



# SXP SCHULZ XTRUDED PRODUCTS

1001 Schulz Blvd., Tunica, MS 38664 \* Office: (662) 373-4114 \* Fax: (662) 373-4119

## **Seller's General Terms and Conditions of Sale (Effective November 1, 2011)**

### **1) General**

1.1) "Seller" and "SXP" means SXP Schulz Xtruded Products LP, a Georgia limited partnership, together with its successors and assigns. "Buyer" means the business entity that purchases or seeks to purchase goods, services or technology from Seller.

1.2) These General Terms and Conditions of Sale ("Seller's Terms and Conditions") are an essential part of Seller's offers, and govern sales by Seller. Buyer's purchase orders, confirmations, purchase conditions and general terms and conditions shall not be binding for Seller even when not expressly rejected by Seller.

1.3) Seller's offers and quotes are subject to final confirmation by Seller at the time of order placement. No agreement to sell goods shall be formed unless and until Seller issues a sales confirmation for such goods.

1.4) Seller's own declarations and those of persons appointed by Seller (e.g. Seller's various agents), or agreements concluded with them, shall only be binding for Seller if they are confirmed in writing.

1.5) To the extent that the Seller's Terms and Conditions conflict with or are different from those contained in any Buyer's purchase order or other procurement document, the Seller's Terms and Conditions will govern, and any additional or inconsistent terms are rejected by Seller unless agreed to in writing. Buyer's acceptance or payment for goods will conclusively confirm Buyer's acceptance of the Seller's Terms and Conditions.

1.6) Buyer shall not be entitled to deduct any claim amounts or set-off from Seller's invoices unless specifically agreed to by Seller in writing. Buyer shall also not be entitled to retain Seller's material without payment because of Buyer's claim against such material.

### **2) Prices**

2.1) Unless otherwise stated by Seller, prices in Seller's quote are firm for the time period specified in Seller's quote and for a delivery time of 90 – 120 days from receipt of raw material (billet). For delivery after 120 days, prices are subject to review and possible re-quote.

2.2) Seller's prices are "EXW SXP, Robinsonville, MS", including truck loading at the plant, but not including packaging. Any applicable taxes will be added to the sales price.

2.3) Prices in Seller's quote are based in part on a specified quantity and the cost of materials and labor at the time of quote, and are subject to change at the time of Seller's sales confirmation. Any additional costs incurred by Seller after the Seller's sales confirmation, irrespective of whatever type these may be, including charges by public authorities, shall be paid by the Buyer.

2.4) Any services and/or time rendered by Seller above and beyond the scope of the Seller's sales confirmation shall also be paid by the Buyer even if these services and/or time were not agreed upon in writing beforehand.

### **3) Delivery and Acceptance**

3.1) In case of delivery terms "EXW SXP", title of goods will be transferred to Buyer before loading of material, upon Seller's notification that the material is on the loading dock, and available for pick up.

3.2) Delivery schedule is given as accurately as conditions permit and is subject to unforeseen circumstances. All delivery schedules and dates are estimates. Any order changes, including requests for additional testing and/or inspection by Buyer, may extend delivery dates, in which case a revised delivery schedule will be provided by Seller. Partial deliveries by Seller will be accepted by Buyer. When start month for delivery is

indicated, start month will include an allowance of 30 days to accommodate the variances in manufacturing that can occur. Delivery schedules of multiple line item orders must be prioritized at time of order placement.

3.3) Force Majeure: Seller will not be liable for failure or delay in delivery resulting from acts of God, government intervention, war, labor laws, government regulations, shortage or non-delivery of raw materials, fuel, power or transportation, breakdown of equipment or any cause beyond Seller's reasonable control whether of similar or dissimilar nature as those listed. In the case of any of the foregoing, Seller shall be entitled to postpone production or withdraw from a contract for sale in part or in whole without Buyer's agreement.

3.4) All TOLL CONVERSION orders are based on a REASONABLE COMMERCIAL EFFORT BASIS and sold "AS IS." All problematic conditions and issues related to the extrusion process (including without limitation, failure to complete the extrusion cycle, loss of material yield due to the extrusion operations, cracks, drag seams, tearing, wall variations, ovality, handling marks, and other potential problems and issues with the final extruded product) are NOT a cause for non-payment, claim for defects or request for material replacement.

3.5) If Buyer does not pick up goods after notice of readiness has been given by Seller, Seller may store the goods on Seller's premises at Seller's discretion and at Buyer's expense.

3.6) All deliveries of goods are subject to the condition that all past due invoices have been paid or resolved in full.

3.7) All claims regarding delivery shortages or defects must be made in writing within 30 days from date of delivery and must be accompanied by the packing lists, bills of lading and receiving notices for that delivery, and evidence showing the claimed shortages and defects.

3.8) All delivery terms will be governed by Incoterms 2000.

#### **4) Payment**

4.1) Unless otherwise agreed, payment for goods, service and technology shall be made as follows: one hundred per cent (100%) of the total invoiced amount is due 30 days from "EXW SXP" notification date. Seller reserves the right to deliver and invoice partial or complete quantities.

4.2) Payment shall be made directly in cash or cash equivalent without any deductions or offsets.

4.3) If Buyer's payment is late by more than 5 days, or if bankruptcy proceedings are initiated by or against Buyer, payment of all outstanding invoices shall become due immediately and are subject to interest at 3% above the U.S. prime rate as established by the Wall Street Journal.

#### **5) Order Changes**

5.1) Prices are subject to increases for changes requested by Buyer, and any change in price resulting from a Buyer directed change must be agreed upon and confirmed in writing before any change of production equipment and prior to Seller's production of changed order. Order changes which delay or stop deliveries are subject to Seller's written approval. Prices are subject to renegotiation at Seller's option when production schedules are modified or where goods must be produced in smaller and/or less economical lot sizes. Seller reserves the right to pass raw material cost increases through to Buyer if longer than expected delivery schedules expose Seller to unexpected increases in raw material costs. Work in process that is delayed or stopped is subject to a handling charge. Buyer will accept delivery and pay for work in process that is within ninety days of completion at time of change request. Work deferred or stopped in excess of ninety days from the scheduled date of completion may be considered cancelled at Seller's option, and Buyer will be liable to Seller for all unpaid invoices and the costs of necessary termination of related sub-contracts, as well as payment at the contract price for finished product, work in process, and raw materials in inventory or on order provided that Seller is not able, in its judgment, to use such product, inventory or raw material for other purposes within 30 days of the cancellation.

#### **6) Warranty**

6.1) Except as otherwise stated herein or in Seller's quote, Seller warrants that goods will conform in all material respects to agreed specifications as stated in the Seller's sales confirmation. Conformance will be determined and demonstrated by inspection methods and standards reasonably specified by Seller or, if Buyer and Seller agree, by other inspection methods and standards.

6.2) Buyer will notify Seller in writing of any claim of defect or breach of warranty within ninety days after date of delivery "EXW SXP". If Buyer should fail to give such notice timely, claims for defects or for breach of warranty, if any, will be waived. Seller's obligation to respond to claims of Buyer is expressly limited to repair or replacement of non-conforming goods without cost to Buyer, or, at Seller's option, the repayment of the purchase price upon return of the goods. Buyer's sole and exclusive remedy will be limited to such repair, replacement or return. Goods may be

returned at the expense of Seller only after inspection by a representative of Seller and upon receipt by Buyer of shipping instructions and a return material authorization (RMA) number from Seller.

6.3) No warranty will apply if a) the goods were rejected based upon test or inspection procedures or processes not agreed to by Seller, or b) Buyer has modified, repaired, reworked or otherwise altered the goods without Seller's prior written authorization.

6.4) The warranty provisions in Seller's Terms and Conditions are in lieu of all other warranties or obligations, express or implied. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller does not warrant the adequacy of Buyer's design, specifications or inspection protocol, if any.

## **7) Limitation of Damages**

In no event will Seller be liable for indirect, special, incidental, exemplary or consequential damages of any kind sustained from any cause or arising out of any legal theory. In no event will Seller be liable to Buyer in an aggregate amount exceeding the total purchase price of the goods giving rise to the claim or claims of liability. These limitations also apply to any liability that may arise out of third-party claims.

## **8) Dispute Resolution**

The interpretation of the terms and obligations hereunder will be construed and governed by the laws enacted in the State of Mississippi, provided that 9 U.S.C. § 1 et seq. will govern any arbitration. In the event of a claim or suit that relates in any way to a sale or potential sale by Seller to Buyer or other performance hereunder, each party unequivocally waives any and all rights it may have to recover attorney's fees against the other party. Each party agrees that in any effort to enforce rights against the other party, the complaining party will first notify the other party in writing of the alleged dispute (and provide documentation regarding the dispute) and the parties will attempt in good faith to resolve the dispute through prompt discussion, exchange of information and meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30<sup>th</sup> day after written notice of the dispute was first made, the parties agree to engage in non-binding mediation in Jackson, Mississippi, using a neutral mediator mutually agreed to and paid for by the parties. If mediation does not resolve the dispute within 30 days of engaging in mediation, the parties shall resolve all disputes, claims and controversies arising under or relating to the sale of goods or potential sale of goods by Seller, or relating to the parties' relationship or dealings, exclusively through arbitration at the Jackson, Mississippi office of the American Arbitration Association. Any lawsuits must be brought exclusively in the state and federal courts located in Jackson, Mississippi, except that judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

## **9) Miscellaneous**

Seller's Terms and Conditions, Seller's quote and Seller's sales confirmation constitute the entire agreement between the parties with respect to the subject matter herein and supersede all previous oral or written proposals, negotiations, representations, commitments, writings and all other communications between the parties in regard to such subject matter. No waiver, alteration, modification of or addition to Seller's Terms and Conditions will be binding unless expressly agreed to in writing and signed by duly authorized representatives of Buyer and Seller. A waiver of any of the terms or conditions hereof will not be deemed a continuing waiver but will apply solely to the instance to which the waiver is directed. If any part of Seller's Terms and Conditions will be judged by any arbitration or court of competent jurisdiction to be invalid, such decision will not affect or nullify the remainder of Seller's Terms and Conditions, but the effect thereof will be confined to the part immediately involved in the controversy adjudged. Neither party will assign its rights or obligations hereunder without prior written consent of the other party, which consent will not unreasonably be withheld. There are no third-party beneficiaries.

## **10) Legal Compliance and Export Control**

The products, technologies and/or software that are covered by Seller's quote and sales confirmation may be of U.S. origin or otherwise subject to U.S. Export and other foreign trade controls. The exports, deemed export, re-export, or release of Seller's products and technologies to other countries or parties may require the prior approval of the U.S. government, the governments of other countries, and/or international organizations such as the United Nations. Diversion of these products and technologies from an authorized destination contrary to U.S. and International law is prohibited. Buyer agrees to comply with the applicable laws and regulations of the United States, other relevant jurisdictions, and pertinent international organizations pertaining to the export, deemed export, re-export or release of all products and technologies. Any violations of this clause, as determined solely by Seller, shall be deemed a material breach by Buyer. In the event of a material breach by Buyer, Seller may charge Buyer for goods but not deliver those goods to Buyer.