

GENERAL TERMS & CONDITIONS OF SALE – SMI Drulingen S.A.S.

1. ENFORCEABILITY

All sales made by SMI Drulingen, hereinafter referred to as “the Vendor”, are subject to these General Terms & Conditions of Sale, except in the event of an express understanding waiving said terms and conditions, entered into in writing between the Vendor and the Purchaser.

No special term may, unless formally agreed thereto in writing by the Vendor, prevail over these General Terms & Conditions of Sale and any and all conflicting terms cited by the Purchaser shall, failing express agreement, not be binding on the Vendor, irrespective of the time at which they are brought to the attention of the latter.

The fact that the Vendor does not enforce, at any given time howsoever of these General Terms & Conditions of Sale may not be interpreted as being equivalent to it foregoing application subsequently of any one howsoever of the said terms and conditions.

2. OFFERS AND ORDERS

1) Unless stipulated otherwise, all orders shall have to be preceded by an offer drawn up by the Vendor. Offers are only valid for 30 days from the issue date thereof. When said timeframe has expired, the Vendor shall no longer be bound by the offer made thereby.

2) All orders shall have to be sent in writing to the Vendor. They are only binding on the Vendor on the condition that they have been the subject of a written order confirmation and subsequent to an agreed downpayment having effectively been received, where applicable.

3) The Vendor agrees solely to fill orders placed by the Purchaser which entail sufficient financial guarantees, ensuring that the latter shall indeed settle the sums due by the due date thereof. Thus, in the absence of complete coverage by means of credit insurance and should the Vendor have particular reasons to fear that the Purchaser shall experience payment difficulties as of the date of an order, or subsequently thereto, and also should the Purchaser not offer the same guarantees as on the date of acceptance of an order, the Vendor may lay down as a precondition for acceptance of the order or continuation of the performance thereof a prepayment or the provision, by the customer, of guarantees in the Vendor's favour. The cost of supplying guarantees shall be borne exclusively by the Purchaser. The Vendor shall also have the option, prior to accepting any and all orders, and likewise during performance thereof, to require from the Purchaser provision of the latter's accounting documents, and notably Profit & Loss Account, albeit projected, to enable the Vendor to assess the solvency of the Purchaser. In the event of a refusal by the Purchaser to make a cash payment, and failing sufficient guarantees being provided to the Vendor, the latter may refuse to honour the order or orders placed and to deliver the goods in question, without the Purchaser being able to argue that such refusal constitutes an unjustified refusal to sell, or to claim any compensation howsoever.

4) The order shall be provided to the Purchaser; ownership of orders cannot be transferred without the prior written consent of the Vendor.

5) The Vendor reserves the right to refuse any and all orders the price of which is lower than the Vendor's cost price.

6) Dimensions, illustrations, plans, and details regarding weight and capacity and less specifically all descriptions set out in the Vendor's instructions and quotes are provided for information purposes only and are not contractually binding.

7) The Vendor reserves the right to modify the particulars of goods ordered provided that said modifications do not affect the intended use or operation of the goods and that they help to make improvements thereto or are justified by the obligation on the Vendor's part to adhere to applicable standards.

8) All plans and sketches drawn up by the Vendor remain the property thereof and cannot be disclosed to third parties.

9) In the event of an order being cancelled subsequently to commencement of manufacturing thereof, the full price of the goods shall be billed to the Purchaser and shall fall due immediately. All modifications requested by the Purchasing following confirmation of an order by the Vendor shall be invoiced in line with the costs generated by said modification.

3. DELIVERY

a) Delivery timeframe

Delivery timeframes set out in contractual documents, notably in order confirmations, are provided for information purposes only. They only commence on the order confirmation date. Non-delivery by the end of delivery timeframes may under no circumstances give rise to the invoicing of damages, to deductions, to modifications to nor to cancellations of pending orders. Under no circumstances shall the Purchaser be entitled to refuse the goods.

Under all circumstances, delivery within the timeframe can only take place if the Purchaser is up to date with its obligations in respect of the Vendor, irrespective of the nature and the cause thereof; the delivery timeframes indicated shall be extended in line with the Purchaser's delays in returning agreed plans, with its delays in paying the downpayment prior to the order and with complying with the payment schedule, where applicable.

Shipping time is in addition to the delivery timeframe which may have been indicated, with provision of the goods taking place as soon as they leave the Vendor's factories.

Should the delivery date be postponed at the request of the Purchaser, the goods shall be deemed to have been delivered as of the date initially planned on the order confirmation. Invoicing shall take place on the date initially planned and the goods shall be stored in a place of the Purchaser's choosing, at the expense of the addressee. Accordingly, the transfer of risks relating to the goods shall take place as of said date and the start date of the guarantee shall also be that date.

The Vendor shall be released from its delivery obligation in the event of the occurrence of force majeure circumstances or of a purely accidental event. Said party shall keep the Purchaser informed regarding said circumstances or said event and shall notify the latter of the consequences that said circumstances or said event engenders, namely extension of the delivery timeframe or termination of the agreement.

b) Shipping and transfer of risks

All prices set out by the Vendor are ex-works prices.

During the course of shipping the goods consequently travel at the risk of the Purchaser which is under the obligation, in the event of damage, of losses or of missing items, to make all necessary reports and to inform the Vendor thereof, by registered letter with acknowledgement of receipt or by means of an extrajudicial instrument sent to the carrier, either immediately if the damage is patent, or within the timeframes allowed as set forth in regulations applicable in the area of transportation. Under all circumstances, the Purchaser shall have to take and all measures liable to ensure the validity of claims made against the carrier.

If it fails to raise and notify its complaints within the timeframes and in the manners requisite for so doing, the Purchaser shall not be permitted to make any claims regarding this matter against the Vendor.

The transfer of risks as regards the goods shall take place in accordance with the incoterms provided for in the agreement.

c) Receipt of goods and returns

Without prejudice to the measures to be taken vis-à-vis the carrier, the Purchaser shall have to ensure, upon receipt and before employing the goods, that the equipment delivered is in conformity with its order (or with the order confirmation if the equipment is specially-designed equipment) or with the delivery slip enclosed with the despatch, and shall have to ensure that it does not present any patent defects or anomalies.

Claims pertaining to patent defects and anomalies and regarding non-conformities must be set out in writing on the delivery slip and also notified a second time to the Vendor, by registered letter with acknowledgement of receipt within three days following receipt. After the expiry of said timeframe, the claim shall be deemed to be late and shall no longer be able to be raised against the Vendor.

The Purchaser shall have to do its utmost to enable the Vendor to record the anomalies, defects or missing items and to remedy them. It shall abstain from carrying out work itself and from having a third party carry out work for said purpose.

All claims pertaining to the operation of the equipment delivered shall have to be accompanied by relevant lines of argument. The cost of carrying out inspections in relation to unjustified or insufficiently-argued claims shall be borne by the Purchaser.

All returns of goods must be set out in a prior written agreement between the Vendor and the Purchaser; failing which, the returned goods shall be kept at the disposal of the Purchaser and shall not give rise to a refund, an exchange or to the issuing of a credit note. The cost and risks relating to returns are, unless the Vendor consents otherwise in writing, to be borne in full by the Purchaser.

The goods must be returned with carried paid.

d) Consequence of a return

If it transpires that the claim had no valid grounds, the Vendor shall have the option of invoicing to the Purchaser all the costs incurred thereby such as carriage expenses, travel expenses, inspection expenses, etc.

4. PRICE AND PAYMENT

a) Price

The goods are delivered at the price applicable at the time the order confirmation is issued, subject to variations arising out of application of the specific indices stipulated in said confirmation.

The prices listed are net prices, they are ex-works prices, and do not include packaging, insurance and carriage.

Taxes, charges, levies and other expenses payable in application of applicable regulations shall be borne in full by the Purchaser. When the basis for invoicing is the weight of the goods delivered, said basis shall be the theoretical weights calculated, which may differ from the real weights shipped, however said weights are subject to official tolerances and general practice in respect of tolerances.

b) General terms and conditions of payment, invoices and disputes.

1) Invoices drawn up by the Vendor are to be paid at the registered office of the Vendor and with respect to the total sum listed on the invoice. All disputes pertaining to invoices giving rise to refusal to pay all or part of the sums invoiced must be brought to the attention of the Vendor, accompanied by grounds, within two weeks following receipt of an invoice by the Purchaser. All invoices which are not disputed within said timeframe of two weeks are deemed to have been definitively agreed to by the Purchaser.

2) Invoices are payable within 30 days from the date on which they are drawn up in accordance with Act 2008/776 of 4 August 2008, without discounts applying, by bank transfer.

3) No offsetting of a debt owed by the Purchaser against an invoice drawn up by the latter is possible.

4) When the Purchaser is domiciled outside of France, payments shall take place imperatively by SWIFT transfers, where applicable guaranteed by means of the issuing of a Stand-By Letter of Credit which complies with the terms provided for in the Vendor's contractual documents. Unless a clause to the contrary exists which has been agreed to by the Vendor, all sales must be paid for in euros.

5) The Vendor reserves the right, at any time, depending on the risks to which it is exposed, to set a credit ceiling for each purchaser and to seek guarantees or obtain early payment of invoices which have not fallen due or obtain payment for pending orders before any and all new orders are performed.

c) Late payment

1) In accordance with Article L. 441-6 of the Commercial Code, late penalties shall be payable failing payment by the day following the date listed on the invoice at the interest rate applied by the European Central Bank to its most recent refinancing operations plus 10 percentage points. Late interest is payable without a reminder being necessary.

2) In addition, in the event that a payment is not made by the due date or that a payment as regards any one agreed instalment is not made, the totality of the sums payable by the Purchaser to the Vendor shall immediately fall due and the Vendor shall be able to suspend performance of all pending orders not delivered at that point in time or not accept all new orders.

3) A Purchaser which is late with payments automatically owes to the Vendor, without a reminder being necessary, a flat compensation charge for collection expenses of €40. When the expenses as regard proceedings which the Vendor has reason to disburse within the framework of collection of monies owed thereto exceed the sum of this flat compensation charge the latter shall be borne in full by the Purchaser, included therein expenses brought about by adversarial collection (i.e. lawyers' fees, bailiffs' fees, etc.).

4) Any and all lateness in respect of payment gives rise to compensation which shall be, under this penalty clause, 20% of the total amount of the unpaid invoice, to be borne by the Purchaser.

5) In the event of late payment, the sale shall be cancelled automatically, if the Vendor so wishes, 48 hours after a formal notice is served and goes unheeded. In this eventuality, the goods shall have to be given back to the Vendor, without prejudice to the damages which the Vendor may be able to claim to remedy the loss incurred.

d) Title retention clause

The Vendor expressly retains ownership of the goods delivered until full payment of the price, that is the principal sum thereof and interest, has been made.

This right applies to all goods delivered by the Vendor, in the Purchaser's inventory. The latter is bound by means of said right to keep the goods in a perfect condition and in such a way that identification and individualisation thereof is possible. The Purchaser is also bound to insure the goods in accordance with general practice, against the habitual risks, and to immediately report any and all accidents that are liable to damage the goods or to render identification and individualisation thereof impossible.

The Purchaser is obligated to forthwith inform the Vendor in the event of court-ordered administration or winding-up and of actioned attachment orders and of attempts to carry out an attachment and of any and all other third-party measures liable to harm the Vendor's rights.

The Purchaser shall not use any and all goods delivered and not yet paid for as collateral security and, less specifically, shall not take any initiatives howsoever which are liable to harm the Vendor's rights.

In the event of resale of the goods before full payment of the price thereof has been made, the Vendor has a right to trace or follow property into the hands of a third person, in respect of the goods; furthermore, the Purchaser undertakes, at the Vendor's choosing, to immediately pay the balance still due subject to it being held liable or to transfer to the Vendor the debt brought about by the sale to the third-party purchaser.

The Purchaser undertakes to inform third parties regarding the existence of title retention by the Vendor and to endeavour to prevent the success of, by any and all avenues available under law, the claims which third parties may have reason to make on pieces of equipment not yet paid for in full by any means howsoever (e.g. attachment, enforcement measures, etc.).

A claim on the goods subject to the title retention clause can be brought by the Vendor in the event of non-compliance by the Purchaser of any one howsoever of its obligations, in particular should a bill or draft payment not be accepted and also in all eventualities in which the Vendor harbours legitimate fears as to the ability of the Purchaser to comply with its obligations, notably its obligation to pay sums due on time.

A claim by the Vendor on the goods the ownership of which is retained thereby shall be carried out by means of a registered letter with acknowledgement of receipt sent to the Purchaser, ordering the latter party to return possession thereof to the Vendor. If the Purchaser does not comply with this order, the Vendor may seek the return, before competent courts, where applicable enforced by means of periodic pecuniary penalties, of the goods to which the title retention clause applies. The expenses arising out of the claim on the goods or on the price thereof shall be borne solely by the Purchaser. The Vendor exercising its right to make a claim gives rise neither to cancellation nor to termination of the sale agreement.

5. GUARANTEE

a) Principle and duration of the guarantee

The Vendor guarantees its goods in the event of non-conformities and of manufacturing defects, to the exclusion of any and all normal wear and tear, for a period of 12 months following delivery. Said guarantee is subject to the Purchaser employing the goods in a normal fashion, notably by complying with the information contained in the documentation supplied by the Vendor and with that set out on the goods themselves.

The Vendor's guarantee no longer applies should the equipment not be maintained in a normal manner, should it be used in a fashion contrary to the Vendor's instructions or should it suffer damage not related to normal use, should it be modified by the Purchaser without the Vendor's consent or, less specifically, should it bear witness to unusual wear and tear. Defects and damage resulting in particular from connection that is non-compliant with best practice, with protection and safety standards, with applicable regulations or resulting from external work or non-authorized work that was carried out, or caused by poor maintenance and also by unreasonable use are not guaranteed by the Vendor.

The guarantee does not apply to patent defects and damage, as regards which the Purchaser must submit a claim under the terms provided for in Clause 3, point b).

The guarantee is not valid in respect of the Purchaser should the goods be resold.

b) Scope of the guarantee

The guarantee only covers the equipment sold.

The Vendor is not liable for any loss of earnings on the part of the Purchaser consecutive upon late delivery or as regards any item of indirect loss that the latter may incur, with the sole obligation incumbent upon the Vendor being, at the choosing thereof, replacement of or repairs to the parts acknowledged to be defective by the Vendor's After-Sales Department, and all other expenses such as disassembly, carriage, packaging, re-assembly, etc., etc., shall have to be borne by the Purchaser. Work carried out under the guarantee does not have the effect of extending the duration thereof, unless legal provisions otherwise apply.

Guarantee coverage is subject to compliance, by the Purchaser, with all of its contractual obligations, in particular the obligations thereof in respect of payment.

c) Application of guarantee coverage

All requests for coverage under the contractual guarantee must be made in writing and contain a precise and documented description of the difficulties encountered by the Purchaser.

6. PURELY ACCIDENTAL EVENTS AND FORCE MAJEURE CIRCUMSTANCES

Obligations shall be suspended and the Vendor may not be held liable in the event of the occurrence of events which prevent it from performing its obligations in a normal fashion, such as, amongst others: war, fires, accidents involving tools, riots, strikes, difficulties as regards transportation and/or as regards obtaining supplies, and any and all events beyond the control of the Vendor.

7. COMPETENT COURT

In the event of a dispute at the time of the performance of an order or pertaining to the application of these General Terms & Conditions of Sale, solely the courts located in the jurisdiction of the Strasbourg High Court (le Tribunal de Grande Instance de Strasbourg) shall be competent. Even should there be more than one defendant, even should guarantors be joined to the case, even in the event of un-disjoinable (indivisible) or associated actions, and finally, irrespective of the method of payment.

8. APPLICABLE LAW

All issues relating to these general terms and conditions and to the sales that they govern shall be exclusively subject to French Law.

