

The following terms and conditions govern purchase agreements and other contracts relating to goods and services made, or agreed to by the company SCHOTT Flat Glass CR, s.r.o.(hereafter named 'SCHOTT'). These terms are not applicable for construction, construction services or employment contracts.

**1. Applicability**

Unless otherwise individually agreed in writing, the legal relationship between the Supplier and SCHOTT with respect to the transactions described will be based exclusively on the following terms and conditions. Any conflicting terms and conditions or terms and conditions, which are in any way inconsistent herewith provided by the Supplier shall not apply, even if SCHOTT fails to expressly reject such terms and conditions in any given case, specifically when ordered goods are accepted without objection, unless with SCHOTT's explicit prior written consent.

**2. Writing requirement**

All orders, together with any modifications or supplements thereto, must be made in writing. Any derogation from this requirement must likewise be agreed by both parties in writing.

**3. Revocation**

SCHOTT has the right to revoke its order free of cost if the Supplier fails to confirm such order verbatim within two weeks following its receipt thereof.

**4. Delivery dates**

a) Any agreed delivery dates for goods or services are binding. If any delays are anticipated or in fact occur, the Supplier shall promptly notify SCHOTT thereof.

b) If, as a result of the Supplier's fault, the delivery date deadline is not met (default), then SCHOTT may demand compensatory damages, without prejudicing its other rights.

c) If the Supplier fails to perform its contractual duties within a reasonable time period of grace stipulated by SCHOTT, then SCHOTT will have the right, following the expiration of such period, to commission a third party to perform the Agreement and to demand that the Supplier reimburse SCHOTT for necessary expenses and additional costs incurred as a result. SCHOTT also has the right to demand compensatory damages in lieu of specific

performance. Upon expiration of the grace period, the Supplier's right to cure and SCHOTT's obligation to accept such performance will lapse as soon as SCHOTT procures substitute performance on its own in lieu of specific performance, or if SCHOTT demands compensatory damages in lieu of specific performance.

## **5. Prices**

The prices are firm. These prices include all expenses connected with the goods and services to be provided by the Supplier.

## **6. Processing and delivery**

a) The Supplier may sub-contract only with the consent of SCHOTT, unless such sub-contracts relate simply to the supply of marketable components. Any supply requests concerning the type and quantity of the requested goods and the delivery schedule are binding. Instalment deliveries require the consent of SCHOTT.

b) A delivery note must accompany every delivery, and must indicate the order number of SCHOTT and describe the contents according to type and quantity.

c) A technical description and a user manual must accompany devices and is free of charge. Software products will be deemed duly delivered only after all documentation (system-technical and user) has been delivered. With respect to any programs specifically written for SCHOTT, the program should also be delivered in source code format.

d) The Supplier will be liable to SCHOTT for all required due and proper labelling/marketing of all consignments and especially for the indication of any customs charge numbers from the German export list. Such labelling/marketing shall also be repeated in confirmations of order and all shipping documents. Especially the supplier will point out in the a.m. documents and invoices the items requiring an export license or which are subject to US re-export regulations and apart from that to indicate the relevant export list number and the customs code number.

e) All goods shall be packaged properly to avoid any damage in transit. If packaging is charged separately, such charges (acceptable cost prices only) shall be quoted in a separate line both in the offer and the invoice.

## 7. Invoices, payments

a) Invoices must be submitted to SCHOTT in duplicate. They must include SCHOTT's order number and correspond verbatim with the order descriptions of SCHOTT. They shall evidence the exact description of the department emitting the order and the date of the order. Invoices that fail to include all of the above information will be returned. They will be deemed not received and thus do not become due and payable, nor may they be used by the Supplier as evidence of any SCHOTT's failure to pay.

b) The invoice payment period commences upon receipt of a proper, verifiable invoice (stamped date of receipt, not date of invoicing!), or on the work day following the date on which delivery of the goods or service was taken, whichever is later.

Invoices that are defective or that contain errors do not become due and payable and SCHOTT may send these back at any time. In the latter case, the obligation shall only become due and payable upon receipt of the corrected invoice. The payment period will be extended, if delivery documents are missing, or if the invoice was addressed to a department other than the one named in the order, or it contains incomplete or incorrect information, for whatever number of days it takes to eliminate the errors caused by the Supplier. Supplier has to take into consideration the duration of the stay of the invoice audit when substantiating any failure to pay and/or Supplier may not use such contested invoices as evidence of SCHOTT's failure to pay.

Any payments made will not constitute a recognition that the good or service is contractually conforming. In the event any good or service is non-conforming or incomplete, SCHOTT is entitled – without prejudicing its other rights – to withhold any payment for any and all claims arising from the business relationship with the Supplier in a reasonable scope and without compensation obligation for SCHOTT until the proper supplementary performance has been completed by Supplier, without losing any rebates, cash discounts, or similar payment benefits.

c) Payment shall be made in the payment period immediately following the date the invoice becomes due and payable by the payment method of SCHOTT's choice.

d) The standard payment condition of SCHOTT is 14 days 3 % / 45 days net.

## **8. Statutory requirements**

- a) For all goods and services, the rules concerning hazardous substances as well as the safety recommendations of German professional bodies and associations - such as VDE, VDI, DIN - must be observed. Any relevant certifications, testing reports and evidence must be furnished free of charge along with the goods and services.
  
- b) With respect to any goods or the provision of any services, the Supplier shall be solely responsible for adhering to the rules on accident prevention. According to these rules, the required safety provisions and any other manufacturers' guidelines must be furnished free of charge along with the goods and services.
  
- c) The delivered goods must meet the source requirements under the preferential trade arrangements of the EU, unless the order expressly stipulates otherwise.

## **9. Pass of risk, acceptance, title retention rights**

- a) Irrespective of the agreed indemnification provisions, the risk of loss on the delivery of goods not involving installation or assembly shall pass to SCHOTT upon receipt of such goods at the address of delivery stipulated by SCHOTT and, with respect to the risk of loss on the delivery of goods involving installation or assembly, it shall pass upon the successful completion of such installation or assembly, which will be documented in an acceptance record.

SCHOTT's mere operational start-up or use shall in no way constitute a formal acceptance.

- b) With respect to the delivery of goods subject to title retention, SCHOTT may resell such goods in the ordinary course of business. SCHOTT shall become the owner no later than upon payment of the full purchase price.

## **10. Duties of inspection and complaints, inspection expenses**

- a) SCHOTT shall promptly notify the Supplier regarding any obvious defects in the goods or services supplied, as soon as such defects are identified in the ordinary course of business. With respect to any defects that SCHOTT notifies within four weeks, the Supplier agrees to waive any expenses arising from a delayed notice of defect.
  
- b) Goods will be inspected upon receipt, and such inspection shall be done on a random sampling basis. If the benchmark quality levels set by SCHOTT are not met, then SCHOTT will have the right to completely reject the goods or carry out a full inspection (100%) at the Supplier's expense.

c) If SCHOTT returns defective goods to the Supplier, then SCHOTT will have the right, regardless of the amount of the expenses incurred, to charge the Supplier the invoice amount plus a flat-expense charge of 5% of the price of the defective goods. In any case, however, the flat-expense charge shall not exceed EUR 550.00 for each returned shipment. SCHOTT expressly reserves the right to provide evidence of higher expenditures.

## **11. Warranties and liability**

a) Any defective goods must be promptly substituted with conforming goods, and any defective services must be repeated in a conforming manner. In the event of a substitution or repeat of services, the supplementary performance shall be deemed to have failed (§§ 440, 636 BGB) in those cases where the defect in quality has still not been eliminated even after a second attempt to remedy has been made. In the case of any errors occurring in development or construction, a supplementary performance by Supplier shall be deemed unreasonable (§ 440 BGB) and SCHOTT reserves the right to promptly enforce the rights set forth in Section 11 d).

b) During the period in which the subject matter of the goods or services is not in SCHOTT's custody, the Supplier shall bear any risk of loss.

c) In emergency situations (specifically where operational safety is in jeopardy or to avoid extraordinarily high damages), and also in order to eliminate minor defects, SCHOTT shall, after having given information and after having set a deadline respectively to the Supplier, have the right to remedy the defect and any damages resulting therefrom itself at the Supplier's expense or to have a third party remedy such defects. The foregoing shall also apply in other cases, to the extent a reasonable time period set by SCHOTT has expired without result.

The aforementioned shall also apply if the Supplier is late in delivering the goods or services and SCHOTT is required, as a result of such defect, to immediately remedy the defect to avoid its own delivery default.

d) To the extent SCHOTT does not elect to remedy the defect itself, SCHOTT shall otherwise have the option - after expiry of the reasonable time period set by SCHOTT without result - either to rescind the contract or to reduce the contractually agreed purchase price (price reduction). In addition to the two aforementioned options, SCHOTT reserves the right to demand compensatory damages.

e) Unless individually agreed otherwise, the warranty period for any defects in quality will be 24 months following the passage of risk in accordance with Section 9 a). The warranty period will be tolled for the period from SCHOTT's despatch of any defect notice to its receipt of any conforming good or service. With respect to any remedied or substituted part of the good or service delivered or repeated, the period defined in sentence 1 above will recommence for those to run upon the receipt of the conforming good or service.

f) If the Supplier is responsible for damage to the product, then it agrees, upon the first demand made, to indemnify SCHOTT with respect to any third party compensatory damage claims, to the extent that the cause of the damage was within its sphere of organisation and control and it itself is liable to third parties.

In this connection, the Supplier will also be obligated to reimburse any expenses, which arise from or are connected with a recall campaign carried out by SCHOTT. SCHOTT shall inform the Supplier about the content and scope of any such implemented recall campaign – to the extent feasible and reasonable – and will provide it with the opportunity to present its opinion.

g) SCHOTT reserves any statutory claims or rights, which it may have as a customer.

## **12. Repeated impairments of performance**

If the Supplier provides goods or services of substantially the same or similar nature which, despite repeated written notices by SCHOTT, are again defective or late, the right to perform supplementary shall be deemed unreasonable and SCHOTT will be entitled to immediately rescind the agreement, namely also with respect to such goods or services that the Supplier will be obligated to render based on previous or other contractual relations to SCHOTT in the future.

## **13. Third party rights**

a) The delivery and SCHOTT's use of the products shall not infringe any third party intellectual property rights within the Federal Republic of Germany.

Specifically where data processing programs are delivered, the Supplier warrants that it has obtained all of the necessary rights, including any licences and/or intellectual property rights, in order to transfer the program.

b) If compensatory damage claims or other demands are asserted against SCHOTT based on the allegation that the Supplier's goods and services infringe intellectual property rights, then the Supplier agrees that in the event third party intellectual property rights were culpably

infringed, it will indemnify SCHOTT with respect to all third party claims enforced including any court costs and out-of-court expenses. The Supplier agrees at its own cost and risk to make arrangements with the respective intellectual property rights holders to avoid infringements of intellectual property rights. The Supplier agrees to pay any licensing fees and royalties. If the Supplier cannot indemnify SCHOTT under applicable laws or for any other reason, then the Supplier agrees to reimburse all costs incurred by SCHOTT in connection therewith, provided that it was responsible for such claim.

#### **14. Insurance obligation**

The Supplier is obliged to set up and to keep an adequate and sufficient insurance for all his main and collateral performances of his contractual duties during the contract period with SCHOTT. The Supplier will provide SCHOTT upon request with an according insurance certificate.

#### **15. Technical documents, tools, manufacturing resources**

a) Any and all written materials provided to the Supplier in connection with this contract and any technical documents, tools, drawings, work standard sheets, sketches, calculations etc. stemming from SCHOTT constitute the intellectual property of SCHOTT and are subject of rights of authorship or copyrights held by SCHOTT. To the extent required for executing and settling the order, SCHOTT grants the Supplier for a limited term a non-exclusive license to the aforementioned rights of authorship or copyrights, which shall terminate once the order has been settled.

SCHOTT shall retain exclusive ownership of any technical documents, tools, plant specifications list, sketches, work instructions, manufacturing materials, etc., which it has made available. SCHOTT shall likewise retain all authorship or copyrights therein. Such material, together with any duplicates made, shall be returned to SCHOTT immediately after executing the order without SCHOTT having to request the Supplier to do so. In this respect, the Supplier will have no right to enforce any right to withhold performance vis-à-vis SCHOTT. The Supplier may use the aforementioned items only in connection with carrying out the order and may not disclose such items to unauthorised third parties or otherwise provide access thereto. Any copying or reproduction of the aforementioned items may be carried out only to the extent that it is absolutely necessary for discharging the order placed by SCHOTT.

b) If, in order to execute the order, the Supplier produces technical documents, tools, plant specifications list, sketches, work instructions, manufacturing materials, etc. then section 15a) will apply accordingly, and SCHOTT will acquire title to these types of items, which the

Supplier shall gratuitously hold in custody on SCHOTT's behalf until repossession is demanded. If SCHOTT participates in the production costs on a pro rata basis only, then SCHOTT will acquire co-ownership rights in the relevant items, which the Supplier shall gratuitously hold in custody on SCHOTT's behalf. SCHOTT may, however, at any time acquire the Supplier's rights related to the items, subject to reimbursement of any item production expenses not yet amortised and demand repossession of the items from the Supplier.

#### **16. Materials set aside**

a) SCHOTT shall retain ownership in any materials it has set aside, and the Supplier shall gratuitously hold such materials in accordance with the standard of care exercised by reasonable business persons and must segregate such materials from the Supplier's own property and identify them as SCHOTT's property. Such materials may be used only for the purpose of carrying out the order issued by SCHOTT.

b) In the event the Supplier processes the material set aside by SCHOTT or restructures such material, then any such action shall be deemed to have been made exclusively for SCHOTT. SCHOTT will become the direct owner of any new item of property created therefrom. If the material set aside comprises only a part of the new item of property, then SCHOTT will become co-owner in this new property item in accordance with the share representing the value of the material set aside by SCHOTT.

#### **17. Confidentiality**

a) The Supplier covenants to treat as a trade secret any and all information and knowledge he receives in connection with the submission of an offer or with the issuance of an order by SCHOTT and agrees not to disclose, or make accessible or circulate such information or knowledge to third parties, unless the Supplier can prove to SCHOTT that it was aware of such information at the time the offer was submitted or that such information was subsequently made available to it by an authorised third party not subject to a confidentiality covenant or that such information had become generally subsequently available without the Supplier having caused or being responsible for such disclosure.

b) The manufacturing for third parties, the presentation of products specifically manufactured for SCHOTT – including those made on the basis of SCHOTT designs or manufacturing specifications, any publication relating to the goods and services for which the order was given, and a reference to an order issued by SCHOTT to a third parties is subject to the prior express written consent of SCHOTT.



c) The duty of confidentiality also applies after the contracted job is completed. It will expire, if and to the extent that the information or know-how contained in the transferred images, sketches, calculations and other documents enters the public domain.

### **18. Severability**

If any provisions of these terms and conditions are or become invalid or unenforceable, either in whole or in part, then the validity of the remaining provisions and clauses will not be affected thereby. In such an event, the Parties are obligated to replace any invalid or unenforceable provisions with other provisions, which match or most closely reflect the commercial intent and purpose of the contract as a whole, and the replacement shall take effect as of the date of the invalidity of unenforceability.

### **19. Place of performance, judicial forum, governing law**

a) Place of performance is the place indicated in the delivery address.

b) If the Supplier is a merchant, then at SCHOTT's option the judicial forum will be the competent court in Frankfurt am Main. In addition, SCHOTT is also entitled to institute legal action in the judicial forum of the Supplier.

c) The substantive law of the Federal Republic of Germany shall govern this contractual relationship, except for the reference rules under its provisions relating to private international law. The provisions of the UN-Convention on Contracts for the International Sale of Goods (CISG) are excluded.