

SCHUNK CARBON TECHNOLOGY LIMITED
TERMS AND CONDITIONS OF SALE OF PRODUCTS AND
OVERHAUL SERVICES

1 INTERPRETATION

1.1 In these Conditions the following definitions apply:

Agreed Purposes: for the purpose of, in the case of the Company, delivery of the Goods and/or Overhaul Services and, in the case of the Customer, receipt of the Goods and/or Overhauled Goods.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Collection: means collection of goods for the purpose of Overhaul Services by the Company or, collection from the custody of the carrier selected by the Company to collect goods for the purpose of Overhaul Services from the Customer, or making premises accessible and staff available for goods to be delivered into the custody of the Company by or on behalf of the Customer (as agreed in the Order), in each case as appropriate; and “Collect”, and “Collection” shall be construed accordingly.

Company: means Schunk Carbon Technology Limited (registered number: 00737825) whose registered office is at Europa Works, Richardshaw Drive, Grangefield Industrial Estate, Pudsey, Leeds, LS28 6QR.

Company Materials: all materials, equipment, documents and other property of the Company used in delivery of the Overhaul Services.

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.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: each have the meaning set out in the Data Protection Legislation.

Customer: means the person, firm or company who purchases the Products from the Company.

Data Discloser: a party that discloses Shared Personal Data to the other party.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Delivery: means delivery of the Goods or Overhauled Goods by the Company to the Customer, or delivery into the custody of the carrier selected by the Company to deliver the Goods or Overhauled Goods to the

Customer, or making the Goods or Overhauled Goods available for collection by or on behalf of the Customer (as agreed in the Order), 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 Goods or Overhauled Goods or, where the Customer wrongfully fails to collect or otherwise take Delivery of the Goods or Overhauled Goods the date set out in clause 9 or in any other circumstances, the date the Company notified the Customer in writing that it would Deliver the Goods or Overhauled Goods.

Designs: means any designs created by or on behalf of the Company (whether as part of the Contract or otherwise) in relation to the Goods or the Overhaul Services.

Force Majeure Event: has the meaning given in clause 18 .

Goods: means the goods referred to in the Order to be supplied to the Customer by the Company (but excluding any Overhauled Goods).

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 2020: the ninth 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 Overhaul 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).

Overhaul Services means the services referred to in the Order as being required to be supplied to the Customer by the Company, by which assets owned by the Customer are overhauled by the Company.

Overhauled Goods means those goods or assets that are the subject of Overhaul Services.

Overhaul Specification: means any description or specification for the Overhaul 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.

Permitted Recipients: the parties to the Contract, the employees of each party, any third parties engaged to perform obligations in connection with the Contract.

Products: means the Goods and/or the Overhaul 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.

Shared Personal Data: the personal data to be shared between the parties under clause 7.1 .

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

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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 party's personal representatives, 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 re-enacted.

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 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 Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 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.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Overhaul Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Overhaul Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue after which time it will, unless otherwise agreed by the Company, lapse.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Overhaul Services except where application to one or the other is specified.

3 SUPPLY OF GOODS AND OVERHAUL SERVICES

- 3.1 The Goods shall be in all material respects as described in the Goods Specification and the Company shall provide the Overhaul Services in all material respects in accordance with the Overhaul Specification.
- 3.2 If Goods are to be manufactured or any process is to be applied to the Goods, or of Overhaul Services are to be provided, the Company reserves

the right to subcontract any of the manufacturing or other processes or Overhaul Services to a third party and in such circumstances the provisions of clause 14.2 14.1.2 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 Overhauls 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 Overhauls Specification which do not materially affect the quality or performance of the Goods or Overhauled Goods (as applicable), and/or which are required to enable any of Goods and/or the Overhauled Goods 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 Overhauls Specification provided by the Customer), is complete and accurate;
- 5.2 It 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 Goods or Overhauled Goods;
- 5.3 Where Goods or Overhauled Goods are to be supplied to a Goods Specification or Overhauls Specification provided by the Customer, the Goods or Overhauled 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 information and materials as the Company may reasonably require to provide the Goods or Overhauled Goods and ensure that such information is complete in all material respects and 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 Overhaul Services are to be provided in accordance with a Overhauls 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 Overhauls 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 It shall take or procure the taking of all such steps as may be necessary to ensure access for the Company to any premises at which the Goods or Overhauled Goods are to be Delivered, and the safety of the Company's employees, agents, contractors and subcontractors on any premises at which the Goods or Overhauled Goods are to be Delivered including, without limitation, complying with all applicable laws (including health and safety laws), 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 Overhauled Goods (as applicable).
- 5.7 It shall co-operate with the Company in all matters relating to the Products.
- 5.8 It shall obtain and maintain all necessary licences, permissions and consents which may be required for the purchase of the Goods or receipt of the Overhauled Goods before the date on which the Goods or Overhauled Goods are to be Delivered.

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, 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. The technique of manufacture of all Goods supplied by the Company or the

technique in the performance of the Overhaul Services shall belong to the Company, irrespective of the ownership of the Designs used.

- 6.2 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Products to the Customer.
- 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 Overhauled Goods in respect of which they were supplied. Thereafter, if following written notice they have not been collected by the Customer, the Company may dispose of them in any way it sees fit without liability to the Customer.

7 DATA PROTECTION

- 7.1 This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 7.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate the Contract with immediate effect.
- 7.3 The Customer shall:
- 7.3.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 7.3.2 give full information to any data subject whose personal data may be processed under the Contract of the nature of such processing.
 - 7.3.3 process the Shared Personal Data only for the Agreed Purposes;
 - 7.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 7.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by the Contract;
 - 7.3.6 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing

of personal data and against accidental loss or destruction of, or damage to, personal data;

7.3.7 not transfer any personal data received from the Company outside the UK without the Company's prior written consent and unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

7.4 The Customer shall assist the Company in complying with all applicable requirements of the Data Protection Legislation. In particular, the Customer shall:

7.4.1 promptly inform the Customer about the receipt of any data subject rights request relating to the Shared Personal Data;

7.4.2 provide the Company with reasonable assistance in complying with any data subject rights request;

7.4.3 not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the Company wherever possible;

7.4.4 assist the Customer, at its own cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact

- assessments and consultations with the Information Commissioner or other regulators;
- 7.4.5 notify the Customer without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 7.4.6 at the written direction of the Customer, delete or return Shared Personal Data and copies thereof to the Customer on termination of the Contract unless required by law to store the Shared Personal Data;
- 7.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for audits by the Customer or the Customer's designated auditor; and
- 7.4.8 provide the Customer with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 7.5 The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with the breach of the Data Protection Legislation by Customer, its employees or agents, provided that the Company gives to the Customer prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

8 ACCEPTANCE OF GOODS/OVERHAULED GOODS

- 8.1 If the Order so specifies, the Company shall undertake or make the Goods or Overhauled Goods available to be inspected by the Customer prior to Delivery.
- 8.2 Following such inspection the Goods or Overhauled Goods will be Delivered to the Customer. Within 5 Business Days of Delivery of the Goods or Overhauled Goods, the Customer shall give written notice to the Company and/or its subcontractors (as appropriate) of its approval or rejection of the Goods or Overhauled Goods – and in the event that it fails to do so, then it shall be deemed to have accepted them.
- 8.3 The Company shall as soon as reasonably practicable upon receipt of a rejection by the Customer pursuant to clause 8.2 above make all such alterations to or repair all faults with the Goods or the Overhauled Goods as shall in the circumstances be reasonably necessary to render the Goods or the Overhauled Goods fit for the purpose for which they were ordered and shall then resubmit the same for approval by the Customer. Within 5 Business Days of re-Delivery of the Goods or Overhauled Goods, the Customer shall give written notice to the Company and/or its subcontractors (as appropriate) of its approval or rejection of the Goods or Overhauled Goods – and in the event that it fails to do so, then it shall be deemed to have accepted them.

9 DELIVERY

- 9.1 Unless otherwise specified in the Order, the stated price of any Goods or Overhaul Services is EX Works (as defined in the Incoterms 2020) and, unless the Company shall elect to collect the Goods or Overhauled Goods on a date and time reasonably acceptable to the Company or otherwise agreed between the parties, Delivery of the Goods or Overhauled Goods

shall be made to the location set out in the Order (“**Delivery Location**”) by such method as the Company may reasonably select.

- 9.2 The Company shall use all reasonable endeavours to ensure that each Delivery of the Goods or Overhauled 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 or Overhauled Goods (including the code number of the Goods or Overhauled Goods, where applicable), special storage instructions (if any) and, if the Order is being Delivered by instalments, the outstanding balance of Goods or Overhauled Goods remaining to be Delivered.
- 9.3 Delivery of the Goods or Overhauled Goods shall, if delivered by the Company, be completed on the arrival of the Goods or Overhauled Goods at the Delivery Location. If the Goods or Overhauled Goods are delivered by a carrier, Delivery of the Goods or Overhauled 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.
- 9.4 Whilst the Company shall use reasonable endeavours to meet Delivery Dates for the Goods and Overhauled Goods, any dates or times quoted in the Order for Delivery of the Goods or Overhauled Goods 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 Goods or Overhauled Goods, cancel the Order, terminate the Contract or, withhold payment by reason of the Company's failure to meet any Delivery Date.
- 9.5 The Company shall not be liable for any failure or delay in Delivery of the Goods or Overhauled Goods, 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 Goods or Overhauled Goods or any

relevant instructions relating to the supply of the Goods or Overhauled Goods.

9.6 The Company reserves the right to deliver the Goods or Overhauled Goods in instalments.

9.7 Where Goods or Overhauled Goods are to be Delivered in instalments, each Delivery shall be invoiced and paid for separately and shall constitute a separate contract. The non-Delivery of, 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 the Customer be entitled to return Goods or Overhauled Goods already delivered which are not defective.

9.8 Where the Delivery of the Goods or Overhauled Goods has failed or is delayed by the Customer for whatever reason (including, without limitation, the Customer failing to take Delivery of the Goods or Overhauled Goods), 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 Goods or Overhauled Goods, the Company may:

9.8.1 deem that Delivery has been completed at 9.00am on the day on which the Goods or Overhauled Goods were Delivered or attempted to be Delivered;

9.8.2 rely on the failure or delay of the Customer to relieve it from performance of any of its obligations;

9.8.3 store any Goods or Overhauled Goods until Delivery on such terms as it thinks fit and charge the Customer for all related costs and expenses (including insurance);

9.8.4 invoice the Customer and require to be paid in full for the Goods or Overhauled Goods; and

- 9.8.5 suspend any further Deliveries of the Goods or Overhauled Goods.
- 9.9 If 60 Business Days after the Company notified the Customer that the Goods or Overhauled Goods 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 or Overhauled Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or Overhauled Goods (if it has been paid) or charge the Customer for any shortfall below the price of the Goods or Overhauled Goods (whether or not paid).
- 9.10 If the Company exercises its rights in accordance with clause 9.9 in respect of Overhauled Goods, title shall pass to the Company immediately prior to the sale of the Overhaul Goods.
- 9.11 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 Goods or Overhauled Goods due to loss of production slots, labour availability or other intervening factors.

10 COLLECTION (GOODS FOR OVERHAUL)

- 10.1 Unless the Customer shall elect to deliver parts for the purpose of Overhaul Services on a date and time reasonably acceptable to the Company or otherwise agreed between the parties (as confirmed in the Order), Collection of parts for the purpose of Overhaul Services shall be made at the location set out in the Order ("**Collection Location**") by such method as the Company may reasonably select.
- 10.2 Collection of parts for the purpose of Overhaul Services shall, if collected by the Company, be completed on the removal of the parts by the Company from the Collection Location. If the parts are collected by a carrier, Collection of the parts shall be completed on delivery by carrier to

the Company of the parts and the Company shall use all reasonable endeavours to transfer such rights as it has against the carrier to the Customer.

10.3 If the Customer elects to the deliver the parts for the purpose of Overhaul Services to the Company in accordance with clause 10.1 , Collection of the parts shall be deemed completed on execution by the Company of a written receipt confirming Collection.

10.4 Whilst the Company shall use reasonable endeavours to meet collection dates for parts any dates or times quoted in the Order for Collection of parts are given by way of estimate only. Accordingly, time for Collection shall not be of the essence and the Customer shall not be entitled to cancel the Order, terminate the Contract or, withhold payment for the Overhaul Services by reason of the Company's failure to meet any Collection Date.

10.5 The Company shall not be liable for any failure or delay in Collection of parts, to the extent that it is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate collection instructions or any relevant instructions relating to the supply of the Overhaul Services.

10.6 The Company reserves the right to Collect parts for the purpose of the Overhaul Services in instalments.

10.7 The Customer accepts that any act or omission by it which causes a delay in Collection may result in a longer delay in the actual Delivery of the Overhauled Goods due to loss of production slots, labour availability or other intervening factors.

10.8 The Company shall notify the Customer if it becomes aware of any defects in parts supplied for the purposes of Overhaul Services which will not be rectified through performance of the Overhaul Services. Following such notification, and subject to any agreement to the contrary between the

parties, the Company's obligation to perform the Overhaul Services in respect of such part shall cease and the Company shall return such part to the Customer at the Customer's expense.

11 RISK AND PROPERTY

11.1 Risk in any parts that the Customer provides to the Company for the purpose of Overhaul Services shall pass to the Company on Collection.

11.2 Risk in the Goods or Overhauled Goods shall pass to the Customer upon Delivery (or deemed Delivery under clause 9.8).

11.3 Title to the Goods shall not pass to the Customer until the earlier of:

11.3.1 payment for the Goods 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

11.3.2 the Customer resells the Goods in which case title to the Goods shall pass at the time specified in clause 11.4.4 .

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

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

11.4.2 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;

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

- 11.4.4 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;
- 11.4.5 the Customer shall notify the Company immediately if it becomes subject to any of the events listed in clause 17 ; and
- 11.4.6 the Customer shall give the Company such information relating to the Goods and the ongoing financial position of the Customer as the Company may require from time to time.
- 11.5 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 17.3 , 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.
- 11.6 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 or shall procure such authorisation and licences from third parties in the event that Goods are stored on third party property.

11.7 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.

11.8 Subject to clause 9.9 , the Customer shall retain title and property to any parts that the Customer provides to the Company for the purpose of the Overhaul Services at all times.

12 PRICES AND PAYMENT

12.1 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.

12.2 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.

12.3 In respect of Overhaul Services the Company shall, subject to clause **Error! Reference source not found.**, be entitled to invoice the Customer in accordance with the Order.

12.4 Unless otherwise agreed in writing by the Company, all prices quoted in the Order are exclusive of VAT, insurance, carriage, Collection and

Delivery charges, which the Customer shall be additionally liable to pay to the Company.

12.5 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 Overhauls Specification for the Products which are requested by the Customer;
- 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).

12.6 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.

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

12.8 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:

12.8.1 cease to manufacture the Goods and/or perform the Overhaul Services, and/or cancel the Contract and sell the Goods or Overhauled 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 Goods or Overhauled Goods to the Customer and claim damages from the Customer 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;

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

12.8.3 where the Company elects not to cancel the Contract, charge the Customer 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. The parties agree that the interest payable in accordance with this clause 12.8 is a substantial contractual remedy for late payment of the debt. 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.

12.9 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.

13 EXPORT ORDERS

13.1 The Customer is responsible for complying with any legislation or regulation governing the exportation of Goods or Overhauled Goods from the UK and the importation of the Goods or Overhauled Goods into the country of destination and for the payment of any export/import duties due.

13.2 Each party shall comply with all reasonable requests of the other for information and documentation needed for the export, domestic shipment or import of Goods or Overhauled Goods.

13.3 Time is not of the essence in relation to the Delivery of Goods or Overhauled Goods. The Company shall not be responsible for any delays to Delivery of Goods or Overhauled Goods arising as a result of export/import checks or licencing procedures.

13.4 If the Customer cannot obtain any required licences or consents for the exportation or importation of certain Goods or Overhauled Goods, the Company shall have the right to terminate this Contract with immediate effect on written notice to the Customer and the Customer excludes any claims for damages in respect of such Products.

13.5 If the Company exercises its right to terminate in accordance with clause 13.4 , 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 the termination of this Contract and failure to obtain required licences or consents.

13.6 Subject to clause 13.7, 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.

13.7 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.

13.8 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 Products.

14 WARRANTIES BY THE COMPANY

Subject to the provisions of Clause 15 below:

14.1 The Company warrants that:

14.1.1 on Delivery the Goods will be free from material defects in material and workmanship and will conform in all material respects (subject to clauses 14.2 to 14.5) with the Goods Specification or shall be fit for purpose; and

14.1.2 the Overhaul Services will be performed with reasonable care and skill.

14.2 The above warranties do not extend to parts, materials or equipment not manufactured by the Company, or Overhaul 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 Overhaul Services to the Company and the

Company will use all reasonable endeavours to transfer such rights as it has to the Customer.

14.3 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.

14.4 Subject to clause 14.5 if:

14.4.1 the Customer gives notice in writing within 14 days of the Delivery Date that some or all of the Goods or Overhauled Goods do not comply with the warranty set out in clause 14.1 ;

14.4.2 the Company is given a reasonable opportunity of examining such Goods or Overhauled Goods; and

14.4.3 the Customer (if asked to do so by the Company) returns such Goods or Overhauled Goods to the Company's place of business at the Customer's cost,

the Company shall, at its option, repair or replace the defective Goods or Overhauled Goods, or refund the price of the defective Goods or Overhauled Goods 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.

14.5 Without prejudice to clause 14.1.2 the Company shall not be liable for a failure of any Goods or Overhauled Goods to comply with the warranties in clause 14.1 if:

14.5.1 the Customer does not notify the Company of such failure to comply with the warranties in clause 14.1 within 14 days of the Delivery Date;

- 14.5.2 the Customer makes any further use of such Goods or Overhauled Goods after giving a notice in accordance with clause 14.4 ;
- 14.5.3 the defect arises because the Customer failed to follow the oral or written instructions of the Company or the OEM as to the storage, installation, commissioning, use (including operating parameters) or maintenance of the Goods or Overhauled Goods or (if there are none) good trade practice;
- 14.5.4 the defect arises as a result of the Company following any drawing, Designs or Goods Specification or Overhauls Specification supplied by the Customer;
- 14.5.5 the Customer alters or repairs such Goods or Overhauled Goods or tampers with any of them before or following installation without the written consent of the Company;
- 14.5.6 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 or Overhauled Goods;
- 14.5.7 the Goods or Overhauled Goods differ from the Goods Specification or the Overhauls Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
- 14.5.8 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 9.3 shall apply.

14.6 Except as provided in this clause 14 , the Company shall have no liability to the Customer in respect of the failure of any Goods or Overhauled Goods to comply with the warranty set out in clause 14.1 .

14.7 These Conditions shall apply to any repaired or replacement Goods or Overhauled Goods supplied by the Company under clause 14.4 .

14.8 Nothing in this clause 14 shall prevent the Company from providing parts and labour notwithstanding any of the circumstances in clause 14.5 arising, at a price to be agreed between the parties.

15 LIMITATION OF LIABILITY

15.1 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.

15.2 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:

15.2.1 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 or Overhauled Goods have been collected by or delivered to the forwarding agents and/or third party carriers;

15.2.2 any claim by the Customer which is based on any defect in the quality or condition of the Goods or Overhauled Goods or any failure to exercise reasonable care and skill unless (a) such claim is notified to the Company in accordance with clause 14.4 and (b) where appropriate, the Goods or Overhauled Goods or the relevant component part have been promptly returned, carriage paid, to the Company.

15.3 The Company accepts no liability for any failure or defect in the Goods or Overhauled Goods:

15.3.1 arising from all or any part of a Goods Specification or Overhauls Specification supplied or approved in writing by or on behalf of the Customer, or from the use of any Tools, or drawings or designs supplied or approved in writing by or on behalf of the Customer;
or

15.3.2 unless such failure or defect renders the Goods or Overhauled Goods unfit for purpose.

15.4 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 Overhauled Goods (or part in question) or to re-perform the Overhaul 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 £1 million for Product Liability or £5 million for Public Liability. The Company shall have no further liability to the Customer.

15.5 Nothing in these Conditions shall exclude or limit the Company's liability for:

15.5.1 fraudulent misrepresentation;

15.5.2 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;

15.5.3 death or personal injury caused by the Company's negligence or the negligence employees, agents or subcontractors;

15.5.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

15.6 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.

15.7 This clause 15 shall survive termination of the Contract.

16 INDEMNITY

The Customer 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.

17 TERMINATION BY THE COMPANY

17.1 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.

17.2 The Company shall be entitled to terminate any Contract with immediate effect by giving written notice 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 Customer to pay any sums due to the Company shall constitute a material breach of the relevant Contract for the purposes of this Clause.

17.3 The Company shall be entitled to terminate the Contract with immediate effect by giving written notice to the Customer if the exceptions permitting termination of the Contract as stipulated in sections 233B(5) and (6) and Schedule 4ZZA of the Insolvency Act (1986) apply and if:

17.3.1 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;

17.3.2 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;

17.3.3 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;

17.3.4 the Customer (being an individual) is the subject of a bankruptcy petition or order;

17.3.5 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;

17.3.6 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);

17.3.7 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;

17.3.8 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;

17.3.9 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 17.3.1 to clause 17.3.8 (inclusive);

17.3.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

17.3.11 there is a change of Control of the Customer.

17.4 Without limiting its other rights or remedies, the Company may suspend the supply of Overhaul Services and all further deliveries of Goods or Overhauled Goods 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 17.3.1 to clause 17.3.11, or the Company reasonably believes that the Customer is about to become subject to any of them.

17.5 Upon termination of the Contract by the Company under the provisions of this clause 17 , 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 Overhaul 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.

17.6 On termination of the Contract the Customer shall:

17.6.1 immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Overhaul Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt; or

17.6.2 return all Goods and Overhauled 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, 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.

17.7 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.

17.8 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

18 FORCE MAJEURE

- 18.1 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. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 18.2 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.
- 18.3 For the purposes of the Contract: “**Force Majeure Event**” means an event beyond the reasonable control of the Company including but not limited to pandemics and epidemics (including the Coronavirus), 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 or public authority action, order, rule, regulation or direction (including ,but not limited to, the imposition of sanctions, restrictions, lockdowns), accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. The shortage of labour, sub-contractors, materials, or utilities shall constitute a Force Majeure Event if caused by circumstances which are themselves Force Majeure Events.

19 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 customers, suppliers, 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 19 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 19 shall survive termination of the Contract.

20 MISCELLANEOUS

20.1 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.

20.2 The headings in the Conditions are for convenience only and shall not affect their interpretation.

20.3 Any notice required to be given under these Conditions shall be in writing and sent to the other party:

20.3.1 If by post: at its registered office or principal place of business; or

20.3.2 If by email to:

Company: inbox.suk@schunk-group.com

Customer: the email address confirmed in the Order.

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 email) one Business Day after delivery or transmission.

- 20.4 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.
- 20.5 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.
- 20.6 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.
- 20.7 The Contract shall constitute the entire agreement of the parties in relation to the subject matter.
- 20.8 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.
- 20.9 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.10 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.

20.11 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.