



## GENERAL CONDITIONS OF SALE, DELIVERY AND SERVICE FOR SCHOTTEL PROPULSION AND STEERING ELEMENTS

Parts and service sold by Schottel, Inc. ("SCHOTTEL") shall only be sold under the following terms and conditions.

### I. GENERAL

1. SCHOTTEL provides all supplies, parts and services exclusively subject to the application of these conditions. Conditions of the Purchaser not expressly approved in writing by SCHOTTEL shall not form part of the contract, even in the case that SCHOTTEL confirms an order without any expressly stated exclusion of such conditions of the Purchaser or if SCHOTTEL performs under the contract. If the Purchaser is not in agreement with our General Conditions of Sale, Delivery and Service, the order confirmation must be returned to SCHOTTEL. Unless otherwise agreed in writing, a contract will be formed exclusively on the basis of the contents of the written order confirmation by SCHOTTEL, notwithstanding any Terms and Conditions that may be contained in any Purchase Order or other document submitted by the Purchaser and notwithstanding any other act of the Purchaser.

Where SCHOTTEL does not issue either a Quotation, or a Sales Confirmation and ships Parts and/or Service pursuant to the Purchaser's Purchase Order, such sale shall be subject to SCHOTTEL's Terms and Conditions of Sale as set herein.

2. Quotations are subject to confirmation in all instances. Any documentation belonging to, or specification made in, the quotation, such as illustrations, drawings, data regarding power, weights and dimensions, shall be considered only as approximate information unless expressly designated as binding. Other properties shall only be deemed as agreed upon if confirmed by SCHOTTEL in writing.

3. SCHOTTEL reserves all rights of ownership and intellectual property rights in respect of cost estimates, drawings and other information both tangible and intangible – including in electronic form ("Documents"). These may not be made accessible to third parties. SCHOTTEL will not make information and Documents classified as confidential by the Purchaser accessible to third parties without the express permission of the Purchaser. Permission shall be deemed to have been granted insofar as SCHOTTEL is required to provide information to its subcontractors for the performance of the contract, provided that SCHOTTEL has imposed corresponding obligations on the subcontractor.

4. REGULATIONS. Purchaser is responsible for following the applicable safety and environmental regulations for work performed by Field Service personnel on site.

### II. EXTENT OF SUPPLY

The extent of supplies shall be as specified by SCHOTTEL in the written order confirmation. Ancillary agreements and/or alterations must be confirmed in writing by SCHOTTEL.

### III. PRICES, SHIPMENT AND PAYMENT CONDITIONS

1. Prices set forth on Quotations and Sales Orders do not include any taxes.

2. Except as provided on the Quotation or Sales Order prices include packing and crating for products destined within the continental limits of the United States excluding Alaska. An additional charge will be made for export packing and crating.

3. Unless otherwise agreed, all shipments are ex works SCHOTTEL's plant (EXW as per INCOTERMS 2010), in St. Rose, Louisiana. In the absence of written shipping instructions from the Purchaser, SCHOTTEL may ship the products collect freight to the Purchaser by any common carrier, which it considers to be satisfactory.

4. If no special agreement has been reached, payment of the contractual price shall be made without deduction or charges to SCHOTTEL's bank account or payment office notified by SCHOTTEL, as follows: 30% downpayment on receipt of order confirmation and invoicing; and 70% on notification of readiness for dispatch and invoicing. All amounts shall be payable 14 days after receipt of the corresponding invoice, unless agreed otherwise.

If the goods cannot be shipped from the works despite having been prepared for shipment by SCHOTTEL, or if shipment/delivery of the goods should be delayed due to any other circumstances for which SCHOTTEL cannot be held responsible, the full invoice amount shall be due 14 days subsequent to invoicing.

5. Payments made by the Purchaser may be offset or withheld only in connection with claims which are undisputed or are determined as legally binding by SCHOTTEL and are limited to the contract between Purchaser and SCHOTTEL.

6. If the Purchaser is in arrears with payment, he shall be liable to pay interest on any unpaid balance at the rate of 18% interest per annum.

7. If the Purchaser is in arrears with a part payment, the entire balance remaining shall be payable immediately. SCHOTTEL reserves the right in this instance to discontinue any work on the contract until the outstanding balance is paid in full. SCHOTTEL is then entitled to claim a time extension on all outstanding supplies and services under the contract until payment or other security acceptable to SCHOTTEL is provided, or, alternatively at SCHOTTEL's sole discretion, to withdraw from the contract and demand compensation for damages. These terms are also applicable should a petition for bankruptcy be filed or insolvency proceedings be initiated against the Purchaser's assets.

8. In the case of subsequent modifications to drawings and specifications, or of any additional or amended acceptance and classification requirements, SCHOTTEL reserves the right to adjust the agreed price in line with the altered conditions and the increased work effort involved. Said price adjustment may not exceed 20% unless SCHOTTEL notifies the Purchaser in writing.

9. If the Purchaser also contracts with SCHOTTEL to install the propulsion or steering system, regardless of whether this is to be installed in a ship or any other location, SCHOTTEL shall be entitled to invoice the Purchaser separately for this work, especially for all required incidental costs including but not limited to travel expenses and daily allowances in addition to the agreed price, unless otherwise agreed in writing. SCHOTTEL's prices do not include the costs of any oil or fuel required, nor – if applicable – certification costs charged by classification societies, which will be invoiced separately unless otherwise agreed in writing.

10. All sales are subject to the approval of the Credit Department. All accounts are subject to the continued review of the Credit Department and if, in its opinion, the financial position of the Purchaser has so changed prior to the delivery as to render the Purchaser insecure, SCHOTTEL may refuse to make delivery pending satisfactory modification of terms of payment.

### IV. DELIVERY PERIOD

1. Only those delivery periods specified in the order confirmation shall be applicable. All other delivery dates indicated by SCHOTTEL are non-binding unless explicitly specified as such in writing. The delivery period is deemed to commence only when the Purchaser has submitted the required documentation, approvals and releases and not before any agreed down payment has been received. Until these conditions are fulfilled by the Purchaser, the delivery period(s) shall be extended.

2. SCHOTTEL's delivery obligation is deemed satisfied when the contract goods have left the works or when the Purchaser has been notified that they are ready for shipment.

3. If non-observance of the delivery period is attributable to Force Majeure, such as mobilization, war, rebellion or similar events, e.g. labor disputes, strike, lockout, adverse weather conditions, or other events beyond SCHOTTEL'S control, then the delivery period will be extended by a reasonable amount of time. This also applies to hindrances affecting subcontractors. The circumstances described above are still deemed to be beyond SCHOTTEL's control even if they arise during an already-existing delay. SCHOTTEL will inform the Purchaser as soon as possible of the beginning and end of such hindrances.





4. If shipment is delayed for reasons within the Purchaser's control, he will be charged storage fees beginning one month after notification that the goods are ready for shipment. In the case of storage at SCHOTTEL, at least 0.5% of the invoice amount will be charged per month or part thereof, up to a maximum of 5% in total. SCHOTTEL further reserves the right to establish a deadline for the Purchaser to accept shipment of the goods and/or to make other use of the contract goods and/or to supply replacement goods to the Purchaser within a reasonable extended period without affecting any other rights to which SCHOTTEL may be entitled.

5. The Purchaser may withdraw from the contract if complete performance becomes impossible for SCHOTTEL prior to the transfer of risk. The Purchaser may also withdraw from the contract if execution of a part of the delivery for a given order is rendered impossible. Otherwise, the Purchaser shall pay the contract price allotted to the partial delivery. In addition, Section IX shall apply. If the impossibility arises due to default in acceptance of if the Purchaser is solely or largely responsible for these circumstances causing the impossibility, the Purchaser shall remain obliged to render consideration.

6. If SCHOTTEL culpably falls behind schedule with supplies, thereby causing losses to be incurred by the Purchaser, then the latter is entitled to claim a lump-sum compensation for this delay. Such compensation is limited to 0.5% for every full week of the delay, but will not be more than a total of 5% of the value of the part of the delivery which cannot be used due to the delayed delivery. If, after the due date, the Purchaser sets SCHOTTEL a reasonable deadline for performance – noting applicable statutory and/or contractual exceptions – and if this deadline is not met, then the Purchaser is entitled to withdraw from the contract subject to applicable statutory and/or contractual requirements. Further claims resulting from default or delay in supplies shall be governed exclusively by Section IX, Paragraph 1 of these Conditions. Any contractual penalty or liquidated damages agreed and due shall be deducted therefrom. Such penalty or liquidated damages being Purchaser's sole and exclusive remedy in absence of other contractual regulations.

## V. TRANSFER OF RISK AND ACCEPTANCE

1. The risk is transferred to the Purchaser in accordance with clause 1 (EXW) of the INCOTERMS 2010.
2. At the request of the Purchaser, and at his expense, SCHOTTEL will insure the consignment against normal risks, e.g. theft, damage due to breakage, transportation, fire and water.
3. Should shipment be delayed due to circumstances beyond SCHOTTEL's control, risk will be transferred to the Purchaser from the day of notification of readiness for shipment. SCHOTTEL agrees to obtain, at the Purchaser's expense, any insurance demanded by the latter.
4. Even if they have insignificant defects, delivered goods shall be accepted by the Purchaser without prejudice to the rights specified in Section VIII.
5. Partial supplies are permissible insofar as they do not cause unreasonable inconvenience to the Purchaser.

## VI. RETENTION OF TITLE

1. The contract goods remain the property of SCHOTTEL until all payments and each and every claim relating to the contract have been received. If the Purchaser fails to comply with the terms of the contract, particularly if he is in default of payment, SCHOTTEL is entitled to withdraw from the contract and repossess the contract goods, following expiration of a reasonable remedy period set by SCHOTTEL, without affecting any statutory and/or contractual provisions to the contrary. The fact that SCHOTTEL takes back contract goods and/or exercises the retention of title, or has the contract goods seized, shall not be construed as constituting a rescission of the contract, unless SCHOTTEL expressly so declares. The Purchaser is obliged to surrender the items in question. The Purchaser must inform SCHOTTEL immediately in writing in the event of seizure, processing or other intervention by a third party.
2. If insolvency proceedings are filed by, or initiated against, the Purchaser, SCHOTTEL shall be entitled to withdraw from the contract and demand the immediate return of the contract goods.
3. SCHOTTEL is entitled to insure the contract goods at the Purchaser's expense against theft, breakage, fire, water and loss by any other means, unless the Purchaser can prove that he has taken out insurance against these risks himself.

4. The Purchaser is entitled to resell the contract goods in the course of regular business only on condition that the Purchaser receives payment from its customer or makes the transfer of ownership of the goods to the customer dependent upon the customer fulfilling its obligation to effect payment. However, the Purchaser hereby assigns to SCHOTTEL in advance all claims on his customers or third parties resulting from the resale, regardless of whether the contract goods are resold in processed or unprocessed condition. The Purchaser is entitled to collect these claims even though they have been assigned. This does not affect SCHOTTEL's right to collect the claims itself. SCHOTTEL undertakes, however, not to collect the claims itself as long as the Purchaser duly meets his payment obligations. The Purchaser is obliged, in case it does not meet its payment obligations, to inform SCHOTTEL of the assigned claims and the associated debtors, to provide all information necessary to effect collection, to hand over the relevant documents and SCHOTTEL may inform the debtors of the assignment. If the contract goods are resold together with other goods not supplied by SCHOTTEL, the Purchaser's claim on his customer shall be considered as having been assigned to the amount of the contract price agreed upon between SCHOTTEL and the Purchaser.

5. The processing or conversion of goods subject to retention of title (hereinafter referred to as proprietary goods) is always carried out by the Purchaser on behalf of SCHOTTEL. Should proprietary goods be processed or inseparably combined with other items not in the possession of SCHOTTEL, then SCHOTTEL becomes the co-owner of these processed or combined goods from the time of processing or combination. If goods supplied by SCHOTTEL are integrated or inseparably combined with other movable objects and if the other object(s) is regarded as constituting the principal object, it is understood that the Purchaser transfers the right of co-ownership to SCHOTTEL provided the principal object belongs to him. In this instance, the Purchaser holds the right of ownership or co-ownership on SCHOTTEL's behalf in all other respects, the object produced by processing, conversion, combination or integration is subject to the same conditions as proprietary goods.

6. If so required by the Purchaser, SCHOTTEL agrees to release the respective part of securities to which it is entitled to the extent that their combined value exceeds by more than 20% the claims to be secured. SCHOTTEL shall be entitled to choose which security interests it wishes to release.

## VII. INSTALLATION, SUPERVISION AND COMMISSIONING

1. If SCHOTTEL has also undertaken to install, supervise the installation of, and/or commission the contract goods, SCHOTTEL is not obligated to start selection and/or deployment of the appropriate skilled personnel or to perform these obligations until the Purchaser expressly confirms in writing that all the necessary preparatory work for foundations, electrical, hydraulic and other systems has been completed and the equipment and materials necessary for SCHOTTEL's performance of the work, such as scaffolding, lifting equipment, energy, water, heating, etc., has been provided, for which the Purchaser shall be responsible, thus enabling SCHOTTEL's personnel to start their work without delay. If the preparatory work has not been properly completed, any additional costs arising because of this will be borne by the Purchaser.
2. If a delay or interruption in installation or commissioning occurs for reasons beyond the control of SCHOTTEL or its agents, the Purchaser shall also bear the additional costs incurred by SCHOTTEL as a result of the delay, interruption or hindrance, regardless of whether the Purchaser can be held responsible for the delay or interruption occurring (except for Force Majeure). SCHOTTEL shall also be entitled to a reasonable adjustment of the time schedule.
3. If the Purchaser entrusts SCHOTTEL's personnel with work and/or services extending beyond the order confirmation and the originally agreed extent of supply, SCHOTTEL is entitled to invoice the Purchaser separately for these items. SCHOTTEL shall only be obligated to perform this work if the Purchaser issues a written order for the additional work. If the Purchaser wishes SCHOTTEL's personnel to work overtime in order to meet SCHOTTEL's





contractual obligations, he must issue a written order to this effect and reimburse SCHOTTEL for the additional costs incurred. Overtime is limited to maximum 10 hours per day, 6 days per week.

### **VIII. WARRANTY CLAIMS**

All other claims excluded – without prejudice to Section IX – SCHOTTEL shall be liable for defects in quality and defects in title, only as follows:

#### **Defects in Quality:**

1. All parts which prove to be defective owing to a circumstance which occurred prior to the transfer of risk shall be either repaired or exchanged for defect-free parts free of charge at SCHOTTEL's option. If such defects are discovered in the contract goods, SCHOTTEL is to be informed of this immediately in writing by the Purchaser. Replaced parts become the property of SCHOTTEL. SCHOTTEL may ask the Purchaser to dispose of the replaced parts free of charge.
2. Unless caused by culpable behavior of SCHOTTEL, liability does not apply to defects attributable to, without limitation, any of the following causes:
  - a) unsuitable or improper use of the contract goods;
  - b) incorrect installation or commissioning;
  - c) installation of non-OEM spare parts;
  - d) natural wear and tear;
  - e) incorrect or negligent handling;
  - f) unsuitable fuel, lubricants, consumables, etc.;
  - g) use of substitute materials;
  - h) incorrect electrical voltage;
  - i) contaminated piping;
  - j) welding work on board;
  - k) consequences of incorrect calculations or information supplied by the Purchaser.

SCHOTTEL assumes no liability for malfunctions that occur later as a result of the installation conditions or improper maintenance or handling by the Purchaser or third parties, nor can SCHOTTEL be held liable for the installation of individual parts supplied in unmounted condition, unless such work is carried out by SCHOTTEL's personnel at the request of the Purchaser and this personnel culpably causes damage to the contract goods.
3. After consultation with SCHOTTEL, the Purchaser shall grant the required time and opportunity for carrying out all repairs or replacement supplies deemed necessary by SCHOTTEL. Otherwise, SCHOTTEL will be exempted from liability for the consequences thereof. The Purchaser is entitled to remedy a defect himself or to have it repaired by a third party and to demand reimbursement of the necessary costs from SCHOTTEL only in urgent cases in which the safety of operation is at risk or to prevent excessive damage from occurring – in which case SCHOTTEL is to be informed immediately.
4. With regard to the direct costs incurred as a result of repairs or replacements, SCHOTTEL shall – insofar as the complaint proves to be justified – bear the costs of the replacement parts, including shipment costs. SCHOTTEL shall also bear the costs of removal and installation as well as the costs of any required assignment of fitters and auxiliary personnel, including travel costs, insofar as this does not cause unreasonable inconvenience or expense to SCHOTTEL. Warranty work shall, even on site, be performed in a workshop area. Thus, dismantling, re-assembly, removal, reinstallation, dock charges, towage, transfer, repositioning, etc., shall not be part of SCHOTTEL's warranty obligations.
5. If the Purchaser sets SCHOTTEL a reasonable deadline for the repair or replacement of a part owing to the presence of a defect in quality – paying due regard to statutory and/or contractual requirements – and if this deadline is not met, then the Purchaser is entitled to withdraw from the contract, subject to the statutory and/or contractual requirements. In case of minor defects, the Purchaser will only be entitled to a reduction of the contract price. The right to a reduction of the contract price is excluded unless repair and replacement finally fail after the third attempt. Further claims are governed by Section IX of these Conditions.
6. If the Purchaser or a third party performs improper repair work, no liability will be accepted by SCHOTTEL for the consequences. The same applies to modifications made to the contract goods without SCHOTTEL'S prior written consent.
7. To the extent that SCHOTTEL has incurred costs or expenses, SCHOTTEL shall be entitled to compensation (a) in the event the defect

notified by the Purchaser to SCHOTTEL is subsequently determined not to exist, or (b) if SCHOTTEL is not responsible for the notified defect.

#### **Defects in Title:**

8. If the use of the contract goods should infringe any property rights, including intellectual property rights valid in the United States, SCHOTTEL shall, at its own expense, either procure for the Purchaser the right of continued use or so modify the contract goods in a manner acceptable to the Purchaser that the property right is no longer infringed, at SCHOTTEL's discretion. If this is not possible on economically reasonable terms or within a reasonable period of time, then the Purchaser shall be entitled to withdraw from the contract. Under the aforementioned conditions, SCHOTTEL shall also be entitled to withdraw from the contract. Furthermore, SCHOTTEL shall exempt the Purchaser from such claims by the owners of the affected property rights which are undisputed or determined as legally binding.
9. The obligations of SCHOTTEL set out in Section VIII, Paragraph 8, are complete and final for the case of the infringement of property and/or intellectual property – without prejudice to Section IX.

They apply if and only if:

- a) the Purchaser informs SCHOTTEL in writing without delay of asserted infringements of property rights and/or intellectual property rights;
- b) the Purchaser has not acknowledged an infringement and gives SCHOTTEL every reasonable assistance in the defense of the asserted claims and/or enables SCHOTTEL to perform modification work in accordance with Section VIII, Paragraph 8.
- c) the Purchaser has furnished SCHOTTEL with a copy of each communication, notice or other action relating to the alleged infringement.
- d) SCHOTTEL is granted the right to all defensive measures including out-of-court settlements.
- e) the defect in title does not arise from an instruction of the Purchaser.
- f) the infringement was not caused by the Purchaser's unauthorized modification or contract-breaching use of the contract goods.
10. Claims for repair or replacement under Section VIII are subject to a statute of limitations of 6 months from the date of installation. This time period shall also apply to claims for rescission and/or reduction. This limitation shall not apply where longer periods are prescribed by law and in the case of intent, fraudulent concealment of the defect or non-compliance with guaranteed characteristics. Any legal provisions regarding suspension of the statute of limitations and/or recommencement of limitation periods shall be unaffected.
11. The foregoing warranty provisions do not apply to any item which is purchased by SCHOTTEL as a component part except to the extent which such items are covered by the warranty, if any, of the original manufacturer.
12. SCHOTTEL does not warrant that its parts will be compatible with any other manufacturers' equipment when sold as an individual part.
13. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. SCHOTTEL'S liability under its warranty is expressly limited to the repair or replacement of any parts which upon examination disclosed to SCHOTTEL's sole satisfaction to be defective within the warranty period. SCHOTTEL shall not be liable under any circumstances for incidental or consequential damages.

### **IX. INDEMNITY BY PURCHASER**

Purchaser shall indemnify and hold SCHOTTEL harmless from and against any and all claims and causes of action for damages and expenses of every kind and character (including cost of suit and reasonable attorney's fees) asserted against SCHOTTEL, its' agents, servants and employees, by any firm, person, corporation or other legal entity on account of injury or death to any person or persons whomsoever, or for damage to or destruction of any personal or real property (including subsurface property or property rights) arising out of, attributed to, directly or indirectly, or in any manner connected





with the parts and services provided or use of the parts and services or any defect in the manufacture or design of any of the parts supplied, including all claims and causes of action resulting either in whole or in part, from SCHOTTEL's alleged breach or breach of implied or expressed warranty (except as specifically provided herein); or alleged breach or breach of the doctrine of strict liability in tort of SCHOTTEL or any other person, firm, corporation or legal entity for which SCHOTTEL, in law, would otherwise be held liable.

#### **X. ITEMS FURNISHED BY PURCHASER**

Prices and delivery dates for products for which the Purchaser furnishes components, plans, patterns, tools, or other items are based upon such items being in usable condition within the required time, and in such quantities as may be required, with transportation charges prepaid to SCHOTTEL's plant in St Rose, Louisiana. If defects are found in items furnished by the Purchaser, SCHOTTEL will notify Purchaser and may charge for additional expenses incurred and extend the delivery dates of the products as a consequence of such delays. SCHOTTEL assumes no responsibility for loss or damage to items furnished by the Purchaser where such loss or damage is due to circumstances beyond its control.

#### **XI. PERIOD OF LIMITATION FOR CLAIMS**

1. All claims of the Purchaser—on whatever legal grounds—shall be time-barred 6 months after dispatch ex works.

#### **XII. INTELLECTUAL PROPERTY, USE OF SOFTWARE**

The Purchaser may use any document or other information which contains intellectual property rights and which has been provided by SCHOTTEL only for the purpose of operation and maintenance of the contract goods. The Purchaser shall not disclose such documents or information to third parties and shall not use them for other purposes, including but not limited to the reproduction of the contract goods (or any portion thereof) or the engineering including but not limited to reverse engineering and/or manufacturing of any components, equipment or parts. The Purchaser's obligation shall survive the expiration or termination of the contract. If software is included in the scope of supply, the Purchaser is granted a non-exclusive right to use the supplied software including the associated documentation. It is granted for use with the designated contract goods. Use of the software on more than one delivery package/shipset is forbidden. The Purchaser undertakes neither to remove any manufacturer indications—including copyright marks—nor to change these without the express prior consent of SCHOTTEL. All other rights pertaining to the software and the associated documentation, including any copies thereof, remain the property of SCHOTTEL or of the originating software supplier, as applicable. The granting of sublicenses is not permitted.

#### **XIII. PARTIAL INVALIDITY**

Should any clause in these Conditions be or become invalid in full or in part, this shall not affect the validity of the contract concluded on the basis of these provisions, the remaining clauses or the remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.

#### **XIV. CANCELLATIONS**

No purchase order with respect to which SCHOTTEL has issued a Sales Order may be canceled after ten days following the Sales Order date without written consent of SCHOTTEL. SCHOTTEL's consent may, at its option, be predicated upon a cancellation charge. Parts purchased but unused and returned will be subject to a re-stocking charge as long as the parts are unused and in their original packaging.

#### **XV. JURISDICTION AND APPLICABLE LAW**

In the event of any disputes resulting from the contract, including disputes relating to cheques or bills of exchange, the action shall be filed at the court having jurisdiction for SCHOTTEL, INC., with its registered office at St. Rose, Louisiana., said court being either the state (St. Charles Parish) or federal (Eastern District of Louisiana) district court in the state of Louisiana. SCHOTTEL reserves the right to bring an action at the place of the Purchaser's registered office. All legal relations between SCHOTTEL and the Purchaser shall be governed exclusively by the laws of the United States and the State of Louisiana. The International Sale of Goods Treaty (CISG) does not apply to these terms and conditions.

Effective as of: April 2012

**SCHOTTEL Inc.**  
190 James Dr. East  
Suite 100  
St. Rose, LA 70087  
Tel.: (504)471 3439  
Fax: (504)471 3443  
info@schottel.com  
[www.schottel.com](http://www.schottel.com)