



# TERMS AND CONDITIONS OF SALE OF PRODUCTS AND SERVICES

Schunk UK Ltd.

## 1 INTERPRETATION

1.1 In these Conditions the following definitions apply:

Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Company:	means Schunk UK Limited (registered number: 00737825) whose registered office is at Europa Works, Richardshaw Drive, Grangefield Industrial Estate, Pudsey, Leeds, LS28 6QR.
Conditions:	means only the standard terms and conditions set out in this document together with any special terms, conditions or amendments to such standard terms and conditions as have been specifically agreed in writing between the Customer and the Company and are set out in the Order.
Contract:	means the contract for the purchase and sale of the Products from the Company, and shall be comprised of the Order and incorporate these Conditions PROVIDED THAT, where there is any apparent conflict between the Order and these Conditions then, unless otherwise specifically agreed in writing by both parties, the Order shall take priority on that issue.
Customer:	means the person, firm or company who purchases the Goods and/or Services from the Company.
Delivery:	means delivery of the Goods by the Company or, delivery into the custody of the carrier selected by the Company to deliver the Goods to the Customer, or making the Goods available for collection by or on behalf of the Customer (as agreed in the Order), or providing the Services to the Customer, in each case as appropriate; and "Deliver", and "Delivered" shall be construed accordingly.
Delivery Date:	means the earlier of the time of actual Delivery of the Products or, where the Customer wrongfully fails to collect or otherwise take Delivery of the Goods the date set out in clause 8 or in any other circumstances, the date the Company notified the Customer in writing that it would Deliver the Products.



Designs:	means any designs created by or on behalf of the Company (whether as part of the Contract or otherwise) in relation to the Services or the Goods.
Force Majeure Event:	has the meaning given in clause 16.
Goods:	means the goods (if any, including any instalment of them or any parts of them) referred to in the Order to be supplied to the Customer by the Company.
Goods Specification:	any specification of the Goods, including any relevant plans or drawings that is provided by the Customer and agreed in writing by the Customer and the Company.
Incoterms 2010:	the eighth published set of pre-defined International Commercial Terms from the International Chamber of Commerce.
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs (including the Designs), database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order:	means the Customer's order for the Goods and/or Services as set out in the Customer's purchase order or, any quotation of the Company, in writing, which is agreed by the Customer before it lapses, in writing (as the case may be).
Products:	means the Goods and Services.
Schunk Group:	the Company, any subsidiary or holding company from time to time of the Company and any subsidiary from time to time of a holding company of the Company.
Services:	means the services (if any) referred to in the Order as being required to be supplied to the Customer by the Company at the Customer's premises in accordance with the Services Specification.
Services Specification:	means any description or specification for the Services (or any of them) provided by the Company or the Customer and agreed by the Company and the Customer in writing and forming part of the Contract.



Tools: means any tools, jigs and patterns owned or used by the Company in meeting its obligations to the Customer under the Contract.

VAT: value added tax or such other additional or replacement tax serving a similar fiscal function.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes a personal representative, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or reenacted.

1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to writing or written includes faxes and e-mails.

1.2.6 A reference to a holding company or a subsidiary is as defined in Section 1159 of the Companies Act 2006.

## **2 BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions.

2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.



- 2.5 Any quotation given by the Company shall only be valid for a period of 20 Business Days from its date of issue after which time it will, unless otherwise agreed by the Company, be incapable of acceptance.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3 SUPPLY OF GOODS AND SERVICES**

- 3.1 The Goods shall be in all material respects as described in the Goods Specification and the Company shall provide the Services in all material respects in accordance with the Service Specification.
- 3.2 If Goods are to be manufactured or any process is to be applied to the Goods (whether or not as part of the Services), the Company reserves the right to subcontract any of the manufacturing or other processes or Services to a third party and in such circumstances the provisions of clause 12.2 will apply.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 Notwithstanding clause 3.1, the Company will be deemed to have provided the Products to an acceptable standard if, they are fit for purpose, even if the Goods Specification and/or the Services Specification have not been fully met. In particular, but without limitation, the Company reserves the right to make any changes to the Goods Specification and/or the Services Specification which do not materially effect their quality or performance, and/or which are required to enable any of Goods and/or the Services to conform with any applicable law, safety, statutory or other requirements or standards in Britain, the EU or any other relevant jurisdiction, and the Company shall notify the Customer in writing in any such event.

### **4 CANCELLATION BY CUSTOMER**

No Order which has been accepted and commenced may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify and keep indemnified the Company in full against all losses (including loss of profit), costs (including the cost of all labour, materials used and subcontractors), damages, charges and expenses incurred by the Company as a result of cancellation.



## **5 WARRANTIES BY THE CUSTOMER**

The Customer warrants that:

- 5.1 The Order (including any Goods Specification or Services Specification provided by the Customer), is complete and accurate;
- 5.2 The Customer shall provide the Company with such timely, complete and accurate information and instructions as the Company reasonably requires to enable it to perform the Contract in accordance with its terms, and shall ensure that the Company has appropriate and timely access to all necessary premises, facilities, staff (in particular forklift drivers) and services (including utility connections) where it is required to Deliver any Product;
- 5.3 Where Products are to be supplied to a Goods Specification or Services Specification provided by the Customer, the Goods are capable of production without the need for the Company to invest in additional or specialist equipment and/or systems other than as stated in the Order or otherwise agreed between the parties in writing;
- 5.4 It will provide the Company with such materials as the Company may reasonably require to provide the Products and ensure any materials provided by it are suitable for the treatment the Company is required to give them in accordance with the Order;
- 5.5 If the Goods are to be manufactured or equipped by the Company in accordance with a Goods Specification or Services are to be provided in accordance with a Services Specification submitted by the Customer, and/or using designs and/or information supplied by the Customer – or varied or adapted at the request (express or implied) of the Customer– the Company's use of such Goods Specification and/or Services Specification, and/or designs, and/or information, and/or adaptations shall not result in any claim against it alleging infringement of any Intellectual Property Right(s) of any other person.
- 5.6 The Customer shall take or procure the taking of all such steps as may be necessary to ensure access to any premises at which the Products are to be Delivered and, the safety of the Company's employees, agents, contractors and subcontractors on any premises at which the Products are to be Delivered including, without limitation, notifying such representatives of the Company of any relevant hazards, and providing the Company with copies of all relevant risk assessments and method statements sufficiently in advance of the Delivery of the Goods or performance of the Services.
- 5.7 Co-operate with the Company in all matters relating to the Products.
- 5.8 Obtain and maintain all necessary licences, permissions and consents which may be required for the purchase of the Goods or performance of the Services before the date on which the Goods are to be Delivered or the Services are to start (as appropriate).
- 5.9 Keep and maintain all materials, equipment, documents and other property of the Company at the Customer's premises in safe custody at its own risk, maintain them in good condition and insure them for their full reinstatement value until returned to the Company, and not dispose of or use them other than in accordance with the Company's written instructions or authorisation.



## **6 TOOLS AND INTELLECTUAL PROPERTY**

- 6.1 All Intellectual Property Rights in the Designs shall belong to the Company irrespective of the ownership of any Goods manufactured from them and, without prejudice to any other rights or remedies that the Company may have and the Customer acknowledges and agrees that the Company shall, without proof of special damage, be entitled to an injunction or other equitable relief for any threatened or actual breach of such rights.
- 6.2 The technique of manufacture of all Goods supplied by the Company or the technique in the performance of the Services shall belong to the Company, irrespective of the ownership of the Designs used.
- 6.3 Any Tools supplied to the Company by the Customer shall be delivered to the Company at the Customer's expense and supplied to the Company free of charge clearly identified as the Customer's property. The Customer represents that such Tools are in good condition, true to design and entirely suitable to manufacture Goods at the rates and in the quantities required by the Customer. (Any necessary modifications to such Tools shall therefore be carried out only with the consent of, and at the risk and expense of the Customer, and subject to the Customer's continuing obligation to indemnify the Company in respect of any losses or delays caused by the need to make such modifications)].
- 6.4 The Company shall use reasonable endeavours to maintain Tools supplied by the Customer in good condition (fair wear and tear excepted). The Customer shall bear the cost of such maintenance.
- 6.5 The Company shall store Tools supplied by the Customer for 6 months from the Delivery of the (final instalment) of the Goods or Services in respect of which they were supplied. Thereafter, if following written notice they have not been collected by the Customer it may dispose of them in any way it sees fit without liability to the Customer.

## **7 TESTING**

- 7.1 If the Order so specifies, the Company shall undertake or make the Goods available to be inspected by the Customer prior to Delivery.
- 7.2 Following such inspection the Goods will be Delivered to the Customer and installed by the Company's qualified engineers or duly appointed and qualified subcontractors and will be followed by the industry standard acceptance trials.
- 7.3 Within 5 Business Days of any such acceptance trials commencing, the Customer shall give written notice to the Company and/or its subcontractors (as appropriate) of its approval or rejection of the Goods – and in the event that it fails to do so, then it shall be deemed to have accepted them.
- 7.4 The Company shall as soon as reasonably practicable upon receipt of a rejection by the Customer pursuant to clause 7.3 above make all such alterations to or repair all faults with the Goods or the Services as shall in the circumstances be reasonably necessary to render the Goods and/or the Services fit for the purpose for which they were ordered and shall then



resubmit the same for approval by the Customer. As soon as the Customer approves or if no approval or rejection is received within 5 Business Days of the alterations or repairs and the Company reasonably believes that the Products are fit for the purpose for which they were ordered the Customer shall be deemed to have accepted the Products.

- 7.5 Before commencement of any testing (unless it is carried out immediately as part of the Services) the Company shall notify the Customer in writing of its readiness to carry out this work. The Customer shall then contact the Company to arrange a date and time for this work to be performed which is (a) reasonably acceptable to the Company and (b) within seven days of the notice. If the Customer fails to arrange such appointment it shall be deemed to have accepted the Products without further testing and the Company may proceed to invoice.

## **8 DELIVERY**

- 8.1 Unless otherwise specified in the Order, the stated price of any Goods is exworks (as defined in the Incoterms 2010) and, unless the Company shall elect to collect the Goods on a date and time reasonably acceptable to the Company or otherwise agreed between the parties, Delivery of the Goods shall be made to the location set out in the Order (Delivery Location) by such method as the Company may reasonably select.
- 8.2 The Company shall use all reasonable endeavours to ensure that each Delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being Delivered by instalments, the outstanding balance of Goods remaining to be Delivered.
- 8.3 Where the Company is not required to provide any Services relating to the installation of the Goods, Delivery of the Goods shall if delivered by the Company be completed on the arrival of the Goods at the Delivery Location. If the Goods are delivered by a carrier, Delivery of the Goods shall be completed on Delivery by the Company to the carrier and the Company shall use all reasonable endeavours to transfer such rights as it has against the carrier to the Customer.
- 8.4 Whilst the Company shall use all reasonable endeavours to meet Delivery Dates for the Goods and performance dates for the Services any dates or times quoted in the Order for Delivery of the Products are given by way of estimate only. Accordingly, time for Delivery shall not be of the essence and the Customer shall not be entitled to reject the Products, cancel the Order, terminate the Contract or, withhold payment by reason of the Company's failure to meet any Delivery Date.
- 8.5 The Company shall not be liable for any failure or delay in Delivery of the Products, to the extent that it is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate Delivery instructions for the Products or any relevant instructions relating to the supply of the Products.



- 8.6 The Company reserves the right to deliver the Products in instalments.
- 8.7 Where Products are to be delivered in instalments, each Delivery shall be invoiced and paid for separately and shall constitute a separate contract. The non-Delivery or, delay or, any defects in a single instalment shall not constitute a repudiatory breach of the Contract as a whole or entitle the Customer to cancel any other instalment or the Order, nor shall it be entitled to return Goods already delivered which are not defective.
- 8.8 Where the Delivery of the Products has failed or is delayed by the Customer for whatever reason (including, without limitation, the Customer failing to take Delivery of the Products), then without prejudice to any other right or remedy available to it, and except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract in respect of the Products, the Company may:
- 8.8.1 deem that Delivery has been completed at 9.00am on the day which the Products were Delivered or attempted to be Delivered;
  - 8.8.2 rely on the failure or delay of the Customer to relieve it from performance of any of its obligations.
  - 8.8.3 store any Goods until Delivery on such terms as it thinks fit and charge the Customer for all related costs and expenses (including insurance);
  - 8.8.4 invoice the Customer and require to be paid in full for the Products; and
  - 8.8.5 suspend any further Deliveries of the Products.
- 8.9 If 60 Business Days after the Company notified the Customer that the Products were ready for Delivery the Customer has not taken Delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods (if it has been paid) or charge the Customer for any shortfall below the price of the Goods (whether or not paid).
- 8.10 The Customer accepts that any act or omission by it which causes a delay in Delivery may result in a longer delay in the actual Delivery of the Products due to loss of production slots, labour availability or other intervening factors.

## **9 RISK AND PROPERTY**

- 9.1 Risk in the Products shall pass to the Customer upon the Delivery Date.
- 9.2 Property or title of the Products shall not pass to the Customer until the earlier of:
- 9.2.1 payment for the Products and all other Products sold or agreed to be sold by the Company to the Customer under any other Contract (in respect of which payment



has become due) has been received in full and in cash or cleared funds by the Company; or

9.2.2 the Customer resells the Products in which case title to the Products shall pass at the time specified in clause 9.3.4.

9.3 Until such time as property or title has passed to the Customer:

9.3.1 the Customer shall hold the Goods as fiduciary agent or bailee of the Company;

9.3.2 the Customer shall maintain the Goods in satisfactory condition, insure them against all risks for their full price, store and protect the Goods at its own cost, separately from any other goods held by the Customer and clearly identifying them as belonging to the Company;

9.3.3 the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.

9.3.4 the Customer may sell the Goods in its ordinary course of business (but not otherwise) before the Company receives payment, for the Goods. However, if the Customer resells the Goods before payment it does so as principal and not as the agent of the Company and title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

9.3.5 Notify the Company immediately if it becomes subject to any of the events listed in clause 15; and

9.3.6 Give the Company such information relating to the Goods as the Company may require from time to time.

9.4 If before the title to the Goods passes to the Customer the Customer becomes bankrupt or enters into liquidation whether voluntary or compulsory, has a receiver or administrator appointed over all or part of its assets, enters into a composition or arrangement with its creditors or breaches any of these Conditions or the Contract or is otherwise subject to any of those matters set out in clause 15.3, the Company may (without prejudice to any other right or remedy) by notice in writing forthwith revoke the Customer's authority to resell the Goods or use them in, the ordinary course of business, recover and resell any of the Goods which have not been resold or irrevocably incorporated into another product, and enter the Customer's premises or any third party premises where the Goods are stored in order to recover them for these purposes.

9.5 Until such time as the property in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods and for that purpose the Customer hereby authorises and licences the Company, its officers, employees and agents to enter upon any land or building upon which the Goods are situated to recover those Goods.



- 9.6 The Customer shall not be entitled to or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall without prejudice to any other right or remedy of the Company forthwith become due and payable.

## **10 PRICES AND PAYMENT**

- 10.1 The price for the Products shall be the price set out in the Order or, if no price is quoted, the price set out in the Company's published price list as at the date of Delivery.
- 10.2 The Company shall be entitled to invoice the Customer for the price of the Goods (or the relevant instalment of them) in accordance with the Order, which shall be in three payments, in the percentages set out in the Order. The first of which shall be due with the Order the second before Delivery and the third, 30 days from the date of the invoice from the Company.
- 10.3 In respect of the Services the Company shall subject to clause 10.5, invoice the Customer in accordance with the Order.
- 10.4 Unless otherwise agreed in writing by the Company, all prices quoted in the Order are exclusive of VAT, insurance, carriage and Delivery charges, which the Customer shall be additionally liable to pay to the Company.
- 10.5 Where the Company is to provide Services, these will be provided at the address specified in the Order during normal working hours and any induction required will take less than an hour. If the Customer requires work to be carried out outside of these times, then unless otherwise specified in the Order or otherwise agreed between the parties in writing, the Company shall be entitled to make an additional charge over and above the charges set out in the Order for such time at its then standard rate for out-of-hours working.
- 10.6 The price for the Services shall, unless otherwise agreed in the Order, include all travel, hotels and living expenses.
- 10.7 The Company reserves the right by giving notice to the Customer at any time before Delivery, to increase the price of the Products to reflect any increase in the cost to the Company (including, but not limited to the Company's costs of handling, storage, disposal, administration and interest,) which is due to any factor beyond the Company's control. This includes, but is not limited to any: foreign exchange fluctuation (of more than +3%), increases in taxes and duties, and increases in labour; change in Delivery Date requested or caused by any act or omission of the Customer; increases in the cost to the Company of raw materials and other manufacturing costs or other supplies which relate to the Products; change in quantities, the Goods Specification or, the Services Specification for the Products which are requested by the Customer; or delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Company adequate or accurate information in respect of the Products; or negligence or breach of the Contract by



the Customer (in particular, but without limitation, any breach of the Customer's Warranties as set out in Clause 5 above.)

10.8 All sums due are payable in full in cleared funds, without deduction counterclaim, set-off, or withholding in the instalments and at the time specified in the Order unless otherwise agreed in writing.

10.9 Time is of the essence in respect of all sums due to the Company.

10.10 If the Customer fails to make any payment in full on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

10.10.1 cease to manufacture the Goods and/or perform the Services, and/or cancel the Contract and sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and sale expenses) account to the Customer for the excess over the Contract price or charge the Customer for any shortfall below the Contract price and/or suspend any further Delivery of the Products to the Purchaser and claim damages from the Purchaser for breach of Contract. In such event the Customer shall not be entitled to be released from its obligations to the Company under the Contract or any other contract with the Company;

10.10.2 appropriate any payment made by the Customer to such of the Products (or Goods and/or Services supplied under any other contract between the Purchaser and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

10.10.3 where the Company elects not to cancel the Contract, charge the Purchaser interest (both before and after any judgment) on the amount unpaid, at the rate of 8% per annum above the Bank of England's base rate from time to time in force, until payment in full is made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer shall pay interest together with the overdue amount.

10.11 The Company shall have a general lien over all the goods and property of the Customer (whether worked on or not) in the possession of the Company for all unpaid debts due from the Customer and the Company reserves the right upon expiration of 14 days written notice to dispose of such goods or property and to apply the proceeds of sale (net of costs of sale) towards the payment of such debts.

## **11 EXPORT ORDERS**

11.1 The Customer is responsible for complying with any legislation or regulation governing the importation of the Goods into the country of destination and for the payment of any duties due.

11.2 Subject to clause 11.3 of these Conditions, payment of the Order price shall be made in cash, cheque or draft drawn on a United Kingdom bank to be approved by the Company.



- 11.3 If the Order requires the Customer to make payment by an irrevocable letter of credit, the letter of credit shall be confirmed by a United Kingdom bank to be approved by the Company. The Customer shall bear all charges in connection with opening such letter of credit.
- 11.4 If any bank liable to make payment to the Company under a letter of credit fails to do so the Customer shall remain liable to pay for the Goods.

## **12 WARRANTIES BY THE COMPANY**

Subject to the provisions of Clause 13 below:

### **12.1 The Company warrants that:**

12.1.1 on Delivery the Products will be free from material defects in material and workmanship and will conform in all material respects (subject to clauses 12.2 to 12.5) with the Goods Specification and the Services Specification and the Company provides for a period of 12 to 18 months (as appropriate) (Warranty Period) from the Delivery Date, a parts and labour warranty (excluding all molybdenum parts); and

12.1.2 the Services will be performed with reasonable care and skill.

12.2 The above warranties do not extend to parts, materials or equipment not manufactured by the Company, or Services not carried out directly by the Company in respect of which the Company shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or provider of the Services to the Company and the Company will use all reasonable endeavours to transfer such rights as it has to the Customer;

12.3 The Company's employees or agents are not authorised to make any representations or give any warranties concerning the Products unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations and warranties which are not so confirmed.

### **12.4 Subject to clause 12.5 if:**

12.4.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 12.1;

12.4.2 the Company is given a reasonable opportunity of examining such Products; and

12.4.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost, the Company shall, at its option, repair or replace the defective Products, or refund the price of the defective



Products in full. The Company agrees to consult with the Customer as to the repairs to be carried out under the warranty but shall not be obliged to obtain the Customer's consent to its decision.

- 12.5 Without prejudice to clause 12.2 the Company shall not be liable for a Product's failure to comply with the warranties in clause 12.1 if:
- 12.5.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 12.4;
  - 12.5.2 the defect arises because the Customer failed to follow the Company's or those of the OEM's oral or written instructions as to the storage, installation, commissioning, use (including operating parameters) or maintenance of the Products or (if there are none) good trade practice;
  - 12.5.3 the defect arises as a result of the Company following any drawing, Designs or Goods Specification or Services Specification supplied by the Customer;
  - 12.5.4 the Customer alters or repairs such Goods or tampers with any Products before or following installation without the written consent of the Company;
  - 12.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or misuse failure to follow Good working practices, or abnormal working conditions which are applicable to these particular goods;
  - 12.5.6 the Products differ from the Goods Specification or the Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; and
  - 12.5.7 the defect is as a direct or indirect result of accidental damage caused by the Customer or the Delivery carrier during loading or unloading or in transport. If the carrier, the provisions of clause 8.3 shall apply.
- 12.6 Except as provided in this clause 12, the Company shall have no liability to the Customer in respect of the Products failure to comply with the warranty set out in clause 12.1.
- 12.7 The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Company under clause 12.4.
- 12.8 Nothing in this clause 12 shall prevent the Company from providing parts and labour notwithstanding any of the circumstances in clause 12.5 arising, at a price to be agreed between the parties.



### **13 LIMITATION OF LIABILITY**

- 13.1 Any typographical, clerical or other manifest error or omission in any sales literature quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 13.2 In no circumstances whatsoever shall the Company be liable to the Customer (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for:
- 13.2.1 any delay, howsoever caused, or for any consequential loss arising to the Customer or third parties as a result of such delay, which occurs after the Goods have been collected by or delivered to the forwarding agents and/or third party carriers;
  - 13.2.2 any claim by the Customer which is based on any defect in the quality or condition of the Products or any failure to exercise reasonable care and skill unless (a) such claim is notified to the Company in accordance with clause 12.4 and (b) where appropriate, the Goods or the relevant component part have been promptly returned, carriage paid, to the Company.
- 13.3 The Company accepts no liability for any failure or defect in the Products:
- 13.3.1 arising from all or any part of a Goods Specification or Services Specification supplied or approved in writing by or on behalf of the Company, or from the use of any Tools, or drawings or designs supplied or approved in writing by or on behalf of the Customer;
  - 13.3.2 where such failure or defect is within reasonable commercial tolerances.
- 13.4 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any indirect, special or consequential loss or damage (whether for loss of profit, product recall or otherwise), costs, expenses or other claims for compensation whatsoever, (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or re-sale by the Customer, and the liability of the Company under or in connection with the Contract whether in contract tort (including negligence) breach of statutory duty or otherwise shall be to replace or repair the Goods (or part in question) or to re-perform the Services free of charge or, at the Company's sole discretion, to refund to the Customer the price (or a proportionate part of the price) paid, and in any event shall in no circumstances exceed £1million for Product Liability or £10million for Public Liability whereupon the Company shall have no further liability to the Customer.
- 13.5 Nothing in these Conditions shall exclude or limit the Company's liability for:
- 13.5.1 fraudulent misrepresentation;
  - 13.5.2 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982, or section 12 of the Sale of Goods Act 1979;



- 13.5.3 for death or personal injury caused by the Company's negligence or the negligence of employees, agents or subcontractors;
- 13.5.4 defective products under the Consumer Protection Act 1987; or
- 13.5.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 13.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.7 This clause 13 shall survive termination of the Contract.

## **14 INDEMNITY**

The Company shall indemnify and keep indemnified the Company, its employees, agents and sub-contractors against all loss, damages, costs, expenses, damage to property and the injury or death of any person caused by any breach of the Contract or any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors.

## **15 TERMINATION BY THE COMPANY**

- 15.1 The Company shall be entitled to terminate any Contract upon not less than 10 Business Days notice where, in its reasonable opinion, there has been a change in the Customer's financial status which is likely to prejudice the Customer's ability to fulfil its obligations under it.
- 15.2 The Company shall be entitled to terminate any Contract if the Customer commits a material breach of any of its terms and (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so. For the avoidance of doubt any failure by the Purchaser to pay any sums due to the Company shall constitute a material breach of the relevant Contract for the purposes of this Clause.
- 15.3 The Company shall be entitled to terminate the Contract with immediate effect by giving written notice to the Customer if:
  - 15.3.1 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited liability partnership is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;



- 15.3.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 15.3.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.3.4 the Customer (being an individual) is the subject of a bankruptcy petition or order;
  - 15.3.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 15.3.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
  - 15.3.7 the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 15.3.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
  - 15.3.9 an event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3.1 to clause 15.3.8 (inclusive);
  - 15.3.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 15.4 Without limiting its other rights or remedies, the Company may suspend the supply of Services on all further deliveries of Products under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 15.3.1 to clause 15.3.10, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 15.5 Upon termination of the Contract by the Company under the provisions of this Clause, the Company may (without prejudice to any other rights or remedies which may have already accrued or be otherwise available) forthwith cancel any other outstanding orders from the Customer or withhold Delivery or suspend manufacture of any Goods ordered and/or performance of any Services, and all outstanding invoices shall become immediately due and payable and if the Products or any other goods have been delivered and/or services



performed, but not paid for, the Company shall be entitled to submit an invoice and the price shall become immediately due and payable.

- 15.6 On termination of the Contract the Customer shall return all of the Goods which have not been re-sold or amalgamated with other products and which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.7 The accrued rights and remedies of the parties as at termination shall not be affected by termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.8 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **16 FORCE MAJEURE**

- 16.1 The Company shall not be liable to the Customer in respect of any delay or failure to perform its obligations to the Customer because of a Force Majeure Event.
- 16.2 If the Company is unable to perform its obligations to the Customer either at all or except at an unreasonable cost because of a Force Majeure Event and this lasts for more than [10] weeks, the Company may without limiting its other rights or remedies upon written notice to the Customer cancel or suspend any of its obligations to the Customer, without liability.
- 16.3 For the purposes of the Contract: Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## **17 MISCELLANEOUS**

- 17.1 Any reference in the Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 17.2 The headings in the Conditions are for convenience only and shall not affect their Interpretation.
- 17.3 Any notice required to be given under these Conditions shall be in writing and sent to the other party at its registered office or principle place of business. Notices are deemed to have



been received on the first Business Day after the date of posting or (if delivery is by hand or via fax or email) one Business Day after delivery or transmission.

- 17.4 The Customer shall not be entitled to assign transfer, mortgage, charge, subcontract or deal with the whole or any part of the Contract or its rights under it without prior written consent of the Company. However, the Company shall be entitled to transfer, assign, mortgage, charge or subcontract the whole or any part of its obligations without notice to the Customer, to any third party.
- 17.5 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.6 If any provision or part-provision of these Conditions or the Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part the validity of the other provisions of these Conditions or the Contract and the remainder of the provision in question shall not be affected thereby unless such provision goes to the root of the Contract and the parties will use all reasonable endeavours to modify the relevant provision or part-provision as far as legally possible.
- 17.7 The Contract shall constitute the entire agreement of the parties in relation to the subject matter.
- 17.8 With the exception of any member of the Schunk Group who shall be able to enforce all the rights of the Company, a person who is not a party to the Contract shall not have any rights to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.9 These Conditions and the Contract shall be governed by the laws of England and Wales and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 17.10 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.



## **18 CONFIDENTIALITY**

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in the this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 18 shall survive termination of the Contract.