

## **Standard Terms and Conditions of Sale and Delivery (Customers domiciled in the United States)**

### **1) Applicability**

- 1.1 The Terms and Conditions of Sale and Delivery set forth below (including Section 18) shall apply to all agreements, deliveries and other services provided by the Supplier except for sales to Customers domiciled outside the USA. With respect to the latter the Standard Terms and Conditions of Sale and Delivery for Customers domiciled outside the USA apply
- 1.2 These Standard Terms and Conditions of Sale and Delivery shall apply to all current and future business relationships, provided that any future revisions of these Standard Terms and Conditions of Sale and Delivery will apply to all orders placed after their promulgation. In the event of a blanket order or other ongoing business relationship, these Standard Terms and Conditions of Sale and Delivery shall also form a constituent part of the contract even if no express reference is made hereto. These Terms and Conditions of Sale and Delivery shall be deemed accepted by no later than upon acceptance of the goods or services.
- 1.3 Any offer by the Supplier to sell the goods is expressly conditioned upon the Customer's assent to the terms and conditions set forth herein. The Supplier expressly objects to and rejects any different or additional terms included in the Customer's request for proposal or quotation, purchase order, web site, or other document. Such terms and conditions shall not apply even if contained in a confirmation letter by the Customer that follows confirmation of the order by the Supplier and even if the Supplier does not expressly reject such terms and conditions; silence on the part of the Supplier shall be deemed an implied rejection of such terms and conditions. If these Terms and Conditions of Sale and Delivery differ in any way from the terms and conditions of the Customer's order, these Terms and Conditions of Sale and Delivery shall be construed as a counteroffer and shall not be effective as an acceptance of such order unless the Customer assents to the terms and conditions contained herein, which shall constitute the entire agreement between the parties.
- 1.4 Any oral or telephonic agreements that differ from the contractual terms and conditions shall be legally valid only if confirmed in writing by the Supplier. The same shall apply to any ancillary agreements and undertakings by representatives and employees of the Supplier, which shall become binding for the Supplier only upon receipt by the Customer of written confirmation.

### **2. Offers and Conclusion of the Agreement**

- 2.1 The Supplier's offers, quotations, responses to proposal and similar communications shall always be subject to change and non-binding, i.e. they shall constitute only a request to make an offer. Declarations of acceptance and any and all orders shall be legally valid only upon written acceptance by the Supplier or in the event of actual delivery.
- 2.2 The scope and performance of the delivery shall be governed (to the extent available) by the order confirmation form issued by the Supplier.
- 2.3 Ancillary agreements, modifications and supplements shall be valid only if confirmed in writing by the Supplier. The same shall apply for any representations or warranties concerning specific qualities or otherwise.
- 2.4 All orders are subject to credit approval by the Supplier.

### **3. Technical Information, Documents containing public statements**

- 3.1 Technical documents such as drawings, specifications, illustrations and any information concerning measurements, qualities or weight shall be for informational purposes only and shall not constitute a warranty as to specific qualities. All technical advice, recommendations and services of the Supplier are intended for use by persons having skill, at their own risk, and the Supplier assumes no responsibility. The Customer hereby waives all claims against the Supplier, for results obtained or damages incurred from the use of the Supplier's advice, recommendations and services. The Customer will indemnify and hold the Supplier harmless from and against all damages, costs and expenses resulting from special marking of the goods or containers in accordance with the Customer's requests. Any express warranties shall be agreed in writing only and designated as such.
- 3.2 All technical documentation shall remain the intellectual property of the Supplier and may be used only for the agreed purpose or the purpose stated by the Supplier.
- 3.3 Public statements, recommendations or advertisements by the manufacturer shall not constitute statements concerning the quality of the goods under the agreement.

**4. Size and Stress Levels.** Unless specifically agreed otherwise in writing, the relevant industrial norm, factory norm and/or production specifications of the Supplier shall govern size and stress levels.

**5. Rules at Destination for Delivery.** The Customer shall advise the Supplier of any local, statutory or other provisions that concern performance of the deliveries or compliance with the safety and admission provisions.

### **6. Prices and Payment Conditions**

- 6.1 Unless agreed otherwise, the prices shall be net *ex works* (EXW, Incoterms 2000), and shall exclude all sales, use, or other taxes, duties, excises, customs, and similiar charges of any government authority, and shall be paid in United States Dollars (US\$). Where no fixed price is agreed, the Supplier's prices as applicable on the date of delivery shall govern. The Supplier reserves the right to modify prices accordingly if, following formation of the agreement, cost reductions or cost increases occur, in particular, due to collective bargaining agreements or changes in the price of materials. Upon request, the Supplier shall provide reasonable proof thereof to the Customer. Any and all ancillary costs, e.g. costs for freight, insurance, export, transit, import or other approvals and certifications etc. shall be borne by the Customer. Similarly, the Customer shall bear any and all tax, duties, charges and customs duties of any nature or type whatsoever. Packaging may not be taken back or refunded without the Supplier's express agreement.
- 6.2 The Customer shall render payment in accordance with the agreed payment conditions. Unless agreed otherwise, the purchase price shall be due and payable immediately and in full upon Customer's receipt of the goods, or if shipments are delayed by the Customer, on the date when the Supplier is prepared to make shipment. The Supplier reserves the right to demand advance payment or payment concurrently with delivery or receipt of the goods. The same shall apply to repaired goods.
- 6.3 Cash or prompt payment discounts require special written agreement. No such discount shall be granted if the Customer is in default in paying prior orders.
- 6.4 Failure to comply with agreed upon payment terms shall release the Supplier from its duty to render delivery, but shall not release the Customer from its duty to take acceptance.
- 6.5 Irrespective of any payment terms agreed to by the Supplier or promissory notes issued by the Customer, all amounts owing by the Customer to the Supplier shall immediately

become due and payable if the payment conditions are not complied with or circumstances become evident that give reason to believe that the Supplier's claims to the purchase price are endangered by the Customer's inability to render payment. In the latter case, the Supplier may make further deliveries contingent upon payment in advance, prompt payment of the previous delivery or the provision of a letter of credit or other assurance of payment deemed adequate by the Supplier. The Supplier may withhold shipment, cease production of goods in process until such advance payment or security is received or such other credit terms are satisfied and, following a reasonable grace period, rescind the agreement or demand compensatory damages for non-performance.

- 6.6 Should the Customer fail to comply with the payment terms, it shall be in default from the date on which the relevant payments are due without the need for any notice on the part of the Supplier. During the default period and after entry of any judgment, the Customer shall pay interest on the monies owed at a rate of one and one-half percent (1.5%) per month, plus all fees and costs of collection, including attorneys' fees, incurred by the Supplier. No acceptance or deposit of funds by the Supplier shall constitute an accord and satisfaction, regardless of any notations placed on the remittance or in accompanying correspondence. The Supplier's right to claim for greater damages as a result of such default shall remain unaffected.
- 6.7 Should the Customer default in payment or other obligations to the Supplier, the Supplier may, after providing notice, repossess the goods or, where applicable, enter the Customer's business and remove the goods, and exercise all remedies of a seller of goods and a secured creditor under applicable law. Repossession shall not constitute rescission of the agreement. To the extent permitted by applicable law, the Supplier may in any event prohibit disposal of the delivered goods.
- 6.8 Any withholding of payment or refusal to render payment shall constitute a default by the Customer if the Customer was or should have been aware of the relevant defect or other grounds for complaint upon conclusion of the agreement. Moreover, only a reasonable amount of the payment may be withheld due to defects or other complaints. In the event of a dispute, the amount that may be withheld shall be decided by a single expert arbitrator appointed by the Bar Association of the county where the Supplier's headquarters is located. Such arbitrator shall also decide at his/her discretion upon the allocation of costs for his/her involvement.
- 6.9 The Customer shall not set off any amount against the Supplier's claims absent the Supplier's express written consent or a final and binding judgment permitting the Customer to do so.
- 6.10 All amounts owing by the Customer to the Supplier, irrespective of the legal relationship from which they derive, shall be promptly due and payable if the Supplier becomes entitled to rescind or terminate the agreement or exercise its rights and remedies under statutory or contractual provisions.

## **7. Security for Payment**

- 7.1 The Customer hereby grants the Supplier a security interest in all goods heretofore and hereafter supplied by the Supplier, and all products and proceeds thereof until full payment of the purchase price and all other present and future obligations of the Customer to the Supplier.
- 7.2 The Customer shall promptly notify the Supplier of any third party judicial measures relating to the goods or to the Customer's business generally, and shall provide any documents necessary to contest such measures.
- 7.3 The Supplier shall be entitled to file any financing statement or other document necessary to perfect or protect its rights hereunder, with or without the Customer's signature.

Upon the Supplier's request the Customer shall sign and deliver any other document reasonably necessary to perfect and protect the Supplier's security interests.

## **8. Delivery**

- 8.1 Unless expressly agreed, all delivery dates given by the Supplier are estimates and shall not be binding, unless they have been expressly confirmed by the Supplier in writing as "binding delivery dates."
- 8.2 The Supplier shall not be responsible for any delays in delivery (including binding agreed delivery dates) due to *force majeure* or other events that render delivery considerably more difficult or impossible for the Supplier (including difficulties in procuring materials, operational disruptions, strikes, lock-out, shortages in personnel or transportation, official orders etc., including where these occur in relation to the Supplier's own supplier or their sub-contractors). This shall apply even where binding dates have been expressly agreed. Such delays shall entitle the Supplier to postpone the delivery for the duration of the hindrance plus a reasonable start-up period or to rescind the agreement, in whole or in part, on the basis of that part of the agreement that has not been performed. The same shall apply if the Supplier is already late in rendering delivery. The Customer shall be promptly notified of non-availability of performance. The price paid for rescinded orders shall be promptly reimbursed or applied to other amounts owing from the Customer, at the Supplier's option. Should the hindrance last for more than three (3) months, the Customer may, after setting a reasonable grace period, rescind that part of the agreement that has not been performed. If by reason of any of the aforesaid circumstances the Supplier's supply of goods shall be insufficient to fill the Supplier's orders from customers and for the Supplier's own uses, the Supplier shall have the right at the Supplier's option, and without liability hereunder, to allocate the Supplier's available supply of the goods among any and all of the Supplier's customers (regardless whether they have open orders with the Supplier at the time), including the Supplier's affiliates and itself in such manner as the Supplier in the Supplier's sole discretion considers equitable.
- 8.3 Should the Customer default in taking delivery or acceptance for any reason (including in connection with orders or approval of preparatory work or acceptance of the purchased goods or otherwise), the entire remaining purchase price shall fall due and payable following expiry of a reasonable grace period not to exceed thirty (30) days. Interim storage of the purchased goods at the Supplier's discretion shall be at the Customer's cost and risk. Upon any breach or default by Customer, Supplier retains all rights and remedies available hereunder, at law or in equity, all of which shall be cumulative.
- 8.4 Unless it has otherwise expressly agreed, the Supplier may at any time render partial deliveries or installments and issue invoices on that basis.
- 8.5 In the event of cancellation of the order by the Customer, the Supplier may at its option treat such action as a breach by the Customer or, should the Supplier not insist on performance of the agreement, a contractual penalty of 10% of the contract price shall be due and payable, unless the Supplier can prove greater damage.

## **9. Passing of Risk**

- 9.1 All risk of loss or damage shall pass to the Customer as soon as the goods leave the Supplier's plant or warehouse. The same shall apply even if (a) the delivery takes place by prepaid post under similar clauses, (b) delivery includes assembly, or (c) transport is arranged by the Supplier.
- 9.2 Should shipment be delayed for reasons for which the Supplier is not responsible, risk shall pass to the Customer upon notification that the goods are ready for shipment.

## **10. Transport and Insurance**

- 10.1 Unless agreed otherwise, shipment shall be at the Customer's expense.
- 10.2 Insurance against loss and damage of any kind shall be the Customer's responsibility. Even if insurance is to be obtained by the Supplier, any insurance shall be deemed taken out on behalf of the Customer, for the Customer's account and at the Customer's risk.
- 10.3 In the event of damage or loss of the goods during transportation, the Customer shall record a corresponding reservation on the receipt documentation and promptly order a fact finding investigation to be conducted at the transport company. Latent transport damage must be reported to the transport company by no later than eight (8) days following receipt of the goods.
- 10.4 Any additional stacking and storage aids also delivered shall be set off and credited back following return in a perfect condition (except in the case of rent).

## **11. Complaints for Nonconformance, Warranty and Liability**

- 11.1 The Supplier shall manufacture the goods in accordance with applicable industrial norms, the Supplier's factory norms and/or any additional production specifications that have been expressly agreed upon by the Supplier and the Customer. Should the Customer demand additional tests or specifications, these shall be agreed in writing and payable by the Customer.
- 11.2 **ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS ARE EXPRESSLY DISCLAIMED, INCLUDING ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM PROVISION OF SAMPLES OR USAGE OF TRADE, ALL WARRANTIES PROVIDED FOR BY LOUISIANA LAW (INCLUDING ANY WARRANTY AGAINST HIDDEN OR REDHIBITORY DEFECTS OR VICES), AND ALL OTHER ORAL OR WRITTEN EXPRESS WARRANTIES.**
- 11.3 The Supplier's warranty shall not cover damages as a result of natural wear and tear, inadequate storage or maintenance, failure to comply with operating instructions, excessive demands, unsuitable production equipment and facilities, improper use or interference by the Customer or third parties, use of non-original components or other reasons for which the Supplier is not responsible.
- 11.4 The Customer shall promptly inspect the goods on receipt to ensure that the right quantity has been delivered and that they conform to the agreement. Complaints concerning obvious defects must be filed in writing with the Supplier within seven (7) days. Should the Customer fail to give timely notice, the goods shall be deemed accepted. The Customer shall notify the Supplier as promptly as possible concerning any other nonconformance. The Supplier shall have no obligation with respect to nonconformance not timely raised, and such nonconformance shall be excluded from the warranty. The deadline shall have been adhered to if the complaint is sent in good time.
- 11.5 Should the Customer believe the goods do not conform to the agreement, the Customer shall not use, dispose of or alter the goods in any manner. For example, the goods may not be divided, processed, resold, incorporated into other goods, or altered until an agreement has been reached as to settlement of the complaint. The Customer shall furnish the Supplier with the purchased goods objected to or samples thereof for purposes of assessing the complaint. The Customers' failure or refusal to do so shall void all warranties.
- 11.6 The presence of a nonconformance that has been acknowledged as such and of which notice has been given by way of a valid complaint shall give rise to the following rights on the part of the Customer: The Customer shall first demand the Supplier to cure. The Supplier may in its discretion do so by (a) delivering conforming goods or (b) otherwise rectifying the nonconformance. Moreover, in the event of failure of an attempt to

cure, the Supplier may, at its choice, repeat the attempt to cure. Only in the event of repeated failure to cure may the Customer rescind the agreement and reduce or receive a refund of the purchase price. The Customer shall have no right to rescind the agreement in the event of immaterial nonconformance.

- 11.7 In the event that the goods are repaired or replaced as a result of a legitimate nonconformance-related complaint, the provisions concerning the delivery time shall apply *mutatis mutandis*.
- 11.8 Should the Customer elect to rescind the agreement due to a material nonconformance or defect in title following the Supplier's failure to cure, the Customer shall have no claim for damages based on the nonconformance. Should the Customer elect to seek a reduction in the price following failed subsequent performance, the Customer shall retain goods if commercially reasonable. The Customer's sole remedy in such case shall be the difference between the purchase price and the value of the defective goods.
- 11.9 Any claims based on material nonconformance shall be barred after twelve (12) months from the date of delivery except where a longer period is prescribed by law or expressly agreed to by the Supplier.
- 11.10 The remedies stated in Section 11.6, 11.7 and 11.8 shall be the Customer's sole remedy on account of nonconforming goods.

## **12. General Limitation of Liability**

- 12.1 **ALL COMPENSATORY DAMAGES AND CLAIMS FOR REIMBURSEMENT OF EXPENSES ON ACCOUNT OF DELIVERY OF NONCONFORMING GOODS, OF WHATEVER SORT, INCLUDING DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, LOST PROFITS, LOSS OF OPPORTUNITY OR BUSINESS ARISING IN CONNECTION WITH THE CONTRACT OR THE SALE, USE OR RESALE OF SUPPLIER'S PRODUCTS, AND INCLUDING FOR VIOLATION OF DUTIES UNDER A RELATIONSHIP UNDER THE LAW OF OBLIGATIONS AND UNDER TORT, SHALL BE EXCLUDED, EXCEPT TO THE EXTENT SUCH EXCLUSION IS FORBIDDEN BY LAW. ANY LIABILITY OF THE SUPPLIER FOR ITS EMPLOYEES OR VICARIOUS AGENTS SHALL BE EXCLUDED.**
- 12.2 **WITHOUT LIMITING THE FOREGOING, EVEN WHERE THE SUPPLIER HAS BREACHED ITS OBLIGATION TO DELIVERY THE GOODS AT ALL, THE CUSTOMER WAIVES ALL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, LOST PROFITS, LOSS OF OPPORTUNITY OR BUSINESS ARISING IN CONNECTION WITH THE CONTRACT OR THE SALE, USE OR RESALE OF SUPPLIER'S PRODUCTS, AND INCLUDING FOR VIOLATION OF DUTIES UNDER A RELATIONSHIP UNDER THE LAW OF OBLIGATIONS AND UNDER TORT. THE SUPPLIER'S LIABILITY FOR FAILURE TO DELIVER THE GOODS IN ACCORDANCE WITH THE AGREEMENT SHALL NOT EXCEED THE LESSER OF (A) THE CONTRACT PRICE UNDER THE AGREEMENT OR (B) THE AMOUNT (IF ANY) BY WHICH THE CUSTOMER'S COST OF OBTAINING SUBSTITUTE GOODS ELSEWHERE EXCEEDS THE CONTRACT PRICE.**

## **13. Intellectual Property**

- 13.1 If the Supplier is sued for infringement of any patent claim by reason of supplying to the Customer a product which is of the Customer's origin or design, the Customer will defend such suit at its own expense and will indemnify and hold the Supplier harmless against damages which are assessed and indemnify the Supplier for any expenses and costs which it may incur as a result of such suit.

13.2 The Customer shall hold defend, hold harmless and indemnify the Supplier against any claim of violation of copyright or trademark arising out of the stamping, molding, impressing or printing of any design or wording on the products supplied to the Customer.

**14. Assignment** In the event the Customer desires to assign this Contract, the Supplier reserves the right to approve and accept the assignee prior to any assignment, and any assignment by the Customer without such approval by the Supplier shall be void and at the Supplier's option constitute a breach of the agreement on the part of the Customer. The Customer agrees that the Supplier shall have the right to subcontract any work provided for herein.

**15. Merger Clause** The Supplier's salespeople may have made oral statements about the goods. Such statements do not constitute warranties, shall not be relied on by the Customer and are not part of the contract for sale. The entire contract is embodied in this writing and any express written representations and warranties apply to the extent so declared in any standard technical specifications of the Supplier. Any and all other representations, promises, warranties or statements by the Supplier's salespeople or the Supplier's agent(s), either in writing or oral, that differ in any way from the terms of this written agreement or of the standard technical specifications of the Supplier shall be given no force or effect.

**16. Drawbacks** The Supplier specifically reserves to itself all rights to drawback of duty or taxes paid on materials entering into the manufacture or production of the goods specified in any order. The Customer disclaims all interests in such rights and agrees to furnish the Supplier with proof of exportation and all other documents necessary to obtain payment of such drawbacks and to cooperate with the Supplier in obtaining such payment.

**17. Confidential Information** All drawings, diagrams, specifications, and other materials furnished by the Supplier and identified as confidential relating to the use and service of articles furnished hereunder, and the information therein, are proprietary to the Supplier. Such materials have been developed at great expense and may contain trade secrets of the Supplier. The Customer may not reproduce or distribute such materials except to the Customer's employees who may use the articles as part of their duties, who need to know such information in order to perform such duties, and who are placed under confidentiality obligations that are substantially as protective of the Supplier's confidential information as are provided by this paragraph. All such materials relating to the articles supplied directly by the Supplier (except information as may be established to be in the public domain or disclosed pursuant to judicial or government action) shall be received in confidence, and the Customer shall exercise reasonable care to hold such information in confidence.

#### **18. Applicable Law, Forum, Severability**

18.1 Subject to Section 18.2 these Standard Terms and Conditions of Sale and Delivery and the entire legal relationship between the Supplier and the Customer shall be governed by the laws of the Commonwealth of Pennsylvania to the exclusion of (a) its conflict of laws rules and (b) the United Nations Convention on the International Sale of Goods (CISG).

18.2 Any and all disputes arising directly or indirectly from the contractual relationship or the goods themselves shall exclusively be brought before the Berks County Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania subject, however, to the Supplier's right to bring disputes before any competent court at the Customer's registered office or the location to which the goods are shipped.

18.3 Should a provision of these Standard Terms and Conditions of Sale and Delivery or a provision under related agreements be or become invalid, the validity of all other provisions or agreements shall remain unaffected thereby.