

1. General

- (a) Under the present Terms and Conditions of Sale :
 - “we”, “us” or “our” refers to SCHALTBAU France, a French Société par actions simplifiée à associé unique, registered under SIREN n°316 223 932 Pontoise, whose registered office is located 10, rue Désiré Granet, Argenteuil (95100),
 - “the Buyer” refers to our contracting partner, a professional that buys our product or service,
 - “the Parties” refer to both us and the Buyer,
 - “third party” or “third parties” refer to any individual or legal entity external to the Parties.
- (b) The Parties agree that, following the negotiations between them, only the present Terms and Conditions of Sale apply to the Buyer’s order(s). Conditions different to ours may apply only if we have given our prior written consent to such application.
- (c) Agreements between us and the Buyer must be made in writing.
- (d) Our Terms and Conditions of Sale apply only to professional Buyers.
- (e) The English translation of the present Terms and Conditions of Sale is performed only for convenience. The Parties agree that in the event of any difficulty as to the meaning to be given to all or part of these Conditions, the French version shall prevail.

2. Quotations and quotation documents

- (a) If the Buyer’s order is firm and precise, which thus forms an offer to contract, we reserve a period of two (2) weeks to accept or refuse, unless a different time period has been agreed between the Parties. Our acceptance will be formalised by an email sent to the Buyer. If we remain silent after two weeks, or after any other period agreed between the Parties, the order will be deemed to have been refused by us, unless execution of all or part of the order by us.
- (b) Together with the order, the Buyer shall submit to us an end-user certificate for the ordered products. We have the right to refuse the execution of the order if the Buyer does not provide us with an end-user certificate, or if the Buyer breaches any applicable regulations on Export Control. We can also refuse execution of the order if the Buyer intentionally keeps silent on the direct or indirect military use of the products ordered. The Buyer undertakes to comply with French Legislation and European Union Legislation on Export Control. The performance of the order is conditioned by the absence of obstacles to such performance arising from, but not limited to, National or International Foreign Trade Regulations, Embargoes, Trade Restrictions.

3. Delivery

- (a) Unless otherwise agreed, delivery of products without assembly is deemed completed “Ex Works”. For products with assembly and for services, delivery will be deemed completed after signature by the Buyer of the minutes of reception of the assembled product or the service performed.
- (b) We have the right to make partial deliveries if they do not result in additional cost to the Buyer.
- (c) Timeliness of delivery that could be imposed on us is subject to the prior transmission, by the Buyer, in due time, of all documents necessary for the realization of the order, including but not limited to plans, authorizations and approvals and other acts of preparation and co-operation to be performed by the Buyer. In case of non compliance with these requirements, the delivery time will be increased for a period equivalent to that which has been taken by the Buyer to meet its own obligations, without prejudice to any damages that we would be entitled to claim for breach of its obligation to cooperate.

In the event that installments are to be paid by the Buyer before delivery, the delivery time will be increased for a period equivalent to that which has been taken by the Buyer to meet its obligations, without prejudice to any penalties, damages and interest that we would be entitled to claim for such payment delays.
- (d) The Buyer that delays delivery of the order agrees to indemnify us for any storage costs incurred, up to one percent (1%) per month of the price of purchased products. This fee is charged from the month following the notice of availability, without prejudice to any damages that we would be entitled to claim against the Buyer.
- (e) Delivery deadlines and / or manufacturing deadlines are given for information only and shall not justify any cancellation of the order by the Buyer or confer to the latter any rights to damages whatsoever, unless it is agreed between the Parties, by a separate document and in writing, that the delivery and / or manufacture deadlines must imperatively be observed.
- (f) In the event that the Buyer wishes to make changes to an order which we have accepted, computation of the delivery date will begin to run from the date on which we have expressly confirmed our acceptance of amendments requested.

4. Test and acceptance of products

- (a) In the event the reception of our products by the Buyer is subject to the completion of tests in our facilities, the Buyer will be deemed to have taken delivery of the products in our offices. The Buyer shall solely bear the costs related to such tests. If, even though the Buyer has conditioned the reception of the products to tests to be carried out, the latter fails to perform such tests after any formal notice that remained unanswered, the products will be deemed to have been delivered to the Buyer, “Ex Works” in full compliance with its expectations.
- (b) If it has been agreed between the Parties that the Buyer shall take delivery of products “Ex Works” on a fixed date, the Buyer must comply strictly with the agreed fixed date. If the Buyer fails to comply with the agreed date, the latter will be deemed to have approved complete reception of such products, after a period of two (2) weeks from the fixed date. In this case, all invoices will be issued by us in accordance with Article 5 of the present Terms and Conditions of Sale.

5. Prices and payment terms

- (a) Our current prices are available to the Buyer upon its request. The validity period of prices is determined by the update of current prices. The prices of our products and services are those applicable on the date of the order.
- (b) Unless otherwise agreed with the Buyer in our confirmation of the order, the price of our products are meant “Ex Works”, excluding packaging, and, if any, assembly, and insurance, VAT excluded. The applicable VAT rate is the one in force on the date of invoicing. Unless the payment of installments has been foreseen on a determined date, the invoice is payable, without any deductions whatsoever, within thirty (30) days following the date of issuance of the invoice, unless it has been agreed a shorter period.
- (c) All payments of our invoices and installments must be made by bank transfer. Exceptionally, and with our prior written consent, we can accept, as means of payment, bills of exchange and checks. In these two cases, the payment shall be effective only after complete and unconditional receipt of the amount of the invoice or installment.
- (d) The deduction of a discount is subject to our prior written consent.
- (e) No offset, other than contractually agreed between the Parties, shall be allowed between any counterclaims of the Buyer and any amount due to us with regard to our invoices and installments.
- (f) If we deem it necessary, we have the right to request from the Buyer any warranty of payment before accepting its order(s). We have the right to publish the guarantee and, in case of non-payment of our invoices by the Buyer, we are entitled to enforce, under applicable Laws and Regulations, the sale of any property of the Buyer which has been transferred to us for the execution of the order.
- (g) In the event of total or partial delay in payment of an invoice, a penalty fee of fifteen percent (15%) we shall be due by the Buyer, without prejudice to any claims for damages relating to said delay. The penalty fee is calculated on the amount, all taxes included, of the outstanding sum due by the Buyer, and shall run as from the due date of the invoice, without any prior notice being required. In addition, the amount of the fixed penalty for recovery costs is set at forty (40) Euros.
- (h) Failure for the Buyer to ensure part or full payment of an invoice on its due date, may lead us to:
 - carrying out any offset, in due proportion of our claim plus interest, costs and accessories, with all assets, loans, refunds, rebates or discounts, and more generally with any amount whatsoever owed by us to the Buyer;
 - suspend all deliveries to the Buyer until full payment of the invoice and penalties that may be due;
 - terminate any contract or pending order, eight (8) days after formal notice to pay sent by us by registered letter, that has been unanswered.

6. Transfer of risks

- (a) For products, the risk is transferred to the Buyer in the following conditions :
 - for deliveries of products without assembly: as soon as the products are available to the Buyer “Ex Works”;
 - for deliveries of products with assembly: the date of arrival of said products in the Buyer’s premises.
- (b) For services, the risk is transferred to Buyer on the date of signature, by the Buyer, of the minutes of reception.

7. Retention of Title

- (a) We retain full ownership of products sold until unconditional payment of the price agreed between the Parties. We have the right to take back immediately, and without particular formalities, the product delivered, if its price has not been settled, in whole or part, by the Buyer at the due date. The recovery of the product does not imply cancellation of the order and does not release the Buyer from his contractual obligations, without prejudice to any damages that we could claim from the Buyer for failure to comply with its payment obligations. After taking over the product, we have the right to resell it, without prejudice to seek reimbursement from the Buyer of any costs incurred by us.
- (b) As long as the Buyer has not paid, in whole or in part, the product price by its due date, the Buyer is made Depository and Custodian of the product, and is required under its sole responsibility to handle the product with care and insure such product at its own expense, for an amount equivalent to its new value, against damage caused by any event, including but not limited to fire, flood and theft. In case maintenance or inspection work have to be done on the product, the Buyer shall, at its own expense, carry out such work in due time.
- (c) In the event of any attachment or any similar procedure carried out by any third party on a product that has not yet been paid, wholly or partly, by the Buyer, the latter shall inform us immediately in writing, to enable us to protect our property rights on the product. If the third party which carried out any attachment procedure on the product in breach of our property rights is not able to reimburse us for any legal fees paid, the Buyer shall be solely responsible for all financial losses incurred by us, and shall reimburse us such amounts.
- (d) Should the Buyer resell the product in breach of our property rights, whereas the price remains wholly or partly unpaid by the Buyer, the latter shall assign to our benefit all receivables acquired after resale of the product, up to the amount (VAT included) that remains to be paid to us. In this respect, we shall require the Buyer to notify us the acquired receivables and their debtors, to provide us with the necessary details regarding recovery of these claims, to deliver to us the corresponding documentation and inform the debtors of the operated assignment carried out.
- (e) Should the Buyer transform, in breach of our property rights, a product that has not been partly or wholly paid, or integrate such product into any other product whatsoever on which we do not own any property, we shall obtain co-ownership of the transformed product in due proportion of the value of the product sold by us to the Buyer (final invoice amount, VAT included).

8. Rights on tools

The Buyer shall not acquire any rights to the tools and equipment used by us for the execution of the order. Such tools and equipments remain our sole and exclusive property.

9. Industrial Proprietary Rights and Copyrights / Deficiency in Title

- (a) We retain all Intellectual Property Rights and Copyright on our illustrations, drawings, calculations and other documents necessary for the execution of orders. This provision also applies to written documents required for the execution of orders marked "confidential". The Buyer is not authorised to transmit any document in connection with the execution of orders, without our prior written consent.
- (b) Unless otherwise agreed, we are required to ensure delivery of products, free of all industrial property rights and copyrights of third parties (hereinafter called "Intellectual Property Rights"). Only the legal system of the country of delivery is decisive in this regard. If a third party invokes Intellectual Property Rights against the Buyer on our products or services, we will be accountable to the Buyer under the following conditions:
 - at our sole discretion and at our expense, either we will provide a right of use for the relevant deliveries or will amend it so that they shall bear no infringement of Intellectual Property Rights, or we will exchange affected products,
 - the aforementioned obligations are dependent on:
 - our prior information by the Buyer of all claims of third parties,
 - the acknowledgment, by the Buyer, of the absence of any infringement of Intellectual Property Rights whatsoever of third parties, caused in whole or part by the Buyer itself,
 - our ability to defend ourselves and conduct all negotiations to find a settlement to the dispute.

If the Buyer stops using the product which is the subject of a claim of Intellectual Property Rights by a third party, the Buyer shall alert the third party on the fact that the cessation of use does not constitute any acknowledgment of a breach of such Intellectual Property Rights.

- (c) Our liability under any claim of Intellectual Property Rights of third parties on our products shall be bound within the strict limits of the above provisions.

- (d) The Buyer shall not be entitled to any claims whatsoever if it is responsible for infringing Intellectual Property Rights in connection with a product or service or their use.
- (e) Nor shall the Buyer be entitled to any claims if infringement of Intellectual Property Rights is the result of specific requirements on the part of the Buyer, an application not envisaged by us, modification of the products and services on the part of the Buyer or utilisation in conjunction with products or services not supplied by us.

10. Rights on Documents and Software

- (a) We retain full Property Rights and Copyrights on, in particular, but not limited to, quotations, drawings and other documents we provide to the Buyer (hereinafter referred to as "Documents"). The Documents may be used by the Buyer for contractual purposes only. Such Documents shall not be disclosed by the Buyer to any third party without our prior written consent and must be returned to us at first request.
- (b) The Buyer shall have a non-exclusive right to use any Software we deliver. The Buyer shall not make changes to the Software or on the product or service without our prior written consent.

11. Deviations in size, weight and quantity

In the absence of derogations arising from the applicable Industry Standards or formal request made by the Buyer in its order, deviations in weight, quantity or size, that does not exceed 10% are permitted, without the Buyer being entitled to terminate the order or claim damages.

12. Illustrations, descriptions and specifications

- (a) The Customer acknowledges that the illustrations, descriptions and specifications relating to the products and services at the time the order submitted is in adequation with its needs. After acceptance of the order, we reserve the right to make any amendments to such illustrations, descriptions and specifications, designed in particular to take into account all technical progress and to make any design changes, insofar as these modifications comply with the needs of the Buyer.
- (b) Our technical advice for the use of our products and services are delivered to the Buyer in the state of technical knowledge acquired at the time of delivery. The Client is solely responsible for the suitability of the product or service to the intended use, if the Buyer did not inform us on the intended particular use, and compliance with legal provisions relating to the use of products and services.
- (c) The Buyer shall comply with the product specifications and implement such specifications. These specifications can be found on our Website or can be available upon request from the Buyer. We shall bear no responsibility for defect or damage resulting from the use of our products that is non compliant with our specifications.

13. Warranty

- (a) Any claim of the Customer for visible defect of the product, error in the execution of the order or other abnormalities related to the order must be made by the Client by registered letter no later than one week after the delivery of the product.
- (b) Our products and services are guaranteed within the limits of mandatory legal provisions against latent defects for a period of one (1) year from discovery of the defect.
- (c) If the product or service delivered proves to be defective, we are entitled, at our own discretion, either to repair the defect, or to deliver a new product or re-execute the service, free of any defect.
- (d) In the event that the replacement of the product or service does not remedy the latent defect, the Buyer shall be entitled, at its discretion, to terminate the order or request a price reduction, without being entitled to any claim for damages.
- (e) Except as provided by mandatory Legal Provisions, all claims based on latent defect shall imperatively be requested within twelve (12) months from the date of transfer of risk. Otherwise, we reserve the right not to meet such claims.

14. Limitation of Liability and exclusion of Liability

- (a) It is expressly agreed between the Parties that our responsibility for any direct damage related to the execution of orders we have accepted will be limited to the price of the product or the service ordered. We exclude all liability for costs that could be incurred by the Buyer for all assembly and disassembly operations made necessary due to defects in our products and services.
- (b) We also exclude all liability for indirect damage that the Buyer may incur, related but not limited to the loss of profits, loss of revenue, loss of data or use of such data.
- (c) Insofar as our liability for the payment of damages is excluded or limited, such exclusion or limitation also extends to the individual responsibility of our employees, representatives and agents.

15. Force majeure

- (a) Force majeure means any event outside the control of the Parties which is unpredictable, irresistible and / or inevitable, or any other situation defined as such by the Courts of France pursuant to Article 1148 of the French Civil Code, making it impossible to execute the order or meeting deadlines of delivery by either Party.
- (b) In the event of a case of force majeure, execution of the order shall be suspended.
- (c) The Party affected by a case of force majeure must notify the other Party by registered letter within fifteen (15) calendar days from the occurrence of the event, and provide all supporting evidence.
- (d) If, due to a case of force majeure, the fulfillment of our obligations is delayed by more than thirty (30) calendar days, we shall consider, either the possibility of continuing the execution of the order with new conditions, or terminate the order before its term without possibility for the Buyer to claim any damages.

16. Termination

In addition to the possibilities of termination provided in the various Articles of the present Terms and Conditions of Sale, we may automatically terminate the order by registered letter, eight (8) calendar days after formal notice sent by us to the Buyer that remained unanswered, without any claim from the Buyer and without prejudice to compensation claims that we may request against the Buyer, if the Buyer fails to fulfill any of its obligations under the order and does not remedy after our formal notice.

17. Preservation of secrecy / prohibition of Advertising

- (a) The Buyer is obliged to maintain secrecy about all information supplied to it, whether recorded in writing or given verbally or embodied in the objects given into the Buyer's possession and not to make the same available to third parties without our written consent. The duty of confidentiality continues to apply even after termination of the Parties' relationship.
- (b) Any reference to our business relations made by the Buyer for advertising purposes requires our express consent.
- (c) The Buyer shall ensure such compliance, by its own subcontractors, as set out in a) et b) above.

18. Assignment

We reserve the right to assign all or part of the execution of the Buyer's order to any company of the SCHALTBAU Group, subject to written notification addressed to the Buyer fifteen (15) days prior to such assignment, without possibility for the Buyer to terminate the order, solely because of such assignment.

19. Personal Data protection

- (a) The Parties expressly undertake to comply with French Data Protection Act of January 6th, 1978 ("Data Protection Act"). The Parties shall take all measures required by their National Laws and regulations which are respectively applied to protect the Personal Data processed in the framework of the order.
- (b) Each Party shall bear alone the consequences of not meeting its obligations regarding the protection of Personal Data.

20. Storage of e-mail correspondance

In order to comply with our obligations to retain data, notably in fiscal and commercial matters, we store the e-mails and documents exchanged with us for a ten years period.

Schaltbau Holding AG and Schaltbau GmbH are the recipients of the data. It is administered by the Schaltbau GmbH IT Manager based in Munich, to which Schaltbau France's contacts may refer if they wish to have access to the data or challenge its use for reasonable cause in accordance with the French law of 6 January 1978.

21. Place of Performance / Governing Law and Jurisdiction / Miscellaneous

- (a) The Laws of France apply exclusively to the present Terms and Conditions of Sale.
- (b) The application of the UN Convention (Vienna Sales Convention) on contracts for the international sale of goods is excluded.
- (c) Disputes which may arise about the validity, interpretation, performance, non-performance, termination and the consequences of termination of all orders will be submitted, first of all, to mediation in accordance with mediation Rules of the Mediation and Arbitration Center of Paris (CMAP), to which the Parties declare their adherence, to seek an amicable solution.
- (d) Any dispute which has not found an amicable solution will be submitted to the exclusive jurisdiction of the Commercial Court of NANTERRE, even in case of multiple defendants.

- (e) Unless otherwise specified in confirmation of the order, the place of performance is located at our Registered Office.
- (f) Any invalidity of individual provisions of the present Terms and Conditions of Sale does not affect the validity of the remaining provisions.

Effective: May 24th 2017

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