



## General Conditions of Sale and Delivery for SCHOTTEL Propulsion and Steering Elements SCHOTTEL Nederland B.V.

### Preamble:

The following conditions apply to all deliveries and services (hereinafter referred to as "Supplies") of SCHOTTEL Nederland B.V. (hereinafter referred to as "SCHOTTEL") with respect to purchasers acting as non-private persons (hereinafter referred to as "Purchasers").

### I. General

1. SCHOTTEL provides all Supplies exclusively subject to the application of these conditions. Purchasing 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 without any respective proviso. If the Purchaser is not in agreement with our General Conditions of Sale and Delivery for SCHOTTEL Propulsion and Steering Elements, the order confirmation must be returned to SCHOTTEL, stating reasons, with a view to reaching an agreement. Unless otherwise agreed in writing, a contract will be formed exclusively on the basis of the contents of the written order confirmation by SCHOTTEL.

2. Quotations are subject to 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. Other properties shall only be deemed as agreed upon if confirmed by SCHOTTEL in writing.

SCHOTTEL reserves the right of ownership, industrial property rights and copyright 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.

### II. Extent of supply

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

### III. Prices and payment conditions

1. Unless otherwise agreed, prices are valid "ex works" as per INCOTERMS 2010, inclusive of standard packaging. If applicable, value-added tax at the current statutory rate will be added to these prices.

2. If no special agreement has been reached, payment of the contractual price shall be made without deductions or charges to SCHOTTEL's bank account or payment office notified by SCHOTTEL, as follows:

30% down payment 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, owing to the absence of instructions or documentation, the contract goods cannot be dispatched from the works despite the fact that they have been prepared for shipment by SCHOTTEL, or if delivery of 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.

3. Payments made by the Purchaser may be offset only in connection with counter-claims which are undisputed or determined as legally binding. Payments may be withheld only in connection with counterclaims which are undisputed or determined as legally binding and have their basis in the same contractual relationship.

4. If the Purchaser is in arrears with payment, he shall be liable to pay interest on money claims at the rate of one month's statutory commercial interest (pursuant to article 6:119a Dutch Civil Code).

SCHOTTEL may claim higher interest on a different legal basis. SCHOTTEL's right to claim additional loss is not excluded.

5. 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 goods until the outstanding balance is paid in full. SCHOTTEL is then also entitled to claim a time extension and effect other outstanding Supplies only against advance payment or to demand that adequate security be provided before delivery and, after granting a reasonable period of grace, to withdraw from the contract and demand compensation for damages. The same applies in the event that a petition for bankruptcy has been filed or insolvency proceedings have been initiated against the Purchaser's assets.

6. 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. However, the adjustment may not exceed a 20% increase in price. Should a price increase more than this become necessary during the course of manufacture, SCHOTTEL shall notify the Purchaser of this immediately in writing.

7. If the Purchaser also contracts 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.

### 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. However, the delivery period is only deemed to commence when the Purchaser has submitted the required documentation, approvals and releases and not before any agreed down payment has been received. If these preconditions are not fulfilled by the Purchaser in due time, the delivery periods shall be extended by a reasonable amount of time; this shall not apply if SCHOTTEL is responsible for the delay.

2. The delivery period is deemed to have been observed if the contract goods have left the works or if the Purchaser has been notified that they are ready for dispatch.

3. If non-observance of the delivery period is attributable to Force Majeure, such as 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 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 dispatch 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 dispatch. 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.

In such a case, SCHOTTEL reserves the right, after the setting and fruitless expiry of a reasonable deadline, 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.



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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. If this is not the case, 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 or 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 not 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 – paying due regard to the statutory exceptions – and if this deadline is not met, then the Purchaser is entitled to withdraw from the contract, subject to the statutory regulations. Further claims resulting from default or delay in Supplies shall be governed exclusively by Section IX, Paragraph 2 of these Conditions. Any contractual penalty agreed and due shall be deducted therefrom.

### **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 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 demanded by the latter.

4. Even if they have insignificant defects, delivered goods shall be accepted by the Purchaser without prejudice to the rights laid down 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 ownership 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 expiry of a reasonable remedy period set by SCHOTTEL; the statutory provisions such that a remedy period is not needed shall be unaffected. 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 the Purchaser files for the initiation of insolvency proceedings, 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.

### **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 obliged to start selection and deployment 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 vicarious 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.

This 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. 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, he must issue a written order to this effect and reimburse SCHOTTEL for the additional costs incurred.

Overtime is limited to max. 10h per day, 6 days per week.

### **VIII. Warranty claims**

Under the exclusion of further claims – without prejudice to Section IX – SCHOTTEL shall be liable for defects in quality and defects in title, 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 ownership of SCHOTTEL. SCHOTTEL may ask the Purchaser to dispose of the replaced parts free of charge.

2. Unless caused by culpable behaviour of SCHOTTEL, liability does not apply to defects attributable to, amongst others 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,



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- 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 dispatch costs. SCHOTTEL shall also bear the costs of removal and installation as well as the costs of any required assignment of SCHOTTEL's personnel 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 the statutory exceptions – and if this deadline is not met, then the Purchaser is entitled to withdraw from the contract, subject to the statutory regulations. 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 industrial property rights or copyrights valid in the Netherlands, 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 rights and copyrights – without prejudice to Section IX.

They apply if and only if

- ☒ the Purchaser informs SCHOTTEL in writing without delay of asserted infringements of property rights or copyrights,
- ☒ the Purchaser has not acknowledged an infringement and gives SCHOTTEL every reasonable assistance in the defence of the asserted claims and/or enables SCHOTTEL to perform modification work in accordance with Section VIII, Paragraph 8,

- ☒ the Purchaser has furnished SCHOTTEL with a copy of each communication, notice or other action relating to the alleged infringement,
- ☒ SCHOTTEL is granted the right to all defensive measures including out-of-court settlements,
- ☒ the defect in title does not arise from an instruction of the Purchaser,
- ☒ 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 are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This 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. The legal provisions regarding suspension of the statute of limitations and recommencement of limitation periods shall be unaffected.

### **IX. Liability**

SCHOTTEL's liability for damage – on whatever grounds – shall be limited to the following circumstances:

- a) intention
- b) gross negligence
- c) loss of life, bodily injury or damage to health
- d) defects in the contract goods whose presence was fraudulently concealed by SCHOTTEL or insofar as SCHOTTEL gave a guarantee regarding the quality of the contract goods
- e) defects in the contract goods insofar as the manufacturer is liable for personal injury or material damage to privately used objects under Dutch product liability law.

In cases of culpable violation of fundamental contractual obligations, SCHOTTEL is also liable for damage due to ordinary negligence, the latter case being limited to contract-typical damage that can reasonably be expected to be foreseen. Therefore, SCHOTTEL shall in no event be liable to the Purchaser, by way of indemnity or by reason of any breach of the contract or statutory duty or in tort or otherwise, for any and all claims, losses or damages such as but not limited to loss of use of any part (or all) of the Supplies, or for loss of production, loss of interest, loss of profit or loss of or default under any business contracts or for any indirect, special or consequential loss or damage which may be suffered by Purchaser in connection with the contract.

The total overall liability of SCHOTTEL to Purchaser, including liquidated damages under these terms and conditions shall not exceed 15% (fifteen per cent) of the contract price. Liquidated damages shall be Purchaser's sole and exclusive remedy for delay:

### **X. Period of limitation for claims**

1. All claims of the Purchaser, except those under Section VIII, Paragraph 10, – on whatever legal grounds – shall be time-barred 12 months after dispatch ex works.
2. For compensation claims under Section IX the statutory period of limitation shall apply.

### **XI. 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



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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 ownership of SCHOTTEL or of the originating software supplier, as applicable. The granting of sublicenses is not permitted.

### **XII. 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.

### **XIII. 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 of The Hague, the Netherlands.

SCHOTTEL is also entitled to bring an action at the place of the other contracting party's registered office.

All legal relations between SCHOTTEL and the Purchaser shall be governed exclusively by the material laws of the Netherlands. The International Sale of Goods treaty (CISG) does not apply to these terms and conditions.

Effective as of: August 2011

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