

Schenck RoTec
TERMS AND CONDITIONS

1. **Contract.** The Contract shall mean any purchase order issued to the Seller, these terms and conditions, all specifications, drawings, bid package and correspondence listed on the purchase order and any properly memorialized amendments or addendums. Seller acknowledges receipt of all the documents listed on the purchase order and expressly assumes the obligation to obtain and review all such documents.

The "Work" means all or part of the construction and services required by the contract, whether completed or partially completed, and includes all labor, materials, equipment, supplies, fees, permits, inspections and services provided or to be provided by the Seller to fulfill its obligations under the Contract.

2. **Acceptance.** It is understood and agreed that the written acceptance by Seller of the purchase order or commencement of any work or any service hereunder by Seller shall constitute acceptance by Seller of this Contract. Additionally, Seller expressly assumes all of the terms and conditions of Buyer's contract with its customer to the extent not expressly inconsistent with this Contract. To the extent of any inconsistency, the Contract shall be interpreted by preference first to the purchase order, then to the terms and conditions, then to the specifications, and then to the customer's terms and conditions. All terms and conditions proposed by Seller which are different from or in addition to this order are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become a part of this order. Any modification to this order shall be made in accordance with paragraph 25. Seller acknowledges that any contradiction or alteration of these Terms and Conditions by issuance of a standard form by Seller, including any preprinted purchase conditions, standard conditions of sale or invoice forms, will not be accepted by Buyer and are categorically refuted by Buyer herewith.
3. **Delivery Schedules.** Deliveries are to be made both in quantities and the time specified in the schedules furnished by Buyer. Buyer will have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified in the delivery schedules. If at any time Seller has reason to believe the deliveries of any supplies, materials or equipment will not be made as scheduled in the Contract, Seller shall immediately deliver to Buyer written notice setting forth the cause and the length of the anticipated delay. Buyer's expenses which result from deliveries at times other than those called for in the Contract, shall be reimbursed by the Seller or deducted from Buyer's payment of Seller's invoice.
4. **Premium Shipments.** If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery schedules and Buyer requires a more expeditious method of transportation for the goods, then the transportation method originally specified by Buyer, Seller shall, at Buyer's option, (i) promptly reimburse Buyer the difference between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Seller's invoices by such difference, or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment. Any transportation charges paid by Buyer to which Seller is entitled to reimbursement shall be added to Seller's invoices as a separate item and the receipted freight bill shall be attached thereto.
5. **Product Identification.** All supplies, materials or equipment shall be properly packed, marked and shipped in accordance with the requirements of the carrier transporting such supplies and Buyer's instructions. Seller shall be liable to Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing. No charge will be allowed for crating, boxing or shipping unless stated on the purchase order.
6. **Invoices.** The acceptance of final payment shall be held to be a waiver of all claims against Buyer or for which Buyer might become liable, and which is chargeable to Seller. In the absence of such documentation, Buyer shall have the right to retain out of any payment then due or to become due, an amount sufficient to indemnify Buyer against such lien or claim. If any lien or claim should arise or be discovered after payment has been made in full, Seller shall reimburse Buyer for any amount paid to discharge such lien or claims and expenses, including attorney fees, incurred in obtaining such discharge. All invoices shall refer to the purchase order number contained in this Contract.

The Work and all portions thereof along with any addendums or additions or alterations shall be subject to final acceptance of the Work by Buyer and its customers prior to final payment and Seller shall return to Buyer all drawings, warranties, permits and certificates together with a properly executed sworn statement and waiver as a condition of final payment.

7. **Liquidated Damages and Delays.** In case Seller fails to meet the agreed delivery dates being subject to liquidated damages for reasons attributable to it, Buyer shall be entitled to liquidated damages at a rate of 0.5% per week of the value of the delayed part of the supplies, subject to a max. of 5% of the Contract price. The forgoing mutually agreed to

dates shall be extended, without cost to seller, for delays beyond the reasonable control of Seller, including, but not limited to, delays caused by fire, flood, cyclone, tornado or other similar casualty, war, insurrection, riot or civil commotion, accidents, strikes or because of any governmental act or regulation beyond the reasonable control of Seller delays shipment beyond the specified dates or prosecution of the Work, unless Buyer elects to terminate the Contract in accordance with paragraph 8, the time of completion of the Work directly affected by any such delay shall be extended for a period equivalent to the time lost, which shall be determined by Buyer. No such extension shall be granted unless the Seller, within 48 hours of the occurrence of the cause of such delay, notifies the Buyer, in writing, that such cause has occurred and makes written application for the specific extension of time claimed to be necessitated by reason of such cause.

Seller shall have no claim for any increase in the contract price or a payment or allowance of any kind based on any damage, loss or additional expense Seller may suffer as a result of any delays in prosecuting or completing the Work whether such delays are caused by circumstances set forth in the preceding paragraph or by any other circumstances. Seller assumes all risks of delays in prosecuting or completing the Work and Buyer's only obligation concerning delays shall be to grant an extension of time under the conditions and for the circumstances set forth in the preceding paragraph.

Cancellation. Performance of the Work under this Contract may be terminated by Buyer at its option, in whole or in part at any time upon at least 48 hours written notice to Seller. Buyer shall have such right of termination notwithstanding the existence with respect to Seller of excusable delays. After receipt of a notice of termination, Seller shall, unless otherwise directed by Buyer, immediately terminate all Work under the Contract. Upon termination of Buyer under this paragraph, Buyer shall pay Seller for all work which has been completed in accordance with this Contract only for such portion of the work as Seller shall have completed, plus the cost to Seller of materials delivered to Buyer to the effective date of termination, plus the cost of materials used in performance of this Contract for which irrevocable orders have been placed by Seller prior to the effective date of termination which have not been terminated or settled, provided that such materials are delivered to Buyer within a reasonable time after the effective date of termination, plus the cost to Seller of terminating and settling orders in accordance with this section, plus the cost to Seller of complying with Buyer's directions relative to the preservation of the work-in-process and the protection of materials and equipment in transit; and the payment to be made for any such completed portion of the Work shall be in the proportion that the completed portion of the Work bears to the entire Work provided for in this Contract. However, Buyer shall be under no obligation to compensate Seller under this provision if the Contract is terminated under the paragraph entitled "Failure to Perform; Insolvency". Payment shall not exceed the total price specified in this Contract.

Buyer shall not be obligated to compensate Seller for any anticipated profits and overhead related to Work not yet performed; any costs incurred due to Seller's failure to terminate the Work on the effective date of termination; or any cancellation charges or fees levied upon Seller for Seller's failure to act promptly upon receipt of notice of termination or cancellation.

8. **Failure to Perform; Insolvency.** If Seller becomes insolvent, makes a general assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or against it, for any relief under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, compositions or extensions, or if a receiver or trustee shall be appointed, or if Seller does not make deliveries as specified in the schedules or fails to make progress so as to endanger performance of the Work and does not correct such failure within 48 hours after receipt of written notice from Buyer specifying such failure, or if Seller breaches any of the terms hereof, including the warranties of Seller, or if it should fail to make prompt payment for materials or labor or if it should disregard laws, regulations, ordinances or instructions of Buyer, Buyer may, at its option and after giving 48 hours written notice to Seller cancel all or any part of the Work covered by this Contract and provide any such labor, materials or equipment as may be necessary to complete the Work, and deduct the cost from any money due or thereafter to become due to Seller; or terminate Seller's right to proceed and for the purpose of completing the work, employ any other person or persons to complete the Work and provide the materials therefor.

Seller shall not be entitled to receive any further payment under the contract until the Work shall be completely finished, at which time, if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by Buyer in finishing the Work, such excess shall be paid by Buyer to Seller. If such expense shall exceed the unpaid balance, then Seller shall pay the difference to Buyer. The expenses referred to in the last sentence shall include expenses incurred by Buyer for furnishing materials, for finishing the Work, attorney fees and any damages incurred by Buyer by reason of Seller's default plus a mark up of 15% general overhead and 10% profit on any and all such expenses. Should Seller default in the performance of its Work causing delay to Buyer in fulfilling its obligations to its customer, Seller shall be liable for any loss and damage, including consequential and liquidated damages, sustained by Buyer as a result thereof.

9. **Inspection.** All materials, equipment or supplies shall be received subject to Buyer's inspection and rejection. Such remedy is in addition to any others provided by law. Any Work not in accordance with Buyer's specifications will be held for Seller's instruction at Seller's risk and if Seller so directs will be returned at Seller's expense. No goods returned as defective shall be replaced without a new order and schedule. Payment for Work on this Contract prior to inspection shall not constitute an acceptance thereof, and acceptance will not remove Seller's responsibility for latent defects or remove Seller's responsibility for warranties.
10. **Non-Conforming Goods.** To the extent buyer rejects goods as non-conforming, the quantities under this Order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new Order or schedule from Buyer. Non-conforming goods will be held by Buyer for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days or such shorter period as may be commercially reasonable under the circumstances after notice of non-conformity, shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the goods, without liability to Seller. Payment for non-conforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy, or relieve Seller of responsibility for latent defects.
11. **Changes.** Quantity, quality, size or class of material, supplies or equipment ordered must not be changed without first obtaining consent in writing from Buyer's purchasing agent; material, supplies or equipment other than the sizes, class or quality called for, will not be accepted and Buyer reserves the right to return excess quantities or goods later found not otherwise to comply with this Contract at Seller's expense; in such case, they are not to be replaced unless authorized in writing. Equipment and/or material furnished against this Contract shall not differ from Certified Submittal Drawings without first obtaining consent in writing from Buyer at no cost to Buyer or Buyer's customer. Buyer reserves the right at any time to make changes in the drawings and specifications as to any material and/or Work covered by this Contract. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and the contract and/or schedule shall be modified in writing accordingly. Any changed work performed by Seller without written authorization by Buyer will be considered part of the original Work and invoices relating to the changed work will not be honored.
12. **Warranty.** Seller expressly warrants that all the Work covered by this Contract will conform to the specifications, drawings, samples or other description furnished or specified by Buyer and will be merchantable, of good material and workmanship and free from defect for a period of 1 year from the date of start-up or initial beneficial occupancy or use by Buyer's customer, or for a period of time as specified by Buyer's customer, whichever is longer. Seller expressly warrants that all the material covered by this Contract which is the product of Seller, or is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended by Buyer.

All warranties and remedies provided for in these terms and conditions shall be in addition to those implied in or available by law and shall exist notwithstanding the acceptance by Buyer of all or a part of the Work. During the warranty period, Seller shall repair, at Seller's expense and at the convenience of Buyer's customer, any defects in the Work, and shall further pay for damage to Buyer's customer's property resulting from such defect in the Work and all expenses incurred to remove, replace and/or repair the Work and any other Work which may be damaged in removing or repairing the Work. Whenever Seller fails to repair or remedy a defect of the Work, Buyer may make such repairs and remedies and shall be entitled to immediate reimbursement by Seller of all costs and expenses of every nature incurred in connection with such repairs or remedies, together with interest at the highest legal rate, actual reasonable legal fees and payment for all damages resulting from said defects. Seller specifically agrees to indemnify, defend and hold harmless Buyer from or against any and all claims, losses, damages and settlement expenses resulting from or arising out of breach of Seller's warranties.

If the equipment furnished by Seller as part of the Work is entitled to the benefit of a manufacturer's warranty, the Seller shall secure such manufacturer's warranty and deliver the same to Buyer's customer prior to final payment hereunder, which standard manufacturer's guaranty is in addition to and not in lieu of, Seller's general warranty above.

13. **Buyer's Property.** Unless otherwise indicated in this Contract, all supplies, materials, tools, jigs, dies, fixtures, patterns, equipment and other items furnished by Buyer, either directly or indirectly to Seller to perform this Contract, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer, provided however that Seller shall bear the risk of loss and damage to such property, normal wear and tear excepted. Such property shall at all times be properly housed and maintained by Seller, shall be insured by Seller with fire and extended insurance coverage for the replacement value thereof; shall not be used by Seller for any purpose other than the performance of this Contract unless otherwise authorized in writing by Buyer; shall be deemed to be personal property (moveable property); shall be conspicuously marked by Seller or marked with the name of Buyer's customer; shall not be commingled with the property of Seller or with that of a third person; and shall not be moved from Seller's premises without Buyer's written approval.

Upon request of Buyer, such property shall be immediately delivered to Buyer by Seller either (i) F.O.B. cars or trucks at Seller's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, and Buyer shall pay to Seller the cost of delivering such property to such location. Buyer shall have the right to enter into Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.

14. **Legal Requirements.** Seller agrees to comply with all applicable federal, state and local laws (including any foreign laws, where applicable), executive orders, and regulations thereunder and amendments thereto, including without limitation, Executive Orders relating to Equal Employment Opportunity, the Federal Occupational Safety and Health Act, Public Law 91-596, the Federal Hazardous Substances Act, the Transportation Safety Act, the Clean Air Act, the Toxic Substances Control Act, the Fair Labor Standards Act, and the Federal Water Pollution Control Act. The supplies sold by the Seller to Buyer shall conform to the requirements of such laws, orders, and regulations, and this Contract incorporates by reference all the requirements of said laws, orders and regulations.
15. **Remedies.** The remedies herein reserved shall be cumulative and additional to any other or further remedies provided at law or at equity. No waiver at any time of the provisions or conditions of this contract shall be construed as a waiver of the other provisions or conditions thereof, nor shall the waiver of any such provision or condition be construed as a right to subsequent waiver of the same provision or condition.
16. **Patents, Industrial Designs and Copyrights.** By accepting this order or performing under it, Seller (a) agrees to defend and hold harmless Buyer, its successors and customer against all suits and from all damages arising out of suits or claims for actual or alleged direct or contributory infringement of, or inducement to infringe, any patent, industrial design or copyright by reason of the manufacture, use or sale of the goods and/or services ordered, including infringement arising out of compliance with specifications furnished by Buyer; (b) agrees not to assert any claim against Buyer under the Patent Act, Copyright Act, Industrial Design Act or any sale of goods, statutes or otherwise, including any hold harmless or similar claim related in any way to any claim asserted against Seller or Buyer for patent or copyright infringement or the like arising out of performance under this Contract, including infringement arising out of compliance with specifications furnished by Buyer, and (c) hereby grants to Buyer a non-exclusive, royalty free irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered hereunder. Seller hereby assigns to Buyer all right, title and interest in and into copyright and any copyrightable material created or produced for Buyer under this Contract.
17. **Technical Information Disclosed to Buyer.** Seller agrees not to assert any claim other than a claim for patent infringement with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this order.
18. **Indemnity & Insurance.** Seller agrees to indemnify, defend and hold Buyer harmless against all liabilities, claims or demands for injuries or damages to any persons or property arising in whole or part out of the performance of this Contract or out of the use of the equipment or goods furnished, including product liability claims. Seller warrants and represents that it maintains and will maintain commercial general liability insurance, including product liability insurance and agrees to provide certificates evidencing such coverage on request of Buyer.
19. **Advertising.** Seller shall not without first obtaining the written consent of Buyer, in any manner advertise or publish that Seller has contracted to furnish Buyer the material herein ordered.
20. **Buyer's Design.** Seller agrees that if the articles, materials or equipment covered by this Contract are to be manufactured to design furnished by Buyer, Seller will not, without the consent of Buyer manufacturer such articles, materials or equipment from said design for sale to other than Buyer.
21. **Year 2000 Requirements.** Seller is responsible to ensure that all products and services supplied to Buyer must be fully compliant and operational according to the year 2000 requirements under the AIAG definition. Specifically, that the aforementioned items' date functions have the ability to transition to the year 2000 and beyond.
22. **Duty Draw Back Rights.** This Order includes all related customs duty and import drawback rights, if any, (including rights developed by substitution and rights which may be required from Seller's suppliers) which Seller can transfer to Buyer.

23. **Set Off.** In addition to any right of set off provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its subsidiaries, and Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to become due from Buyer to Seller.
24. **Entire Agreement.** This order, together with the attachments, exhibits, or supplements, specifically referenced in this order, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements. This order may only be modified by a purchase order amendment/alteration issued in writing and signed by Buyer.
25. **Confidentiality.** This Contract is strictly confidential between Buyer and Seller. Seller shall not publish or disclose details of any nature concerning this Contract to any third party without prior written consent from Buyer. Any such disclosure may result in legal action taken by Buyer.
26. **Governing Law.** This Contract shall be interpreted in accordance with the laws of the State of Michigan.
27. **Miscellaneous:**
- (a) Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent;
 - (b) Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other;
 - (c) If any term of this Order is invalid or enforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provision of this Order shall remain in full force and effect;
 - (d) Sales/use tax status is indicated on the face of this Order as to whether or not this Order is subject to state or local sales or use tax and the status of the same.

The foregoing purchase order and all of its terms and conditions are hereby accepted.

By: _____
Seller
Title: _____

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