



## General Conditions of Sale and Delivery for SCHOTTEL Propulsion and Steering Elements

### Preamble:

The following General Conditions of Sale ("Conditions") apply to all quotations, offers and purchase orders for the supply of goods and services ("Supplies") made or accepted by SCHOTTEL Australia Pty Ltd (ABN 39 165 661 594) ("SCHOTTEL") and the delivery of any Supplies to any person, firm or company which enters into an agreement with SCHOTTEL ("Purchaser").

### I. General

1. These Conditions (which can only be waived or varied by SCHOTTEL) will prevail over all conditions of the Purchaser to the extent of any inconsistency. If the Purchaser is not in agreement with these Conditions, the order confirmation must be returned to SCHOTTEL, stating reasons, with a view to reaching an agreement. Unless otherwise agreed by SCHOTTEL in writing, a contract will be formed exclusively on the basis of these Conditions and the terms of the written order confirmation by SCHOTTEL. Each supply which SCHOTTEL makes in response to an order will be regarded as a separate contract for sale.

2. Quotations are subject to written confirmation in all instances. Any documentation belonging to, or specifications 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 by SCHOTTEL.

### II. Intellectual property and software licence

In this clause a reference to intellectual property rights includes patents, trademarks, copyright, registered designs and licences and applications in respect of any of the above.

SCHOTTEL for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any intellectual property rights relating to the cost estimates, drawings and other information, both tangible and intangible (including in electronic form) in relation to the Supplies. Nothing in these Conditions operates or is intended to deny SCHOTTEL or its related bodies corporate, or confer on the Purchaser, such rights or any other intellectual property rights in the Supplies.

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 Supplies. The Purchaser shall not disclose such intellectual property or information to third parties and shall not use them for purposes not authorised under these Conditions, including but not limited to the reproduction of the Supplies (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 of which these Conditions form part.

If software is included in the Supply ("SCHOTTEL Software"), the Purchaser is granted a non-exclusive licence to use the SCHOTTEL Software, including any associated documentation. This licence is granted for use only in conjunction with the designated Supplies. Use of the SCHOTTEL Software in conjunction with more than one delivery package / shipset is not permitted. The Purchaser is not permitted to grant any sublicenses of the SCHOTTEL Software. All other rights pertaining to the SCHOTTEL Software and the associated documentation, including any copies thereof, remain the property of SCHOTTEL or the originating software supplier, as applicable. The Purchaser must not damage or remove any identification labels or marks of SCHOTTEL from any items supplied by SCHOTTEL - including extension and effect other outstanding deliveries only against advance payment or to demand that adequate security be provided before delivery and, after granting a reasonable period of grace, to terminate the contract and demand compensation for damages. The same applies in the event that the Purchaser becomes subject to an Insolvency Event. In these Conditions "insolvency Event" means the occurrence of any one of the following events: the party becomes insolvent under administration as defined in Section 9 of the Corporations Act 2001; any step is taken (including without limitation, any application made,

trademarks - nor change these without the express prior consent of SCHOTTEL.

### III. Confidentiality

The Purchaser shall not without the prior written consent of SCHOTTEL disclose to any third party or use for any purpose other than contemplated under the agreement of which these Conditions form part, any proprietary or confidential documents, knowledge, information, prices, data standard sheets, manuscripts or other technical documentation supplied or made known to the Purchaser by SCHOTTEL. 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.

### IV. Extent of supply

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

### V. Prices and payment

1. Unless otherwise agreed, prices are "ex works" as per INCOTERMS 2010, inclusive of standard packaging and exclusive of GST ("Purchase Price"). If GST is imposed on a Taxable Supply made by SCHOTTEL to the Purchaser under or in connection with these Conditions, the price of the Taxable Supply shall be equal to the GST-exclusive consideration that the Purchaser must pay to SCHOTTEL for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to SCHOTTEL issuing a Tax Invoice to the Purchaser, payable at the same time and in the same manner as the consideration to which it relates. In these Conditions "GST" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "Taxable Supply" and "Tax Invoice" have the same meaning as in the GST Act.

2. Unless otherwise agreed by SCHOTTEL in writing, payment of the Purchase Price and any applicable GST shall be made in full without set off, deductions or charges to SCHOTTEL's bank account or payment office notified by SCHOTTEL, as follows:

1/3 is payable by the Purchaser as a down payment on receipt of order confirmation and invoicing;

2/3 is payable by the Purchaser when SCHOTTEL provides notification of readiness for dispatch and invoicing;

All amounts shall be due and payable 14 days after receipt of the corresponding Tax Invoice ("Payment Date"), unless agreed otherwise. If, owing to the absence of instructions or documentation, the goods cannot be dispatched by SCHOTTEL despite the fact that they have been prepared for shipment, or if delivery should be delayed due to any other circumstances for which SCHOTTEL cannot be held responsible, the full invoice amount shall remain due by the Payment Date.

3. If the Purchaser defaults in the payment of any money due to SCHOTTEL pursuant to these Conditions, then in addition to any other rights which may be conferred upon SCHOTTEL by law or equity, SCHOTTEL will be entitled to be paid interest by the Purchaser on such money at the rate prescribed in Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW) from the date of such default until full payment to SCHOTTEL.

4. 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 withhold any further Supplies until the outstanding balance is paid in full. SCHOTTEL is then also entitled to claim a time proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the party or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets; the party resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them; the party, if a body corporate, becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of



itself; proceedings are commenced to make the party bankrupt or the party becomes bankrupt; or an event analogous to any of those set out in this clause occurs.

5. In the event that the Purchaser requests SCHOTTEL after the acceptance of the order to make modifications to drawings and specifications or of any additional or amended acceptance and classification requirements ("Change Request"), SCHOTTEL has the right to adjust the Purchase Price in line with the changes to the Supplies resulting from the Change Request. However, the adjustment may not exceed an increase of 20% of the Purchase Price ("Maximum Price Increase"). Should an increase greater than the Maximum Price Increase become necessary during the course of manufacture as a result of the Change Request, SCHOTTEL shall notify the Purchaser of this immediately in writing and the following shall apply: the parties will negotiate to reach a mutually acceptable arrangement and if the parties fail to agree within 10 business days after commencing their negotiations, either party has the right to terminate the contract. In the event that the contract is so terminated, the Purchaser has to pay to SCHOTTEL an amount equal to a) the value of the work performed by SCHOTTEL up to the date of termination to the extent that SCHOTTEL has not yet been paid for such work and b) all other costs and expenses incurred by SCHOTTEL in respect of the Purchaser's order prior to the termination, including, but not limited to, orders that SCHOTTEL has placed with suppliers and material purchased in anticipation of the work to be performed by SCHOTTEL for the Purchaser.

6. If Supplies include the installation by SCHOTTEL of a propulsion or steering system ("Installation Services"), regardless of whether this is to be installed in a ship or any other location, the Purchaser is obliged to pay SCHOTTEL for such Installation Services separately from and in addition to the Purchase Price relating to the propulsion or steering system. The costs of the Installation Services are determined by SCHOTTEL and include all required incidental costs, including but not limited to travel expenses and daily allowances. The Purchase Price relating to the Installation Services do not include the costs of any oil or fuel required nor acceptance costs charged by classification societies, and such costs will be charged by SCHOTTEL separately unless otherwise agreed in writing.

#### VI. 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. However, the delivery period is only deemed to commence when the Purchaser has submitted the required documentation, approvals and releases and after any agreed down payment has been received by SCHOTTEL ("Delivery Preconditions"). If any of these Delivery Preconditions are not fulfilled by the Purchaser in due time, the delivery periods set shall be extended until all of the Delivery Preconditions are fulfilled; unless SCHOTTEL is responsible for the delay.

2. Delivery is deemed to have been effected when the contract goods have left the works or when the Purchaser has been notified that they are ready for dispatch prior to the estimated delivery date, whichever is the earlier.

3. Stated delivery times are no more than an estimate by SCHOTTEL any and shall not be binding upon SCHOTTEL. SCHOTTEL will not be liable for any consequential or other loss resulting partly or wholly from late delivery. If non-observance of the delivery period is attributable to a force majeure event, including, but not limited to mobilization, war, rebellion or similar events, e.g. labour 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 delays caused by SCHOTTEL's 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 delays.

4. If dispatch is delayed for reasons within the Purchaser's control, SCHOTTEL is entitled to charge the Purchaser storage fees commencing one month after notification that the goods are ready for dispatch. In the case of storage at SCHOTTEL, the Purchaser must pay a storage fee of 0.5% of the Purchase Price per month or part thereof, up to a maximum of 5% of the Purchase Price in total. If delivery cannot be effected within a reasonable period of delay as determined by SCHOTTEL, SCHOTTEL has the right to make other use of the contract goods and to supply replacement goods to the Purchaser

within a reasonable, extended period without affecting other statutory rights of SCHOTTEL.

5. The Purchaser may terminate any contract of which these Conditions forms part if performance becomes impossible for SCHOTTEL prior to the transfer of risk.

The Purchaser may also terminate any contract of which these Conditions form part if performance of a part of the delivery for an order is rendered impossible and the Purchaser has a legitimate interest in rejecting a partial delivery. Unless this is the case, the Purchaser shall pay the Purchase Price on a pro rata basis based on the value of the partial deliver of the Supplies. In addition, Section XII shall apply. The Purchaser is obligated to pay the full Purchase Price if delivery cannot be effected due to default in acceptance by the Purchaser or if the Purchaser is solely or largely responsible for the circumstances which prevent SCHOTTEL from effecting delivery.

6. If SCHOTTEL negligently causes a delay of delivery which results in losses to be incurred by the Purchaser, then the Purchaser is entitled to claim a lump-sum compensation for such losses ("Delay Compensation"). Such Delay Compensation is limited to 0.5% of the Purchase Price for every full week of the delay, but not exceeding in total 5% of the portion of the Purchase Price which relates to the part of the Supplies which are affected by such delay. If, after the scheduled date for delivery, the Purchaser sets SCHOTTEL a reasonable deadline for performance and if this deadline is not met, then the Purchaser is entitled to terminate the contract.

#### VII. Transfer of risk and acceptance

1. The risk is transferred to the Purchaser according to Incoterms 2010.

2. At the request of the Purchaser and at the Purchaser's expense, SCHOTTEL will insure the goods against theft, damage due to breakage, transportation, fire and water and any other insurable risks.

3. Should dispatch be delayed due to circumstances beyond SCHOTTEL's control, risk will be transferred to the Purchaser from the day of notification of readiness for dispatch. SCHOTTEL agrees to take out, at the Purchaser's expense, any insurance for the duration of the delay if so requested by the Purchaser.

4. SCHOTTEL has the right to deliver the Supplies in instalments as long as this does not cause unreasonable inconvenience to the Purchaser.

#### VIII. Retention of title

1. Notwithstanding that risk passes to the Purchaser under clause VII, legal and beneficial title ("Ownership") in any goods which form part of the Supplies ("Products") shall remain with SCHOTTEL until the Products are the subject of an order confirmation; and the Purchase Price for the Products as well as any other amounts the Purchaser may owe SCHOTTEL have been paid in full.

2. Until such time as Ownership in the Products passes to the Purchaser, the Purchaser shall be in a fiduciary relationship with SCHOTTEL; the Purchaser must not allow any person to have or acquire any security interest in the Products; store the Products in a manner which makes them readily identifiable as the property of SCHOTTEL; hold the Products as bailee of SCHOTTEL; keep, and provide the SCHOTTEL at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and keep the Products insured for their full insurable or replacement value (whichever is the higher).

3. Notwithstanding Clause VIII 2 the Purchaser is entitled until notified by SCHOTTEL or until the Purchaser becomes subject to an Insolvency Event to sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for SCHOTTEL in a separate account.

4. SCHOTTEL is entitled at any time while any debt remains outstanding by the Purchaser to notify the Purchaser of its intention to take possession of the Products and for this purpose the Purchaser irrevocably authorises and licenses SCHOTTEL and its servants and agents to enter upon the land and buildings of the Purchaser with all necessary equipment to take possession of the Products. SCHOTTEL is not liable for damage or injury to any premises caused by SCHOTTEL exercising its rights under this clause.



5. On receipt of notice from SCHOTTEL, if SCHOTTEL has reasonable grounds to believe that the Products will be destroyed, damaged or removed from the Purchaser's normal place of business, or on the Purchaser becoming subject to an Insolvency Event, the following applies: the Purchaser's authority to sell or otherwise deal with the Products as set out in clause VIII 3 is withdrawn; SCHOTTEL may withhold delivering further Products and all invoices issued by SCHOTTEL to the Purchaser become due and payable immediately; SCHOTTEL can exercise its rights under clause VIII 4, and the Purchaser must immediately deliver to SCHOTTEL all Products which are in the Ownership of SCHOTTEL.

6. The Purchaser shall give immediate notice to SCHOTTEL if the Purchaser becomes subject to an Insolvency Event.

#### **IX. Personal Property Securities Act 2009 ("PPSA")**

1. The Customer acknowledges and agrees that it grants SCHOTTEL a security interest in the Products and their proceeds by virtue of SCHOTTEL's retention of title pursuant to clause VIII.

2. The Customer undertakes to do all things necessary and provide SCHOTTEL on request all information SCHOTTEL requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and not to change its name in any form or other details on the PPSR without first notifying SCHOTTEL.

3. The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions.

4. To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA: section 95 (notice of removal of accession); section 123(2) (notice of seizure); section 125 (obligation to dispose of or retain collateral); section 129(2) (notice of disposal by purchase); section 130 (notice of disposal); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

5. The Customer appoints SCHOTTEL as its attorney to sign in the Customer's name all documents which SCHOTTEL considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.

6. The Customer will reimburse SCHOTTEL for any fees payable by SCHOTTEL in relation to the registration of the Security Interest created by these Conditions, including registration fees and maintenance fees.

7. These Conditions create a Security Interest in all Products which SCHOTTEL has supplied to the Customer and all Products which SCHOTTEL supplies to the Customer in the future. Initial registration of a financing statement by SCHOTTEL in respect of the Customer under the PPSA covers Security Interests in Products supplied now or subsequently under these Conditions.

8. Unless otherwise defined in these Conditions, the terms and expressions used in this clause IX have the meanings given to them, or by virtue of, the PPSA.

#### **X. Installation, supervision and commissioning**

1. If SCHOTTEL has also undertaken to install, supervise the installation of, and/or commission the Products, SCHOTTEL is not obliged to start assigning the appropriate skilled personnel or to perform the installation 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 by the Purchaser to enable SCHOTTEL's personnel to commence the installation work without delay. If the preparatory work has not been properly completed, any additional costs resulting therefrom 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 ("Delay Without Fault"), the Purchaser shall be responsible any resulting additional costs incurred by SCHOTTEL as a result of the Delay Without Fault, regardless of whether the Purchaser is responsible for the Delay Without Fault occurring (except for Force Majeure). SCHOTTEL shall also be entitled to a reasonable adjustment of the time for delivery to the extent that the Delay Without Fault affects the scheduled delivery times. The occurrence of a Delay Without Fault has no effect upon the obligation of the Purchaser to comply with the agreed payment deadlines.

3. If the Purchaser entrusts SCHOTTEL's personnel with work and services extending beyond the order confirmation and the originally agreed extent of supply, SCHOTTEL is entitled to invoice the Purchaser separately for these items based on the then prevailing prices of SCHOTTEL for any goods/services so provided. SCHOTTEL shall only be obliged 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, the Purchaser must issue a written order to this effect and reimburse SCHOTTEL for the additional costs incurred.

#### **XI. Warranty claims**

1. Except to the extent expressly provided in these Conditions (or the agreement of which these Conditions form part), and subject to the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("ACL") and equivalent State and Territory legislation, all conditions, warranties or consumer guarantees (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Products or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or any other matter covered by the conditions and warranties implied by Part 3-2 Div. 1 of the ACL are hereby expressly excluded.

2. To the fullest extent permitted by law, SCHOTTEL's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by SCHOTTEL in its absolute discretion: in the case of Products, the replacement repair or payment of the cost of replacement or repair of the Products; and in the case of services, supplying the services again or payment of the cost of having the services supplied again).

#### **XII. Liability**

SCHOTTEL accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure loss of contracts with third parties, goodwill or any type of special, indirect or consequential loss ("Loss") whether suffered by the Purchaser or by any third party and whether or not SCHOTTEL was aware that such Loss was possible or such Loss was otherwise foreseeable, whether such Loss arises from any representation, recommendation or advice made or given in relation to the Supplies, the use of the Products, or the failure by SCHOTTEL to observe and fulfil its obligations under these Conditions or otherwise.

#### **XIII. Miscellaneous**

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of Western Australia and the parties submit to the jurisdiction of that State. In relation to the subject matter of these Conditions, these Conditions supersede all oral and written communications by or on behalf of any of the parties. If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect. No neglect, delay or indulgence on the part of SCHOTTEL in enforcing these Conditions shall prejudice the rights of SCHOTTEL or be construed as a waiver of any such rights. The agreement of which these Conditions form part is personal to the Purchaser and may only be assigned by the Purchaser with the prior written and informed consent of SCHOTTEL.

Effective as of: June 2014