivery Date, the Supplier will immediately be in default without any notice of default being required.
- 3.8. Delivery of the Supply before the Delivery Date may only take place after written approval by Schoeller Allibert and does not change the payment term of the relevant Supply.
- 3.9. In case circumstances arise or are foreseeable which (may) result in delivery of the Supply after the Delivery Date, Supplier shall immediately inform Schoeller Allibert in writing, stating the nature of these circumstances, the (prevention) measures taken or to be taken and the presumed duration of the delay.
- 3.10. In the event of delivery after the Delivery Date, Schoeller Allibert is entitled to impose a penalty of 10% of the invoice amount of the relevant Supply, without prejudice to Schoeller Allibert's (other) rights to compensation for any damages, including any penalties, incurred by Schoeller Allibert as a consequence of delivery after the Delivery Date by the Supplier.
- 3.11. Unless otherwise agreed upon in writing between the Parties, the Supplier shall not deliver the Supply in partial shipments. Schoeller Allibert is entitled to refuse unauthorised partial shipments and to return such shipments to Supplier at the expense of Supplier.
- 3.12. Schoeller Allibert is entitled to postpone delivery of the Supply at all times, taking into account the possible consequences postponement might have on Supplier. In case of postponement Supplier shall, without additional costs, store the Supply per request of Schoeller Allibert. Should or could postponement result in unreasonable situations or have a disproportionate effect on Supplier, Parties shall discuss reasonable and acceptable solutions to be able to execute the Agreement.
- 3.13. Ownership of the Supply transfers to Schoeller Allibert at the time of delivery of the Supply. In the event of rejection of the Supply by Schoeller Allibert, risk of the Supply remains with Supplier.
- 3.14. All products made available by Schoeller Allibert to Supplier in connection with the execution of the Agreement, shall at all times remain the property of Schoeller Allibert. Damage to these products shall at all times be at the expense of Supplier.
- 3.15. A declaration of receipt signed by personnel of Schoeller Allibert, does not constitute and does not imply a declaration of conformity of the Supply with the Agreement.

Transport

- 3.16. The Supplier shall arrange appropriate and adequate packaging and transport of the Supply in compliance with the Agreement, Purchase Order and/or Specifications and all applicable legislation, regulations and/or standards.
- 3.17. Ownership of packaging materials transfers to Schoeller Allibert at the time of delivery, except in case of deposit packaging. Supplier shall clearly indicate if deposit packaging is applicable. Deposit packaging shall be returned to the address indicated by Supplier at Supplier's risk and expense.
- 3.18. The Supply which should be considered as bulk cargo shall be carried by or on behalf of Supplier in an

adequate transport vehicle appropriate for such bulk goods. Any contaminations are at the risk and expense of Supplier.

Insurance

- 3.19. The Supplier shall ensure that a satisfactory, adequate and sufficient liability insurance is in place.
- 3.20. At the request of Schoeller Allibert, Supplier shall provide Schoeller Allibert with a copy of the liability insurance policy or other proof of the validity thereof.

CLAUSE 4 PAYMENT

- 4.1. Payment shall take place within 60 days after the invoice date, unless otherwise agreed upon in writing. Schoeller Allibert can suspend its payment obligations if the Supplier does not (fully and/or timely) perform its obligations under the Agreement. Payment by Schoeller Allibert does not in any way entail acceptance of the Supply. The Supplier is not entitled to suspend all or part of its obligations under the Agreement.
- 4.2. All prices are deemed to include transport costs, taxes, import duties, other duties, insurance, packaging (materials), disposal, unloading, installation, mounting and commissioning, unless explicitly otherwise agreed upon in writing by the Parties.
- 4.3. The Supplier is not entitled, on any ground whatsoever, to unilaterally increase the agreed purchase price. Unless otherwise agreed upon, the purchase price shall be fixed and binding during the term of the Agreement, shall be in Euro's and shall be exclusive of VAT. If the purchase price is indicated in foreign currency, Supplier shall ensure that the purchase price invoiced to Schoeller Allibert is converted to Euro's against the exchange rate applicable at the time Schoeller Allibert accepts an offer of Supplier by means of a Purchase Order.
- 4.4. In the event of advance payment by Schoeller Allibert, Schoeller Allibert can demand an unconditional and irrevocable bank guarantee by a reputable bank or any other security of Supplier beforehand, in order to ensure proper performance by Supplier of its obligations under the Agreement.
- 4.5. Schoeller Allibert has the right to set-off debts to the Supplier against claims on the Supplier. Supplier does not have the right to set-off any claims on Schoeller Allibert.

CLAUSE 5 BREACH, DAMAGES, LIABILITY AND INDEMNITY

- 5.1. If the Supply does not comply with the Agreement, Schoeller Allibert has the right to file a formal complaint with Supplier within reasonable time after discovery of any defect or within reasonable time within which Schoeller could have discovered such defect, even if the Supply has been processed, used, has been taken into operation or has passed on.
- 5.2. If the Supplier fails to perform one or more of its obligations under the Agreement, Schoeller Allibert shall be entitled, but not obliged, to take alternative measures, including the instruction of third parties at the full expense and risk of Supplier, in which case the damages including but not limited to additional costs incurred by Schoeller Allibert shall at all times be at Supplier's risk and expense.

- 5.3. Supplier shall at all times take the necessary measures to prevent further damages and losses at its own expense. Schoeller Allibert is entitled to take the necessary precautions to prevent further losses and damages caused by Supplier and recover all costs involved from Supplier.
- 5.4. Supplier shall compensate all damages (including damages resulting from improper packaging, security and transport and/or off-loading (whether or not physically carried out by Schoeller Allibert's (supervised by Supplier) personnel or not)) which Schoeller Allibert or third parties incur or may incur in connection with non-compliance by Supplier with one or more of its obligations under the Agreement, in which case all connected legal and non-legal costs shall also be borne by Supplier. With regard to any extrajudicial collection costs, Schoeller Allibert is entitled to charge a collection fee of 15% of the total invoice amount.
- 5.5. Supplier shall indemnify and hold Schoeller Allibert harmless against any (direct and indirect) damages or losses (including indirect losses, resulting losses, lost profit, missed savings and losses resulting from business interruption) Schoeller Allibert or any third party may incur as a result of non-compliance of Supplier with one or more of its obligations under the Agreement, without prejudice to any other rights of Schoeller Allibert.
- 5.6. Schoeller Allibert shall never be liable for any damages and losses in connection with and resulting from the Agreement and/or the Supply, unless such damages and losses result from gross negligence and/or misconduct of Schoeller Allibert or its managerial personnel.
- 5.7. Should Schoeller Allibert, notwithstanding Clause 5.6, be deemed liable, Schoeller Allibert's liability shall at all times be limited to the invoice amount for the Supply to which the liability relates and shall never exceed the amount that is paid out in the relevant case under Schoeller Allibert's liability insurance.

CLAUSE 6 TERM AND TERMINATION

- 6.1. The Agreement commences and terminates by operation of law on the dates agreed upon in the Agreement, unless Parties decide to extend the Agreement in writing. Extension of an Agreement takes place under the same conditions as the original Agreement, unless otherwise agreed upon in writing between the Parties.
- 6.2. The Agreement can only be amended in writing and only if it is duly signed by the representatives of both Parties.
- 6.3. Parties may terminate the Agreement immediately and without any additional written notice in case of:
 - (a) Bankruptcy of the other Party;
 - (b) Suspension of payments of the other Party;
 - (c) Liquidation of the other Party;
 - (d) Attachment or sequestration on a substantial part of the movable and immovable goods or other goods of the other Party.
- 6.4. Parties have the right to terminate the Agreement immediately and extra judicially if the other Party substantially fails in the performance of its obligations under the Agreement and does not, after having been

demanding in writing, remedy such non-performance within seven (7) days after receipt of the written demand, without prejudice to the right to claim damages.

- 6.5. The Party who is not able to perform under the Agreement as a result of force majeure (within the meaning of Article 6:75 of the Dutch Civil Code), has the right to suspend its obligations under the Agreement during the period of force majeure. The Party who expects not to be able to perform under the Agreement as a result of force majeure, immediately notifies the other Party in writing thereof.

CLAUSE 7 GUARANTEE

- 7.1. Supplier guarantees that the Supply is of first class design, construction, skill, material and quality and fully in accordance with the Agreement. Supplier furthermore guarantees that the Supply is suitable for the purpose for which the Supply has been purchased and complies with all applicable legislation, regulations and/or standards.
- 7.2. Supplier is bound to remedy all errors and defects which arise within a time period of 24 months after the Supply is taken into operation by Schoeller Allibert or at the latest 30 months after delivery of the Supply, upon Schoeller Allibert's first request, unless these errors and defects result from normal wear and tear or inexpert use

CLAUSE 8 PRODUCTS / INTELLECTUAL PROPERTY

- 8.1. All products of Schoeller Allibert made available to Supplier in connection with the Agreement, such as plans, designs, moulds, drawings, etc. shall remain the property of Schoeller Allibert and shall be returned to Schoeller Allibert immediately after performance of the Agreement or termination of the Agreement.
- 8.2. Supplier shall not use any products of Schoeller Allibert in any other way except as agreed upon in the Agreement.
- 8.3. Supplier shall not make any products of Schoeller Allibert available to third parties, without the express prior written consent of Schoeller Allibert.
- 8.4. Supplier guarantees that he has full ownership of the Supply or the right to transfer ownership of the Supply and indemnifies Schoeller Allibert against any infringement of any third party rights in that respect.
- 8.5. The Parties agree that all current and future intellectual property rights (including but not limited to: patent rights, copyrights, trademark rights and design rights), in respect of products and/or services manufactured and/or produced at Schoeller Allibert's request and/or instructions (as well as improvements thereof and additions thereto), vest and shall remain vested exclusively in Schoeller Allibert. At Schoeller Allibert's first request, the Supplier shall assign and transfer such intellectual property rights that may have vested in the Supplier to Schoeller Allibert
- 8.6. The Supplier guarantees that the Supply does not infringe the intellectual property or other rights of third parties. The Supplier indemnifies Schoeller Allibert against all third-party claims in this respect.
- 8.7. Parties shall immediately inform each other of (alleged) (imminent) infringements of the

intellectual property rights relating to the Supply or (alleged) (imminent) infringement by the Supply of third-party intellectual property rights. At such times, the Parties will consult with each other and render to each other all cooperation in order to enforce or avert claims in court.

CLAUSE 9 CONFIDENTIALITY

- 9.1. Supplier is subject to any applicable Confidentiality Agreement or non-disclosure agreement as agreed upon with Schoeller Allibert in connection with the Agreement. All information and/or knowledge in connection to the Agreement is deemed confidential, unless otherwise agreed upon in writing by the Parties and Supplier may not disclose any information in connection to the Agreement to third parties. This Clause survives the termination of the Agreement and remains in effect until written discharge of Supplier by Schoeller Allibert.
- 9.2. Supplier shall not exploit his relationship with Schoeller Allibert for promotional and commercial activities without the prior written consent of Schoeller Allibert.

CLAUSE 10 DISPUTES

- 10.1. All disputes concerning and arising from or in connection with offers from Supplier, Purchase Orders, the Supply and/or the Agreement will be submitted exclusively to the competent court in Amsterdam without prejudice to the right to appeal and the right to submit an appeal to the Supreme Court.

CLAUSE 11 APPLICABLE LAW

- 11.1. Any offer from Supplier and all Purchase Orders and Agreements, are governed exclusively by Dutch law,

with the exclusion of the Vienna Sales Convention.

CLAUSE 12 OTHER

- 12.1. If and to the extent that the Incoterms deviate from these General Conditions, these General Conditions shall prevail.
- 12.2. In the event of a conflict between the English text of the General Conditions and any translations thereof, the English text shall prevail.
- 12.3. If a provision of the Agreement, Purchase Order and/or these General Conditions should prove to be invalid or unenforceable, such will not alter the validity or enforceability of any other provision of the Agreement, Purchase Order and these General Conditions. Such an invalid or unenforceable provision will be replaced or will be deemed to have been replaced with a provision that is valid and enforceable and reflects as closely as possible the intent of the invalid or unenforceable provision.
- 12.4. Supplier's rights under the Agreement are not-transferable within the meaning of Article 3:83 paragraph 2 Dutch Civil Code and Supplier cannot transfer any of its obligations under the Agreement, without Schoeller Allibert's express prior written consent.
- 12.5. Schoeller Allibert has the right, without Supplier's prior approval, to transfer all or part of its rights and obligations under the Agreement to its affiliates. The Supplier herewith consents to such transfer beforehand.
