

General Terms and Conditions of Sale

1. DEFINITIONS

- A. **"Buyer"** means the entity receiving the Proposal or contracting for materials, equipment, labor, services.
- B. **"Contract"** means the accepted Purchase Order, the Proposal, these General Terms and Conditions, and any attachments, drawings, specifications, or other documents attached or incorporated by reference to the preceding, as Buyer and Seller may amend or supplement them.
- C. **"Proposal"** means the proposal Seller issued to Buyer containing specific terms relating to the Work, its price, and delivery dates.
- D. **"Purchase Order"** means a purchase order issued by Buyer.
- E. **"GTCS"** means these General Terms and Conditions of Sale, as Seller may amend or supplement them.
- F. **"Purchase Price"** means the purchase price for the Work Buyer and Seller agree to and specified in the Contract.
- G. **"Seller"** means Schenck USA Corp., a New York corporation, or any of its subsidiary companies, divisions, or business units issuing a Proposal to Buyer.
- H. **"Work"** means all labor, services, materials, supplies, equipment, and other items or documentation Seller furnishes Buyer under the Contract.

2. APPLICATION OF GTCS; PROPOSALS; BINDING CONTRACT

- A. The GTCS applies to all quotations, offers, Purchase Orders, and Work. Unless Seller otherwise agrees in writing, it accepts no terms specified by Buyer that conflict with the GTCS, whether or not Seller objected to such conflicting term.
- B. The GTCS applies to current and future Work even if not specified in any Proposal or Purchase Order.
- C. Buyer may accept a Proposal by providing Seller written notice within 30 calendar days of the Proposal's date. Until accepted, a Proposal may be withdrawn or modified.
- D. Whether or not referencing a Proposal, purchase orders are legally binding invitations to enter into a contract. Seller has ten business days after receipt to accept a Purchase Order. A Purchase Order is not accepted until it is signed on behalf of Seller and transmitted to Buyer, or Seller indicates in writing it accepts the Purchase Order.
- E. No Contract for the Work is binding until Buyer and Seller sign and exchange a written instrument specifying all material terms (including price, delivery, and specifications) or accept such instrument by delivering written notice to the other.
- F. Amendments to a Contract are binding only if in writing and signed by both Buyer and Seller. Any change Buyer makes may result in a price increase. Seller may suspend performance until Buyer and Seller agree on the scope and cost of any requested change.

3. PRICE, TAXES, PAYMENT, SECURITY

- A. All prices quoted by Seller are subject to modification until Buyer and Seller have entered into a binding Contract.
- B. All prices (including the Purchase Price) are exclusive of any tax or import duty imposed by any governmental authority. Buyer is responsible, and Seller will invoice Buyer for all such taxes and duties unless Buyer provides Seller a proper tax exemption certificate.
- C. Unless specified differently in the Contract, Buyer must pay the Purchase Price, without deduction or set-off, in immediately available United States funds within 30 days after the date of the invoice Seller provides Buyer. Past due invoices are subject to a finance charge equal to the lower of 2%/month or the highest rate permitted by law.
- D. If Seller reasonably believes Buyer's ability to pay the Purchase Price is impaired or unsatisfactory, Seller may require payment of the Purchase Price before shipment, a deposit before beginning the Work, other satisfactory assurance of payment, or any combination of the preceding.
- E. If Buyer fails to pay the Purchase Price as agreed, besides any other legal remedy Seller may have, Seller may defer or cancel delivery or provision of any further Work.
- F. Seller retains title to and a purchase money security interest in all Work until Buyer pays the full Purchase Price and all other charges payable by it. The Contract constitutes a security agreement within the meaning of the Uniform Commercial Code, and Seller has the rights provided a secured party under it. Buyer authorizes Seller to file continuing financing statements reflecting Seller's security interest in the Work and all proceeds and after-acquired equipment or materials. If Buyer breaches the Contract, Seller may retake possession of the Work with or without legal process.
- G. Buyer must reimburse Seller all costs it incurs to collect the Purchase Price.

4. DELIVERY

- A. Unless Seller agrees otherwise, all Work is made Ex-Works Seller's specified location. If Seller fails to specify a location, it is deemed Seller's factory or warehouse where the Work is manufactured or stored.
- B. Risk of loss or damage passes to Buyer when Seller delivers the Work to the carrier at Seller's location.
- C. Buyer must pay all transportation, storage, and special packing costs or reimburse Seller on invoice if it advances any such costs. Unless otherwise specified, all prices quoted and the Purchase Price are exclusive of these expenses. If the Purchase Price includes any of these expenses, the Purchase Price is subject to any change in them not caused by Seller. Buyer agrees regardless whether Seller estimated transportation or packing costs when it submitted its Proposal, Buyer must pay the actual transportation and packing costs, even if they increase when product is shipped.
- D. If Buyer is unable, declines, or refuses to take delivery when specified in the Contract, Seller will have the Work stored for Buyer at Buyer's risk and cost, and the Work will be considered "delivered." Buyer must pay all resulting storage, handling, and re-handling charges.
- E. Absent timely instructions from Buyer, Seller will select the method of transportation and routing of shipment.
- F. Seller may ship Work in one or more consignments and invoice each consignment separately.
- G. Unless otherwise agreed in writing, delivery time is not "of the essence." Even if delivery is specified as "of the essence," Seller is not responsible for delays in shipment beyond its reasonable control.

- H. Seller is not responsible for shipping delays beyond its reasonable control. Seller may invoice for Work ready to be shipped to Buyer in accordance with the terms of the Contract even if shipment is delayed unless Seller caused the delay.
- I. Buyer must notify Seller of any visible defects, quantity shortages, or incorrect product shipments within seven days of receiving any shipment. Failure to provide such notice is deemed acceptance and an unqualified waiver of any right to return product on those bases.

- 5. **ASSEMBLY, INSTALLATION, COMMISSIONING.** If the Contract requires assembly, installation, or commissioning work, the equipment or material must be assembled, erected, and installed under the personal direction of Seller's employee or agent. Buyer must furnish sufficient electricity, water, compressed air, light, heat, sanitary facilities, fire protection, adequate all-weather storage space, ingress and egress to the job site, and other items listed in the Contract as Buyer's responsibilities or reasonably requested by Seller. Buyer also must install necessary infrastructure and utilities to support equipment connection. Buyer must prepare the site so installation personnel can work in the ordinary course with no extra equipment or procedures required due to construction or production interference. Unless otherwise provided in the Contract, installation will be performed only during Seller's normal working hours and any overtime work required must be requested and paid for by Buyer.

- 6. **CANCELLATIONS.** By written notice to Seller, Buyer may cancel all or any portion of a Contract after it is signed and delivered by both Buyer and Seller. Within 30 days after such cancellation, Seller will invoice and Buyer must pay all contract costs and other expenses incurred by Seller before it receives such written notice (including machine-hours, expenses, overhead costs, costs of expended materials, direct labor with factory burden, and all commitments to Seller's suppliers, subcontractors and others), plus a cancellation charge of 20% of the Purchase Price to cover general and administrative expenses, plus 10% of the Purchase Price to cover Seller's lost profit. If Buyer materially breaches any of its obligations under the Contract, Seller may cancel the unfinished portion of the Contract without liability to Buyer.

7. WARRANTIES AND REMEDIES

- A. **MATERIAL / WORKMANSHIP WARRANTY (APPLICABLE TO EQUIPMENT, SYSTEMS, TOOLING AND SPARE PARTS).** Seller warrants that all equipment it manufactures and furnishes and related work will be free from defects in materials and workmanship for 12 months from delivery. Seller's sole obligation is to repair or replace, at Seller's option, any part or component which, after Seller's inspection, proves to be defective. Seller is not liable for any removal, shipping, or reinstallation costs, all of which Buyer must pay. Seller will make repairs or replace components available to Buyer in Seller's standard packaging, Ex-works Seller's shipping point. This warranty does not apply to consumable, replaceable parts or components normally subject to wear and replacement. Seller's obligations under this paragraph A are subject to these conditions:
 - (i) Seller must receive from Buyer immediate written notice describing the defect in detail.
 - (ii) Buyer must not attempt to correct the defect without Seller's prior written approval. Buyer must have installed (if applicable), operated, and maintained the equipment strictly in accordance with Seller's operating and maintenance instructions, including Seller's design basis or other design criteria stated in the Proposal.
 - (iii) The defect must have been caused solely by faulty materials or workmanship for which Seller is responsible, and not by such things as erosion, corrosion, or deterioration resulting from how the equipment is operated, accident (including damage during shipment), neglect, misuse, or abuse, or exposure to conditions beyond the environmental power or operating constraints specified by Seller. Seller assigns to Buyer any warranty provided by the manufacturer of any components of the equipment Seller provides. Seller's responsibility regarding those products is limited to the manufacturer's warranty. Seller's warranty for such products is limited to repair or replacement, at Seller's option, and does not include labor, repair or replacement costs, or travel unless otherwise explicitly provided in writing.
 - (iv) The damage to the equipment must not result from a failure of Buyer test articles.
- B. **SERVICES WARRANTY (APPLICABLE TO CONSULTING, PLANNING, DESIGN, ENGINEERING, INSPECTION, REPAIR, MACHINING, SPIN TESTING, BALANCING SERVICE ORDERS, AND OTHER SERVICES).**
 - (i) Seller warrants it will perform the services in a competent and non-negligent manner. For 12 months from the date Seller completes such services, Seller, at its cost, will re-perform correctly any non-conforming services or, if such services cannot be re-performed, refund the amount paid for the non-conforming services.
 - (ii) Seller warrants it will perform any engineering or design work in accordance with generally accepted trade or industry practice. Seller's sole obligation under this warranty is to revise and resubmit incorrectly completed calculations and drawings.
- C. **PERFORMANCE WARRANTY.** Any warranty relating to the performance of equipment is subject to:
 - (i) The information provided by Buyer being accurate, the conditions specified in the Proposal being met, and properly trained personnel operating and maintaining the equipment.
 - (ii) Unless otherwise specified in the Proposal, Buyer must have conducted performance tests within 30 days after the equipment's initial operation or six months after shipment, whichever is earlier. If the tests are not conducted within that period through no fault of Seller, the equipment is deemed accepted by Buyer and in compliance with the Contract. Buyer must provide Seller the opportunity to witness all performance tests.
 - (iii) Seller's obligations under any performance warranty are satisfied when performance tests are successfully completed in accordance with applicable standard procedures specified in the Proposal.
 - (iv) Seller makes no warranty regarding including the equipment supplied by Seller into Buyer's manufacturing process. Seller's warranty is limited solely to the performance of its equipment in accordance with the Contract. If the equipment fails to meet the Contract performance warranties, Seller, at its option, will repair such equipment or supply replacement parts.
- D. **PATENT WARRANTY.** Seller, at its expense, will defend any suit or proceeding brought against Buyer based on a claim any equipment or material Seller provides Buyer under the Contract infringes any U.S. patent issued as of the Proposal date. Seller will pay any court-imposed damages and costs awarded against Buyer up to, and not exceeding, the amount Buyer paid Seller under the Contract. But Seller will not defend any such suit or proceeding or pay any damages or costs regarding equipment or material manufactured or designed to Buyer's specifications. Seller's obligations under this paragraph C are subject to:
 - (i) Buyer promptly must notify Seller of such claim and provide Seller a copy of any documents or materials provided to Buyer supporting the claim.

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- (ii) Buyer must give Seller full authority, information, and assistance Seller deems necessary to defend against the claim.
- (iii) To avoid such claims or minimize potential liability, Seller may:
- (a) Procure for Buyer the right to use the equipment or material subject to an infringement claim;
 - (b) Modify the equipment or material so it no longer infringes;
 - (c) Replace the equipment with non-infringing equipment or material; or
 - (d) Refund the Purchase Price for the infringing equipment or material.
- E. **COMPLIANCE WITH OSHA.** Where applicable to the Work, Seller will comply with Federal OSHA requirements in effect on the Proposal date. Seller's sole responsibility is to modify or replace equipment cited as violating OSHA requirements. OSHA requirements relating to noise are expressly excluded. Where state, local, or Buyer's health and safety requirements differ from OSHA requirements, at Buyer's request, Seller will use reasonable commercial efforts to modify or change designs to meet such requirements. Buyer must pay any additional costs arising from such changes or from erection procedures required by state, local, or Buyer's health and safety regulations which differ from OSHA requirements.
- 8. LIMITATIONS TO SELLER'S LIABILITY TO BUYER**
- A. **CONSEQUENTIAL DAMAGES.** Seller will not be liable to Buyer, any successors in interest or assignees of Buyer, any customers of Buyer, or any beneficiary or assignee of Buyer, for any consequential, incidental, indirect, special, or punitive damages arising out of any defect in, or failure of or malfunction of the goods or services Seller provides under the Contract. Included in consequential or incidental damages are those based on lost goodwill, lost profits or revenue, interest, work stoppage, impairment of other goods or services, loss from shutdown or non-operation, increased expenses of operation, loss of use of related goods or operations, and costs to purchase replacement goods. This limitation applies whether such loss or damage is based on contract, warranty, negligence, indemnity, strict liability, or other theories.
- B. **CONTINGENCY.** Buyer's recourse for Seller breaching any warranty is contingent on Buyer paying the Purchase Price and all other costs it is obligated to pay under the Contract.
- C. **EXCLUSIVITY. THE WARRANTIES AND REMEDIES PROVIDED IN SECTION 7 ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT ASSUME, OR AUTHORIZE ANY PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY RELATING TO ITS PRODUCTS OR THE WORK.**
- D. **SPIN TESTING, BALANCING SERVICES.**
- (i) Buyer understands there is an inherent risk in spin-testing or balancing Buyer's parts. Buyer assumes that risk when it delivers parts to Seller for spin-testing or balancing. Seller is not liable for damage to any part caused by such services if Seller exercised reasonable care in performing the services. "Reasonable care" means the level of care Seller normally provides in performing such processes. If Buyer's part is damaged because of Seller's negligence in performing such services, Seller will be liable to Buyer for no more than the amount Buyer paid for the services. If Buyer's part bursts in Seller's facility during spin testing or balancing, Buyer must pay for the cost to repair and replace all damaged items and components and any repair required because of the burst.
 - (ii) Existing arbors, tooling, designs, and instrumentation needed for spin testing or balancing services remain Seller's property and are covered under Seller's property and casualty insurance policies. When Buyer orders the services, it can request special terms for ownership of arbors, tooling, and instrumentation. Seller, at its option, may store Buyer-owned equipment at a Seller location. Buyer-owned equipment is excluded from and not covered by Seller's property and casualty insurance, whether or not it is actively involved in a test. Buyer must maintain insurance on its property while in transit or on Seller's premises.
 - (iii) If Buyer interrupts a test for any reason, including to inspect the part being tested, Buyer must pay Seller a demurrage charge (reasonably determined by Seller) to hold Seller's facility or equipment open for reinstallation of the part and resumption of the spin testing or balancing. The demurrage charge will start when the test is interrupted; there is no grace period.
- E. **OTHER CONTRACTORS.** Seller has no duty or authority to direct, supervise, or oversee any of Buyer's contractors or provide the means, methods, or sequence of their work or stop their work. Seller's services or presence at Buyer's site relieves no others of their responsibility to Buyer or others. Seller is not liable for the failure of Buyer's contractors or others to fulfill their obligations. Buyer agrees to indemnify, hold harmless and defend Seller against all claims arising out of such failures.
- F. **HAZARDOUS MATERIALS.** Seller has no obligation to remove or remediate any hazardous materials, including asbestos bearing materials, it encounters at Buyer's facilities. Seller will remove or remediate such material only if Buyer and Seller enter into a separate agreement with separate consideration to Seller for such work. If Seller or any of its subcontractors must perform work in or adjacent to any facilities containing hazardous material (including asbestos), and the work must be interrupted to remediate or remove those materials, Buyer must pay Seller all costs and other expenses associated with such interruption. Buyer agrees to defend, hold harmless and indemnify Seller and its agents against any claim arising from exposure to such hazardous (including asbestos-bearing) materials.
- G. **HEALTH AND SAFETY.** Seller is not responsible for inspecting, observing, reporting, or correcting health and safety conditions or deficiencies of Buyer or others at Buyer's site. Seller is not responsible for health or safety programs or precautions related to Buyer's activities or operations, Buyer's other contractors, the work of any other person or entity, or Buyer's site conditions. Buyer agrees to indemnify, hold harmless and defend Seller against any claims arising out of such conditions or deficiencies. So as not to discourage Seller from voluntarily addressing health or safety issues while at Buyer's site, if Seller does address such issues by making observations, reports, suggestions, or otherwise, Seller nevertheless will have no responsibility arising on account for such action.
- 9. PROPRIETARY AND CONFIDENTIAL MATERIALS.** All information supplied by Seller as to design, manufacture, erection, operation, and maintenance of any equipment, including all drawings, patterns, specifications, and information in Seller's Proposal or the Contract, is Seller's proprietary and confidential property, and Buyer must return it to Seller on request. Buyer has no rights in Seller's proprietary and confidential property and may not disclose it to others or allow others to use it, except as required for Buyer to obtain service, maintenance, and installation of the equipment purchased from Seller. Buyer agrees it will use no drawings, specifications, or information included in Seller's Proposal or the Contract for competitive bidding or similar purposes, nor will it reproduce or build assemblies or process systems per Seller's design drawings without Seller's written approval. Buyer will hold in confidence and not disclose to any person, or use or copy any trade secret, process, record, plan, projection, information pertaining to customers or prospective customers, financial information, marketing strategies, or any other confidential or proprietary information of Seller (including the terms of the Contract or any other agreement between Buyer and Seller), except as authorized in writing by Seller. Buyer will inform its officers, directors, employees, and agents who need to know such information of its confidential nature and require them to maintain such confidentiality. Buyer is responsible for a breach of this paragraph by anyone to whom it provides any of Seller's confidential or proprietary information. This paragraph survives the Contract's termination and remains in effect as long as Buyer has any Seller proprietary or confidential information. Besides any other remedies to which it may be entitled at law, Seller may seek a temporary or permanent injunction for any breach or threatened breach of this paragraph without posting a bond.
- 10. FORCE MAJEURE.** Neither Buyer nor Seller is liable for any delay or failure to perform (other than to make payments due under the Contract) if such delay or nonperformance is caused by acts of God, floods, fire, explosions, storms, transportation difficulties, supply chain disruptions; strikes, lockouts, or other labor or industrial disturbances; wars, epidemic, pandemic, any law, rule, order, or action of any court, agency, or other instrumentality of the federal or any state or local government; exhaustion, reduction, or unavailability of material at the source of supply from which deliveries are normally made; or exhaustion or unavailability or delay in delivery of any material necessary to manufacture the products Seller is to provide under the Contract (regardless whether such exhaustion, reduction, unavailability, or delay is beyond such party's control, provided only it is not willfully done or brought about to excuse failure or omission to perform under these terms); failure of conditions, commercial impracticability, or other cause or causes beyond a party's control whether similar or dissimilar to those stated above. If any of such contingencies or conditions occur, Seller may curtail deliveries or allocate its supply of materials or products among its customers as Seller, in its sole discretion, determines is fair and reasonable in the circumstances. Buyer may not hold Seller responsible for any loss or damage Buyer incurs because of any such failure, curtailment, or allocation by Seller. Seller does not have to make up any goods not so delivered, but Seller will adjust the Purchase Price appropriately.
- 11. BUYER'S NEGLIGENCE AND INDEMNIFICATION OF SELLER**
- A. Seller is not responsible for losses or damages arising out of the negligence of Buyer, its employees, agents or architects or those of third parties for whom Seller is not responsible, or losses for which the Buyer has agreed to provide insurance. If both Seller and Buyer are negligent and the negligence of both is the proximate cause of a loss or accident, they each will be responsible for its portion of any resulting damages (excluding consequential or indirect damages which Seller disclaims) equal to its comparative share of the total negligence.
- B. To the extent permitted by law, Buyer must defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, customers and other designated parties against all claims, damages, losses, expenses, liens, demands and causes of action (including those of the parties, their agents and employees) for death, personal injury, property damage or any other liability, damages, fines or penalties (unless reimbursement of fines or penalties is prohibited by law) including costs, attorney's fees and settlements arising out of the use of any product or out of or in connection with any work performed on Buyer's premises by: (a) any act, failure to act or omission of Buyer or any agent, employee, invitee or licensee of Buyer (or any of their agents, employees, invitees or licensees) and whether resulting from or contributed to by the negligence of Seller, its agents or employees; (b) any defect in, or condition of Buyer's premises, or any equipment on or in it or any materials furnished or provided by Buyer; or (c) any equipment, components, labor, materials or products provided by Buyer in conjunction with the Work.
- 12. MISCELLANEOUS**
- A. **EXPORT COMPLIANCE.** Buyer will comply and cooperate fully with Seller in its compliance, with all import and export control laws and regulations, including the United States Export Administration Regulation, the United States International Traffic in Arms Regulations, the United States Office of Foreign Assets Control Regulations, the United States Foreign Trade Regulations, and country-specific import and export regulations and country-specific sanctions regimes. Buyer will obtain import and re-export approvals and licenses required for the Work, including products, equipment, parts, services and technical data delivered. Buyer will retain documentation evidencing such compliance and all approvals and licenses. Buyer agrees to indemnify and hold Seller harmless from any fines, penalties, or other liability imposed by any government entity arising from Buyer's failure to comply with such laws and regulations or to disclose to Seller information required to assist it with its compliance with such laws and regulations.
- B. **SEVERABILITY.** If any part of the Contract is declared invalid or unenforceable, such invalidity or unenforceability will not affect the validity and enforceability of any remaining portion, which will remain in full force and effect. Seller may enforce the part declared invalid or unenforceable with a provision which serves as much as validly possible the same commercial purpose as such part.
- C. **ASSIGNMENT; SUBCONTRACTS.** The Contract binds and inures to the benefit of Buyer and Seller, and their successors, and assigns, but Buyer may not assign the Contract without Seller's prior written consent. Seller may subcontract any portion of the Work.
- D. **DISPUTES.** Seller and Buyer will use all reasonable efforts to amicably resolve disputes arising out of the Contract before starting any formal legal proceedings. Legal proceedings under the Contract must be filed exclusively in the state or federal courts in New York, which courts have exclusive jurisdiction. Buyer consents to the personal jurisdiction of the state or federal courts of New York for any such action.
- E. **NOTICES.** All notices, consents, waivers, requests, demands, and other communications permitted or required under the Contract must be in writing and are deemed given to a party when (i) delivered to the appropriate address by hand delivery or by nationally recognized overnight courier service (costs prepaid), (ii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment, or (iii) received or rejected by the addressee, if sent postage prepaid by certified or registered mail, return receipt requested, in each case to the parties at the addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated in the Proposal or Contract, or at such other address, facsimile number or e-mail address as a party may designate by written notice given to the other parties as provided in this paragraph E.
- F. **ENTIRE AGREEMENT, CONTRACT INTERPRETATION, GOVERNING LAW.** All communications, written and verbal, between Buyer and Seller relating to the subject of the Contract before the date it was signed and delivered are merged into the Contract, and the Contract, when duly signed and delivered, constitutes the sole and entire agreement between Buyer and Seller relating to its subject matter. No change in or modifications to the Contract are binding unless in writing and signed by both parties. Unless Seller expressly agrees to the contrary in writing, the GTCS governs any conflicting terms in Buyer's documents. The Contract is deemed entered into and must be construed, governed, and enforced under the laws of the State of New York, excluding its choice of law rules. The U.N. Convention on Contracts for the International Sale of Goods does not apply to this Contract.