

## GENERAL TERMS AND CONDITIONS

### 1. Definitions and interpretation

**1.1** The following general sale conditions govern all present and future offers, acceptance of offers and the entire life of the contractual sales relations with the Buyer and shall bind the Buyer starting from the moment of acceptance of the sales offer by the Buyer.

**1.2** The following definitions and rules of interpretation apply in these conditions.

**Buyer:** the person, firm or company purchasing the Goods from the Company.

**Company:** The Company Srl a socio unico, Via Gaetano Donizetti 1, 25030 Mairano (BS), VAT Nr. IT03463200984.

**Contract:** any contract and/or purchase order between the Company and the Buyer for the sale and purchase of the Goods, incorporating or subjected to these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company, including any part or parts of them.

**1.3** A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.4** Words in the singular include the plural and in the plural include the singular.

**1.5** Condition headings do not affect the interpretation of these conditions.

**1.6** Any reference made to trade terms (such as EXW, CIP, etc.) is deemed to be made to Incoterms<sup>®</sup> published by the International Chamber of Commerce and current at the date of closing of this contract.

### 2. Application of terms

**2.1** Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.

By placing orders for Goods, the Buyer is deemed to have accepted these conditions.

Any counter-confirmations referring to the own conditions of the Buyer are hereby contradicted; general conditions from the Buyer shall only be deemed to be accepted by the Company in the sole case they are accepted explicitly and in writing.

Any information or data relating to technical features and/or specifications of the Goods contained in dépliant, price lists, catalogues and similar documents shall be binding only to the extent they are expressly referred to in the Contract.

**2.2** No terms or conditions endorsed on, delivered with or contained in the purchase order of the Buyer, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

**2.3** These conditions apply to all sales of the Company and any variation to these conditions and any representations about the Goods shall have no effect, unless expressly agreed in writing and signed by an authorized representative of the Company.

The Company reserves the right to amend these conditions at any time and such amended version shall forthwith apply to any past, pending or future sales of Goods.

**2.4** Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. The Company may make any change to the Goods which, without altering their essential features, appear to be necessary or suitable.

**2.5** No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the order is issued by the Company or, if earlier, the Company delivers the Goods to the Buyer.

**2.6** Any quotation is given on the basis that no contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer, which will include these general conditions.

### 3. Delivery

**3.1** With "delivery" the parties specifically mean the place and time of transfer of risks as per ICC Incoterms<sup>®</sup> current at the date of closing of the Contract; in no case whatsoever it will correspond to the actual handing over of the Goods to the Buyer.

**3.2** Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place "FCA – Free Carrier (ICC 2010 INCOTERMS), Company's warehouses.

**3.3** The Buyer shall take delivery of the Goods within 7 (seven) days of the Company giving the Buyer notice that the Goods are ready for delivery, unless otherwise specified in writing.

**3.4** Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

**3.5** Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the failure of the Company), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

**3.6** If for any reason the Buyer fails to perform the advance payment or to accept or perform delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations:

(a) risk in the Goods shall pass to the Buyer, including for loss or damage caused by the negligence of the Company;

(b) goods shall be deemed to have been delivered;

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance), and;

(d) the Company shall urge the Buyer, with a formal notice in the form described as per Condition 10.1, to perform the payment or the delivery.

Should the Buyer fail to comply to the formal notice set above for more than 3 (three) months, the Company shall be entitled to terminate the contract for breach and to withdraw any sums paid by the Buyer, without exclusion of any further compensation for damages arising out of non-payment or delayed payment or non-delivery or delayed delivery; therefore, the ownership of the Goods shall return to the Company.

**3.7** Any delay caused by force majeure (as defined in art. 8) or by acts or omissions of the Buyer (e.g. the lack of indications which are necessary for the supply of the Goods), shall not be considered as a delay for which the Company is responsible or liable.

**3.8** In case of delay in delivery for which the Company is responsible, the Buyer may request, after having summoned the Company in writing, a compensation for the damages actually suffered, within the maximum amount of 5% of the price of the Goods whose delivery has been delayed.

**3.9** Except in case of fraud or gross negligence, the payment of the amounts indicated in art. 3.8 excludes any further compensation for damages arising out of non-delivery or delayed delivery of the Goods.

**3.10** The Company is entitled to deliver partial shipments if:

- the partial shipment can be used by the Buyer for the contractually specified purpose,

- the delivery of the remaining goods is assured, and

- this does not cause the Buyer substantial additional work or expenses (unless the Company has expressly declared the will to bear the costs).

**3.11** The Company may increase / reduce shipments by up to 10% (ten percent) of the agreed total delivery volume, which shall be reflected in the invoice. The Buyer undertakes to accept the Goods that are delivered within these tolerance limits and shall not derive any claims from such deliveries.

**3.12** Whatever the delivery term agreed between the parties is, should the Company undertake operations of loading of the Goods, directly by its employees or by third parties on behalf of the Company, such operations shall be carried out at the Buyer's sole and total risk.

**3.13** Any complaints relating to packing, quantity, number or exterior features of the Goods (apparent defects), must be notified to the Company, by registered letter with return receipt, or by e-mail, within 8 (eight) days from receipt of the Goods; failing such notification the Buyer's right to claim the above defects will be forfeited.

**3.14** In general, Goods will be supplied in cardboard boxes on pallets: possible requirements for different packing must be specifically agreed with the Company.

#### **4. Partial / Non delivery**

**4.1** The quantity of any consignment of Goods as recorded by the Company upon dispatch from the place of business of the Company shall be conclusive evidence of the quantity received by the Buyer on delivery, unless the Buyer can provide conclusive evidence proving the contrary.

**4.2** The Company shall not be liable for any partial or non-delivery of Goods even if caused by the failure or negligence of the Company, unless the Buyer gives written notice to the Company of the partial or non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

**4.3** The liability of the Company for partial or non-delivery of the Goods shall be limited to:

- (a) Completing the order by delivering the missing Goods;
- (b) Delivering the Goods ordered under the Contract; or
- (c) Cancelling the order by issuing a credit note against any raised invoice, if any, and by taking back any partially delivered Goods, if any.

The above remedial actions shall take place within a reasonable time and at the sole option of the Company.

## **5. Risks, Title of Ownership**

**5.1** The Goods are at the risk of the Buyer from the place and time of delivery as defined by the applicable ICC 2010 INCOTERM.

**5.2** Ownership of the Goods shall not pass to the Buyer until the Company has received in full, in cash or cleared funds, all sums due to it in respect of:

- (a) The Goods; and
- (b) All other sums due to the Company from the Buyer on any account.

The retention of the Title of Ownership is extended to the Goods sold by the Buyer to third parties and to the price of such sales.

**5.3** Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) Hold the Goods on a fiduciary basis as a bailee of the Company;
- (b) Store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the property of the Company;
- (c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) Maintain the Goods in satisfactory condition and keep them insured on behalf of the Company for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

**5.4** The right of the Buyer to possession of the Goods shall terminate immediately if:

- (a) The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts, or the Buyer ceases to trade; or
- (c) The Buyer encumbers or in any way charges any of the Goods.

**5.5** The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

**5.6** The Buyer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the right of the Buyer to possession has terminated, to recover them.

**5.7** Where the Company is unable to determine whether any Goods are the goods in respect of which the right of the Buyer to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

**5.8** On termination of the Contract, howsoever caused, the rights of the Company (but not of the Buyer) contained in this condition shall remain in effect.

## **6. Price and payment conditions**

**6.1** Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the initial commercial offer and subsequently confirmed in the acknowledgment of order as per Condition 2.6.

**6.2** The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage, transport, insurance, export and import customs operations, issuance of certificates (such as certificates of origin, certificates of inspection), and all other necessary documents, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

**6.3** Unless not specified otherwise, full advance payment shall be deemed to be the general payment condition, as set forth in article 6.6.

**6.4** No payment shall be deemed to have been received until the Company has received cleared funds.

**6.5** If the parties have agreed on payment on open account, payment must be made, unless specified otherwise, within 30 (thirty) days from the date of invoice, by bank transfer. Payment is deemed to be made when the respective sum is at the Company's disposal at its bank in Italy. If it is agreed that payment must be backed by a bank guarantee, the Buyer must put at the Company's disposal, at least 30 (thirty) days before the date of delivery, a first demand bank guarantee, issued in accordance with the ICC Uniform Rules for Demand Guarantees by a primary Italian bank and payable against on simple declaration by the Company that he has not received payment within the agreed term.

**6.6** If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment refers to the full price. Unless otherwise agreed, the advance payment must be credited to the Company's account at least 3 (three) days before the agreed date of delivery.

**6.7** If the parties have agreed on payment by documentary credit, the Buyer must, unless otherwise agreed in writing, take the necessary steps in order to have an irrevocable documentary credit, to be issued in accordance with the ICC Uniform Customs and Practice for Documentary Credits (Publication n. 500), and notify the Swift code to the Company at least 21 (twenty-one) days before the agreed date of delivery.

In case the Swift code is notified to the company with delay, the delivery date shall be postponed accordingly.

Unless otherwise agreed, the documentary credit shall be confirmed by an Italian bank agreeable to the Company and will be payable on demand.

**6.8** If the parties have agreed on payment against documents (documentary collection) payment will be, unless otherwise agreed, Documents Against Payment.

**6.9** Unless otherwise agreed, any expenses or bank commissions due with respect to the payment shall be for the Buyer's account.

**6.10** The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

**6.11** If the Buyer fails to pay the Company any sum due pursuant to the Contract within the term set forth, the Buyer shall be liable to pay interest to the Company on such sum, automatically and without the necessity of a prior notice in accordance with the Italian Legislative Decree nr. 231 of October 9th 2002, from the due date for payment, accruing on a daily basis until payment is made.

## **7. Warranty and defective Goods**

**7.1** The Company undertakes to remedy any defects, lack of quality or non-conformity of the Goods for which is liable, occurring within 12 (twelve) months from the EXW Incoterms<sup>®</sup> 2010 delivery of the Goods, provided such defects have been timely notified in accordance with the law.

Longer warranty periods will apply only if specifically agreed in writing.

The Company shall be entitled to opt for repairing or replacing the Goods which have shown to be defective. The Goods repaired or replaced under the warranty will be submitted to the same guarantee for a period of 6 (six) months starting from the date of repair or replacement. Goods withdrawn by the Company for purpose of replacement shall be deemed sole property of the Company.

**7.2** The Company does not guarantee that the Goods conform to special specifications or technical features or that they are suitable for particular usages except for the characteristics which have been expressly agreed upon in the Contract or in documents referred to for that purpose in the Contract.

**7.3** The Buyer shall not be entitled to return the Goods unless specifically and preventively authorized by the Company.

**7.4** After such authorization, the Buyer shall ship the Goods to the Company' place of business under the DAP ICC Incoterms<sup>®</sup> condition; the Buyer undertakes to declare – on shipping documents (such as proforma invoices, CMR's, AWB's ...) – the value for customs purposes that the Company shall recommend prior to shipment.

**7.5** The Company shall not be liable of any of the warranties in condition 7.1, unless:

(a) The Buyer gives written notice of the defect to the Company, and within 8 (eight) days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) The Company is given the opportunity after receiving the notice of examining such Goods and the Buyer returns such Goods to the Company's place as per Condition 7.3, for the examination to take place there.

**7.6** Defects and damages resulting from misuse or improper use, wear parts and consumables are excluded from the warranty.

**7.7** Improper use includes in particular:

(a) use other than stated under the provisions of the technical manual which is provided for free upon the Buyer's request (If no such request is made, any improper or unusual use is considered as improper);

(b) non-observance of the safety instructions in technical manual or on the packaging;

(c) damages caused by water or dropping;

(d) technical interventions, done by the Buyer or third parties, such as disassembly, modification or amendment.

Also, the warranty does not apply to samples.

**7.8** Whether after the examination carried out by the Company no defect or malfunction whatsoever is found, or in case the defect or malfunction is discovered to be caused by improper use as per Condition 7.6, and in all cases where the warranty is expired or non applicable, the Company shall charge the Buyer a claim management fee of EUR 150,00 (one hundred and fifty/00) plus VAT if applicable.

**7.9** Minor deviations in color and shape on delivered Goods and packaging may occur for reasons of production engineering and do not therefore constitute defects.

**7.10** Except in case of fraud or gross negligence of the Company, the Company's only obligation in case of defects, lack of quality or non-conformity of the Goods will be that of repairing or replacing the defective Goods. It is agreed that the above mentioned guarantee (i.e.: the obligation to repair or replace the Goods) is in lieu of any other legal guarantee or liability with the exclusion of any other Company's liability (whether contractual or non-contractual) which may howsoever arise out of or in relation with the Goods supplied (e.g. compensation of damages, loss of profit, recall campaigns, etc.).

## **8. Force majeure**

**8.1** Either party shall have the right to suspend performance of her contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond his control, such as strikes, boycotts, lock-outs, fires, war (either declared or not), civil war, riots, revolutions, requisitions, embargo, energy black-outs, delay in delivery of components or raw materials.

**8.2** The party wishing to make use of the present clause must promptly communicate in writing to the other party the occurrence and the end of such force majeure circumstances.

**8.3** Should the suspension due to force majeure last more than 8 (eight) weeks, either party shall have the right to terminate the Contract by a 14 (ten) days written notice to the counterpart.

## **9. Governing Law, Jurisdiction, General provisions**

**9.1** The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it. The formation, existence, construction, performance, validity and all aspects of the Contract shall be solely governed by the law of the Republic of Italy with the exception, however:

(a) of its conflict-of-laws rules, and

(b) excluding as well the application of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (Vienna Conventions or CISG).

**9.2** The competent law courts of the place where the Company has his registered office shall have exclusive jurisdiction in any action arising out of or in connection with this contract.

**9.3** However, as an exception to the principle hereabove, the Company is in any case entitled to bring his action before the competent court of the place where the Buyer has his registered office and/or place of business and/or agent and/or distributor.

**9.4** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**9.5** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**9.6** Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

#### **10. Communications**

**10.1** All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post, registered mail or sent by e-mail:

(a) In case of communications to the Company, to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) In case of the communications to the Buyer to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

**10.2** Communications shall be deemed to have been received:

(a) If sent by mail, 2 (two) days (except Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) If delivered by hand, on the day of delivery; or

(c) If sent by e-mail on a working day prior to 4.00 pm recipient's time at the time of transmission and otherwise on the next working day.

**10.3** Communications addressed to the Company shall be marked for the attention of the responsible sales manager of the Company.