



General Terms of Sale and Delivery for SCHOTTEL drive and control units -Version for international Customers-

Scope, general information

1. The following General Terms of Sale and Delivery ("Terms") apply exclusively for all deliveries and services provided by SCHOTTEL Middle East FZE ("SCHOTTEL"), and are either ordered by international customers ("Customer") and/ or executed, performed or provided outside of Germany.
2. Any deviating or opposing general purchase conditions of the Customer shall only be a contractual component if and to the extent that SCHOTTEL expressly agrees to its validity in writing.
3. The Terms shall also apply for all future transactions between SCHOTTEL and the Customer, even if SCHOTTEL unconditionally makes a delivery or performs a service to the Customer while aware of deviating or opposing general terms and conditions.
4. Any individual agreements made with a Customer on a case-by-case basis (including side agreements, addenda and changes) shall take precedence over these "Terms". A written contract or written confirmation by SCHOTTEL is decisive for the content of such agreements.
5. Legally relevant declarations and notifications to be issued to SCHOTTEL by the Customer (e.g. deadlines, notices of defects, declaration of withdrawal or reduction) are only effective if made in writing.
6. References to the validity of legal regulations are only significant for clarification. The legal regulations thus apply even without such an explanation if they are not directly changed or expressly excluded in these Terms.
7. If SCHOTTEL intends to provide additional services to the Customer such as commissioning, repairs or maintenance, the corresponding general terms and conditions for these additional services shall also apply and take precedence over the Terms.

II. Conclusion of the contract and scope of the deliveries and services

1. All quotations made by SCHOTTEL are subject to confirmation and non-binding unless they are expressly labelled as binding or include a specific acceptance deadline.
2. SCHOTTEL can accept orders or jobs within 14 days of receipt.
3. A contract shall take effect – in the absence of a special agreement – with the written order confirmation by SCHOTTEL. The scope of the deliveries and services follows from the data provided by SCHOTTEL in the order confirmation.
4. SCHOTTEL retains the ownership and copyrights for illustrations, drawings, calculations and other documents; they must not be made accessible to third parties. This particularly applies for those written documents which are labelled confidential; the Customer shall require SCHOTTEL's express written consent before giving them to third parties. All documents must be returned to SCHOTTEL immediately upon SCHOTTEL's request if no contract is concluded.
5. SCHOTTEL will not make documents designated by the Customer as confidential accessible to third parties without the explicit written consent of the Customer.
6. Information provided by SCHOTTEL about the object of the delivery and service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) and representations of the same (drawings and diagrams) are only approximations unless their usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features but rather descriptions or characterisations of the delivery or service. Standard deviations and those resulting from legal regulations or representing technical improvements and the replacement of components by identical parts are permitted if they do not impair the usability for the contractually intended purpose.

III. Prices and terms of payment

1. If not otherwise agreed, the prices for the scope of delivery or services listed in the order confirmation are understood as "ex works" Dörth, Spay or Wismar in accordance with INCOTERMS 2010 including loading at the plant and standard packaging, however with the exclusion of unloading, installation and commissioning. Any additional or special services shall be separately charged.

2. The legal VAT, if any, is not included in the prices; it will be separately indicated on the bill on the day of invoicing in the currently legal amount.
3. If no other agreement has been made, then the contractual price without discounts or fees is to be paid to SCHOTTEL's bank account or to a payment office specified by SCHOTTEL and namely:
 - 1/3 down payment upon receipt of the order confirmation and the invoice;
 - 2/3 upon notification of the readiness for shipment and receipt of the invoice.
4. Invoice amounts are to be paid without discount within fourteen (14) days of receipt of the corresponding invoice if not otherwise agreed on. The date of payment is the date of receipt by SCHOTTEL.
5. Checks are not deemed as payment until they are cashed.
6. SCHOTTEL shall be authorized to demand appropriate interest on money claims at the rate of one month's EURIBOR + 4 % if the Customer is in default of payment. This shall not affect the assertion of additional damages.
7. The Customer shall not be entitled to rights of set-off unless its counter-claims are determined to be legally binding, are undisputed or are recognised by SCHOTTEL.
8. The Customer shall only be authorized to assert rights of retention by reason of counter-claims from the same contractual relationship.
9. SCHOTTEL reserves the right to interrupt work on the contractual objects if the Customer is in default with a partial payment until the corresponding amount due has been paid in full.
10. SCHOTTEL shall then be authorised to demand an extension of the delivery and service deadlines or a postponement of the delivery and service dates by the length of time corresponding to that in which the Customer does not meet its contractual duties.
11. SCHOTTEL shall also be authorized to make deliveries or perform services still pending only against advance payment or securities if circumstances become known following the conclusion of the agreement which are adequate for substantially reducing the creditworthiness of the Customer and which jeopardise the payment of SCHOTTEL's outstanding receivables from the respective contractual relationship.

IV. Date of delivery, delivery delay

1. The delivery deadline is indicated in the agreements between the contractual partners in the order confirmation.
2. SCHOTTEL's compliance with its duty to perform assumes that all commercial and technical issues are clarified and that the Customer has fulfilled all duties incumbent on it such as the provision of the required official certificates or approvals or the making of a down payment. The delivery deadline shall be extended accordingly if this is not the case.
3. This does not apply if SCHOTTEL is responsible for the delay. SCHOTTEL shall report any looming delays to its Customers as soon as possible.
4. The delivery deadline is complied with if the delivery object has been shipped or its readiness for shipment reported by this deadline.
5. SCHOTTEL shall not be liable for the impossibility of delivery or for delivery delays if they have been caused by force majeure or other events which were not foreseeable at the time of the contract's conclusion (e.g. all types of operational disturbances, difficulties in material and energy procurement, transport delays, strikes, legal lockouts, shortage of labour, energy or resources, flooding, fire, difficulty obtaining required legal approvals, legal actions or the lacking, incorrect or late delivery by suppliers) and for which SCHOTTEL is not responsible.
6. If such events as those specified in No. 5 of this section significantly complicate the delivery or service by SCHOTTEL or even make it impossible and the impediment is not merely temporary, then SCHOTTEL can withdraw from the contract.
7. In the case of temporary impediments, the delivery or service



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deadlines shall be extended or postponed by the time period of the interference with the addition of a reasonable start-up period. This also applies for impediments affecting subcontractors.

8. SCHOTTEL shall notify the Customer as soon as possible about the start and end of such impediments.
9. If it is unreasonable for the Customer to accept the delivery or service due to the delay, then it can withdraw from the contract by immediately submitting a written declaration to SCHOTTEL.
10. The entry into default by SCHOTTEL shall be determined in accordance with the legal regulations. A reminder notice by the Customer, however, is always required.
11. If SCHOTTEL goes into default with a delivery or service, then the Customer can demand a flat-rate compensation for its damages due to delay.
 - a. The flat-rate compensation shall be 0.5 % for every completed calendar week of delay, but no more than 5% based on the net invoice amount of the part of the delivery or service which was not delivered/performed on time due to the delay.
 - b. SCHOTTEL retains the right to prove that the Customer did not suffer any losses or only a much lesser loss than the pending lump sum compensation.
12. In the case of acceptance delays or other culpable infringements of the Customer's duty to cooperate, SCHOTTEL shall be authorized to compensation for the resulting damages, including any added expenses. Additional claims are reserved.
13. The risk of accidental loss or accidental deterioration of the contractual objects shall be transferred in this case to the Customer at the time of the acceptance delay or any other infringement of the duty to cooperate.
14. If the shipment of the contractual objects is delayed due to reasons attributable to the Customer, then the Customer shall be charged for any costs resulting from the delay, starting one month after notification of readiness for shipment.
 - a. The Customer is particularly obliged to pay a warehouse fee for the storage and maintenance of the contractual objects as compensation for expenses.
 - b. The warehouse fee shall be 0.5 % of the net invoice amount for each month started, but no more than 5 % in total unless the Customer can prove that SCHOTTEL did not incur any warehouse costs or considerably lower costs.
15. The Customer can withdraw from the contract without notice if the complete fulfilment becomes definitively impossible for SCHOTTEL before the transfer of risk.
16. The Customer can also withdraw from the contract if the fulfilment of parts of the contract becomes impossible and it has a justified interest in refusing a partial delivery.
17. If this is not the case, then the Customer shall be obliged to pay the corresponding contract price for the partial delivery.
18. The regulations in nos. 15 to 17 of this section each apply accordingly in the case of SCHOTTEL's incapacity.
19. Apart from that, Section VIII applies.
20. The Customer shall remain obligated to make payment if the impossibility or incapacity occurs during the acceptance delay by the Customer or if the Customer is solely or largely responsible for these circumstances.
21. If the Customer grants SCHOTTEL – under consideration of the statutory exceptions – a reasonable grace period after the deadline for fulfilment has passed and if this grace period is not met, then the Customer shall be authorized to withdrawal within the scope of the legal regulations.

V. Transfer of risk and acceptance

1. The risk of accidental loss or accidental deterioration of the contractual object ("**Risk**") is transferred to the Customer in accordance with the clause of INCOTERMS 2010 agreed on in each case. Section III. No. 1 "ex works" (EXW) applies accordingly if no deviating clause was agreed on.

2. If the shipment is delayed or not made due to circumstances not attributable to SCHOTTEL, then the risk shall be transferred to the Customer on the day of notification of readiness for shipment.
3. At the Customer's request, SCHOTTEL shall provide transport insurance for the delivery; the costs incurred for this shall be borne by the Customer.
4. The Customer may not refuse acceptance of the contractual object due to the presence of an insignificant defect.
5. SCHOTTEL is not authorized to make partial deliveries unless
 - a. the partial delivery can be used by the Customer as part of the contractual purpose,
 - b. the delivery of the remaining contractual objects ordered is ensured and
 - c. the Customer does not incur any significant extra expenditures or additional costs unless SCHOTTEL declares its willingness to assume these costs.

VI. Retention of title

1. SCHOTTEL shall retain ownership of the contractual objects (in section VI. hereinafter "**conditional goods**") up to the full receipt of all payments from the signed contract and an ongoing business relationship with the Customer (secured claims).
2. SCHOTTEL is authorized to insure the conditional goods at the Customer's expense against theft, breakage, fire, water and other damage if the Customer cannot provide evidence of having concluded such an agreement itself.
3. The Customer must neither sell, pledge nor assign the conditional goods to third parties until the secured claims have been paid in full.
4. The Customer shall be obliged to notify SCHOTTEL without delay if and to the extent that third parties have accessed the conditional goods.
5. SCHOTTEL shall be authorised to redeem the conditional goods in the case of Customer conduct in violation of the contract, especially payment delays.
 - a. The redemption of the conditional goods by SCHOTTEL is not a withdrawal from the contract unless SCHOTTEL had expressly declared this in writing.
 - b. SCHOTTEL's seizure of the conditional goods, however, always implies a withdrawal from the contract.
6. SCHOTTEL is authorised to dispose of the conditional goods following their redemption. Any proceeds shall be credited to the Customer's accounts payable – with the deduction of reasonable liquidation costs.
7. SCHOTTEL is authorized to withdraw from the contract and to demand the immediate return of the conditional goods if the Customer's financial situation significantly worsens or such a worsening appears imminent and the proper fulfilment of the contractual obligations from this contractual relationship with respect to SCHOTTEL's interests is threatened or insolvency proceedings or a similar process are initiated against the Customer's assets or if the opening of such proceedings is refused due to lack of substance.
8. The Customer is authorized to resell the conditional goods in proper business transactions. In this case, however, the Customer must surrender all claims from such resale to SCHOTTEL, regardless of whether this is done before or after any possible processing, mixing or combining of the conditional goods. Regardless of SCHOTTEL's authorisations to collect the claims on its own accord, the Customer still remains empowered to collect the claim even after its surrender. In this context, SCHOTTEL commits to not collecting the claim for as long and to the extent that the Customer meets its payment obligations, no application to open insolvency or similar proceedings is pending and no suspension of payments has occurred.
9. If the aforementioned securities exceed the claims to be secured by more than 10 %, then SCHOTTEL shall be obligated to release the securities at its own discretion to the Customer upon request.

VII. Warranty



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Under exclusion of further claims - subject to Section VIII - SCHOTTEL is liable for material defects and defects of title as follows:

1. Material defects

- 1.1 The delivered contractual objects must be inspected by the Customer immediately upon receipt.
- 1.2 They shall be deemed approved by the Customer with respect to obvious or other defects which would be recognizable in a prompt and thorough inspection if SCHOTTEL does not receive a written notice of defects within seven business days following delivery.
- 1.3 With regard to other defects, the contractual objects shall be deemed approved by the Customer if the notice of defects is not received by SCHOTTEL within seven business days from the moment of the defect's discovery; if the defect was already noticeable to the Customer at an earlier date during normal usage, then this earlier date shall be decisive for the start of the complaint period.
- 1.4 All such parts of the contractual objects which prove to be defective due to a circumstance existing before the transfer of risk must be repaired or replaced with flawless parts by SCHOTTEL at its own cost.
- 1.5 Replaced parts become the property of SCHOTTEL.
- 1.6 The Customer shall be obligated to send back defective parts at the request of SCHOTTEL.
- 1.7 SCHOTTEL shall assume no liability for defects not caused by its own culpable behaviour, including those based on the following circumstances:
 - a) unsuitable or improper usage of the contractual objects;
 - b) usage of the contractual objects for a purpose other than their intended purpose and for one not covered by SCHOTTEL's technical specifications;
 - c) incorrect installation or incorrect commissioning;
 - d) installation of parts other than original spare parts;
 - e) normal wear;
 - f) faulty or negligent handling;
 - g) usage of unsuitable fuels, lubricants, operating materials;
 - h) usage with incorrect electrical current or with an incorrectly designed electrical wiring system.
 - i) contaminated cables;
 - j) welding operations directly on the equipment;
 - k) consequences of incorrect authorizations or information by the Customer.
- 1.8 SCHOTTEL shall assume no liability for damage resulting from improper repairs performed by the Customer or a third party. The same applies for changes made to the contractual objects without SCHOTTEL's prior consent.
- 1.9 Furthermore, SCHOTTEL shall not be liable for the assembly of loosely delivered components unless this service has been performed by SCHOTTEL's own personnel after being contracted by the Customer and the personnel have culpably damaged the contractual objects in this process.
- 1.10 Upon consultation with SCHOTTEL, the Customer shall grant the time and opportunity deemed by SCHOTTEL as necessary to perform all repair and replacement work.
- 1.11 The Customer shall be authorized to eliminate the defect itself or to have it eliminated by a third party for the sake of prevention solely in urgent cases which jeopardise the safety or operational capacity or when a risk of serious damage exists and shall be entitled to compensation by SCHOTTEL for the required expenses; SCHOTTEL is to be notified immediately about these cases in writing.
- 1.12 SCHOTTEL shall pay for the replacement parts and their shipment with regard to direct costs due to non-fulfilment (repair or follow-up delivery) – if the claim proves justified.
- 1.13 SCHOTTEL shall also bear the costs for the replacement and in-

stallation and also the costs for the required employment of technicians or assistants including their travel costs if this does not result in unreasonable difficulties or expenses for SCHOTTEL.

- 1.14 The Customer shall be entitled to withdraw from the contract if SCHOTTEL allows a reasonable deadline set by the Customer for the repairs or replacement delivery due to a material defect to elapse fruitlessly.
- 1.15 In the case of negligible defects, the Customer shall be entitled solely to a reduction in the contract price. The right to a reduction in the contract price is otherwise excluded.
- 1.16 In the case of defects in components from other manufacturers which SCHOTTEL cannot rectify due to licensing or other reasons, SCHOTTEL can surrender its warranty claims against the manufacturer and suppliers to the Customer. Warranty claims against SCHOTTEL do not exist for such defects under the other conditions and in accordance with these Terms unless the legal enforcement of the claims against the manufacturers and suppliers stated above was unsuccessful or futile due to insolvency, for example. To this extent, SCHOTTEL shall solely be liable at a lower level. The statute of limitations of the Customer's relevant warranty claims against SCHOTTEL shall be suspended for the duration of the legal dispute.
- 1.17 Additional claims are subject to the regulations in Section VIII of these Terms.
- 1.18 SCHOTTEL shall be entitled to reimbursement by the Customer for any costs or expenditures incurred if the defects reported by the purchaser prove to be non-existent or if SCHOTTEL is not responsible for them.

2. Defects of title

- 2.1 For the case that the contractual objects violate a protection right or copyright of a third party, SCHOTTEL will, at its own discretion and costs, modify or replace such contractual objects so that third party rights are no longer violated and the contractual objects can still perform the functions contractually agreed on, or obtain usage rights for the Customer by concluding a licensing agreement. If SCHOTTEL does not succeed at this under reasonable conditions or within a reasonable time period, then the Customer shall be authorised to withdraw from the contract or to reduce the purchase price accordingly. Any damage claims of the Customer shall be subject to Section VIII.
- 2.2 Moreover, SCHOTTEL shall release the Customer from undisputed or legally determined claims of the owner of the commercial protection rights or copyrights.
- 2.3 The duties of SCHOTTEL specified in Section VII. 2.1 are exhaustive subject to Section VIII. 2 for the violation of commercial protection rights or copyrights.
- 2.4 The duties specified in Section VII. 2.1 only exist if
 - the Customer notifies SCHOTTEL about alleged protection rights violations without delay;
 - the Customer supports SCHOTTEL to a reasonable extent in averting the asserted claims and makes it possible for SCHOTTEL to make the modifications in accordance with Section VII. 2.1;
 - the Customer has provided SCHOTTEL with copies of all communication, notifications or other actions in connection with the alleged violation;
 - the defect of title is not the result of an instruction or design specification of the Customer;
 - the legal violation was not caused by the Customer changing the contractual objects without authorization or using them in a non-contractual manner.

VIII. Liability

1. SCHOTTEL shall in no event be liable to the Customer, by way of indemnity or by reason of any breach of the contract or statutory duty, negligence or in tort or any other area of law, for any and all indirect, incidental or consequential loss or loss of use of any part (or all) of the works or equipment or loss of production, loss of in-



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terest, loss of profit, loss of income, loss of goodwill, loss of customers or for any indirect, incidental, special, punitive or consequential damage which may be suffered by the Customer in connection with the Contract.

2. The total aggregate liability of SCHOTTEL to Customer including lump-sum compensations under these Terms shall not exceed 15% (fifteen per cent) of the contract price. SCHOTTEL is only liable if damage was caused by SCHOTTEL's own fault either by act or omission.
3. This Article shall however not limit SCHOTTEL's liability in case of fraud or willful misconduct by SCHOTTEL, or in cases of damage to health, bodily harm, injury or death which may be suffered by Customer in connection with the contract.

IX. Period of limitations for claims

All claims of the Customer - on whatever legal grounds - shall be time-barred 12 months upon delivery in accordance with the agreed term of INCOTERMS 2010. In case there is no such agreement, the time limit shall commence upon SCHOTTEL's ready to dispatch notice to the Customer. For compensation claims under Section VIII the statutory time limits shall apply.

X. Intellectual property

1. The Customer shall be authorized to use all documents or other information covered by commercial protection rights or copyrights and which were provided by SCHOTTEL solely for purposes of the operation or maintenance of contractual objects.
2. The Customer shall not be authorised to provide such documents or information to third parties and must not use them for other purposes such as for the reproduction of contractual objects (or parts of them) or the reproduction or manufacture of components, equipment or parts.
3. This Customer obligation shall continue beyond the end of the contract.
4. Final Customers of the contractual objects and persons contractually using them are expressly not third parties in terms of No. 2 of this section.

XI. Software usage

1. A non-exclusive right, unlimited by time and location to use the supplied software, including its documentation, shall be granted to the Customer for any such software included in the scope of supply

upon full payment of the contractual objects.

2. It shall be provided for usage on all contractual objects for which it is intended. Use of the software on more than one system/shipset is prohibited.
3. The Customer may reproduce, revise, translate or convert the software from the object code into the source code solely within the legally permissible scope. The Customer commits to not removing manufacturer data, copyright notes, serial numbers or other identifying features and to not changing them without SCHOTTEL's prior explicit consent.
4. SCHOTTEL or the software supplier shall retain all other rights to the software and its documentation including copies. In no case shall the Customer have the right to lease the software or issue sublicenses, to communicate it to the public by wire or wireless means or to make it accessible to third parties – with the exception of final Customers or persons who are provided with the contractual objects in accordance with the provisions of this contract – either for a fee or at no charge.

XII. Arbitration and Applicable Law

1. All disputes arising out of or in connection with the contract and / or these Terms, including the validity of the contract, shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC), Paris / France, to the exclusion of legal proceedings, by three arbitrators appointed in accordance with the said Rules. The language of arbitration and the award shall be English. Place of arbitration shall be Zurich, Switzerland.
2. **These Terms and all legal relationships between SCHOTTEL and the Customer are governed by the substantive law of Switzerland.**

XIII. Final provisions

1. The place of fulfilment is Spay/Rhein, or Dörth, Germany, unless the order confirmation expressly specifies the relevant manufacturing plant as the place of fulfilment.
2. Should a provision of these Terms be fully or partially ineffective or infeasible or lose its legal effectiveness or feasibility at a later date, this shall not affect the validity of the remaining provisions of the Terms.

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SCHOTTEL Middle East FZE
PO Box 261778
Dubai
United Arab Emirates
Phone: +9714 8807750
Fax: +9714 8807760
www.schottel.de