

## **TERMS OF SALE**

The following SCHOTT Pharma USA, Inc. ("SCHOTT") terms and conditions of sale and those appearing in SCHOTT's quotations and order confirmations (collectively the "Terms of Sale") are exclusive and in lieu of all other terms and conditions appearing on Customer's purchase order or Customer's other documents and apply to all quotations made and all orders accepted by SCHOTT for SCHOTT products ("Products"). Customer agrees that SCHOTT's acceptance of Customer's order is limited to the Terms of Sale. Neither SCHOTT's commencement of performance, confirmation of Customer's order, nor delivery of Products shall be deemed or constitute acceptance of any additional or different terms or conditions from Customer. SCHOTT's failure to object to provisions contained in any order or other document or writing of Customer shall not be construed as a waiver by SCHOTT of the Terms of Sale or an acceptance of any terms or conditions of Customer, which are hereby expressly rejected by SCHOTT.

### **1. Performance.**

Performance of any order received by SCHOTT is expressly conditioned upon acceptance by SCHOTT management.

### **2. Orders and Cancellations.**

- a. All orders placed with SCHOTT must be in writing or in electronic form from Customer and must include a complete description of Products being ordered, the quantity, the requested delivery date, as well as Customer's name, contact name, address, email address, telephone number, and fax number. Orders will be a binding contract only when accepted by confirmation in writing by SCHOTT.
- b. Customer orders requiring an export license will not be accepted until the export license has been obtained by Customer.
- c. Orders requiring a Letter of Credit will not be accepted until the Letter of Credit is received (unless otherwise negotiated prior to order acceptance) and meets SCHOTT's standard terms for a Letter of Credit. No production will begin until payments terms are agreed.
- d. Customer shall be deemed to have accepted the Terms of Sale unless written notice of objection is given by Customer to SCHOTT within 24 hours of receipt of SCHOTT's order confirmation.
- e. Delivery dates may not be rescheduled without SCHOTT's prior written approval.
- f. Customer may not cancel any order in whole or in part without prior written agreement from SCHOTT and on condition of Customer's payment of SCHOTT's cancellation charges. If SCHOTT agrees to cancel the order, SCHOTT may assess cancellation charges in the following amounts:
  - (i) for standard Products that can be readily resold to another customer of SCHOTT: twenty percent (20%) of the contract price, and
  - (ii) for custom or specially made Products: (1) the contract price for all completed Products, and (2) with respect to non-completed Products, cancellation charges may include: (y) an equitable charge as determined by SCHOTT based upon all costs (including but not limited to costs of materials purchased, labor, storage charges, handling, freight, duties, and taxes, and any destruction or recycling costs) incurred by SCHOTT or its affiliates or suppliers in performance of the order to the date of cancellation and will thereafter reasonably incur as a result of such cancellation, and (z) a cancellation fee of 20% of the contract price.
- g. Customer shall pay all cancellation charges due within thirty (30) days of the date of SCHOTT's invoice.
- h. SCHOTT's cancellation charges shall not be deemed SCHOTT's exclusive remedies in the event of an unauthorized order cancellation by Customer.

### **3. Prices.**

- a. The prices of the Products are those specified on SCHOTT's quotation or SCHOTT's confirmation of Customer's order, or if no price is specified, those in SCHOTT's Price List current at the time of SCHOTT's acceptance of the order. All prices printed in SCHOTT's Price List or quoted to Customer are subject to change without notice.
- b. Prices include standard packaging. Extra charges will be added for special packaging reasonably necessary to deliver the Products.
- c. Prices for Products do not include any federal, state, or local taxes, or other governmental charges (such as tariffs or duties) or fees imposed on this Agreement or on the manufacture, import, export, sale or use of the Products, which, when applicable, will be invoiced additionally and paid by Customer, unless Customer presents an exemption certificate acceptable to the taxing authorities.
- d. Customer agrees to pay any processing fees if SCHOTT accepts credit card payment.
- e. SCHOTT shall have the right to adjust the price of the Products that are the subject of Customer's order at any time in the event of an increase in SCHOTT's or its affiliate's or their supplier's costs to supply the Products due to increases in the cost of energy, material, labor, freight/shipping, and/or governmental charges (such as tariffs, duties, or taxes). The adjustment in the price shall correspond to such increase in cost. SCHOTT will provide Customer with written notice of such price increase.

### **4. Payment.**

- a. Payment shall be due thirty (30) days after the date of SCHOTT's invoice unless otherwise specified in SCHOTT's quotation or order confirmation. For orders with multiple delivery dates, SCHOTT may invoice Customer separately and Customer shall pay for each delivery separately and each delivery shall be considered a separate and individual contract.
- b. SCHOTT may charge Customer interest for all late payments computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.
- c. SCHOTT reserves the right to establish and/or change credit and payment terms extended to Customer when, in SCHOTT's sole opinion, Customer's financial condition or previous payment record warrants that action. Further, on delinquent account, SCHOTT shall not be obligated to continue performance under Customer's order or any contract with Customer.
- d. SCHOTT retains a security interest in the Products delivered to Customer, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the "Collateral"), to secure payment of all amounts due under this Agreement. If Customer fails to pay any amount when due, SCHOTT shall have the right to repossess and remove all or any part of the Collateral from Customer. Any repossession or removal shall be without prejudice to any other remedy of SCHOTT at law or in equity. Customer agrees to take all acts and execute and deliver all documents (including, without limitation, financing statements) reasonably requested by SCHOTT to transfer, create, perfect, preserve, protect, and enforce this security interest.
- e. Customer is responsible for and shall pay all costs, fees, and expenses, including reasonable attorneys' fees and the fees of collection agencies, incurred by SCHOTT in enforcing any of the terms, conditions or provisions hereof or in protecting SCHOTT's rights herein or with respect to past due Customer accounts.

### **5. Delivery.**

- a. Unless otherwise agreed to in writing by SCHOTT, all prices quoted or printed in SCHOTT's Price List are for delivery Ex Works (Incoterms 2020) SCHOTT's premises.
- b. Customer agrees that all freight, express, and delivery charges shall be paid by Customer and shall not be subject to discount.

- c. If SCHOTT has agreed with Customer to arrange for shipping of Products, SCHOTT will select the carrier and all shipments shall be freight collect, unless agreed otherwise.
- d. In no event shall SCHOTT be liable for any delay in delivery nor shall the carrier be deemed an agent of SCHOTT.
- e. Delivery will be deemed complete and risk of loss or damage to the Products will pass to Customer upon delivery.

#### **6. Inspection, Acceptance and Variance, and Returns.**

- a. Customer shall have the right to inspect the Products at the time and place of delivery before paying for or accepting them. After inspecting the delivered Products, if Customer claims that the Products do not conform to the specifications issued by SCHOTT and SCHOTT confirms that the Products do not conform to the specifications, then SCHOTT's sole obligations and Customer's exclusive remedies with respect to such non-conforming Products shall be, at SCHOTT's option, to repair or to replace the Products or to refund to Customer the purchase price paid for the Products.
- b. The Products shall be deemed accepted by Customer unless notice under Section 6(a) is received within thirty (30) days of delivery and the Products are returned to SCHOTT within sixty (60) days of delivery.
- c. At SCHOTT's sole discretion, the quantity of Product delivered to Customer may vary by a margin of plus or minus ten percent (10%) of the quantity in the confirmed order. In case of such a variance, the order will be deemed fulfilled and Customer agrees to accept and pay for the delivered quantity.
- d. No Products may be returned to SCHOTT without SCHOTT's prior written authorization. Returned Products must be in their original packaging and be in new condition. SCHOTT will bear the return cost for the return of non-conforming Products; however, if the Products are found to be within the specifications issued by SCHOTT, then Customer shall be responsible for all costs associated with the return of the Products.

#### **7. Ownership of Tooling.**

- a. Unless otherwise agreed in writing by SCHOTT and Customer, all tooling, material, equipment, and facilities used in the manufacture of the Products shall remain the property of SCHOTT.
- b. SCHOTT shall not be responsible for any Customer furnished tooling, materials, or equipment that may be damaged during processing or manufacturing.
- c. SCHOTT's supply of Products to Customer does not in any way convey or grant any license or right to make the Products or any additional products, or have any of them made by Customer or a third party.

#### **8. Warranty.**

- a. SCHOTT warrants to Customer that the Products at the time of delivery will conform to the applicable current specifications issued by SCHOTT.
- b. Products sold by SCHOTT with additional express written warranties shall be subject to the specific terms and conditions of those warranties. The duration of any additional express written warranties shall be limited to the applicable warranty duration stated in writing by SCHOTT. If no warranty duration is specified by SCHOTT, then the warranty duration shall be thirty (30) days from the date of delivery.
- c. Unless otherwise agreed to in writing by SCHOTT, no warranty shall extend to or be for the benefit of any third party.
- d. Customer will be deemed to have waived any warranty claim unless written notice of such claim is given to SCHOTT promptly but in no event later than thirty (30) days from date of discovery of such breach of warranty.

e. SCHOTT'S ENTIRE RESPONSIBILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY IS LIMITED, AT SCHOTT'S OPTION, TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE WARRANTY CLAIM. THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SCHOTT IN CONNECTION WITH THE PRODUCTS, AND SCHOTT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

#### **9. Assignment.**

Customer's order shall not be assigned in whole or in part by either party without the written consent of the other party, except that SCHOTT may assign or sublicense its rights, liabilities, or obligations arising out of Customer's order to one or more of SCHOTT's subsidiary or affiliated companies or may have all or part of the order fulfilled by one or more of SCHOTT's subsidiary or affiliated companies.

#### **10. Statute of Limitations.**

No claim or cause of action by Customer arising from this Agreement may be brought at any time more than twelve (12) months after the facts occurred upon which the claim or cause of action arose.

#### **11. Export Control.**

Customer shall comply with all applicable export laws, regulations, and treaties relating to export or re-export of the Products. Customer will defend, indemnify and hold SCHOTT and its affiliates and suppliers harmless for any claims, penalties, fines, damages, and costs arising from or related to Customer's failure to comply with this section.

#### **12. Limitations of Liability.**

SCHOTT'S ENTIRE AND AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER FOR INFRINGEMENT, BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SCHOTT UNDER THE ORDER FOR THE PRODUCTS THAT CREATED THE LIABILITY. SCHOTT SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT.

#### **13. Governing Law.**

The construction, interpretation, and performance of this Agreement and all transactions hereunder shall be governed by the laws of the State of New York, excluding any of its conflict of law provisions. SCHOTT and Customer specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

#### **14. Choice of Forum.**

Any and all claims or actions challenging the validity, interpretation, or performance of this Agreement shall be brought in the state or federal courts located in New York City and the parties hereby consent to the personal jurisdiction and venue of such courts with respect to such claims or actions. Notwithstanding the foregoing, SCHOTT may seek interim injunctive relief in any court of appropriate jurisdiction.

#### **15. Force Majeure.**

Except for the payment of money due and owing, neither party shall be liable for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by a cause

beyond its reasonable control, including but not limited to fire, flood, earthquake, typhoon, hurricane, epidemic, pandemic, other natural phenomena, explosion, war, invasion, terrorist threats or acts, riots, civil unrest, explosion, strike, labor dispute, embargo, government requirement, civil or military authority, act of God, act or omission of carriers, or other similar causes, and with respect to SCHOTT, inability to reasonably obtain necessary labor, materials, components, or manufacturing facilities ("Force Majeure Condition"). If any Force Majeure Condition occurs, the non-performing party shall give immediate notice to the other party and shall be excused from performance under this Agreement for the duration of the Force Majeure Condition, provided however that the non-performing party shall take all reasonable steps and cooperate with the other party to avoid or remove the cause of non-performance and shall resume performance immediately when the cause is removed. If the non-performing party does not remove the cause of nonperformance within sixty (60) days, the other party may terminate this Agreement. If the Force Majeure Condition cause shortages in SCHOTT's or its affiliate's or supplier's supply of Products or materials necessary to deliver the Products, SCHOTT may, without obligation to obtain similar products or materials from other sources, first satisfy its own requirements and the requirements of its divisions, subsidiaries, and affiliates for such Products and materials and then allocate the remainder among its customers in a manner and amount that is fair and reasonable in SCHOTT's sole judgment.

**16. Non-Waiver.**

No course of dealing or failure of either party to strictly enforce any term, right, or condition of this Agreement shall be construed as a waiver of that term, right, or condition.

**17. Entire Agreement.**

The Terms of Sale shall constitute the entire agreement between the parties with respect to the Products (the "Agreement") and shall not be modified, waived, or rescinded, except in writing signed by SCHOTT and Customer. The provisions of this Agreement supersede all prior oral and written communications, agreements, and understandings with respect to the subject matter of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable by a court or other body of competent jurisdiction, such invalidity of unenforceability shall not affect the validity or enforceability of this Agreement, and the invalid or unenforceable provision shall be replaced by a legally valid and enforceable provision coming closest to achieving the same result as the invalid or unenforceable provision to the maximum legal extent.