



## **SUPPLY CONTRACT BETWEEN THE SUPPLIER COMPANY HEREAFTER KNOWN AS THE SELLER AND SCHUNK CARBON TECHNOLOGY SA DE CV, HEREAFTER KNOWN AS THE BUYER**

### **1. PURPOSE**

The seller is binding upon to provide the buyer with the products and/or services, which were detailed in the document titled Scheduling Agreement and/or Purchase Order. The buyer is binding upon to receive and pay the seller the price agreed in either of the mentioned documents, provided that the products and/or services have met the specifications, quantities, delivery times, prices and, shipping instructions specified by the buyer.

### **2. ACCEPTANCE AND GOVERNING PROVISIONS**

For the execution of this contract, both parties must abide to the specifications previously provided by the buyer or mentioned in the Scheduling Agreement and/or Purchase Order. Once the Scheduling Agreement or Purchase Order has been accepted by the seller, through an Order Acknowledgment, this last document shall constitute, the entire agreement between the parties in this contract (except, for any additional warranties given by the seller) superseding, any and/or all previous, and negotiations.

Acceptance of the offer to purchase is expressly conditioned upon seller's assent to this contract. Any attempt by the seller to amend in any way the exact terms, and conditions hereby mentioned is, highly objected to, and rejected. Unless specifically agreed upon, in writing by the buyer, NO additional or different term, or provision of any quotation, acknowledgment, invoice, or other form supplied by the seller shall become part of this contract despite the buyer's failure to specifically object to such term, or provision.

### **3. GOVERNING LAW AND FORUM**

Both parties agree that this contract shall be governed, by, and interpreted in accordance with the laws of the State of Mexico, and in case of dispute; the parties are subject to the provisions in Clause 22 of this instrument. Any controversy, or claim arising out of a Scheduling Agreement and/or Purchase Order, and acceptance of these, or any suspected violation of any of its specifications constitutes a violation of this contract.

### **4. PRICE, DELIVERY AND CHARGES**

Delivery must be made in the quantities, and within the times (which is of the essence) at the prices, and in accordance with the shipping, and routing instructions specified by the buyer, except in the case when the buyer may receive the benefit of any price reductions by the seller made effective after receipt of the order, but before delivery. Failure of the seller to comply with each requirement shall entitle the buyer the right to cancel this contract and be exempt of all liability. For any undelivered product or service, it will solely be the seller's responsibility, in case the buyer may incur in any damages or extra charges

The seller shall not unreasonably anticipate delivery by purchasing materials, or manufacturing quantities more than what is reasonably required to meet the buyer's request. Items received in



advance, may at the buyer's option be returned at the seller's expense, or be accepted, and payment withheld until the scheduled delivery date. The seller guarantees that the price charged, for products, or services covered by the order is the lowest price charged. The buyer will not be accountable, for any special packing, extra shipping charges or tax duties, Customs fees or other assessments in connection with this purchase, expressly set forth in the order.

#### **5. INVOICES**

An invoice must be issued for each individual shipment. All shipping documents such as the invoice, bill of lading and packing list must be dated, and must arrive the day of delivery, or before.

#### **6. FREIGHT AND SHIPPING**

All orders must be shipped in accordance with the instructions given by the buyer. If the buyer identifies any damages in the goods, he/she will immediately notify this to the seller. See Annex 1 for international packing and Annex 2 for guidelines for shipments to Mexico.

#### **7. PACKAGING**

Unless otherwise instructed by the buyer, the seller shall use the best practices of commercial packaging. Each package, bill of lading, invoice, and shipping memorandum must be marked with the number of the order. Annex 2, Guidelines for shipments.

#### **8. INSPECTION**

All purchased goods shall be subject to inspection and/or testing by the buyer to its convenience. This can be made at the moment of reception, during or after the manufacturing process. If any inspection or test is to be made on the premises of the seller, adequate facilities and hospitality must be provided to the inspectors that will perform the tasks, while their time in the place.

This activity shall not constitute a waiver, or limit, or impair, or be used as a defense to the right of subsequent rejection by reason of any undiscovered or latent defect.

#### **9. QUALITY REJECTIONS**

If a quality rejection arouses, the seller is obliged to send an Action Plan to the buyer. Failure to do so, may result in the buyer voiding further transactions with the seller. Any extra fees that the buyer may incur in, because of quality issues may be charged to the seller.

#### **10. WARRANTY**

The seller warrants that this sale, or use of these goods will not infringe, any patent, copyright, or trademark in Mexico.

#### **11. TOOLINGS**

All tools, gauges, dies, molds, engravings, plates, electrodes, anvils, fixtures and patterns provided or authorized by the buyer for the seller to acquire to work on the orders shall remain the property of the buyer.

Such property shall be identified, and marked as the buyer's property, and shall be held by the seller at his own risk. Maintenance shall also be provided by the seller. This property may be removed from the seller's facilities at any without any additional obligation for the seller.



## **12. DISCLAIMER**

The seller agrees not to make any claim against the buyer by reason of use of any information concerning the seller's products, methods, or manufacturing processes which the seller must disclose to the buyer, unless otherwise specifically agreed in writing.

## **13. HAZARDOUS MATERIAL**

The seller must include Material Safety Data Sheets (MSDS), and hazardous warning labels with each hazardous item. Hazardous materials are defined by each country's governing standards regarding hazardous materials.

## **14. SELLER'S COMPENSATION**

The seller shall compensate the buyer for all losses, damages, and expenses (including attorneys' fees, and other costs of defending any action), which they, or any of them may sustain or incur because of the seller's performance covered in this contract.

## **15. COMPLIANCE WITH THE LAWS**

The seller shall comply with federal or state laws, rules, and regulations in connection with the performance of this contract.

## **16. INCOTERMS**

The seller shall maintain coverage as required by the Incoterm 2010 shown in the Schedule Agreement or Purchase Order.

## **17. ASSIGNMENT**

The seller shall not assign, or subcontract the work required without the written consent of the buyer, but this provision shall not restrict the seller in the procurement of component parts, or materials.

## **18. CHANGES**

No amendments in the order may be made except by means of a formal written change in the order issued by the buyer. The buyer reserves the right to modify Scheduling Agreements and Purchase Orders (including without limitation specifications, quantities and delivery dates). Prices may be changed, as well by the buyer, upon previous agreement with the seller.

## **19. CANCELLATION/TERMINATION BY THE BUYER**

The buyer shall have the right to cancel or terminate this contract, and therefore the Scheduling Agreements and/or Purchase Orders according to its convenience at any time.

If this contract, Scheduling Agreements and/or Purchase Orders are indeed cancelled, then the buyer will be limited to pay the seller's actual cost for work, and materials applicable solely to the orders which shall have been manufactured when the notice of cancellation/termination was received by the seller.

Additionally, the buyer may at its option terminate this contract, and cancel the Scheduling Agreements and/or Purchase Orders without liability to the seller (except for conforming shipments previously accepted by the buyer) in the event the seller shall cease to exist, become insolvent, or be subject of bankruptcy.



## **20. ENTIRE AGREEMENT**

The parties agree that there are no understandings, agreements or representations, express or implied, not specified in this contract. The terms and conditions defined in the Scheduling Agreement and/or Purchase Order and this instrument must contain the entire agreement between the seller and the buyer. If there were previous agreements, these will not take effect against the terms and conditions agreed in this document.

## **22. ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE**

Both parties agree that in the event of default, contingencies, or legal discrepancies involving the need to conduct a legal dispute, it will be submitted first to arbitration established by the International Chamber of Commerce. Among the available dispute resolution alternatives to the courts, arbitration is, by far the most commonly used internationally.

All disputes arising out of, or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the mentioned Rules."

The place for resolving any disputes will be in Mexico City.

## **ANNEX 1**

### **WOODEN PACKAGE REGULATIONS**

This document refers to the decree published in August 16, 2012 in the Official Journal, **NOM- 144 SEMARNAT-2012**, by the Ministry of Natural Resources of the Mexican Republic.

It is necessary for Mexico to establish the procedures and requirements that allow people who use wood packaging for the international trade of goods and merchandise, to comply with the international phytosanitary regulations; Therefore, for Mexico to comply with the International Plant Protection Convention, it is necessary to adapt the corresponding national regulations with ISPM No. 15. Approved treatments are: "Heating Treatment (HT)" and "Methyl Bromide (MB)".

Certificates must show application of internationally recognized products for phytosanitary treatment, prevention and elimination, including visually stamped/sealed on packages employed, against plagues, its introduction and dispersion.

Import cargoes into Mexican ports, airports and terminals will be inspected by the Ministry of Public Health, and all cargo arrivals not complying with this decree will be confiscated, fined, placed on quarantine, treated locally, destroyed or eventually returned to origin.

We request your support to avoid logistic difficulties.

**IMPORTANT: All expenses resulting from not following instructions on this document will be charged to the supplying company.**

## **ANNEX 2**

### **GUIDELINE FOR SHIPMENTS**

These instructions apply to all shipments being sent to Schunk Carbon Technology SA de CV. All shipments that do not follow these instructions will be sent back to the shipper.



#### **A) SHIPMENTS FROM USA AND CANADA**

Shipping documents should be sent by e-mail the day of the shipment:

1. Invoice or proforma invoice.
2. Name and tracking information of the shipper.
3. Packing List
4. Quality Certificate
5. MSDS (if applicable)

#### **B) SHIPMENTS FROM THE EUROPEAN UNION**

Shipping documents should be sent by e-mail the day of shipment:

1. Invoice or proforma invoice. This document must contain the declaration of origin word by word as follows:

**“The exporter of the products covered by this document (customs or competent governmental authorization No. (1)) declares that, except where otherwise clearly indicated, these products are of (2) preferential origin”.**

- Date and place
- Signature
- Full name

**(1):** Write the number of authorized exporter.

**(2):** Write the name of the country where the products were produced. If it's more than one European country, please write **“EUROPEAN COMMUNITY”**.

2. Name and tracking information of the shipper.
3. Packing List
4. Quality Certificate
5. MSDS (if applicable)

For further consultation, please check the Annex 3 and its 5 Appendices to Decision Nr. 2/2000 of the EC-Mexico Joint Council of 23 March 2000.