



Schenker of Canada Limited, Purchase Order Terms and Conditions ("Terms and Conditions")

The following Terms and Conditions are applicable to Schenker of Canada Limited ("Schenker") transactions, wherein Schenker is the Buyer and the other contracting party is the Seller, as defined herein.

Terms and Conditions

1. **GOVERNING PROVISIONS.** In the event of conflict between the terms written on the face of Schenker's Purchase Order or other contract of purchase (the "PO") and these Purchase Order Terms and Conditions ("T&Cs"), the terms written in the "T&Cs" shall prevail. Any goods or materials purchased by Schenker, ("Buyer") from Seller (the "Products"), and any service performed for Buyer by Seller (the "Services"), shall be deemed to be only upon the terms, including these T&Cs, in this Agreement, except as they may be added to, modified, superseded, or otherwise altered by Buyer, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Buyer's act of accepting or paying for any shipment or any similar act of Buyer, and Buyer hereby rejects any different or additional terms and conditions proposed by Seller.
2. **COMPLIANCE WITH LAWS.** Seller warrants that any Products or Services shall be adequately contained, packaged, marked, labeled and registered in compliance with, and that the Products and Services shall conform to, the requirements of all applicable Federal, Provincial and local laws, regulations, rules and orders. Seller shall defend, indemnify and save harmless Buyer from and against any claims, liabilities, expenses (including attorneys' fees), fines, penalties, damages and/or economic losses arising out of or resulting from the failure of Seller and/or the Products or the Services to comply with the requirements of this Paragraph 2.
3. **PRICE AND DELIVERY.** No extra charge of any kind, including charges for boxing, packing or crating shall be allowed unless specifically agreed to in writing in advance by Buyer. At any time during the term of this Agreement that Buyer can purchase goods of a like quantity at a price or under terms which will result in a delivered cost to Buyer that is lower than the delivered cost of the Products, Buyer may notify Seller of such lower delivered cost and Seller shall, within fifteen (15) days after such notice, advise Buyer in writing whether or not Seller shall meet such price or such terms. If Seller elects not to meet such price or such terms, or fails to advise Buyer within such period, Buyer may purchase the lower delivered cost goods, and the quantity of any purchase so made shall correspondingly reduce the purchase and sales obligations of Buyer and Seller hereunder, or under any PO. Unless otherwise provided in this Agreement, delivery of the Products shall be at Buyer's facility. Risk of loss, liability and/or damage shall remain with Seller until the Products are physically delivered to Buyer's facility.



4. **FAVORED NATIONS.** Seller warrants that the prices for the Products or the Services are not less favorable than those currently extended to any other customer for the same or like goods or services in equal or less quantities. In the event Seller reduces its price for such Products or services during the term of this Agreement, Seller agrees to reduce the price of the Products or Services correspondingly.
5. **INSPECTION AND ACCEPTANCE.** All Products shall be subject to Buyer's rights of inspection, rejection, and revocation of acceptance. Payment for or use of Products prior to inspection shall not constitute acceptance thereof and shall be made without prejudice to any and all claims that Buyer may have against Seller. Any Buyer's signature on any shipping/receiving document shall not constitute acceptance of Product or any different terms or conditions or acknowledge condition of Product but shall merely acknowledge receipt of a shipment.

Without limiting any of Buyer's rights provided by law or by this Agreement, Seller shall, upon request of Buyer and at Seller's expense, immediately replace at Buyer's facility any Products rightfully rejected by Buyer.

6. **TAXES AND GOVERNMENTAL CHARGES.** All prices shall not include federal or provincial sales taxes which shall be shown separately on each invoice, unless Buyer has indicated that the purchase is exempt from such taxes. Seller agrees to pay any other taxes or charges imposed by federal, provincial, or local law upon the Products or Services sold to Buyer hereunder unless otherwise agreed in writing.

Seller shall, upon request of Buyer, inform Buyer whether the Products are imported or manufactured with imported materials and furnish Buyer with all documentation required for duty drawback for product or imported materials contained in the Product purchased by Buyer hereunder.

7. **PATENTS.** Seller agrees to defend, indemnify and hold harmless Buyer, its successors, customer and users, from and against all liability, economic loss, damage, and expense (including attorneys' fees) resulting from any actual or alleged infringement of any intellectual property right, or any litigation based thereon, with respect to the Products (or any part thereof and including Seller's process of manufacturing Products), and any such obligation shall survive acceptance of such Products and payment therefore by Buyer.
8. **INDEMNIFICATION.** Seller shall assume the sole responsibility for any and all actual or alleged damage or injury (including death) to any and all persons (including, but not limited to employees of Seller or Buyer) and to all property arising out of or resulting from the performance of its obligations under this Agreement or any act or omission of Seller, and shall defend, indemnify and save harmless Buyer from and against any and all claims, liabilities, expenses (including reasonable attorneys' fees), fines, penalties, damages and/or economic losses of whatsoever nature arising therefrom except for such claims, liabilities, etc. as are caused by the sole negligence of Buyer.
9. **WARRANTY.** Seller warrants good title to all Products. Seller warrants that the Products are new, merchantable, safe, fit for intended use, free from defects in workmanship and materials and conform to any specifications, drawings, samples, or other descriptions referenced herein or applicable thereto.

Seller further warrants that all Services shall be performed in accordance with the highest standards, in a workmanlike manner and in conformance with all specifications, plans, or drawings referenced herein or applicable thereto. Products or Services found to be defective in material or workmanship or nonconforming with specifications within eighteen months from the date of shipment (or performance) or twelve months from the date of putting same into service, whichever date occurs first, shall, at Buyer's



option be corrected or repaired in place by Seller, or be replaced at Buyer's facilities by Seller, or be returned to Seller at Seller's expense (including transportation and handling costs) for repair, replacement or full refund.

These warranties shall survive any inspection, delivery, use or acceptance of Products or Services, or payment therefore by Buyer. Seller agrees that all warranties and indemnities applicable to Products provided hereunder shall automatically inure to the benefit of, and be directly enforceable by, a third party purchasing or receiving such Products from Buyer.

10. LIEN WAIVERS/SUBCONTRACTORS. Seller shall, at its sole cost and expense, obtain from all its subcontractors and materialmen waivers and releases of all liens which may be imposed by them against the premises of Buyer or the improvements thereon, in connection with any Products, and Seller shall defend, indemnify and hold harmless Buyer with respect thereto. If Seller engages subcontractors, Seller agrees that its agreements therewith shall provide for the subcontractors to be bound by these terms and conditions as fully as if they were the prime contractor and, without limiting the generality of the foregoing, to provide to Buyer the insurance certificates required in paragraph 16 hereof.
11. CANCELLATION. Time is of the essence of this Agreement. In addition to all its other legal remedies, Buyer reserves the right to cancel all or any part of the undelivered Products if Seller does not make deliveries as specified, or if Seller breaches any of the terms hereof. Buyer may terminate the purchase of Services or Products at any time for its convenience on 30 days' advance written notice. Buyer may, at its option and without prejudice to any other remedy, terminate any PO immediately by written notice upon the occurrence of any of the following:

If Seller (or any of their employees or contractors):

- a) a) Ne respecte pas toutes les dispositions du code de conduite et des normes sociales minimales de Schenker ou de la Deutsche Bahn : voir <https://www.dbschenker.com/ca-fr/meta/vendor-terms-and-conditions>
- b) Is in any way associated with any activity that could (in Buyer's sole, reasonable, discretion) serve to cause harm to the name of Buyer (or any name under which Buyer may do business in the future), or the name of any parent or affiliated company;
- c) Declares bankruptcy, or otherwise files for protection from its debtors or is put in default;
- d) Files or submits false or fraudulent information to Buyer;
- e) Makes any disparaging or false statements about Buyer, any successor organization and any affiliated companies; or
- f) Violates the confidentiality provisions of Section 13 referenced herein.
- g) Violates the insurance provisions of Section 15 referenced herein.
- h) Is in material default of its obligations hereunder and such default is not remedied after 30 days from written notice thereof.
12. FORCE MAJEURE. Each party shall be absolved from liability from any act, omission or circumstance occasioned by any cause not within its control, without the negligence of the party affected, and which it could not, by reasonable diligence, have foreseen or avoided. Such acts, omissions or circumstances, however, shall not relieve a party of liability in the event of its failure to use reasonable diligence to remedy the situation and remove the cause with all reasonable dispatch and to give notice (including all details of the situation) in writing to the other party as soon as possible after the occurrence thereof.
13. CONFIDENTIALITY. Seller agrees not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Buyer or observed or developed by Seller in the performance hereof and to not disclose any of the foregoing to third parties, except as required in the performance of this Agreement and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Agreement, Seller shall return to Buyer all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any of the

foregoing made by Seller or third parties employed by Seller. Buyer shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Seller hereunder. All Products produced for Buyer hereunder pursuant to data or materials furnished to Seller or pursuant to specifications provided by Buyer and which are subject to or may be copyrighted under the Federal Copyright Act shall be deemed to be "collective work" and title to and ownership of such Products shall at all times be in Buyer.

14. QUALITY COMMITMENT. Seller agrees to promptly notify Buyer of loss of any third-party certification (such as ISO9000 Series, QS9000) that occurs during the term of this Agreement or any extension thereof.
15. INSURANCE REQUIREMENTS. Seller shall procure and maintain all of the required insurance coverages from and with reputable and financially responsible insurance providers. SELLER shall procure and maintain the following minimum coverage levels. If SELLER is self-insured for any or all of the types and levels of insurance requirements codified in this Section, SELLER shall confirm this in writing which will be made part of this Contract by attachment.

Workers Compensation or equivalent in accordance with provincial statutes.

- a) Commercial general liability insurance (including contractual liability and protective liability coverage) insuring SELLER against liability for injuries to persons, including injuries resulting in death, environment restoration, and loss or destruction of or physical damage to property in a combined single limit of an amount not less than one million dollars (\$1,000,000) per occurrence; five million (\$5,000,000) general aggregate. This will include coverage for Employers Liability of not less than \$1,000,000, along with an endorsement for any rented/hired, non-owned, or any other vehicles operated by SELLER in connection with transportation performed hereunder.
- b) Auto Liability with combined single limits of liability for bodily injury or property damage of not less than \$2,000,000.00. All insurance coverages provided under SELLER'S commercial automobile policy must be for all owned, leased, vehicles operated by SELLER in connection with the transportation performed hereunder.
- c) Each of the policies of insurance specified in this section shall name SCHENKER, its directors, officers, employees, stockholders, subsidiaries and affiliates, as additional insured as respects to SELLER's negligence, and as a loss payee as SCHENKER's interest may appear, and shall further provide that SCHENKER shall not be obligated to pay premiums for any such insurance, such insurance shall be primary with respect to all insured, and such insurance shall be applicable separately to each insured and shall cover claims, suits, actions or proceedings by each insured against any other insured.
- d) SELLER'S insurance policies shall provide for waiver of insurer's subrogation rights against SCHENKER, its directors, officers, employees, stockholders, subsidiaries and affiliates.
- e) It is expressly understood that SCHENKER does not represent that the types of, or minimum levels of insurance coverage's set forth herein are adequate to protect the SELLER's interests. SELLER shall pay deductible amounts under the foregoing policies.
- f) SELLER shall furnish SCHENKER written certificates from applicable insurance providers establishing that the said insurance has been procured, and is being properly maintained. All such insurance policies shall provide (unless otherwise provided by statute), that in the event of cancellation or any material modification thereof, said underwriter shall endeavor to provide written notice of such cancellation or material modification shall be given to SCHENKER no less than thirty (30) days prior to the effective date of such cancellation or modification.
- g) If SELLER fails to maintain any insurance required by this Section, SCHENKER may, at its option and without notice, elect to terminate this agreement.



Insurance Certificates must be made out to Schenker of Canada Limited. The mailing address for the certificate of insurance is as follows.

Schenker of Canada Limited
5935 Airport Road, 10th Floor
Mississauga, Ontario L4V 1W5
Attn: Procurement Department

Attn: Procurement Department

This certificate of insurance must be on our file before the Seller or their representatives commence work on Schenker premises. To expedite the approval please e-mail the certificate to purchasingcanada@dbschenker.com

16. CONFORMITÉ SUPPLÉMENTAIRE

16.1 Le vendeur s'engage par la présente à adhérer au code de conduite de la DB pour les partenaires commerciaux dans le cadre de toutes les relations commerciales (y compris les contrats existants) avec l'acheteur ou avec l'une de ses sociétés affiliées au sens de l'article 15 de la German Joint Stock Corporation Act (AktG) (désignées collectivement sous le nom de « sociétés DB »). En cas de violation de la part de l'entrepreneur, les sociétés DB se réservent le droit de mettre en œuvre les conséquences décrites à l'article 5 du Code de conduite de la DB pour les partenaires commerciaux.

16.2 Le vendeur s'engage à respecter les normes de conduite professionnelle du client (annexe 5) dans le cadre de toutes les relations d'affaires avec le client. Sur demande, le client peut demander une preuve écrite du respect des normes de conduite professionnelle.

16.3 Le vendeur s'engage à respecter les exigences des cl. 1.2 - 1.7, 3.3 - 3.5 des conditions générales d'achat de la Deutsche Bahn AG et de ses sociétés affiliées en date du 01.01.2023.

16.4 Les contrats conclus avec des membres actifs ou anciens du conseil d'administration, des directeurs généraux ou des cadres supérieurs d'entreprises allemandes et étrangères affiliées à la Deutsche Bahn AG conformément à l'article 290 du code de commerce allemand (HGB), ainsi qu'avec des cadres du groupe et des personnes politiquement exposées (PEP), sont soumis à des dispositions spéciales et à des processus d'approbation menés par le client et la Deutsche Bahn AG en raison d'exigences légales et internes spécifiques du DB ou d'intérêts publics spécifiques/de risques de réputation. Dans ce contexte, une personne politiquement exposée (PPE) désigne toute personne qui exerce ou a exercé une fonction publique de haut niveau au niveau international, européen ou national (ou qui exerce ou a exercé une fonction publique d'importance politique comparable au niveau national). Sont notamment concernés : a) les chefs d'État, les chefs de gouvernement, les ministres, les membres de la Commission européenne, les vice-ministres et les secrétaires d'État; b) les députés et les membres d'organes législatifs comparables; c) les membres des organes de direction des partis politiques; d) les membres des organes de direction des cours des comptes; e) les membres des organes d'administration, de direction et de surveillance des entreprises publiques en Allemagne ou à l'étranger. On entend par ancien poste de ce type a) le fait d'avoir exercé l'une des fonctions susmentionnées il y a moins de deux ans ou b) le fait d'avoir exercé une fonction au sein du conseil d'administration ou en tant que directeur général, cadre supérieur ou dirigeant au sein du groupe DB à un moment quelconque, quelle que soit l'ancienneté de cette fonction.

16.5 De ce fait, le vendeur, s'il est une personne physique, s'engage à notifier à l'acheteur, sous forme de texte, son appartenance à l'un des groupes de personnes mentionnés à l'article 16.4. Si le vendeur est une personne morale ou une société, il s'engage à informer l'acheteur sous forme de texte si une personne physique appartenant à l'un des groupes de personnes mentionnés à l'article 16.4 détient directement ou indirectement plus de 25 % des parts de capital ou des droits de vote au sein de la société de l'entrepreneur.

16.6 Tout manquement aux obligations imposées par les articles 16.4 et 16.5 donne à l'acheteur le droit de résilier le contrat sans préavis, pour un motif valable. Les autres droits et prétentions de l'acheteur restent inchangés.

DIVERS. DIVERS. Aucun transfert ou cession du présent accord ou de l'un de ses droits ou obligations ne peut être effectué par l'une des parties sans le consentement écrit de l'autre partie, lequel ne peut être refusé ou retardé de manière déraisonnable. Le fait que l'une des parties n'insiste pas, dans un cas donné, sur la stricte exécution par l'autre partie d'une disposition du présent accord ne doit pas être interprété comme une renonciation permanente à cette disposition, ni comme une renonciation à toute autre disposition du présent accord. Le présent accord est régi et interprété conformément aux lois de l'Ontario, sans référence aux principes de conflits de lois. Le vendeur s'engage à faire en sorte que ses représentants qui pénètrent dans les locaux de SCHENKER ou d'un client de SCHENKER, ou dans les environs, fassent preuve d'une prudence raisonnable et se conforment aux règles en vigueur sur le site.

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