

General Terms and Conditions of Sales (GTCS) of Schoeller Allibert Sp. z o.o. with the registered office in Zabrze

§ 1. General

1. These General Terms and Conditions of Sale, hereinafter referred to as "GTCS", shall apply to all and any contracts for the sale of goods and services concluded by **Schoeller Allibert Sp. z o.o. with the registered office in Zabrze**, hereinafter referred to as "Seller".
2. The Parties may withdraw from the application of these GTCS entirely or partially or modify them in writing under pain of invalidity. Where such a contract is concluded, the relevant provisions of the GTCS shall be excluded and the provisions of the contract shall apply instead.
3. The Seller pursues its business objectives by concluding contracts for the sale of goods with other entities, hereinafter referred to as "Buyers", excluding consumers in the meaning of Article 22' of the Civil Code.
4. The Buyer, prior to placing an order, shall deliver copies of registration documents confirming the Buyer's status as an entrepreneur or another business entity running business activity to demonstrate capacity to enter into agreements with the Seller (as needed, entry into a business register or an extract from the National Court Register (KRS), a certificate of NIP number (Tax Identification Number) and a document confirming the award of the statistical REGON number.
5. The Buyer, by placing an order, accepts these GTCS.

§ 2. Orders

1. The Buyer shall be obliged to deliver to the Seller an order for goods in writing under pain of invalidity. The condition is deemed fulfilled if the order is sent by fax or email. The submission of an offer to conclude a sales contract or a supply contract by the Buyer shall be deemed an order in the meaning of these GTCS.
2. The Seller sends an order confirmation as a letter, email or fax within 48 hours from the moment of agreeing upon the details of the order. The Seller shall be authorised to make modifications and changes to the order placed by the Buyer and such modifications shall be stated in the order confirmation. No response from the Buyer within 24 hours from sending an order confirmation by the Seller is considered as the acceptance of the new conditions of the order specified by the Seller.
3. The confirmation of order acceptance by the Seller or issuing an invoice by the Seller means that the sales contract or supply contract is concluded by the parties at the terms and conditions stipulated hereunder.

§ 3. Pricelist and prices

1. The prices of goods and services shall be agreed by the Seller. The "Pricelist" shall be provided as an appendix to these GTCS.
2. All the prices stated in the "Pricelist" shall be net (without VAT) in the Seller's indicated warehouse (EXW prices for the Seller's warehouse).
3. The Seller reserves the right to correct the "Pricelist" without having to notify the Buyer in prior of the fact each time. It shall be verified if the pricelist is valid and current using the preparation date provided therein or the date of the last change.
4. A current pricelist shall always be available from the Seller.
5. The previous valid pricelist expires at the time a new pricelist enters into force, unless the parties agreed otherwise in an individual contract confirmed in writing.
6. Until delivery is completed, if the implementation period of the order placed is longer than 60 days, the Seller reserves the right to change the price used in the order and order confirmation if the constituent elements of the price change, i.e. costs of materials, taxes, import duties, currency exchange rate, etc., by more than 10% with regard to the price of such materials on the transaction confirmation day.
7. In case the Parties agree that the payment of price indicated in the offer in foreign currency shall be made in PLN, the equivalent of the price expressed in a foreign currency shall be calculated in PLN on a basis of the average exchange rate of such foreign currency announced by Polish National Bank as for the day preceding the day in which the VAT invoice is issued.

§ 4. Delivery dates. Contractual penalties

1. The Buyer is obliged to collect the ordered goods from the Seller's warehouse at latest within 7 days from the implementation date specified in the order. Failure to collect the goods shall authorise the Seller to deliver, at the Buyer's expense and risk, the ordered goods to the place indicate by the Buyer. If the delivery place of the goods cannot be specified or if the goods ordered are not collected by the Buyer, the Seller may impose a penalty on the Buyer of PLN 10 net per pallet for each day of delay in the collection of goods. Goods shall be stored at the Buyer's risk.
2. The Seller reserves the right to perform partial deliveries. As needed, the Seller also has the right to deliver goods in the quantity of +/- 10% than given in the order confirmation.
3. The Seller shall not be held liable for defaulting the delivery dates for reasons not attributable to him. The Buyer is obliged to notify the Seller of any claims for delay in the delivery of goods in writing for their validity at latest within 14 days from the time of delivery according to the contract / order. Failure to lodge claims on such date means the Buyer waives such claims unconditionally.
4. The Buyer may withdraw from the goods ordered and cancel the order placed only at the Seller's consent in writing under pain of invalidity. The Seller shall not be obliged to accept such withdrawal from the order but shall co-operate with the Buyer to limit transaction costs if only possible.
5. The Seller reserves the right to change the agreed dates and conditions of delivery or to withdraw from the order in exceptional, justified cases, also when the Buyer has already placed an order and when such an order has been confirmed by the Seller, in particular due to an act of force majeure and in other exceptional circumstances independent of the Seller.

§ 5. Release of goods and delivery by shipment

1. The place of performance by the Seller, i.e. the release of goods, shall be the Seller's warehouse indicated by the Seller in the order confirmation referred to in § 2 above.
2. The Seller may deliver goods to the Buyer at the address indicated in the order via a forwarding company with which the Seller regularly co-operates or via another forwarding company as expressly requested by the Buyer. The Buyer shall include such information in the order.
3. The costs of delivering the goods at the address indicated in the order shall be charged with the Buyer unless the parties agree otherwise.
4. The Seller shall be fully liable for the goods until released by the warehouse. Liability, including in case of losing or damaging the goods, in connection with the release of the goods, shall be with the Buyer from the moment of releasing the goods from the Seller's warehouse, excluding delivery by shipment, when liability is transferred upon the shipping company mentioned in Clause 2. The Seller shall not bear any liability for any damage in the transport of goods, especially in the case where the Buyer fails to fulfil all the formal requirements of receiving the dam-

aged shipment mentioned in § 8 hereunder, and especially if a complaint is not lodged directly with the shipping company.

§ 6. Payment

1. Pecuniary performance being the payment of the price for the goods or service is payable at the date agreed in the settlement document and shall be paid by transfer to a bank account.
2. Payment date shall be considered the date when the monies due are fully credited at the Seller's bank account.
3. Until amounts due being a price of goods or service provided by the Seller are paid, the Seller retains a property title for goods released or delivered to the Buyer. A property title for the goods shall be transferred upon the Buyer not sooner than all settlements resulting from the contract are settled, including the due contractual penalties or default interest.
4. Until a property title is transferred upon the Buyer, the Buyer does not have the right to incur any related commitments or transfer a property title and possession of goods to third parties nor to encumber the goods with any limited property rights. The Buyer must store the goods the property title of which belongs to the Seller with due care and clearly marked as Schoeller Allibert Sp. z o.o. property. Where the Buyer defaults the payment of the entire or partial payment or if any insolvency proceedings are initiated against the Buyer, the Seller may, without prejudice to his other rights, recover all the goods delivered the property title for which is still his property and which are still at the Buyer's disposal.
5. In case of delayed payment of the price, the Buyer is obliged to pay, without notice, interests in commercial transactions, unless the Seller withdraws from them at his will. A statement on withdrawal from interest must be submitted in writing under pain of invalidity to the Seller.
6. In case of no payment on the due date or if it is reasonably expected that the Buyer's financial liquidity is at risk, the Seller shall be authorised to change the conditions of sale or delivery, to demand that the remaining amounts due are paid immediately and to suspend the performance of other orders until all defaulted payments are settled, the Seller is also authorised to withdraw from the fulfilment of the orders placed.
7. In the event of sales with deferred payment date, the Seller has in particular:
 - a. the right to withdraw from the contract concluded with the Buyer where, to secure a sales transaction, the Seller fails to receive insurance for the amounts due under the contract price. The Seller has the right to withdraw from the contract within 7 days from receiving refusal to be granted such insurance by the insurer; or
 - b. the right to change the due date with a demand to pay the entire selling price
- 3 days prior to commencing deliveries, in the event that the insurer of the property, delivering claims insurance services to the Seller, does not cover the concluded contract by insurance.
8. Any payments made by the Buyer on account of the price shall be settled by the Seller on account of this most overdue one, although payments may be identified.

§ 7. Rules regarding issuance of invoices

1. Unless it is necessary because of the amount of goods the sale and/or delivery of goods, performed by the Seller for the benefit of Buyers on a basis of concluded contracts shall be accounted for in the periods specified in the following sections of the present paragraph (hereinafter referred to as: "Accounting Periods").
2. The Accounting Period embraces the seven following days, from Monday to Sunday, subject to clause 3 below.
3. In case one of the days embraced with the given Accounting Period (specified according to the clause 2 above) falls on the last day of calendar month, then such Accounting Period shall be divided into two accounting subperiods:
 - a. the period from Monday preceding the last day of calendar month to that last day of calendar month, and
 - b. the period from the day following the last day of calendar month to Sunday following that last day of calendar month.
4. It is of no relevance that any of the days of Accounting Period is a free day, for the purpose of calculating Accounting Periods.
5. For the purpose of calculating Accounting Periods, it is irrelevant that in one or more days of the given Accounting Period the Seller does not sell goods and/or services for benefit of the Buyer.
6. The Seller shall issue the VAT invoice including the price for sale and/or delivery of goods performed in the given Accounting Period or accounting subperiod, within 7 days from the day the specific Accounting Periods or accounting subperiod ends. Unless otherwise agreed by the Parties, the Seller is also entitled to issue the VAT invoice before the Accounting Period ends. In such situation the VAT invoice shall embrace all sales and/or deliveries from such unfinished Accounting Period.

§ 8. Returns

1. The Goods shall be returned solely and exclusively after agreeing in prior and in writing under pain of invalidity and at the Seller's consent.
2. The goods returned must be unused, undamaged, free of any defects and in their original packaging.
3. Transportation of the returned goods shall be performed wholly at the Buyer's expense.
4. As compensation for the costs incurred by the Seller, the Seller is authorised to deduct from the amount of the price paid up 30% of the net value of the goods returned and the Buyer consents to this.

§ 9. Complaints and guarantee

1. Before first use of a good, the Buyer is obligated to acquaint himself with available good's documentation and its usage in particular with a user guide of the good. The Good's documentation is are always available at the Seller's office and from the Seller's generally available website at www.schoellerallibert.com.
2. The Seller grants a 24-month guarantee for materials and/or workmanship defects counting from the moment of performing sales or delivery. The Buyer's guarantee claims towards the Seller may be lodged within 24 months from the date of issuing an invoice to the Buyer by the Seller.
3. The Seller's liability under warranty for the physical defects of goods shall be excluded.
4. The goods or parts thereof bearing the symptoms of incorrect use or use contrary to the intended purpose or symptoms of mechanical damage shall be excluded from the guarantee.
5. The Buyer is under obligation to lodge complaints concerning damaged shipments immediately not later than within 24 hours from the date of collecting materials by the Buyer.
6. A physical defect shall be reported immediately, not later, however than within 48 hours from the moment of detecting thereof under the pain of rejecting a complaint.

7. Any complaints shall be lodged in writing, otherwise shall be null and void. Complaints made in any other form shall not be considered.
8. The Buyer, after lodging a complaint, is obliged to follow strictly the Seller's hints, especially as regards securing and operating further the defective goods until repaired or replaced or the rights under pain of losing rights resulting from the granted guarantee.
9. The Buyer is obliged to provide any information to the Seller concerning a defect and its cause and such information must be true in order to evaluate correctly whether the defect is subject to repair under the guarantee. If any information is hidden or if untrue information is provided, the Buyer shall bear the costs of repair and loses the guarantee.
10. Where the Seller considers a complaint lodged as reasonable, the Seller, at his discretion:
 - a. undertakes to perform the recognised guarantee repairs at his expense in the period of guarantee,
 - b. shall deliver goods free of defects against defective goods returned at the Buyer's expenses, or,
 - c. shall terminate the Contract together with the Buyer once the price paid is returned and defective goods are returned at the same time.
11. The Seller reserves the right to repair the product under the recognised guarantee repair directly at the Buyer's site in the place where goods are stored, also via a company authorised by the Seller where the transportation costs of the goods are too high or a risk of further damage exists.
12. Where the goods cannot be repaired at the Buyer's site, the defective goods shall be sent by the Buyer to the Seller in packaging ensuring protection against damage or destruction, after agreeing upon in prior the rules of settlements and after agreeing upon the mode of transport.
13. The Buyer's any guarantee claims shall become null and void in the event:
 - where goods are transported or unloaded incorrectly,
 - if the purchased goods are used contrary to the intended use, in particular contrary to Seller's directions included in the user guide of goods;
 - if any defects arise due to improper storage of goods,
 - if the user has performed any structural modifications on his own,
 - if any defects arise due to improper maintenance of goods.

§ 10. Liability

1. Apart from liability for physical defects of goods described in this Clause, the Seller shall not be held liable towards the Buyer for any harm done by the goods in connection with possession or use thereof, subject to liability resulting from mandatory provisions of law.
2. The Seller shall not be liable for any special characteristics of the goods or for the fact that the goods delivered are unfit for the purpose of the Buyer, except for situations where the Seller has given an assurance in writing under pain of invalidity to the Buyer that the goods possess special characteristics or are suitable for the Buyer's special purposes.
3. The Seller declares, that all good's dimensions included in the specification are nominal sizes. The actual dimensions of the goods may deviate from the nominal dimensions in the range of +/- tolerances contained in the technical drawing or "General Tolerance Sheet". The technical drawing or the General Tolerance Sheet are available at Schoeller Allibert's registered office or will be sent by email on every demand of the Buyer, upon earlier sending to the email: info.poland@choellerallibert.com request for re-sending "General Tolerance Sheet" for a given good.
4. The Seller shall not be liable for any costs, damage, contribution to damage (including consequential damages) suffered as a result of repairing, removing or replacing the goods. Any liability of the Seller connected with the conclusion of a contract or performance thereof, regardless the nature of such liability, does not include redressing the damage for the Buyer's lost benefits, including lost profits, including actual damage, in particular connected with production losses, loss of market reputation, etc.
5. In the event that any third party raises any claims against the Buyer likely to arise in connection with the goods or products sold or delivered by the Seller for the production of which the goods sold or delivered by the Seller had been used, the Buyer is obliged to inform the Seller immediately of the fact in writing, thus enabling him to participate in any actions related to third party claims under pain of excluding of any liability of the Seller.

§ 11. Industrial property right

1. The Seller is entitled to a property right or copyrights connected with any cost estimates, software, drawings, specifications and other information relating to the goods. Such cost estimates, software, drawings, specifications and other information must not be used without the Seller's written consent, unless necessary for the correct use of the goods purchased from the Seller.
2. The Buyer acknowledges that the materials and information referred to in Clause 1 above are confidential and shall not have the right to deliver them to third parties without the Seller's written consent. The Buyer, without the Seller's prior consent in writing for validity shall not copy any drawings, software, stereotypes, moulds or tools (even such developed in co-operation with the Buyer or at his cost), or products manufactured in connection with them. The moulds, tools, etc. shall remain the Seller's property even if production thereof had been ordered by the Buyer or if the Buyer has been charged with their costs.

§ 12. Final

1. Any disputes likely to arise between the Parties in connection with the implementation of the agreement the wording of which is formulated under these GTCS shall be, if possible, settled amicably and finally in court.
2. Any matters referred to court likely to arise under agreements concluded by the Seller shall be settled by Polish common courts competent for the registered office of the Seller.
3. The Seller reserves the right to make changes to the General Terms and Conditions of Sale. Changes in the provisions shall become binding for the other party when delivered normally as agreed by the parties in their business relationships so that the other party can read them.
4. The current GTCS are always available at the Seller's office and from the Seller's generally available website at: www.schoellerallibert.pl
5. The Polish law shall be governing any contracts concluded in connection with the orders placed by the Buyer and accepted by the Seller. United Nations Convention on Contracts for the International Sale of Goods signed in Vienna on 11.04.1980 shall not be applied to any contract concluded under this GTCS.
6. General legal regulations, in particular the provisions of the Civil Code, shall apply to all the matters not settled under these GTCS.
7. The fact that the Buyer has not familiarised himself with the GTCS shall not release the Buyer from compliance with them.