

## **Purchasing Terms and Conditions SCHOTT Schweiz AG and SCHOTT Suisse SA**

**The following terms and conditions govern orders and any other contracts relating to the delivery of goods or the performance of services placed or concluded by SCHOTT Schweiz AG or by SCHOTT Suisse SA (hereafter «SCHOTT»). These terms are not applicable to construction or employment agreements.**

### **1. Priority**

Unless otherwise individually agreed in writing, the legal relationship between the Supplier and SCHOTT with respect to the transactions described below will be based exclusively on the following terms and conditions. Any conflicting terms and conditions provided by the Supplier shall not apply, even if SCHOTT fails to expressly reject such terms and conditions in any given case, particularly when ordered goods are accepted without objection.

### **2. Written Requirement**

All orders, modifications or supplements thereto must be made in writing.

### **3. Revocation**

SCHOTT is entitled to revoke its order free of charge if the Supplier fails to confirm such order in an unchanged form within two weeks after receipt.

### **4. Delivery dates**

- a) Any agreed delivery dates for goods and services are binding. If delays are expected or occur, the Supplier shall promptly notify SCHOTT thereof.
- b) If the delivery date cannot be met due to the Supplier being at fault (delay), SCHOTT is entitled to assert claims for damages without prejudice to any other rights.
- c) If the Supplier fails to perform its contractual duties within a reasonable period of grace determined by SCHOTT, SCHOTT shall be entitled, following the expiration of such period, to commission the contractual performance to a third party and to demand compensation from the Supplier for any necessary expenditures and additional costs. SCHOTT may additionally withdraw from the contract or demand compensatory damages in lieu of specific performance. The Supplier's right to cure and SCHOTT's obligation to accept such performance will lapse as soon as SCHOTT - after the expiry of the period of grace - 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 stipulated prices are fixed prices and include all costs in connection with the delivery of goods and services to be carried out by the Supplier.

## 6. Execution and Delivery

- a) Subcontracts may only be awarded to third parties by the Supplier with the prior written consent of SCHOTT, provided that it is not merely a case of commonly available parts. Delivery call-offs are binding with respect to the type and quantity of goods as well as to their delivery schedule. Partial deliveries shall require SCHOTT's consent.
- b) Each delivery shall be accompanied with a delivery note stating SCHOTT's order number and describing the contents specifying type and quantity.
- c) For delivery of devices, a technical description and operating instructions shall be provided free of charge. For software products, the delivery obligation shall only be considered as being fulfilled after full technical documentation (relating to system and to user) has been delivered. For any application developed specifically for SCHOTT, the source code of the application with its appropriate documentation must also be delivered additionally.

## 7. Invoices and Payments

- a) Invoices must be submitted to SCHOTT in duplicate, separately from the delivery. They shall meet with SCHOTT's order descriptions and include SCHOTT's order number. Order date is to be specified as well.
- b) For invoicing, the payment term starts on the working day that follows receipt of a correct and checkable invoice (date on receipt stamp and not invoice date!) or receipt of goods or full completion of services, whichever is later.
- c) Invoices containing mistakes or errors shall not be deemed due for payment and can be returned by SCHOTT at any time. In the latter case, payment shall only become due upon receipt of the corrected invoice. If delivery documents are missing or invoice has been addressed to a place other than the one stated in the order or in case of incomplete information or errors, the payment period will be extended by the same number of days as required by the Supplier to correct the errors generated by him.

Any payments made will not constitute recognition that delivery or service are contractually conforming. In the event any delivery 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 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.

- d) Payment occurs during the payment cycle following the due date by means of payment chosen by SCHOTT, once in a week.

## 8. Legal Provisions

- a) The provisions stated in the SDR Agreement concerning transportation of hazardous goods (also ADR provisions of the Swiss Association of Freight Forwarders as well as Spedlog Swiss) will have to be respected for all deliveries and services. The relevant attestations, test certificates, objective evidences are to be delivered free of charge.
- b) During deliveries and the performance of services the Supplier shall bear full responsibility for the observance of accident prevention regulations. Any necessary protective equipment in accordance with the aforementioned regulations and possible instructions of the manufacturer shall be provided free of charge.

## 9. Passing of Risk, Acceptance, Property Rights

- a) Independently of an agreed exemption, the risk of loss and damage passes to SCHOTT upon receipt of goods at the place of delivery indicated by SCHOTT in its order in the event that an assembly or installation is not required; in case of delivery with installation or assembling the risk of loss and damage shall pass to SCHOTT upon proper and successful completion of the assembly or installation and recorded by a person authorized to accept them.

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 retention of title, SCHOTT may resell and reprocess such goods in the ordinary course of business. SCHOTT will become owner of the goods upon payment of the full amount at the latest.

## 10. Obligation of inspection and complaints, inspection expenses

- a) SCHOTT shall promptly report to SCHOTT obvious defects of delivery or service as soon as these are identified in the normal course of business. In the event of defects reported by SCHOTT within four weeks, the Supplier agrees to waive the claim of late notification of defects.
- b) Incoming goods shall be subject to random checks. SCHOTT is entitled to fully reject the delivery if the threshold quality value agreed by SCHOTT is exceeded or to carry out a full inspection (100 %) at the Supplier's expense.
- c) Should SCHOTT have to return defective goods to the Supplier, SCHOTT is entitled to pass on the expenses whatsoever incurred to the Supplier plus an additional administration fee amounting to 5% of the price of the defective

goods. This fee shall not exceed CHF 1,000.00 for each returned shipment. SCHOTT expressly reserves the right to prove and claim higher expenses.

## 11. Guarantee

- a) In his capacity as a specialist, the Supplier guarantees that the delivery item is free of any defects affecting its value or suitability for the use assumed, meets all properties as warranted and all services and specifications as specified. The Supplier is bound to perform permanently appropriate quality controls. The delivery item must meet the provisions of public law applicable at the place of destination.
- b) The guarantee period is 24 months after date of delivery.
- c) If delivery or parts of the delivery do not comply with the guarantee pursuant to Section 11.a) the Supplier shall eliminate or have defects eliminated on site at his own expense. If a full repair is not to be expected within a period suitable for SCHOTT, the Supplier shall deliver and install non-defective substitutes free of charge. If the Supplier cannot actually eliminate the defects immediately, SCHOTT is entitled to eliminate them himself or have them eliminated, or to obtain replacement at the Supplier's expense. The Supplier shall bear all costs arising for transportation and travel expenses relating to warranty work.
- d) The Supplier is responsible for the services of his suppliers as if they were his own.
- e) The guarantee period pursuant to Section 11.b) also applies for improvement and replacement deliveries.

## 12. Withdrawal

- a) If the Supplier is in default with the delivery or repair as described in Section 11.c) and after an appropriate grace period granted has expired without results, SCHOTT is entitled to withdraw from the contract and reject delivery without having to bear any costs.
- b) If it happens that even before the delivery is due the agreed deadline cannot be met, SCHOTT is also entitled to withdraw from the contract and reject delivery without having to bear any costs.
- c) Furthermore, the contract can be cancelled if, during the manufacturing process, it becomes obvious that the delivery will be not suitable.
- d) SCHOTT's rights to claim damages remain unaffected and reserved.

## 13. Product liability, exemption, liability insurance

- a) If the Supplier is responsible or co-responsible for damages occurred because of product defects, SCHOTT reserves the right of recourse - fully or to an appropriate extent - against the Supplier. If product damage can be undoubtedly attributed to a faulty or defective product delivered by the Supplier, the Supplier must hold harmless SCHOTT at first request with respect to all third-party claims for damages.
- b) Within the scope of his liability, the Supplier is obliged to reimburse all expenses arising from or connected with a recall campaign carried out by SCHOTT. SCHOTT shall inform the Supplier about the contents and scope of any such implemented recall campaign – as far as practicable and reasonable – and give him opportunity to respond.

#### 14. Material and legal guarantees

- a) The Supplier is liable for ensuring that property rights of third parties (patents, samples, models etc.) are not infringed by delivery or use of goods offered or by the services rendered. He shall hold SCHOTT completely harmless with respect to any claim.
- b) Defective deliveries must be immediately replaced by flawless deliveries and defectives services must be reperformed.
- c) In urgent cases – especially in the event of operating safety hazard or to prevent exceptionally high damages – and also in order to eliminate minor damages, SCHOTT is entitled to eliminate the defect himself or have it eliminated by a third party at the Supplier's expenses. This applies as well to other cases in which a reasonable time limit granted by SCHOTT for rectification has expired without results.
- d) Delivered goods must be free of any third-party rights. When delivering data processing programmes, the Supplier must ensure that he has all the rights - industrial property rights in particular - allowing him to transfer those programmes to others.

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

- a) Any documents provided by SCHOTT, tools, drawings, work standard sheets etc. are SCHOTT's intellectual property and are subject to copyright of SCHOTT. As far as required for the completion of an order, SCHOTT shall grant the Supplier - for a limited period of time – with a non-exclusive right of use of aforementioned copyrights which shall end with order completion, respectively with order termination. All technical documents, tools, work standard sheets, manufacturing resources etc. provided by SCHOTT AG shall remain SCHOTT's exclusive property. They shall be returned to SCHOTT with all duplicates immediately after order completion without request. In this respect, the Supplier shall have no rights of retention towards SCHOTT. The Supplier is only entitled to use the aforementioned items within the scope of order execution, he is not allowed to disclose them to unauthorized third parties

or make them accessible otherwise. Any copying or reproduction of the aforementioned items can only be allowed as far as strictly necessary for the execution of SCHOTT's order.

- b) If the Supplier prepares the items mentioned under 15.a) partially or entirely at SCHOTT's expenses, section 15.a) shall apply accordingly. In this case SCHOTT shall take up a proportional share of the production costs and thus acquire joint ownership of the items which shall be kept safe for SCHOTT by the Supplier free of charge. SCHOTT can, however, acquire at any time the rights regarding the item against compensation for expenses not yet amortized and demand the release of this item.

## 16. Provision of material

- a) Material provided by SCHOTT shall remain SCHOTT's property and must be stored free of charge and with the due diligence of a proper businessman separately from other items and marked as SCHOTT's property. This material can only be used within the scope for the execution of SCHOTT's order.
- b) Should the Supplier process or transform material provided by SCHOTT, this activity shall take place exclusively for SCHOTT. SCHOTT shall immediately obtain ownership of the newly produced item. If the material provided by SCHOTT is only part of the new item, SCHOTT shall acquire co-ownership of the new item in proportion to the value of the material provided by SCHOTT.

## 17. Confidentiality

- a) The Supplier is obliged to treat as confidential all information and knowledge he receives in the course of an offer or order sent by SCHOTT, and not to transfer them to third parties, unless he can prove to SCHOTT that he was already aware of the information at the time of the offer, or that this information was made available to him later without a confidentiality obligation by a third party authorized to do so, or that this information was or later became accessible to the public without the Supplier being at fault or responsible for this.
- b) Any production for third parties, any display of products especially made for SCHOTT, in particular those made according to SCHOTT's drawings or manufacturing specifications, any publication about the item relating to the deliveries and services ordered by SCHOTT as well as any reference to this order to third parties require the prior express written consent by SCHOTT.

## 18. Partial Invalidity

If any provisions of these terms and conditions are or become invalid, either entirely or partially, then the validity of the remaining provisions will not be affected thereby.

## 19. Place of performance, venue, governing law

- a) The place of performance is always the place of delivery indicated in the order.

b) The following courts shall have exclusive jurisdiction for all disputes based on these Purchasing Terms and Conditions :

For business area St. Gallen: St. Gallen (SCHOTT Schweiz AG)

For business area Yverdon: Yverdon (SCHOTT Suisse SA)

c) This contractual relationship shall be governed by Swiss law, excluding the provisions of Private International Law.

## 20. Amendments to the Contract

Any amendment or supplement to an order which has already been placed must be submitted and agreed in writing. This requirement as to written form can be amended only in writing.