

# Construction Supplement for Terms & Conditions of Purchase

## Schenck Process UK Ltd

Version 12/09

### 1. Definitions and Interpretation

- 1.1 These Supplementary Conditions only apply insofar as and to the extent that the Contract is one governed by the terms of the Construction Act. Where the Contract is a construction contract for the purposes of the Construction Act then the terms contained in these Supplementary Conditions apply in priority to any other terms in the Terms & Conditions of Purchase or Order howsoever which are relevant to the obligations of application for payment, timing of payment, payment notices and withholding notices as regulated by the Construction Act.
- 1.2 Save where the contrary is provided, expressions used in these Supplementary Conditions that are prefixed with a capital letter have the same meaning as in the Terms & Conditions of Purchase.
- 1.3 The following words which begin with capital letters in these Supplementary Conditions have the precise meanings set out below:

**"Application Date"** means the [25th] day of each month, or such other dates as may be specified in the Order.

**"Construction Act"** means the Housing Grants, Construction and Regeneration Act 1996 (as amended).

**"Interim Applications"** has the meaning ascribed to it in clause 3.1.

**"Order Price"** means the price shown in the Contract for the provision of the Goods and Services by the Seller.

**"Site"** means such location as is specified in the Contract for receipt of the Goods by the Company and/or for the carrying out of the Services by the Seller.

**"Superior Contract"** means any contract entered into or to be entered into between the Company and any person (a "Superior Contractor") for the carrying out of any works or the supply of any materials of which the Services, works, Goods or materials to be carried out or supplied under the Contract form part.

### 2. The Order Price

- 2.1 The Order Price is fixed and no change in any of the component parts of Order Price including, without limitation, changes resulting from

any change in law shall entitle the Seller to make any adjustment to the Order Price.

### 3. Interim Applications for Payment

- 3.1 The Seller shall submit applications for payment ("Interim Applications") to be received the Company by the relevant Application Date.
- 3.2 Any application not received by the Company by the time stated in clause 3.1 will be deemed to be held over to the following Application Date.
- 3.3 Each Interim Application shall include the value of the Services carried out and Goods delivered to Site by the Seller up to and including the relevant Application Date, and shall:
  - (a) include a full breakdown of the value of Services and Goods covered by the application; and
  - (b) include details of any modifications which the Seller has been instructed to carry out in accordance with clause 2.3 of the Terms & Conditions of Purchase together with a breakdown of the amounts applied for in respect of each such modification (if any); and
  - (c) be accompanied by such supporting documentation and information as the Company may reasonably require together with proof that title in all Goods and materials supplied was vested in the Seller immediately prior to delivery to Site.
  - (d) where the Seller is registered for VAT, be accompanied by a VAT invoice in respect of the amount the Seller considers to be due.
- 3.4 The amount due to the Seller in respect of each payment shall be the Company's valuation of the Goods delivered and Services carried out by the Seller up to the relevant Application Date less:
  - (a) all sums to be deducted by the Company under the terms of the Contract, including (without limitation) any retention; and
  - (b) all sums previously due or paid by the Company to the Seller under the Contract.
- 3.5 No payment shall fall due:
  - (a) in respect of off Site Goods or materials; or
  - (b) for any Goods or materials brought to Site prior to incorporation of the same into the works provided by the Seller; or



- (c) for any Goods or materials in respect of which the Seller fails to provide proof of title.

#### **4. Timing of Payment**

- 4.1 Subject to clause 4.3, provided that the Seller has submitted an Interim Application in accordance with clause 3 payment will fall due to the Seller 76 days after the last day of the month in which the relevant Application Date fell.
- 4.2 The final date for payment of any sum falling due under the Contract shall be 14 days after such sum falls due.
- 4.3 In the event that a Superior Contractor or anyone whose solvency is lawfully a condition precedent of payment to the Company, becomes insolvent (as defined in Section 113 of the Construction Act) any sum which would otherwise fall due to the Seller under the Contract shall not fall due until 14 days after receipt by the Company of payment from the Superior Contractor in respect thereof and then only to the extent of such payment.
- 4.4 Without prejudice to any right the Company may have to challenge the amount applied for in any Interim Application submitted by the Seller at any time, not later than 5 days after payment falls due to the Seller or would have fallen due had the Seller properly carried out its obligations under the Contract, the Company shall give to the Seller written notice specifying the amount (if any) of the payment made or proposed to be made and the basis on which that amount was calculated.
- 4.5 Immediately following receipt of the notice referred to in clause 4.4 the Seller shall issue a credit note against the relevant invoice referred to in clause 3.3(d) in respect of the balance (if any) of the said invoice over and above the amount notified.
- 4.6 Any sums deducted by the Company by way of retention shall fall due to the Seller:
- (a) where any part of the sums due to the Company under a Superior Contract are retained under the terms of such Superior Contract, 76 days after such sums fall due to the Company under such Superior Contract (for the avoidance of doubt, where a portion only of the sum retained falls due under such Superior Contract, an equivalent portion only shall fall due under the Contract); or; if there is no such Superior Contract, or such Superior Contract makes no provision for retention,
  - (b) as to one half of such sum, on the expiry of 76 days after the end of the month in which the Services and all deliveries of Goods are completed; and as to the other half, on the expiry of 15 months after the end of such month.
- 4.7 Any amount for which the Seller is liable to the Company or which the Company is otherwise

entitled to recover from the Seller under the Contract shall fall due on the date on which the Company notifies the Seller of the amount thereof.

- 4.8 Subject to clause 4.9, if the Company intends to pay less than any sum due under the Contract the Company must give to the Seller a notice in writing not later than 1 day before the final date for payment specifying the amount the Company considers to be due on the date the notice is served and the basis on which that sum was calculated.
- 4.9 Clause 4.8 applies where the Contract constitutes a "construction contract" as defined in Section 104 of the Construction Act but not further or otherwise.