

Schuler Presses UK Limited

General Terms & Conditions of Sale

1 Interpretation

1.1 In these Conditions:

- 1.1.1 "the Buyer" means the person who buys or agrees to buy the Goods from the Company;
- 1.1.2 "the Company" means **Schuler Presses UK Limited** of Quayside Drive, Walsall, West Midlands WS2 9LA, England
- 1.1.3 "Conditions" means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company;
- 1.1.4 "delivery" has the meaning described in Condition 4;
- 1.1.5 "delivery address" means any address for delivery of Goods agreed in writing or (failing which) at the Company's discretion any address for delivery given in the Company's quotation or any address or business premises used by the Buyer in correspondence or otherwise used, advertised or notified;
- 1.1.6 "Goods" means any goods (including any instalment of goods or any parts for them) and/or services and work which the Company is to supply, provided or carried out by the Company for the Buyer;
- 1.1.7 "Price" means the price for the Goods excluding packing and VAT.

2. General

- 2.1 These Conditions will apply to any quotation made, to any order accepted and to any contract. No variations or additions shall be effective unless expressly agreed by the Company in writing. Any terms and conditions in a Buyer's order or otherwise sought to be imposed by the Buyer and not agreed by the Company in writing shall have no effect and delivery by the Company shall not imply or constitute acceptance of any such conditions. These Conditions supersede all conditions previously issued by the Company.
- 2.2 A quotation by the Company is not a contractual offer. An offer by the Buyer will only occur upon the submission of an order to the Company. An offer or an order is not deemed to be accepted until the Company acknowledges the order in writing
- 2.3 Quotations are to be valid for a maximum period of 30 days (unless agreed by the Company in writing) from the date of the quotation and may be withdrawn by the Company within such period by written or oral notice.

3. Prices

- 3.1 The Price set out in the quotation is an estimate only. Unless fixed prices are expressly agreed in writing by the Company in its acceptance of the order the Price payable by the Buyer shall be at the Company's rates ruling at the date of the Company's acceptance of the order.
- 3.2 The Price is exclusive of VAT
- 3.3 Unless otherwise stated in writing by the Company the Price is Ex-Works (as per Incoterms 2000) and excludes packing. It is the Buyer's responsibility to arrange and pay for the carriage and insurance of the Goods from this point in accordance with this Incoterm.

4. Delivery

- 4.1 The quoted delivery period refers only to the date of the completion of the Goods at the Company's authorised sub-contractor & or availability of the Goods from the Company location stated in the order acknowledgement.

- 4.2 The quoted delivery date is given in good faith but is not binding unless so confirmed in writing by the Company's acceptance of an order and in that event time shall not be the essence of the contract. .
- 4.3 The date of delivery shall in every case be dependent upon receipt of final instructions from the Buyer in writing by the Company.
- 4.4 The Company will endeavour to comply with reasonable requests by the Buyer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Buyer shall pay all costs, expenses including but not limited to transportation and a reasonable charge for storage.
- 4.5 If transport of the Goods is by the Company or its carrier, the Company will deliver the Goods to the delivery address and the Buyer will accept the delivery upon its arrival.
- 4.6 Where the Buyer is to arrange carriage in accordance with Condition 3.3 the Buyer shall procure;
- 4.6.1 that delivery takes place as soon as possible after the Company has given notice that the Goods are ready and in any event within 7 days of such notice; and
- 4.6.2 that the transport is suitable in all respects to carry the Goods involved and the Company may without liability withhold delivery if in its opinion the transport is unsuitable in any respect.

5. Risk

- 5.1 When carriage is arranged by the Company by its own transport or otherwise delivery shall be deemed to take place at the moment when possession or control of Goods is offered or transferred to the Buyer or its agent at a delivery address before off-loading or otherwise. When the Buyer arranges carriage by its own transport or otherwise delivery shall be deemed to take place when the Company passes possession or control of the Goods to the carrier.
- 5.2 Risk in respect of Goods shall pass to the Buyer upon whichever shall first occur of

the following events:-

5.2.1 Delivery; or

5.2.2 if at the Buyer's request the Company defers delivery or retains possession of the Goods available for delivery at the date of such request.

5.3 The Buyer shall insure the Goods against loss or damage to the value of the full invoice price in the joint names of the Company and the Buyer from delivery until payment in full has been made.

6. Title

6.1 While any money remains owing by the Buyer to the Company on any account (whether due for payment or not):-

6.1.1 title to all Goods (under any contract) shall remain vested in the Company notwithstanding delivery or passing of risk;

6.1.2 the Company may recover and re-sell any Goods and the Buyer shall deliver any Goods to the Company upon demand and the Buyer grants the Company an irrevocable licence to enter at any time any premises, vehicles or property owned or occupied by the Buyer or any third party to repossess and remove Goods whether or not they have been affixed to any property and/or to examine any Goods. The Company shall not be responsible for and the Buyer will indemnify the Company against liability in respect of damage caused to any such premises, vehicles or property in such repossession or removal being damage it was not reasonably practicable to avoid;

6.1.3 the Buyer shall ensure that if goods are or become affixed to any land or building they shall be capable of being removed without material injury to the goods or to such land or building and shall take all necessary steps to prevent title to the goods from passing to the owner or landlord of such land or building. The Buyer warrants to repair and make good any damage caused by the affixation of goods to or their removal from any land or building and to indemnify the Company against the indemnified matters as a

result of any such affixation or removal;

- 6.1.4 the Buyer shall hold all Goods in a fiduciary capacity for the Company; stored separately; properly protected and insured; and clearly identified as the Company's property; and all the normal incidents associated with a fiduciary relationship shall apply;
- 6.1.5 the Buyer's authority to use or resell Goods is not implied and any authority given by the Company may be revoked at any time and is automatically revoked and the Buyer's right to possession of Goods shall cease when any money owing to the Company becomes overdue for payment or on the occurrence of any event specified in Condition 18;
- 6.1.6 the Buyer shall give the Company written notice forthwith of any resale of Goods with full details of the sub-purchasers, prices and payments made and shall keep full records thereof available for inspection by the Company;
- 6.1.7 any resale of Goods by the Buyer will be as agent for the Company and shall be on the condition that title does not pass to the purchaser except on the same basis as set out in this Condition 6;
- 6.1.8 the Company may trace the proceeds of any resale of Goods including proceeds of any insurance or factoring of debts and the Buyer shall hold any such proceeds in trust for the Company and shall pay the same to the Company and in the case of tangible or non-monetary proceeds shall keep the same stored separately, properly protected and insured and clearly identified as the Company's property;
- 6.1.9 any processing of Goods by the Buyer confirms a bailment for processing relationship with the Company. If goods the property of the Company are attached to, admixed with, processed with or incorporated or included in goods the property of any person other than the Buyer, the product thereof shall be deemed to be owned by the Company in common with that other person;
- 6.1.10 if goods the property of the Company are attached to, admixed with, processed with or incorporated or included in goods the property of any person other than the Buyer, the product thereof shall be deemed to be

owned by the Company in common with that other person;

6.1.11 any processing of goods by the Buyer confirms a bailment for processing relationship with the Company.

6.2 The Buyer may not pledge or in any way charge by way of security for an indebtedness any Goods which remain the property of the Company but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

6.3 Nothing contained in this Condition shall confer any right on the Buyer to return Goods or to refuse or delay payment.

6.4 The provisions of this Condition 6 shall continue to apply notwithstanding that Goods are incorporated in the Buyer's or other Goods or products.

7. Cancellation

7.1 Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss or damage including loss of profits resulting to the Company by reason of such cancellation (as to all of which the certificate of the Company's auditors shall be final and conclusive), will be reimbursed by the Buyer to the Company forthwith.

8. Terms of payment

8.1 Unless otherwise agreed by the Company in writing payment of the Price shall be net monthly account. Payment shall be due and payable on the last working day of the month following the end of the month in which the Goods were delivered or would have been delivered save for the Company's consenting to postpone the delivery in accordance with Condition 4.4 Company. Time for payment shall be of the essence.

8.2 In the event of default in payment by the Buyer in accordance with agreed terms the Company shall be entitled without prejudice to any other rights or remedy to suspend all further deliveries and to charge interest on any amount outstanding at the rate of 4% per annum above the Bank of England base interest rate in force at the relevant time.

9. Shortages and defects apparent on visual inspection

9.1 The Buyer shall have no right to claim for shortages or defects apparent on visual inspection unless;

9.1.1 the Buyer makes a visual inspection of the Goods and submits a written complaint to the Company within 14 days of receipt of the Goods and specifying the shortage or defect

9.1.2 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use is made of the Goods

If a complaint is not made to the Company then the Goods shall be deemed in all respects to be in accordance with the contract and the Buyer shall be bound to the contract to pay for the same accordingly and in such circumstances Conditions 7 and 10 of these Conditions shall not apply.

9.2 Where a valid complaint in respect of shortage is made by the Buyer the Company shall deliver further Goods in a quantity equal to the amount of the shortage but the Company shall not be liable in respect of any direct or indirect costs, damages or expenses or for any consequential loss or loss of profits or production incurred by the Buyer by reason of any such shortage or defect or in respect of any delay in the performance of the contract on the part of the Company caused as a result.

9.3 Whether or not the Company arranges delivery the Company accepts no responsibility for delivery of the Goods and is in no way liable for claims for loss or damage in transit. Any such claim must be made by the Buyer against the relevant carrier in accordance with the carrier's conditions.

10. Defects

10.1 The Conditions and warranties contained in sections 12-15 of the Sale of Goods Act 1979 are to be implied into this contract.

10.2 In respect of defects which are not apparent on visual inspection the Buyer shall have no claim or set off in respect thereof unless

- 10.2.1 a written complaint is sent to the Company as soon as possible after the defect is noticed and no use is made of the Goods thereafter or alteration made thereto by the Buyer before the Company is given an opportunity in accordance with sub-paragraph (4) of this condition to inspect the Goods and (a) the complaint is sent within six months of the date of despatch by the Company as specified on the Company's despatch note or such other period as the manufacturer may stipulate in accordance with condition 9(1) hereof
- 10.3 The Buyer shall not be entitled to any claim or set off in respect of any repairs or alterations undertaken by the Buyer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse.
- 10.4 The Company may within 15 days of receiving a written complaint under Condition 10.2.1 inspect the Goods and the Buyer if so required by the Company shall take all steps necessary to enable the Company to do so.
- 10.5 In the event of the condition of the Goods being such as might or would (subject to these conditions of sale) entitle the Buyer to claim damages, or to repudiate the contract (whether or not the same be apparent on inspection), the Buyer shall not then do so but shall first ask the Company to repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled, at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time. If the Company does so repair the Goods or supply satisfactory substitute Goods, the Buyer shall be bound to accept such repaired or substitute Goods and the Company shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered.

11. Liability

- 11.1 The Company does not manufacture certain proprietary items (including but not limited to electric motors and hydraulic pneumatic and electrical systems) and the Company's liability in respect of such proprietary items shall be limited to the liability of the supplier to the Company of such items further in respect of such proprietary items the Company relies upon the testing examination and research carried out by the supplier for the purpose of the Health and Safety At Work Act 1974.
- 11.2 The Company will not be responsible for Goods that do not fit as a result of machine modification by a third party and not reported at the time of placing the order.
- 11.3 The Company shall not limit its liability for death or personal injury arising from the Company's negligence or that of its employees or for fraudulent misrepresentation.
- 11.4 Subject to Condition 11.3, the Company's liability whether in respect of one claim or an aggregate of various claims arising out of any contract shall not exceed the contract price and the Buyer agrees to insure adequately to cover claims in excess of such amounts.
- 11.5 Subject to Condition 11.3 under no circumstances whatsoever shall the Company be liable for consequential loss, loss of profits, damage to property or any consequential, indirect, incidental, or special loss or damage sustained by the Buyer howsoever arising and the Buyer shall fully indemnify the Company from and against all loss, damage demands claims, actions and proceedings which are incurred by the Company or threatened demanded brought or made against the Company by any person firm or Company or governmental or other authority in respect thereof together with all costs and expenses incurred in relation thereto.

12. Warranties

- 12.1 Subject to these Conditions, the Company warrants that:

- 12.1.1 [the Goods will substantially accord with the quoted specifications]

- 12.1.2 [in the case of the Goods supplied by the Company, the Goods will correspond in all material respects with their specifications at the time of delivery and be free from material defects for a period of 6 months from the date of their initial use or 12 months from the date of their delivery, or as stated in the quotation from the Company;
- 12.1.3 the Company shall not be liable for any goods or parts manufactured by a third party; and
- 12.1.4 in the case of services and work provided or carried out shall be provided or carried out with reasonable skill and care.

13. Representations

- 13.1 The Buyer acknowledges that no statement or representation (save as may have been made by the Company in writing) which may have been made to the Buyer or anyone concerned on the Buyer's behalf by or on behalf of the Company induced the Buyer to enter into the contract;
- 13.2 any such statement or representation as aforesaid is not warranted and does not form part of the contract; and
- 13.3 any liability of the Company and any remedy of the Buyer at law or in equity in respect of any such statement or representation as aforesaid (apart from any fraudulent statement or representation) is hereby excluded save only in so far as liability in respect of any particular statement or representation may not be excluded pursuant to law.

14. Installation and site repairs

- 14.1 Where the assistance of the Company's service engineer is provided on site the Company's responsibility will be for the installation or repair as defined in the contract. The auxiliary equipment and machine parts not included in the contract remains the full responsibility of the Buyer.

14.2 The Company will not be liable to the Buyer and the Buyer shall indemnify the Company against all indemnified matters in respect of any damage to any installation, the installation site and materials and equipment on site not caused by the negligence of the Company, its employees or contractors. The Buyer shall insure against all such matters.

14.3 The Buyer shall obtain any necessary licences and permission for the carrying out of the installation work and shall ensure that the site complies with all health and safety requirements.

15. Safety devices

15.1 The Price quoted for the Goods is exclusive of line guards, fences and other safety devices. The extent of the provision of these devices will depend upon the location of the Goods and the requirements of the relevant local health and safety executive. Upon the Buyer's placing an order in accordance with the Company's quotation for the Goods, the Company agrees to contact the relevant health and safety executive to ascertain particulars of its requirements. The Company shall communicate any such requirements to the Buyer and shall quote a fair price therefore (such fair price in the event of disagreement to be determined by an arbitrator appointed by the parties or in default of appointment upon the application of either party to a person to be appointed by the president for the time being of the institute of mechanical engineers). If a separate contract is concluded with the Company for the provision of equipment to comply with such requirements, then the Company agrees to meet those requirements. If no separate contract is concluded the Buyer shall undertake in writing to the Company to perform and comply with the said requirements and any other steps specified by the Company to ensure that the Goods will be safe and without risk to health when properly used. The Buyer will indemnify and keep the Company against all actions proceedings costs claims or demands arising out of any default by the Buyer in its obligations under this Condition 13.

16. Confidential information

16.1 All drawings, documents, designs, specifications, financial and business information and other information supplied by the Company to the Buyer shall be supplied on the express understanding that the Buyer will not without the written consent of the Company;

16.1.1 give away, loan, exhibit or sell any information provided such drawings or extracts there from or copies thereof

16.1.2 use them in any way except in connection with the components for which they are issued

16.2 The Buyer shall:

16.2.1 only make copies of the Information as far as is necessary for the purpose for any quotation given or contract made with the Company under the terms of these Conditions; and

16.2.2 at the request of the Company, deliver up to the Company as far as is reasonably practical all Information in the possession, custody or control of the Buyer and expunge it from any computer, word processor or device containing it.

17. Indemnity

17.1 So far as and to the fullest extent permitted by law the Buyer shall indemnify the Company from and against all indemnified matters arising from any failure by the Buyer to comply with these Conditions or otherwise without limitation under or in connection with a contract from any cause other than negligence or breach of contract by the Company under these Conditions.

18. Buyers drawings

18.1 The Buyer shall be solely responsible for the accuracy of all drawings, specifications, advice and recommendations given to the Company by the Buyer either directly (e.g. as part of a main contract document) or indirectly or by the Buyer's own advisers or consultants. Examination or consideration by the Company of such drawings, specifications, advice or recommendations shall in no way limit the Buyer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.

18.2 The Buyer shall indemnify, keep indemnified and hold the Company harmless from and against all damage, loss or expense incurred by the Company arising out of the Company's manufacture of components in accordance with the drawings and specifications of the Buyer where such drawings and specifications shall be at fault or where it is alleged that they involve an infringement of any third party's intellectual property rights.

19. Dimensions

19.1 The Company reserves the right to alter or change dimensions of the Goods supplied within reasonable limits having regard to the nature of the Goods dimensions specified by the Company are to be treated as approximate only unless the Buyer specifically states in writing that exact measurements are required.

20. Data

20.1 The information contained in the advertising sales and technical literature including but not limited to any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature issued by the Company is given in good faith but should not be relied upon to be accurate. The information contained in the Company's publications is provided for general guidance only and forms no part of the contract unless expressly agreed in writing. The Buyer should obtain specific recommendations and advice from the Company regarding the uses and attributes of the Company's products.

21. Termination

Without prejudice to any of its other rights or remedies the Company may without liability cancel a contract or suspend further deliveries or work: -

- 21.1 if the Buyer commits any breach of this or any other contract with the Company including (without limitation) any failure to make any payments on the due dates;
- 21.2 if being an individual the Buyer shall die;
- 21.3 if a meeting of the shareholders of the Buyer (being a company) is convened for the purpose of considering a resolution for the winding up of the Buyer or a meeting of the creditors of the Buyer is convened or the Buyer goes into liquidation or there is a winding up petition or if circumstances exist in which the Buyer may be wound up by the Court;
- 21.4 if the Buyer does or fails to do anything which could entitle any person (including without limitation any debenture holder or secured creditor) to initiate or which could give rise to a relevant event; or if any step is taken (including without limitation a resolution being passed, a meeting being called, a petition being presented or any order being made) for or towards a relevant event; or if any relevant event shall occur: and in this condition a "relevant event" means a voluntary arrangement (as defined by Ss1 and 253(1) Insolvency Act 1986), any scheme, arrangement or composition with or any assignment for the benefit of all or any creditors of the Buyer; bankruptcy of the Buyer (being an individual) or of any member of the Buyer (being an unincorporated firm or a partnership); the levying, threat or enforcement of any distress, execution or other legal process upon or sued against or any other exercise of rights over or against any assets, property or undertaking of the Buyer; the taking possession by an encumbrance of any asset, property or undertaking of the Buyer; the appointment of a receiver or manager or an administrative receiver, liquidator or other similar official or insolvency practitioner in respect of the Buyer or any assets, property or undertaking of the Buyer; the appointment of an administrator or similar official or the making of an administration order of or in respect of the Buyer; and any similar or analogous event;

- 21.5 if the Buyer becomes insolvent or unable to pay its debts (within the meaning of S123 or S268 Insolvency Act 1986) or permits any judgment against it to remain unsatisfied for 14 days;
- 21.6 if the Buyer ceases or threatens to cease to carry on business;
- 21.7 if any event occurs in relation to the Buyer under the laws of any other jurisdiction which is similar to or analogous with any of the events described above; or
- 21.8 if the Company reasonably considers that any of the events mentioned above is about to occur and notifies the Buyer accordingly.

22. Force Majeure

- 22.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in delivery or any delay in performing or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

23. Legal

- 23.1 These Conditions shall be governed by and interpreted in accordance with the laws of England and the parties shall submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to these Conditions.

24. Third Party Rights

24.1 A person who is not a party to any contract to which these Conditions do not relate has no right under the Contracts (Rights of Third Parties) Act 1999.

25. General

25.1 These terms are the entire agreement between the parties with regard their subject matter and no other terms, conditions, guarantees or statements will apply. If a court decides that any part of these Conditions cannot be enforced that particular part of these Conditions will not apply but the rest will.