

**Terms and Conditions of Sale, Delivery and Payment**

The following terms and conditions of sale, delivery and payment shall govern all orders for goods and services. Any purchasing terms and conditions of the Customer are hereby expressly excluded unless expressly agreed in writing.

A reference to "We" herein is a reference to SCHOTT Australia Pty. Ltd.

A reference to "You" is to the Customer.

**1. Orders, Prices and Conditions of Payment**

- 1.1 We calculate the applicable prices on the date of receipt of an order, such prices being in Australian dollars (AUD) unless otherwise stipulated, plus an additional amount for GST as applicable from time to time. Unless special terms are agreed, the prices are *ex works*, with no deduction or discount being granted for immediate payment.
- 1.2 If payment terms are not met, we reserve the right to charge interest at the rate charged by our bank on overdraft facilities. Furthermore, the entire balance due on the account shall become due and payable immediately, irrespective of any payment arrangements previously made.
- 1.3 In the case of any orders for custom-made products to your specifications, we reserve the right to increase the price by a reasonable amount and to deviate to a reasonable extent from the agreed quantity. The Customer must take delivery of surplus quantities. In respect of pressed pieces and glass feed-through headers, a variation of +/-10% in relation to the ordered quantity shall be deemed reasonable.

**2. Delivery Dates**

We will use all reasonable endeavours to meet the stipulated delivery dates provided in the Order. However, due to the hazards and peculiar features of glass processing, time for delivery shall not be of the essence unless otherwise expressly agreed in writing. Our time stipulations are subject to our supplier delivering the correct products to us and on time. Any delay in delivery shall not give rise to any claim by you for non-payment or refusal of delivery or any other claim for loss or damage.

**3. Place of Performance and Passing of Risk**

- 3.1 The place for delivery and payment is our principal place of business.
- 3.2 When goods are transported, the risk (of accidental loss, destruction or deterioration) (the "Risk") shall pass to the Customer as soon as we have delivered the goods to the carrier chosen by us.

**4. Packaging**

Unless otherwise agreed, we will not accept the return of packaging unless we are obliged to do so under Australian law.

**5. Warranties in Respect of Material Defects and Notification of Defects**

- 5.1 All defects and any claims in respect of the goods must be notified in writing without delay, and in any case no later than 14 days after delivery of the goods. Hidden defects must be notified without delay immediately after their discovery, otherwise the goods shall be deemed to have been accepted.

- 5.2 Any claims relating to defects in quality of the goods ("material defects") must be made in writing and received by us within 12 months after delivery of the goods to the Customer. No claims will be accepted which are made 12 months after delivery of the goods. The foregoing provisions are subject to any applicable legislation under the applicable proper law of these terms and conditions. Our consent must be obtained before any goods are returned.
- 5.3 If the delivered goods contain a defect that already existed at the time of delivery then we will, at our election and subject to receiving notification of the defect within the required time, either repair the goods or arrange for substitute goods to be delivered.
- 5.4 If performance under Item 5.3 cannot be rendered, the Customer may rescind the agreement and recover the purchase price. We shall not be liable for any claim for loss, damage or expenses incurred.
- 5.5 The following shall not give rise to any claims based on defects: immaterial deviations from the agreed condition of the goods, immaterial impairments to their utility, natural wear and tear, or loss or damage that arises after the Risk has passed as a result of incorrect or careless treatment, overuse, unsuitable operating resources, defective building work, unsuitable building foundations or special external influences that are not requirements under the contract. In addition, if the Customer or a third party improperly (in a non-workmanlike manner) carries out maintenance work or modifications, then no claims based on defects may be made in respect of such work or modifications or the resulting consequences.
- 5.6 Claims on the part of the Customer for expenses necessary to enable subsequent performance, particularly transport, infrastructure (e.g., tolls) and labour costs and the cost of materials, are excluded to the extent that such expenses are higher because the goods delivered by us were subsequently taken to a location other than the Customer's business premises, unless such transportation is consistent with the authorised use of the goods.
- 5.7 The provisions of Item 7 shall otherwise apply to any other claims on the part of the Customer for compensatory damages or the reimbursement of costs.
- 5.8 To the extent permitted by law the warranties implied by the Sale of Goods Act 1923 are expressly excluded.

## **6. Industrial Property Rights and Copyright; Title Defects**

- 6.1 Unless otherwise agreed, we will deliver the goods free from the industrial property rights and copyrights of third parties (hereinafter referred to as "Proprietary Rights"). In the event that a third party makes a legitimate claim against the Customer for infringement of Proprietary Rights based on the goods delivered by us and used in accordance with the contract, we shall be liable to the Customer for any claim made within the period specified in Item 5.2 above as follows:
- a) At our election and at our own expense, we will either secure a licence for the goods concerned, or modify them so that the Proprietary Right is not infringed, or exchange them. If we are unable to do any of the above on reasonable terms, then the Customer shall be entitled to rescind the contract and obtain a refund of the contract price. The Customer may not demand compensation or make any claim for loss of profits or other damage or make claim reimbursement for expenses incurred.
  - b) The provisions of Item 7 shall apply to any claims for compensatory damages.

- c) Our obligations as described above shall exist only on the condition that the Customer notifies us in writing without delay of the claims asserted by the third party, the Customer does not admit to the infringement and leaves in our hands any defence of the claims and settlement negotiations. If the Customer discontinues using the delivered goods in order to mitigate loss or for any other good reason, then the Customer shall bring to the attention of the third party the fact that discontinuing use of the goods in no way constitutes an admission of an infringement of Proprietary Rights.
- 6.2 Claims on the part of the Customer are excluded if the Customer is responsible for the infringement of Proprietary Rights.
- 6.3 Claims on the part of the Customer shall be further excluded if the infringement of Proprietary Rights is a result of special instructions issued by the Customer, an application or use of the goods that was not foreseeable or permitted by us, or as a result of the Customer modifying the goods or using them together with goods not delivered by us.

## **7. Other Claims for Compensatory Damages**

- 7.1 In the event of a breach of a contractual obligation, our liability shall be limited to contractual loss or damage that was foreseeable at the time the contract was entered into. The Customer is not permitted to make a claim for loss of profits, punitive or exemplary damages.
- 7.2 For loss or damage caused by delay due to negligence, our liability is limited to a maximum of 5% of the purchase price of the goods.
- 7.3 Except as provided in Item 7.2 our liability for negligence is hereby excluded.
- 7.4 The exclusions and limitations of liability set forth under Items 7.1 to 7.3 shall not apply in the event that a warranty is given with respect to the condition of the goods, a defect is fraudulently concealed, or in the event of injury to life, physical injury or injury to health, or strict liability under Australian law.

## **8. Non-binding Nature of Drawings, Diagrams, Measurements and Weights**

Any drawings, diagrams, measurements and weights supplied by us are approximate only, unless they are expressly stipulated in writing to be binding. The Customer must guarantee that working drawings (construction diagrams) supplied by it to us do not infringe the Proprietary Rights of third parties. The Customer must hold us harmless and indemnify and keep us indemnified in the event that any rights of recourse are asserted by a third party.

## **9. Documents**

Documents supplied by us may not be copied or made available to third parties, or used for any purpose other than the agreed purpose.

## **10. Reservation of Title**

- 10.1 We shall retain title to the goods until payment is made in full for the goods and all of our claims, including claims arising in the future, are fully paid. The Customer may process and sell the goods in accordance with the following conditions:
- (a) If the goods are further processed or remodelled by the Customer, then we shall be deemed the manufacturer and shall acquire title to the intermediate or final products. The processor shall be merely the custodian.

- (b) If the goods subject to the reservation of title ("reserved goods") are mixed or processed with other property not belonging to us, then we shall acquire a co-ownership interest in the new item proportionate to the value of the reserved goods to the other property.

- 10.2 The goods may be sold only in the normal and ordinary course of business and only if claims deriving from their resale are not assigned to third parties beforehand. The Customer's claims deriving from resale of the goods shall, upon execution of the purchase agreement between us and the Customer, be deemed assigned to us to the extent that our goods are mixed or inter-processed with other property. In such a case, the assigned claims shall serve as our security only up to the value of the reserved goods sold in each case. We will not collect on the assigned claims for as long as the Customer complies with its payment obligations. However, the Customer has an obligation to disclose to us the identity of the third party debtor at our request and to notify such debtor of the assignment. The Customer may collect on the claims itself unless and until it receives instructions (to the contrary) from us. The Customer must immediately transfer the amounts collected by it to the extent that our claims are due.
- 10.3 Pledges or the granting of security interests in the reserved goods or the assigned claims are not permitted. The Customer must inform us immediately of any action by third parties affecting the goods delivered subject to a reservation of title or the assigned claims. We agree to release the assigned claims at our election if they exceed the value of our claims to be secured by more than 20% and are derived from fully paid goods.
- 10.4 In the event of breach of a term of these Terms and Conditions by the Customer, particularly in the case of default on payment, we are entitled to recover the goods. The Customer has an obligation to deliver up the goods.
- 10.5 If, in the case of sales of goods outside of Australia, the reservation of title agreed under Item 10 is not permitted to the same effect as under Australian law, then we shall retain title to the goods until payment of all of our claims arising out of the contractual relationship formed through the sale of the goods. If the foregoing reservation of title is not permitted with the same effect as under Australian law either, but it is permissible to reserve other rights in respect of the goods, then we are authorised to exercise all of these rights. The Customer shall cooperate in all actions we may wish to take in order to protect our ownership interest or alternative right in the goods.

## 11. Relevant Information regarding Electronic Commerce

In case we use electronic means for the conclusion of a contract with regard to the supply of goods or rendering of services ("e-commerce") the Customer waives its rights regarding:

- (a) The availability and explanation of a system to recognize and correct input errors before submitting an order; and
- (b) The supply of information regarding:
  - (i) the necessary steps to conclude a contract,
  - (ii) electronic storage of the contract so concluded and its accessibility to the Customer, and
  - (iii) the possible languages available for contract conclusion.

## 12. Applicable Law and Judicial Forum

- 12.1 The law in force in New South Wales shall apply to all legal relationships and transactions established between the parties under these Terms and Conditions. The

Customer hereby submits to the exclusive jurisdiction of the courts of New South Wales.

- 12.2 The judicial forum for both parties, including for bill of exchange matters, is our principal place of business (registered office). If we become the plaintiff in litigation, then we are also entitled to bring an action in the jurisdiction of the Customer's principal place of business (registered office).