



## 1. General

- 1.1. These Terms and Conditions for the purchase of production materials and elevator/escalator components ("**Terms and Conditions**") shall apply to the purchase of Goods by Buyer from Seller.
- 1.2. In these Terms and Conditions the following capitalized terms shall have the following meaning:

**Buyer**

means a company of the Schindler Group which issues a Purchase Order or on whose behalf a Purchase Order is issued.

**Delivery Time(s)**

means the delivery date/time as stated on the purchase confirmation issued by Seller and accepted by Buyer.

**Excusable Delay**

has the meaning set forth in Article 3.5.

**Goods**

means all production materials and elevator or escalator components specified in the Purchase Order and spare parts.

**Incoterms**

means those trade terms published by the International Chamber of Commerce and entitled „Incoterms 2020“, as amended from time to time.

**Intellectual Property Rights**

means patents, design rights, copyrights, trademarks and service marks (whether registered or not and applications for any of the foregoing), know-how, trade secrets and rights of a like nature, throughout the world.

**in writing or written**

means a document served by any means including email and electronic data interchange, including documents signed by simple and qualified digital signatures using DocuSign or Adobe Sign.

**Purchase Order**

means any individual order for the purchase of Goods issued by Buyer to Seller. A purchase order typically consists of several lines and positions in relation to Goods.

**Schindler Group**

means Schindler Holding Ltd., Hergiswil, Switzerland and the companies directly or indirectly controlled by Schindler Holding Ltd.

**Serial Defect**

means a successive failure of the Goods to conform to the specifications whereby the failure is homogeneous or similar.

**Supply Contract**

means any contract formed by Seller's acceptance of a Purchase Orders.

**Systematic Failure**

means a failure related in a deterministic way to a certain cause which can only be eliminated by a modification of the design or the manufacturing process, operational procedures, documentation or other relevant factors.

**Seller**

means the supplier company being the signatory of these Terms and Conditions or any of its affiliates supplying Goods to the ordering Schindler company under these terms and conditions.

**Terms and Conditions**

means these terms and conditions for the purchase of production materials and elevator/escalator components.

## 2. Offers and Purchase Orders

- 2.1. Based on Buyer's request Seller shall submit - free of charge - a binding offer. The offer shall explicitly point out any ambiguities, gaps or technical specifications in Buyer's request for quotation which may impair or make impossible the suitability of the Goods for the purpose for which it is intended. It shall further highlight any deviations from Buyer's request.
- 2.2. Buyer shall issue a Purchase Order to Seller. Acceptance of a Purchase Order by Seller is expressly limited to the terms of the Purchase Order and to these Terms and Conditions. Unless specifically accepted by the Buyer in writing, any additional or different terms and conditions are expressly excluded and shall not form part of any Supply Contract. Each Purchase Order accepted by Seller shall constitute a separate and individual Supply Contract. In the case of discrepancy or inconsistency between a Purchase Order and these Terms and Conditions, the Purchase Order shall prevail over these Terms and Conditions.
- 2.3. Seller shall forward a written acceptance of the Purchase Order within two working days after Seller's receipt of said Purchase Order. In any event any performance by Seller in relation to a Purchase Order shall constitute acceptance of such Purchase Order. In the event that Seller does not for-

ward a written acceptance or does not start performance in relation to a Purchase Order within two working days after receipt of the Purchase Order, Buyer may revoke such Purchase Order without incurring any liability to Seller.

- 2.4. After the acceptance of a Purchase Order, Buyer may request changes with respect to the Goods (including, but not limited to specifications, drawings, designs, constructions as well as raw material, production process and technology as well as changes regarding the date and place of delivery, packaging, quality, quantity and means of transportation). Such change request shall duly consider Seller's reasonable interests. If such change results in an increase or a reduction of Seller's costs or in a potential delay of delivery, Seller shall immediately inform Buyer and the parties shall agree in writing on a reasonable adjustment of Seller's remuneration.
- 2.5 After the acceptance of a Purchase Order, Seller shall not be entitled to changes with respect to the Goods (including, but not limited to specifications, drawings, designs, constructions, raw material, production process and technology as well as changes regarding the date and place of delivery, packaging, quality, quantity and means of transportation) without Buyer's prior written consent.
- 2.6 The volumes set out in any requests for quotation or offers are solely assumptions for the purpose of price calculation, and do not establish any obligation of Buyer or another company of the Schindler Group to order such volumes.

### 3. Delivery Times, Delays

- 3.1. Seller acknowledges that delivery times and quantities are of the essence and Buyer may reject and/or return at Seller's expense any delivery of Goods or part thereof received before or after the Delivery Time or in excess or short of the quantity specified in the Purchase Order and/or delivery schedule.
- 3.2. Seller shall inform Buyer promptly of any occurrence which will or may result in any delay of delivery at any time or which will or may result in Seller's inability to fulfil the quantities specified in the Purchase Order and/or delivery schedules. Seller shall also advise Buyer in writing of corrective measures which Seller is taking to minimize the effect of such occurrence.
- 3.3. Delays occasioned by missing information, documents or objects to be supplied by Buyer shall be excused only to the extent Seller has requested the transmission or supply of said items in due time.

- 3.4. Except for Excusable Delay, in the event that Seller fails to effect delivery consistent with the Delivery Time specified in the Purchase Order, Buyer shall, for each working day, be entitled to a handling fee of EUR 50 and to a penalty in the amount of 1% of the Purchase Order value. Subject always to Buyer's right to recover from Seller all actual losses and damages exceeding the penalty or the right to cancel or rescind the Supply Contract if the penalty has fallen due.
- 3.5. Either of the parties may suspend performance of a Supply Contract during the occurrence of an "**Excusable Delay**", which shall mean any delay not occasioned by the fault or negligence of the delayed party and which results from acts of God or from restrictions, prohibitions, embargoes imposed by governmental authority, or any other circumstances beyond such party's control. Buyer may obtain the Goods covered by the Supply Contract from other sources for the duration of Seller's inability to perform due to Excusable Delay and to reduce without any obligation to Seller, the quantity of the Goods specified in the Purchase Order or delivery schedules.
- 3.6. In the event that Seller discovers any fact which may, or could with the passage of time, result in an Excusable Delay, Seller shall immediately advise Buyer in writing of such fact and use its best endeavors to take all measures and precautions to mitigate and reduce the effect of the Excusable Delay.
- 3.7. If an event of an Excusable Delay prevents one of the parties for more than 20 working days from fulfilling its obligations, the other party may rescind or terminate the Supply Contract forthwith.

### 4. Packaging, Transport, Shipping Documents, Passing of Risk

- 4.1. Goods shall be suitably, carefully and appropriately packed and prominently labeled in accordance with Buyer's instructions. However, packaging shall be consistent with applicable standards and best practice, environmental rules and legal regulations, giving due consideration to the nature of the Goods and the agreed mode of transport. Any damage due to inadequate or unsuitable packaging shall be the sole responsibility of Seller. Reusable packaging shall, at Buyer's request, be taken back free of charge and Buyer shall be credited with the packaging material costs included in the purchase price. Unless otherwise agreed, the return of empty containers and pallets shall be for Seller's account.
- 4.2. Delivery notes and documents accompanying the Goods shall refer to Buyer's Purchase Order number and shall comply with Buyer's pertinent instructions.

In case of electronic order processing Schindler's "Terms and Conditions for eProcurement" shall be complied with.

- 4.3. Seller shall attach a legally compliant commercial invoice in English to the shipping documents, all in duplicate.
- 4.4. In the case of deliveries incurring customs duty, the invoice shall specify as separate items:
  - cost of items not included in the price (such as commissions, brokerage, cost of licenses, cost of means of production, Buyer's free issue materials);
  - cost of items included in the price (such as cost of assembly and freight cost);
  - if any: value of repairs carried out, broken down into cost of materials and wages;
  - certificates of origin.
- 4.5. Should further official documents be required in the case of imports or exports for the intended use of the Goods delivered, Seller shall procure such documents for Buyer without delay and make them available to Buyer at Seller's cost.
- 4.6. A detailed packing list of all Goods in each package must be in weatherproof envelope attached to the interior and exterior of each package.
- 4.7. The Goods shall be delivered complete with all instructions, warnings and other data necessary for the safe and proper operation.
- 4.8. Unless otherwise agreed between the parties in writing, the time at which the risk of damage to or loss of the Goods shall pass to Buyer shall be in accordance with the Incoterm agreed in the Supply Contract. Unless otherwise agreed between Buyer and Seller, the Goods shall be deemed to be sold "DDP" (Incoterms 2020), with named place being the premises of Buyer or any other delivery location defined by Buyer.

## 5. Price, Terms of Payment

- 5.1. Unless otherwise agreed in writing, prices are understood including delivery to the agreed place of delivery and including packing.
- 5.2. All invoices must be itemized and identified with the Purchase Order number. Freight, duties, taxes and other similar charges authorized by the Purchase Order shall be itemized separately.
- 5.3. Unless otherwise agreed between Buyer and Seller in the individual case, Seller's invoices shall be due

and payable at a discount of 2% within 30 days from receipt of Seller's properly documented invoice and the Goods, or 90 days net.

- 5.4. Payment of Seller's invoice does not constitute acceptance of the Goods. All Seller invoices shall be subject to adjustment for errors, shortages, defects in the Goods, or other failure of the Seller to meet the requirements of the Purchase Order.
- 5.5. If Seller is in delay with the presentation of accompanying documents required for customs clearance, in particular with properly prepared invoices or signed certificates of origin, both in duplicate, Buyer shall be entitled to withhold an appropriate part of the purchase price, at least 10 %, until complete submission of the missing documents.
- 5.6. Seller may not assign its payment rights hereunder without the prior written consent of Buyer.
- 5.7. In the event Buyer fails to pay Seller's invoice in due time without cause, Seller shall remind the Buyer in writing. If Buyer fails to pay the overdue invoice within 10 days after the receipt of the above notice, then Seller shall remind Buyer again in writing. If the overdue invoice is not paid within 20 days from the date of the second reminder, Seller may charge interest on the amount overdue commencing from the expiry of the aforementioned 20-day period. The rate of interest is 1% per annum.

## 6. Warranties

- 6.1. In addition to any warranty pursuant to applicable law, Seller warrants that the Goods are free from defects in design, materials and workmanship, strictly conform to the specifications, drawings, approved samples and to the terms of the Supply Contract, meet the agreed performance criteria, are new and state-of-the art and fit for the purpose for which they have been purchased.
- 6.2. Seller further warrants that Seller has title, free and clear of all liens, claims, security interests and encumbrances to the Goods.
- 6.3. In addition, Seller represents and warrants that (i) the Goods comply with all statutory requirements, applicable laws, regulations and standards, including without limitation, those dealing with environmental issues, health and safety, in force at the final place of delivery indicated in the Purchase Order, and (ii) the Goods or their intended use thereof do not infringe Intellectual Property Rights of any third party.
- 6.4. Seller further represents and warrants that (i) it has

all appropriate permits, licenses and authorizations to manufacture and sell the Goods; and (ii) all of its activities and processes are in full compliance with laws, regulations and standards applicable to Seller, its affiliates, its business, its manufacturing process and the Goods, foreign and domestic.

- 6.5. The warranty period of the above warranties is 36 months, commencing upon the later of (i) delivery at the agreed place of delivery, or (ii) - if so agreed - final joint acceptance of the Goods, subject to longer warranty periods provided at law or legal regulations regarding commencement, suspension or restart of warranty periods or statutes of limitation. In cases of Systematic Failures and/or Serial Defects the warranty period is 60 months from the Delivery Time. Buyer's notice of a defect shall suspend the statute of limitation regarding any claims arising out of or in connection with the respective defect.
- 6.6. Subject to any deviating agreement between the parties in the individual case, Buyer's inbound inspection of the Goods shall be limited to an inspection regarding identity, quantity and visible transport damage. Other, in particular hidden defects, may be detected in the ordinary course of business. Seller may notify a breach of warranty during the entire warranty period to Seller.
- 6.7. In case of any breach of the warranties provided herein, Buyer may, in addition to any remedies available at law, reject, return for credit, require prompt correction, repair or replacement of the defective or non-conforming Goods. All costs, including shipping, travel, removal and installation costs, as well as taxes, duties and other levies, howsoever incurred in connection with Goods to be replaced or repaired or faulty work to be repaired or corrected shall be borne by Seller.
- 6.8. If Seller fails to repair or correct a defective Good within 14 days or replace it within two days, Buyer, following an additional two days' notice to Seller, may repair or correct Seller's non-conforming Goods or procure replacement Goods elsewhere with all costs for such actions for Seller's account. Buyer shall be entitled to deduct all costs for the foregoing repairs, corrections or replacements from the price for the Goods and Seller shall be liable for any excess such as special handling (airfreight etc.) and damage costs.
- 6.9. The warranty period of repaired or replaced Goods shall recommence on the date of acceptance by Buyer of the repair, correction or replacement and shall in case of repairs continue for a period of 12 and in case of replacements 36 months or the remainder of the original warranty period, whichever is longer.

## **7. Liability, Indemnity**

- 7.1. Seller shall be liable for all damages and losses incurred by Buyer and occasioned by or arising out of or in connection with any breach of Seller's obligations under the Supply Contract.
- 7.2. Seller shall defend, indemnify, and hold harmless the Buyer and its affiliates, distributors or agents and assigns, against all losses, claims, expenses and damages, which may result in any way from any accident, injury or damage either to person or property or from death of any persons by reason of any act or omission on the part of the Seller, its agents, employees, subcontractors or sub-suppliers.

## **8. Insurance**

- 8.1. Seller shall procure and maintain at its sole expense such liability, property damage and employer's liability insurance with reputable and financially sound insurance companies, as will protect Buyer and its customers from any of the risks stated in Article 7.2 and will supply, upon request of the Buyer, certificates satisfactory to Buyer evidencing such coverage.
- 8.2. In particular, Seller shall maintain a comprehensive general and products liability insurance policy with world-wide coverage (covering bodily injury and property damage and the financial losses arising therefrom). Seller's insurance coverage shall be no less than the equivalent of EUR 5 million per occurrence.
- 8.3. The existence of any insurance shall not limit Seller's obligation under any provision hereof or under the Supply Contract.

## **9. Quality, Environment**

- 9.1. Unless otherwise agreed, Seller shall, at Buyer's request, by submitting quality records or other documents, provide evidence of the efficiency of its ISO 9001 or equivalent quality management system.
- 9.2. Upon request, Seller shall further provide evidence that Seller has implemented and maintains an environmental management system in accordance with the requirements of ISO 14001, or at least an equivalent system derived from ISO 14001.
- 9.3. Upon 48 hours' notice, Buyer may have access to Seller's premises during normal business hours and without interfering with Seller's business in order to inspect all documents, instruments, books and records relating to any Supply Contract or the Goods

which are subject of such Supply Contracts, as well as Seller's manufacturing process.

- 9.4. The aforementioned inspection shall not prejudice the remedies available to Buyer in connection with defective Goods.
- 9.5. Seller agrees to keep all records documenting the quality of the Goods for at least 10 years from the date of delivery.
- 9.6. Seller shall impose the aforementioned obligations also on its sub-contractors and/or sub-suppliers and upon Buyer's request submit pertinent evidence.

## **10. Spare Parts / End of Life**

- 10.1. Seller shall supply - at competitive conditions and for a period of at least 20 years following delivery of the Goods - spare parts required therefor.
- 10.2. Seller shall without delay inform Buyer, if Seller intends to discontinue the manufacture and/or supply of Goods or, after expiry of the above 20-year period, spare parts for the Goods sold to Buyer. The pertinent notice has to be given at least six months prior to the discontinuation of production. Within three months following receipt of such notice, Buyer shall be entitled to place a final order for the delivery of Goods or spare parts at customary market conditions.
- 10.3. Buyer may procure spare parts, not covered by Seller's Intellectual Property Rights, directly from Seller's sub-suppliers or any third party.
- 10.4. Seller shall impose the aforementioned obligations under this Article 10 also on its sub-contractors and/or sub-suppliers and shall not impair Buyer's right to procure from sub-suppliers or third parties according to Article 10.3 by restricting its sub-suppliers contractually.

## **11. Infringement of Third Party Intellectual Property Rights**

- 11.1. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, costs, damages, claims and expenses (including court costs and legal expenses and any settlement of such claim or action) incurred by Buyer in respect of any claim or action brought by a third party against Buyer or its customer alleging that the Goods or their use by Buyer or Buyer's customer infringe the Intellectual Property Rights of such third party.

11.2. The parties shall inform each other forthwith of all actual or alleged infringements of third party rights of which they become aware. Seller shall assist Buyer in its investigation, defense or handling of any such claim, including the provision any documents needed by Buyer to defend the action.

11.3. If Buyer selects its own legal counsel, Seller's indemnification obligation extends to the reasonable costs and fees associated with such representation. If Buyer does not select its own legal counsel, Buyer shall give Seller sole conduct of the defense of any such claims or actions.

11.4. Upon Buyer's request, Seller shall specify any and all Intellectual Property Rights known or becoming known to it, which are used in the design or manufacture of or which otherwise affect or relate to the Goods.

11.5. In the event of a claim of infringement of any third party rights that is communicated to Seller, Seller shall take the required steps to ensure for Buyer a non-infringing source of Goods, which may involve securing the required licenses (if any), redesign of the product, or other steps Seller deems necessary to ensure that a non-infringing product is delivered to Buyer.

## **12. Export Control**

12.1. Seller shall be responsible and liable for (i) compliance with all government export authorizations, including without limitation ensuring that export licenses and other governmental approvals required for the delivery of the Goods are obtained, export-related paperwork and documentation are properly completed and timely filed, and (ii) to provide the importer with complete and accurate required trade information such as customs entry requirements, applicable Harmonized Tariff Number (HS Code), the Export Control Classification Number (ECCN, if applicable), country of origin, preferential treatment, including certificates of origin, declarations, as well as government export authorizations related to goods falling under this agreement, where applicable. Buyer shall obtain any required import licenses and shall comply with any legislation or regulations governing the importation of the Goods into the country of destination.

12.2. Seller shall inform Buyer forthwith, if a Good or component thereof is listed in an applicable export control list.

12.3. Seller shall inform Buyer immediately of any circumstances of which it gains knowledge prior to or after conclusion of the Supply Contract, likely to constitute

a breach of any applicable export control regulations.

- 12.4. If violations of export control regulations have been established or cannot be excluded, Buyer may, at its election, withdraw from the Purchase Order or the Supply Contract or rescind those partial deliveries presumably constituting a breach of export control regulations. Seller shall indemnify and keep Buyer harmless against any damage resulting from the non- or faulty performance of its obligations under this Article 12. The scope of the damages to be compensated shall include the compensation of all necessary and reasonable expenses incurred by Buyer, in particular costs and expenses in connection with its defense as well as any administrative or criminal fines and penalties.

### **13. Confidentiality, Non-Publicity**

- 13.1. The parties shall treat as business secrets and keep confidential all commercial and technical information of the other party, which comes to their knowledge during the course of their business relationship unless such information is or becomes public knowledge without fault of the party receiving such information.
- 13.2. Drawings, patterns, jigs, samples and similar objects shall not be disclosed or otherwise made available to third parties without the prior written consent of the party, which owns them. Reproduction of such items is permitted only if agreed in writing with the party owning them and is in all cases subject to compliance with the applicable copyright laws.
- 13.3. Seller shall include obligations equivalent to Article 13.1 and 13.2 in all contracts with sub-contractors and shall ensure that all sub-contractors are contractually obliged to comply with the same.
- 13.4. Without Buyer's prior written consent, Seller shall not publish in any manner through any marketing or other medium that Seller has contracted with or has been supplying the Goods to Buyer, unless such publication is required by mandatory law.

### **14. Business Continuity, Responsible Sourcing Policy**

- 14.1. Seller shall have adequate business continuity processes and plans (Business Continuity Framework) in place to ensure and maintain the required safety on reliability of production and supply of the Goods and to fulfill its obligations under a Supply Contract in case of disruption or any other unforeseeable events which may affect production (e.g. business interrup-

tion; default of a Subcontractor of the Seller).

- 14.2. Seller shall adhere to Buyer's Responsible Sourcing Policy, as may be updated from time to time at Buyer's sole discretion, at all times in its business relation with Buyer and the Schindler companies. The Responsible Sourcing Policy can be accessed under the following link: <https://group.schindler.com/rsp>. Furthermore, Seller shall comply with all applicable codes, laws, regulations, standards relating to corrupt practices, anti-trust, non-discrimination, etc.
- 14.3. Seller shall impose the obligations pursuant to Article 14.1 also on its sub-suppliers and sub-contractors and upon Buyer's request, shall provide evidence thereof.

### **15. Termination for Convenience**

- 15.1. Buyer may terminate any Purchase Order or Supply Contract in whole or in part, at any time for its convenience, by written notice to Seller. Buyer is not liable for any damages, including loss of anticipated profits on the Purchase Order or the Supply Contract or the part thereof so cancelled.
- 15.2. All Goods completed prior to the date of termination shall become the property of Buyer.
- 15.3. Seller's obligations under Article 6 (Warranty), 7 (Liability, Indemnity), 10 (Spare Parts), 11 (Infringement of Third Party Intellectual Property Rights) and 13 (Confidentiality, Non-Publicity) shall survive termination and expiry of these Terms and Conditions.

### **16. Assignment, Subcontracts**

- 16.1. Without the prior written consent of Buyer Seller shall not, in whole or in part, assign the rights and obligations under a Purchase Order or a Supply Contract, or subcontract a substantial portion thereof, to any third party.
- 16.2. Seller shall not subcontract a substantial portion of the Purchase Order or the Supply Contract without the written approval of the Buyer. Seller is fully responsible for the acts and omissions of its sub-contractors or sub-suppliers, or persons employed by such sub-contractors or sub-suppliers.
- 16.3. Seller shall inform Buyer in relation to all planned changes of material suppliers in writing and request Buyer's written approval to the changes prior to the implementation of such changes. Buyer shall not withhold its approval without good reasons.

## 17. Miscellaneous

ing the validity, invalidity, breach or termination thereof.

- 17.1. If any provision hereof or any partial provision is or is held by any competent court or authority to be invalid or unenforceable, such provision or partial provision shall be deemed null and void, the remaining portions hereof continuing to be in full force and effect. If required, the parties shall replace such invalid or unenforceable provision with a valid and enforceable provision having similar economic consequences, provided that the content of these terms and conditions is not materially altered.
- 17.2. No delay or omission of Buyer to exercise any right or remedy granted under a Purchase Order or the Supply Contract and these Terms and Conditions shall operate as a waiver of such rights, and every right and remedy of Buyer provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 17.3. In case of erection or other services at Buyer's or a third party site, - Seller shall, in addition to these Terms and Conditions, observe the safety regulations applicable at the erection or work place.
- 17.4. Without prejudice to its other rights Buyer and its affiliates reserve the right to deduct from any payment due to Seller or any of its affiliates under the Agreement the amount of any bona-fide contra-account and/or other claim which Buyer or any of its affiliate may have against Seller or any of its affiliates in connection with this Agreement.
- 17.5. These Terms and Conditions together with the Purchase Order constitute the complete and exclusive statement of agreement between the Parties hereto with respect to the subject matter of these Terms and Conditions and supersede all prior agreements between the Parties or prior or subsequent terms and conditions issued by Seller.

## 18. Applicable Law and Jurisdiction

- 18.1. These Terms and Conditions shall be governed exclusively as to all matters including validity, construction and performance by and under the laws of Switzerland, without regard to conflict of law provisions and excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 18.2. The parties submit to the exclusive jurisdiction of the courts of Zurich 1, Switzerland, for the determination of any controversies whatsoever arising under or in connection with these Terms and Conditions, includ-