

Terms and Conditions of Sale



Schulz Extruded Products
Robinsonville Mississippi

DEFINITIONS. “Seller” means Schulz Extruded Products. “Buyer” means the business entity buying goods or services from the Seller with a purchase order or other procurement document.

2. CONTRACT FORMATION. The Parties agree that these general terms and conditions of sale (the “Seller Terms and Conditions”) apply to all quotations and offers made by and purchase orders performed by Seller. To the extent that the Seller Terms and Conditions conflict with or are different from those contained in any Buyer purchase order or other procurement document, the Seller Terms and Conditions will control and any additional or inconsistent terms are rejected by Seller unless Seller’s acceptance thereof is in writing and expressly refers to each such additional or conflicting term. Buyer’s acceptance of, or payment, for goods will confirm Buyer’s assent to the Seller Terms and Conditions.

3. INSTALLMENT DELIVERIES. Except where otherwise stated delivery may at Seller’s option be by installments. In all cases where Seller is entitled or bound to deliver by installments, failure to deliver or defective delivery of one or more installments shall not entitle Buyer to cancel or reject or withhold payment for any other installments. Where installment deliveries are made at the request of Buyer, packing charges, quantity extras and minimum charges, if applicable, shall be based on the installments requested.

4. PRICES. Any price specified by Seller is, unless otherwise stated, Seller’s price prevailing at the time of such quotation and is subject to modification. The contract price shall be Seller’s price prevailing at the time when the goods are dispatched from Seller’s works or warehouse or such other price as may be agreed upon by Seller and Buyer. Except where otherwise stated any duties and taxes on the goods or contract are not included in the contract price and shall be for account of Buyer. Where the goods are sold duties and taxes paid, any change in such duties and taxes subsequent to the date of the contract shall be for account of Buyer. Prices are subject to increases for any changes requested by Buyer as determined by Seller prior to any change of production equipment and prior to manufacture of modified goods. Unless otherwise mutually agreed, Buyer may not make any changes to an Order within [30] 60 days of the Order delivery date. Goods remain with the original purchasing document and commitment even in the event of a part number change or any other change, unless mutually agreed in writing.

5. TERMS OF PAYMENT. Unless otherwise agreed, payment terms are net thirty (30) days from the date of invoice; provided, however, that Seller may require full or partial payment in advance whenever advance payment is advisable, as reasonably determined by Seller, based upon the financial condition of Buyer. Amounts not paid after three business days past due will be subject to 1-1/2 % per month. All deliveries of goods are subject to the condition that all past due invoices have been paid or resolved in full.

6. DELIVERY TITLE AND RISK. Unless otherwise agreed, terms of delivery shall be EXW (named Seller’s location) per Incoterms 2010. Risk and title in the goods shall pass to Buyer on delivery or earlier as provided by the applicable Incoterm. All claims regarding shortages must be made within thirty (30) days from receipt of shipment and must be accompanied by the packing lists covering the shipment. Order will include mutually agreed upon line item shipping tolerances.

7. DELIVERY PROMISES. All shipping dates are based on receipt of a firm order with complete information contained therein. In addition, the shipping dates are based on standard quality control checks as a part of the normal production sequence. The goods shall be delivered by the date specified in the area entitled “Date Required” provided, that additional inspection or testing required by Buyer which affects normal production sequence will be considered as extending the shipping dates accordingly. Delivery is constituted as presented to client’s common carrier per Ex Works terms.

8. WARRANTY. Seller warrants that goods will substantially conform to agreed written specifications as stated in the acknowledgment of order, such conformance to be determined and demonstrated by the then in effect inspection methods and standards. Buyer will notify Seller in writing of any goods which were not made in accordance with this warranty within sixty (60) days after their receipt, and if Buyer should fail to give such notification, claims for breach of warranty, if any, will be waived. Seller’s obligation is expressly limited to repair or replacement of non-conforming goods without cost to Buyer or, at Seller’s option, the repayment of the portion of the purchase price for the non-conforming goods upon return of the Goods to Seller. Buyer’s sole and exclusive remedy will be limited to such repair, replacement or return. This warranty is in lieu of all other warranties or obligations express or implied. SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SELLER DOES NOT WARRANT THE ADEQUACY OF BUYER’S DESIGN OR SPECIFICATIONS OR THE INSPECTION PROTOCOL. No person is authorized to give any other warranties on Seller’s behalf. The warranty provisions herein will not apply if (i) the goods were rejected by the use or application of test or inspection procedures or processes not agreed to by Seller; or (ii) Buyer has or has attempted to correct, repair, rework or otherwise alter the goods without Seller’s prior written authorization.

9. EXCLUSIONS OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE OR ARISING OUT OF ANY LEGAL THEORY. Except in respect of Buyer’s obligations to pay the purchase price for goods ordered hereunder in accordance with the terms hereof, in no event will either party be liable to the other party in an aggregate amount exceeding the total amount paid to Seller by Buyer for the goods giving rise to the claim or claims of liability. These limitations also apply to any liability that may arise out of third-party claims. In no event will the Seller be liable for indirect, special or incidental, exemplary or consequential damages of any kind, sustained from any cause or arising out of any legal theory. These limitations also apply to any liability that may arise out of third-party claims.

10. FORCE MAJEURE. Neither party will not be liable for failure or delay in delivery or failure to perform other obligations under these terms and conditions (other than those relating to the payment of money) due to acts of God; orders bearing priority rating established pursuant to law; labor strikes or differences with workmen; fire, flood or other casualty; governmental regulations or requirements; shortages or failure of raw materials, supplies, fuel, power or transportation; breakdown of equipment; or any other cause beyond such party’s reasonable control whether of similar or dissimilar nature than those enumerated. Each party will have such additional time within which to perform as may be reasonably necessary under the circumstances and, in the event of an event of force majeure, Seller will have the right to apportion its production among its customers in a commercially reasonable fashion.

11. TERMINATION. (a) If Buyer shall commit any material breach of any of its obligations hereunder or cease business or become subject (or any substantial part of its assets become subject) to any form of bankruptcy, winding-up, dissolution, insolvency, receivership, administration, arrangement with creditors, distress or enforcement of security, Seller may forthwith terminate the contract on written notice to Buyer without prejudice to the rights of either party accrued prior to such termination. (b) Seller may terminate this contract at any time without liability by summary written notice to the Buyer if any export license, consent or permission which the Seller determines is required from time to time, whether under the UK export control regime, the US export control regime, or otherwise, is not in place. Notwithstanding anything to the contrary contained herein, Buyer, only at his client’s written request, reserves the right to cancel any purchase order with respect to any undelivered goods in accordance with the cancellation schedule attached hereto.

12. TRADEMARKS AND PATENTS. The use of any trademark owned by Seller or their suppliers shall not be permitted without the written consent of the proprietor of such trade mark. Buyer and Seller will indemnify, defend and hold harmless each other against any actual or claimed loss, liability, expense (including reasonable attorneys’ fees), damage or claim for, or any litigation arising from or relating to, patent, trademark or other intellectual property right infringement or misappropriation arising out of or resulting from the goods supplied hereunder or each other’s respective designs, specifications or manufacturing processes or procedures.

13. GENERAL. Unless otherwise specified in writing by Seller all specifications and order requirements for the goods shall be subject to any tolerances published by Seller and provided to Buyer in writing. If any provision in these Seller Terms and Conditions or any contract is invalid or unenforceable to any extent or for any purpose, this shall not affect the validity or enforceability of the remaining provisions or of that provision for other purposes, but it shall be deemed to be severed to that extent for that purpose.

14. APPLICABLE LAW. The interpretation of the terms and obligations hereunder will be construed and governed by the laws enacted in the state of Texas, excluding its choice of law rules and excluding the U.N. Convention on Contracts for the International Sale of Goods. The parties agree that, in any effort to enforce the terms and obligations hereunder, the complaining party will first notify the other party in writing of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30th day after written notice of the dispute was first made, the parties agree to engage in non-binding mediation in the city of Seller’s location, using a neutral mediator mutually agreed to and paid for by the parties. If mediation does not resolve the dispute, the parties may resolve the dispute through appropriate legal action. Legal action may be brought only in the state and federal courts located in the state of Delaware, Texas and the parties consent to the jurisdiction of such courts. Both parties expressly agree to waive all rights to a trial by jury for any claims or disputes arising under this contract. Neither party will have any rights to set-off hereunder. Seller warrants the goods furnished hereunder have been produced or furnished in full and complete compliance with all applicable laws and regulations.

15. U.S. EXPORT CONTROL. U.S. Export Control laws apply to the products and technologies covered by this Order. Export or re-export of these products or technology may require the prior approval of the U.S. government in accordance with the Export Administration Regulations and OFAC rules, and the Buyer agrees to notify the Seller of any such intended export or re-export. Diversion contrary to U.S. law is prohibited.

16. OTHER. The parties hereto shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. No agreement or understanding to modify these terms or any purchase order shall be binding upon the Buyer unless in writing and signed by Buyer’s authorized agent.

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