



Schoeller Allibert

**GENERAL PURCHASING TERMS AND CONDITIONS SCHOELLER ALLIBERT S.P.A. (Ed. 01-2019)**

These General Purchasing Terms and Conditions are published on the Internet website [www.schoellerallibert.com/it](http://www.schoellerallibert.com/it)

**1. DEFINITIONS**

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- 1.1. **General Terms and Conditions:** these General Purchasing Terms and Conditions of Schoeller Allibert.
- 1.2. **Confirmation of an Order:** the confirmation sent by the Supplier in writing (also by e-mail) to Schoeller Allibert in acceptance of the Purchase Order. Confirmation of an order may consist only in the full and unconditional acceptance of the Purchase Order. Any correction or demonstration of different intent shall be understood as not applicable.
- 1.3. **Contract:** is the entirety of the General Purchasing Terms and Conditions, of the Purchase Order, of the Confirmation of an Order, of the Specifications and of all documents listed in them and which are an integral part of them.
- 1.4. **Delivery date:** the final date by which the Supplier must deliver the Supplies to the place indicated by Schoeller Allibert.
- 1.5. **Supplier:** any company, agency or juridical entity that sells raw materials, products and/or goods of any kind to Schoeller Allibert.
- 1.6. **Supplies:** the goods as described in the Contract and/or in the Purchase Order.
- 1.7. **Confidential Information:** The following are to be considered unconditionally confidential:  
(a) All Information and experiences, including all deeds, documents, items of news, data, knowledge, software (including the source code), procedures, formulae, models, samples, designs, printing plates, matrices, equipment and instruments, stamps, production specifications, business secrets and know-how, even if they are not patentable in any way and in any form or support, even if they are not specifically relevant to the subject of the Contract,  
(b) as well as all information regarding the company organisation of Schoeller Allibert, or of the businesses, its customers and/or suppliers: meaning, therefore, in particular, all

information regarding the administration, the services and the commercial structure, fully employed and para-subordinate staff (level, qualifications, duties, pay ...), the customers and the relationships with third parties, which has been communicated or passed on, by whatever right or for whatever reason or which, in any case, is at the disposal of the Supplier.

- 1.8. **Purchase Order:** the document transmitted by Schoeller Allibert to the Supplier for a specific production and/or delivery of the goods referred to as the Supplies
- 1.9. **Party / Parties:** Schoeller Allibert and/or the Supplier.
- 1.10. **Schoeller Allibert:** Schoeller Allibert S.p.A., sole proprietorship, subject to management and coordination activities of LA HOLDING LTD and participant in the Gruppo Schoeller Allibert, currently in Volvera (TO) – Frazione Zucche, via Enzo Ferrari n. 1, fully paid up share capital euro 104,000.00, registration number in the Turin Companies Register and Tax Code 00517600011 and VAT no. 07769340014.
- 1.11. **Specifications:** the technical and/or functional characteristics to which the goods must correspond, and for which the descriptions – also including designs where possible – form an integral part of the Purchase Order and/or of the Contract.

**2. SCOPE**

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2.1. The General Terms and Conditions shown hereinafter comprise an integral and substantial part and are applicable to every Purchase Order and Confirmation of an Order, to every Specification relating to the Supplies and, in general, to every Contract agreed between Schoeller Allibert and the Supplier, even without any express reference to them or any specific agreement to that effect. That is because these General Terms and Conditions are agreed to be fully accepted by the Supplier on

confirmation of the order and, in any case, on conclusion of the Contract.

**2.2.** It is the duty of the Supplier, applying ordinary diligence, to make themselves aware of these General Terms and Conditions and any future amendments to them, all of which are duly published as stated in the opening paragraph.

**2.3.** The Supplier is not entitled to invoke nor object to any terms and conditions other than those included in these General Terms and Conditions. This means, therefore, that any general and/or particular terms and conditions of the Supplier shall not be applicable, whether stated by the Supplier in the Confirmation of an Order or, in any case, shown in their brochures, catalogues, internet websites, publications, designs or otherwise.

**2.4.** Any terms or conditions differing from these General Terms and Conditions shall be applicable only if expressly agreed on by the Parties in writing. Even in that case, these General Terms and Conditions shall continue to apply to the parts not subject to waiver.

**2.5.** Any request for an offer made by Schoeller Allibert is to be understood as not binding and may be revoked at any time. On the contrary, every offer presented by the Supplier shall be considered irrevocable, unless there is an express agreement in place to the contrary.

**2.6.** The Contract is to be considered concluded (i) when the Purchase Order from Schoeller Allibert has been fully and unconditionally accepted by the Supplier by means of the Confirmation of an Order or (ii) when the Supplier has started performance of the Purchase Order.

**2.7.** Any amendment to the Contract must be expressly agreed by the Parties in writing.

### **3. RIGHTS AND DUTIES**

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#### **Quality and powers of**

##### **inspection**

**3.1.** The Supplier guarantees that the quality of the supplies complies with the Contract, the Purchase Order and the Specifications and meets any other requirements agreed between the Parties.

**3.2.** The Supplier also guarantees that the Supplies, all materials used and their production comply with applicable legislative and regulatory provisions, both national and international, and/or applicable standards, including

- purely for the sake of example - Directive 2004/12/CE, regarding packaging and disposal of packaging, the ISO 14001 Standard, European (EN) Standards, British Standards and American Standards.

**3.3.** At the Supplier's expense, Schoeller Allibert is entitled to monitor at any time the correct, precise performance of the Supplies. For such purpose, inspectors appointed by Schoeller Allibert shall be

allowed access, during working hours and subject to prior notice, to the Supplier's premises.

**3.4.** If, as the result of an inspection, any particular Supply proves, even partially, not to be in compliance with the Contract, or does not conform to applicable legislation, regulations and/or standards, such Supply may be wholly rejected by Schoeller Allibert. On such occurrence, Schoeller Allibert is entitled, but not obliged, to set a date of no less than five (5) days within which the Supplier is bound to ensure compliance with the previously determined terms and conditions.

If the set date passes without remedy, Schoeller Allibert, of its own accord, may take measures either directly or through third parties and charge any related expense incurred to the Supplier, or may fully or partially terminate the Contract, without prejudice, in any case, to entitlement to compensation for damages incurred.

**3.5.** In the event of an inspection revealing defects and/or non-compliance on the part of the Supplier, Schoeller Allibert retains the right to suspend payments, pursuant to art. 1460 of the Italian civil code.

**3.6.** Inspections and any provisional acceptances do not exempt the Supplier from their contractual duties and responsibilities

**3.7.** In the event of a Supplier being rejected by Schoeller Allibert, that Supplier must withdraw its products within three (3) days of receipt of the notice of rejection. If the Supplier does not take steps to withdraw within the deadline stated above, the Supplies shall be despatched by Schoeller Allibert, at the expense and risk of the Supplier.

#### **Delivery method and performance**

**3.8.** Unless otherwise agreed in writing, delivery of the Products is understood to be "Delivery Duty Paid", as defined by Incoterms® ICC 2010 or by the version of Incoterms that is in force at the time of conclusion of the Contract. The delivery address shall be stated by Schoeller Allibert in the Purchase Order.

**3.9.** The Supplier must comply punctually with the delivery dates stated in the Purchase Order and/or Contract (which are to be considered essential, in the interests of Schoeller Allibert). In the event of failure to comply with the delivery dates, the Supplier shall be considered to all legal effects in breach of contract, without the necessity of formal notice.

**3.10.** Any delivery in advance of the prescribed date may only be made with the prior written agreement of Schoeller Allibert and shall not, in any case, have the effect of altering the agreed terms for payment.

**3.11.** In the event of circumstances arising or being foreseeable, including those of force majeure, which might lead to delay in delivery of the goods, the Supplier must give immediate notice to Schoeller Allibert in writing, explaining the nature of the circumstances, the measures implemented or to be implemented and the expected length of delay.

**3.12.** In the event of late delivery of the goods, the Supplier shall be bound to pay, as a penalty charge, an amount corresponding to 1% of the value of the Supplies for each week of delay, up to a maximum equivalent to 10% of the value of the supplies, notwithstanding the right of Schoeller Allibert to claim compensation for further damages, direct or indirect, including therein, but not restricted only to them, damages through loss of production, as a consequence of the delay however.

**3.13.** Unless otherwise agreed in writing, the Supplier may not perform the Contract by means of partial deliveries. Schoeller Allibert shall be entitled to reject a partial delivery and return the goods at the expense of the Supplier.

**3.14.** Schoeller Allibert shall be entitled to ask for postponement of delivery at any time. In such event, the Supplier shall, without being entitled to claim extra costs, keep the supplies on request by Schoeller Allibert. If the postponement of the delivery leads to disproportionate costs for the Supplier, the Parties shall mutually negotiate a reasonable solution for performance of the Contract.

**3.15.** Ownership of the products is transferred to Schoeller Allibert at the time of delivery of the Supplies. In the event of rejection of the Supplies, the risks continue to be borne by the Supplier.

**3.16.** Mere receipt of the delivery of the Supplies does not imply acceptance, nor does it represent acknowledgement of compliance of the Supplies with the Purchase Order or the Contract.

#### **Transportation**

**3.17.** The Supplier must ensure appropriate and adequate packaging of the Supplies for transportation, in accordance with the Contract, legislation, regulations and/or standards as applicable.

**3.18.** Ownership of the packaging is transferred to Schoeller Allibert at the time of delivery, unless otherwise agreed between the Parties.

**3.19.** Those Supplies consisting of loose materials must be transported by or on behalf of the Supplier with an adequate vehicle, which is suitable for such goods. Any contamination is at the risk and expense of the Supplier.

#### **Insurance**

**3.20.** Notwithstanding the liability of the Supplier in relation to Schoeller Allibert, the Supplier undertakes to take out an adequate insurance policy and keep it in force for the whole period of validity of commercial relations with Schoeller Allibert (with leading insurance companies and limits of liability as defined by normal market conditions) in order to cover public liability under any form, including therein liability for damage caused by the product.

**3.21.** The Supplier shall provide Schoeller Allibert with a copy of the said insurance policy, as under art. 3.20, together with the certificate of payment of the relevant premium.

## **4. PRICES AND TERMS OF PAYMENT**

**4.1.** The invoice for the Supplies must be issued in accordance with fiscal regulations in force and must always contain reference to the Purchase Order number.

**4.2.** Payment of the due price by Schoeller Allibert shall occur within the time limit of ninety (90) days from the end of the month shown in the date of the invoice, unless otherwise agreed in writing.

Payment by Schoeller Allibert of the price agreed in the Contract does not represent in any way acknowledgement of compliance of the Supplies and does not release the Supplier from their liabilities or their duties.

In any case, Schoeller Allibert may suspend the payment, pursuant to art. 1460 of the Italian civil code, if the Supplier fails to fulfil its duties arising from the Contract.

The Supplier is not entitled in any case to suspend the Supplies, either wholly or partially.

**4.3.** All prices are understood to be inclusive of transportation costs, taxes, excise duty, customs fees and other tax dues, as well as costs of packing, disposal, unloading, installation and fitting and commissioning, unless otherwise agreed in writing between the Parties.

**4.4.** Unless otherwise agreed, the purchase price is always pre-determined, in other words not subject to review, even as an express waiver to article 1467 of the Italian civil code, and is expressed in Euro, exclusive of VAT.

The Supplier is not entitled, for any reason, to increase the mutually agreed selling price unilaterally.

If the purchase price is expressed in foreign currency, the Supplier must guarantee that the price invoiced to Schoeller Allibert is converted into Euro at the exchange rate applicable at the time Schoeller Allibert issued its Purchase Order.

**4.5.** In the event of advance payment, Schoeller Allibert is entitled to be provided with a first demand bond by the Supplier, from a leading credit institute, or some other equivalent form of guarantee, in order to guarantee correct fulfilment on the part of the Supplier of the duties prescribed by the Contract.

**4.6.** Subject to agreement, each of the Parties may compensate for established, liquid and payable sums owing to the other Party for whatever reason, including those owing as penalties.

## **5. GUARANTEE**

**5.1.** The Supplier guarantees that the Supplies (i) shall be fully compliant with the prescriptions in the Purchase Order, the Contract and their related documentation; (ii) shall be suitable for the purpose for which they have been supplied; (iii) shall conform to the best industrial practice and to standards and regulations

applicable; (iv) shall be free of any fault and/or defect related to their design, materials, processing, construction and installation.

**5.2.** This guarantee, unless otherwise agreed by the Contract, lasts for thirty (30) months from the date of delivery of the Supplies. In the event of use of the goods subject to the Supplies, the guarantee is restricted to the period of twenty four (24) months from commissioning.

**5.3.** Pursuant to art. 1495 Italian civil code, the time limit for Schoeller Allibert to report faults to the Supplier is forty five (45) days from the time they are detected.

**5.4.** In the event of faults and/or defects being detected during the guarantee period, the Supplier shall be bound to repair or replace, at its own expense and promptly within seven (7) days of being given notice, any faulty part of the Supplies.

The cost of returning faulty goods shall be payable by the Supplier.

Any goods repaired or delivered as replacements shall be guaranteed for the same length of time and on the same conditions as the original goods.

**5.5.** Should the Supplier fail to remedy promptly any defect in or non-compliance of the products, Schoeller Allibert may, as an alternative and at its own discretion, (i) terminate the Contract in accordance with the provisions of art. 8.2, (ii) be entitled to an appropriate reduction in price corresponding to the value of the defective or non-compliant goods, (iii) have all necessary work done by third parties of its own choice, at the expense of the Supplier, notwithstanding, in any case, the right of Schoeller Allibert to compensation for the damage incurred.

## **6. LIABILITY**

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**6.1.** The Supplier shall be liable to Schoeller Allibert and any third party and shall release Schoeller Allibert from liability and indemnify them against any loss, damage, (direct or indirect, including therein, but not restricted only to, damages of production and/or productivity), claims from third parties, costs and expenses of any nature whatsoever, incurred either by Schoeller Allibert or by third parties, arising from breach on the part of the Supplier of its obligations under the Contract.

**6.2.** Except in the event of fraud or gross negligence, Schoeller Allibert shall not be held liable for damage or loss in connection with and/or arising from the Contract.

**6.3.** It is, in any case, agreed that any liability acknowledged to be held against Schoeller Allibert, waiving and/or notwithstanding the provisions under clause 6.2, shall be limited to a sum equivalent to the price paid by Schoeller Allibert for the Supplies (excluding any compensation for any further damages and expenses of any kind whatsoever) and shall not in any case exceed any compensation

paid by the insurance company, covering the public liability of Schoeller Allibert.

## **7. FORCE MAJEURE**

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**7.1.** Notwithstanding what is laid down in the following article 8.2, failure to perform duties by one of the Parties shall not constitute breach of obligations prescribed by the Contract if the non-performance is caused by a force majeure. The Party expecting to be unable to fulfil its duties due to force majeure shall take steps to give notice to the other Party at the earliest opportunity.

For the purposes of this article, reasons of force majeure are considered to be such events that the Party is unable to prevent or avoid, such as, inter alia and purely for the sake of example, acts of war and the like, acts of terrorism or sabotage, epidemics, natural disasters, explosions, fires, destruction of machinery, prolonged suspension of transport systems, lack of raw materials or fuels, breakdown of machinery, strikes, occupation of factories and premises, provisions of any kind of government authority.

## **8. TERMINATION**

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**8.1.** In the event of non-fulfilment by the Supplier of its duties arising from the Contract, Schoeller Allibert may, without prejudice to further remedies prescribed by the law, by the Contract and/or these General Terms and Conditions for specific circumstances, serve notice on the Supplier to fulfil within the time limit of seven (7) days from receipt of such notice, with warning that, if the said time limit passes without response, the Contract shall be understood to be terminated.

**8.2.** In addition to what is prescribed in paragraph 8.1, Schoeller Allibert may terminate the Contract immediately and without need for prior notice in the following cases:

(a) if the Supplier is in breach of its obligations under articles 3.9, 5.4 and 12;

(b) if the Supplier is not able to fulfil its contractual obligations due to circumstances of force majeure that are protracted over a continuous period in excess of thirty (30) days.

(c) if the Supplier is subject to bankruptcy, composition or any insolvency or liquidation procedure;

(d) in the event of seizure of a substantial part of the Supplier's movable and property assets or other assets.

## **9. INTELLECTUAL AND INDUSTRIAL PROPERTY**

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**9.1.** All the information and experience (“Confidential Information”) of Schoeller Allibert made available to the Supplier under or even only loosely associated with the Contract, shall remain the property of Schoeller Allibert and shall be returned to Schoeller Allibert immediately after the completed performance or the termination of the Contract. It is strictly forbidden to reproduce these elements or to produce products identical to those referred to in the Contract.

**9.2.** The Supplier may not use or make use of the information and experience of Schoeller Allibert in a different manner and/or for different purposes than those prescribed in the Contract.

**9.3.** The Supplier is not authorised to make the products (or parts of them) nor the information and experience of Schoeller Allibert available to third parties, without the written consent of Schoeller Allibert.

**9.4.** The Supplier guarantees that the Supplies do not breach copyright, patents, trade marks or any other intellectual or industrial property rights of third parties. The Supplier undertakes to indemnify and release Schoeller Allibert from liability with regard to any claim whatsoever, including those for compensation, from third parties.

**9.5.** The Parties agree that all the equity rights to intellectual or industrial property (including, inter alia and purely for the sake of example, those relating to patents, models, brands, know-how and all copyright), whether existing or future, related however to the products manufactured in accordance with the instructions and Specifications provided by Schoeller Allibert (together with any related improvements and additions), shall be or shall become, in any case, fully and exclusively the property of Schoeller Allibert.

**9.6.** The Supplier also undertakes to collaborate with Schoeller Allibert, also by filling in and/or signing all required documentation

- including all the required documents for depositing, assignment, registering and/or transfer - to ensure full and exclusive ownership for Schoeller Allibert of all the aforementioned equity rights to intellectual or industrial property, without any fees and/or payment, of any description, payable by Schoeller Allibert.

**9.7.** The Parties undertake to inform each other as soon as possible regarding any breach whatsoever of intellectual property rights committed or suffered by third parties and related to the Supplies. In such circumstances, the Parties undertake to consult and provide each other with all the necessary assistance to assert or defend their rights.

## **10. OBLIGATIONS OF CONFIDENTIALITY – PROTECTION OF PERSONAL DATA**

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**10.1.** The Supplier undertakes, without any time limit and even after termination of the Contract, for whatever reason that may have occurred, to keep the Confidential Information acquired and/or used under and/or at the time of performance of the Contract strictly confidential and adopt all the required measures to ensure it remains strictly confidential and, in any case not to disclose it to third parties, unless in the case of express written consent of Schoeller Allibert, or of fulfilment of a legal obligation and/or of an order issued by a Judicial Authority.

**10.2.** The Supplier and Schoeller Allibert give notice to each other that the information that passes from one Party to the other under and/or at the time of performance of the Contract might concern and/or contain personal data, including that of third parties (the “Personal Data”) subject to the discipline of Regulation (EU) 2016/679 of the European Parliament (hereinafter “GDPR”) and of further standards, codes, regulations and/or provisions applicable in any case (the “Privacy Laws”).

In the event of Personal Data processing, the Party carrying out such processing undertakes to observe the GDPR and Privacy Laws, in any case processing the Personal Data exclusively for those purposes strictly connected with performance of the Contract, so as to ensure its security and confidentiality and that it is only kept for the length of time that is strictly necessary for completion of the purposes it is being processed for, or for the longer time required to ensure fulfilment of any legal obligations.

**10.3.** The Supplier may not in any way exploit its relationship with Schoeller Allibert for promotional and/or commercial purposes without prior authorisation in writing by Schoeller Allibert itself.

## **11. COMPLIANCE WITH STANDARDS AND PRINCIPLES**

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**11.1.** The Supplier, in performance of the Contract, undertakes to observe strictly all legislative and regulatory provisions in force, whether national or international, as well as all standards applicable as under article 3.2.

## **12. APPLICABLE LAW AND EXCLUSIVE JURISDICTION**

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**12.1.** These General Terms and Conditions and the Contract are subject to Italian law. Application of the Vienna Convention on the International Sale of Goods is excluded.

12.2. Any dispute however caused by these General Terms and Conditions or by the Contract shall be normally be subjected to the exclusive jurisdiction of the Court of Turin.

**13. FINAL PROVISIONS**

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13.1. The Supplier may not assign the Contract to third parties in any form whatsoever, nor any credit or obligation deriving from it, without prior written consent from Schoeller Allibert.

13.2. Schoeller Allibert shall be entitled to assign or transfer the Contract to subsidiary companies at any time, subject to written notice being given to the Supplier.

13.3. The Supplier declares that it accepts as of now, pursuant to and in accordance with art. 1264 Italian civil code, any assignment of credits owed by itself to Schoeller Allibert, thereby releasing

Schoeller Allibert expressly from any other duty of notification, other than the confirmation of the assignment by means of registered letter with proof of receipt or by certified email.

13.4. Any invalidity or, in any case, inefficacy of any of the provisions of these General Terms and Conditions or of the Contract shall not prejudice the validity and efficacy of the remaining legally and functionally independent clauses, notwithstanding what is prescribed by art. 1419, I paragraph Italian civil code. The Parties shall replace the invalid or ineffective clause with a new clause that corresponds - as far as possible - to the intentions and the economic purposes pursued by the replaced clause.

13.5. Any delay in asserting any one or more of the rights laid down in these General Terms and Conditions may not, in any case, be understood as a definitive surrender of all such rights and shall be no impediment to demanding their prompt and strict fulfilment at any time.

Place and date

The Supplier

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The Supplier declares that they have read and understood the above stated General Purchasing Terms and Conditions and that they accept specifically, pursuant to articles 1341 and 1342 Italian civil code, the contents of the following clauses:

- 3.12. Penalty for late delivery;
- 4.2. Right of suspension of performance of the Contract;
- 6. Liability;
- 7. Reasons of force majeure;
- 12. Applicable law and exclusive jurisdiction;
- 13.1. Prohibition of assignment of the Contract.

Place and date

The Supplier

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