

**THE FOLLOWING GENERAL TERMS AND CONDITIONS OF SALE ("GTCS") SHALL CONSTITUTE THE APPLICABLE CONDITIONS BETWEEN BUYER AND SELLER RELATING TO THE SALE OF SELLER'S GOODS AND/OR SERVICES ("GOODS"), AND SHALL APPLY TO ALL QUOTATIONS, ACKNOWLEDGEMENTS, DELIVERIES AND/OR TO ALL PURCHASE ORDERS PLACED BY BUYER. SELLER SHALL NOT BE DEEMED TO HAVE WAIVED THESE GTCS IF IT FAILS TO OBJECT TO PROVISIONS APPEARING IN, INCORPORATED BY, REFERENCED IN, OR ATTACHED TO BUYER'S PURCHASE ORDER(S) AND/OR IN ANY OTHER BUYER'S DOCUMENTS. BUYER'S SILENCE OR ACCEPTANCE OF OR PAYMENT FOR OR USE OF GOODS SHALL CONSTITUTE A FULL AND COMPLETE ACCEPTANCE OF THESE GTCS.**

#### **Article 1 - Formation of contract - Entirety - Changes**

**1.1.** The word "Contract" hereinafter means in order of descending prevalence: (i) SELLER's quotation(s); (ii) these GTCS; (iii) the SELLER's purchase order acknowledgement of receipt; (iv) any type of order(s) placed by BUYER ("PO"), excluding any of its terms and conditions of purchase or any equivalent terms and/or excluding any provisions or terms appearing in, incorporated in or referred to in or attached to the PO and any other BUYER's documents; and/or (v) the technical specifications as defined or expressly accepted by SELLER.

The PO shall be deemed to be binding on SELLER only if acknowledged so by SELLER. Once the PO is acknowledged, BUYER is not entitled to change or cancel the PO without SELLER's prior written consent. All quotations issued by SELLER are deemed to be valid for a period of 30 calendar days following their date of issuance unless otherwise specified by SELLER.

**1.2.** If required, the effectiveness of the Contract will be conditional upon: (i) receipt of the agreed down payment; (ii) receipt of the contractually compliant documentary credit; (iii) obtaining of coverage export credit insurance; and (iv) obtaining of any requisite approval of competent government authorities. If all the aforementioned conditions are not fulfilled within 45 days as from the date of execution of the Contract, the Contract shall be deemed null and void.

**1.3.** No change to the Contract shall be valid unless jointly agreed upon in writing by SELLER and BUYER.

#### **Article 2 - Delivery - Risk – Retention of Title**

**2.1.** The Goods shall be delivered EXW (Ex-Works) or FCA UNLOADED (Free Carrier Unloaded) at SELLER's premises, as per ICC Incoterms 2010. Partial delivery is permitted. Risk of loss of or damage to the Goods shall pass to BUYER at the time of delivery.

**2.2.** If delivery term is not EXW (Ex-Works) or FCA UNLOADED (Free Carrier Unloaded) and damage occur to the Goods during transportation and/or if such damage is discovered by BUYER during inspection, BUYER shall then immediately inform SELLER by fax or e-mail, issue a claim to the carrier precisely describing said damage on the document presented to BUYER by the carrier and keep a copy of such document. BUYER shall then immediately confirm said claim to the carrier in a letter with acknowledgement of receipt. BUYER shall hold harmless and indemnify SELLER and/or its insurers for any said damages in case of BUYER's failure as to said notification, issuing and confirmation.

**2.3.** SELLER reserves title to the Goods delivered until full payment of the purchase price has been made and until the overall balance in SELLER's favor - future claims being included - has been cleared ("Goods subject to retention of title"). Any modification or processing of the Goods subject to retention of title will be made on behalf of SELLER. If the

Goods are incorporated in non-SELLER products by BUYER, SELLER will become a co-owner of the newly created products, the scope of co-ownership being determined by the ratio of the value of the Goods subject to retention of title to that of the third-party products that were also used. The products thus created will also be deemed to be Goods subject to retention of title by SELLER. The same applies accordingly, if Goods subject to retention of title are connected or mixed with goods of a third party or the BUYER. BUYER shall be entitled to sell the Goods subject to retention of title in the normal course of its business. BUYER shall be obliged to reserve ownership rights itself, in so far as it resells on credit Goods subject to retention of title. If third parties raise claims to the Goods subject to retention of title, BUYER will identify these Goods as SELLER's property and notify SELLER without delay. BUYER hereby assigns to SELLER by way of security all claims and ancillary rights that may arise from reselling the Goods subject to retention of title or from the BUYER's business relationship with its customers in connection with the reselling of the Goods subject to retention of title, up to the amount of the value of these Goods. BUYER will be authorized and under the obligation to collect the accounts receivable. If BUYER makes default in payment, SELLER will be entitled at any time to revoke this authorization and to notify BUYERs' purchasers of the assignment and to take possession of the Goods subject to retention of title and if required demand that BUYER assigns any claims against third parties for the return of the Goods. BUYER will be under the obligation to provide SELLER with all information required for the recovery of the claims and to hand over the relevant documents. SELLER's taking back or attaching the Goods subject to retention of title will not be deemed a rescission of the agreement. At BUYER's request, SELLER will release the securities insofar as their value exceeds all claims to be secured by more than 20%.

#### **Article 3 - Terms of performance**

**3.1.** BUYER shall provide SELLER on a timely basis with all drawings, data, documents and all other information necessary to carry out the Contract and SELLER shall be entitled to rely without further inquiry on such drawings, documents, data and information. Moreover, SELLER shall not be liable for any design, manufacturing or other errors, which are the results of a defect in the drawings, documents, data or any information provided by BUYER or third party(ies).

**3.2.** In the event of inability to deliver the total quantity of Goods specified herein for any reasons, SELLER may allocate its manufacturing capacities amongst any purchasers, as well as any affiliated companies of SELLER, on such basis as it may be deemed fair and reasonable. SELLER will inform BUYER on the conditions under which such allocation is applied.

#### **Article 4 - Times of Delivery - Acceptance**

**4.1.** Date(s) for delivery or any time limit(s) set forth in the Contract are SELLER's best approximation of such date(s) or time limit(s); SELLER disclaims any liability whatsoever with respect to such delivery date(s) or limit(s). Delivery times shall be automatically postponed or extended in case of delay which is not attributable to SELLER such as occurrence of force majeure or non-fulfilment by BUYER of its own obligations.

**4.2.** BUYER shall perform inspection of Goods acc. to § 6.4. If silent, BUYER is deemed to have accepted the Goods. Reservation(s), issued by BUYER on minor defects which do not affect the basic functions and/or performances of the Goods, shall not prevent full acceptance of the Goods. Except if defect(s) in the Goods is (are) exclusively attributable to SELLER, the return of Goods by BUYER is made at its own expenses and risks. All Goods are governed by SELLER's part numbers and any BUYER's numbers are used for reference purposes only.

## **Article 5 - Prices - Payment**

**5.1.** Prices are stated in Euro, calculated for Goods delivered EXW of FCA SELLER's premises (as per International Chamber of Commerce Incoterms 2010) and include standard packaging as used by SELLER. In case the cost of the raw materials increases for more than 5 %, the prices specified in the Contract may be increased accordingly upon prior notice to BUYER and provided that the invoice(s) corresponding to the affected Goods has (have) not been issued by SELLER as of the date of such increase. All prices are quoted exclusive of (i) any and all taxes, tariffs, levies including VAT and any other taxes, (ii) transportation and insurance costs. BUYER agrees to indemnify and hold harmless SELLER for any liability for tax in connection with the sale, collection or withholding thereof of Goods. If any law or regulation comes into force after the date of SELLER's quotation which increases the cost of performance, price shall be adjusted accordingly. In case of European Union transactions, BUYER undertakes to provide SELLER with all information and documents which could be required for Value Added Tax purposes.

**5.2.** Goods will be invoiced upon delivery EXW or FCA SELLER's premises. All invoices shall be paid Net 30 days from the date of the invoice. In addition to any other rights, SELLER may charge interest on all overdue payments at the interest rate applied by the European Central Bank in Frankfurt Am Main, Germany, to its most recent main refinancing operation plus 10 percentage points. No discount shall be granted for anticipated payment.

**5.3.** Payments shall be made with no deductions, withholdings, set-off or other charges of any kind whatsoever, regardless of any disputes, litigation and/or discussions between SELLER and BUYER.

## **Article 6 - Warranty**

**6.1.** SELLER warrants that the Goods will comply with SELLER's technical specifications and/or will be free from defects in materials and workmanship. Except as otherwise mandatory provided by applicable law, this warranty shall expire 12 months after the delivery of the Goods.

**6.2.** SELLER warrants that Goods shall be free from defect in title without limitation as to time.

**6.3.** If, within the warranty period, Goods are shown to be defective for reasons directly attributable to SELLER, SELLER shall at its option: (i) repair, replace under the same Contract's conditions, or modify, all or part of such defective Goods or, (ii) issue a credit note to BUYER for a lump sum equivalent to the selling price (excluding taxes) of such defective Goods. If requested by SELLER, BUYER shall return such defective Goods to SELLER.

**6.4.** BUYER shall inspect the Goods upon receipt within 2 working days from delivery and in case of defect notify such defects to SELLER in writing without delay, at the latest within 5 working days from delivery. In case of hidden defect, BUYER shall notify SELLER immediately upon becoming aware of such defect. BUYER's notice must precisely describe the nature of such defects to SELLER.

**6.5.** The warranties and remedies shall not apply to defects due to (i) information, such as design, material, products and equipment, supplied by and/or specified by BUYER or third party(ies), (ii) Goods which have been altered or repaired by anyone other than SELLER, or (iii) due to normal wear and tears of the Goods.

**6.6. THE FOREGOING WARRANTIES SET FORTH IN THIS ARTICLE 6 SHALL CONSTITUTE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY SELLER TO BUYER, AND SHALL CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDIES THERETO, AND ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR**

**A PARTICULAR PURPOSE, OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE.**

## **Article 7 - Liabilities/Penalities**

**7.1. IN NO EVENT AND UNDER NO CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, IN TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE), UNDER ANY WARRANTY OR OTHERWISE SHALL SELLER, ITS SUBCONTRACTORS, AND THEIR RESPECTIVE INSURERS, BE LIABLE TO ANY PERSON OR ENTITY (INCLUDING BUYER) FOR DAMAGE CAUSED BY REASONS SUCH AS REMOVAL OR REINSTALLATION OF THE GOODS OR COSTS OF DISASSEMBLY OR REASSEMBLY OF GOODS OR EQUIPMENT IN CONNECTION THEREWITH. MOREOVER, ANY FURTHER DAMAGE CLAIMS AND/ OR CLAIMS TO THE REIMBURSEMENT OF EXPENSES OF THE BUYER ON ANY LEGAL BASIS WHATSOEVER, PARTICULARLY ON ACCOUNT OF A BREACH OF DUTIES ARISING FROM ANY KIND OF RELATIONSHIP AND IN TORT, ARE EXCLUDED.**

**THIS SHALL NOT APPLY IN SO FAR AS MANDATORY LIABILITY APPLIES, E.G. UNDER THE PRODUKTHAFTUNGSGESETZ [PRODUCT LIABILITY ACT], IN THE CASE OF INTENT OR GROSS NEGLIGENCE, DAMAGE TO A PERSON'S LIFE, BODY OR HEALTH AND/OR A BREACH OF SIGNIFICANT CONTRACTUAL DUTIES. HOWEVER DAMAGE CLAIMS FOR A BREACH OF SIGNIFICANT CONTRACTUAL DUTIES SHALL BE LIMITED TO FORESEEABLE DAMAGE TYPICAL OF THE CONTRACT, EXCEPT IN CASES OF INTENT OR GROSS NEGLIGENCE OR LIABILITY DUE TO DAMAGE TO A PERSON'S LIFE, BODY OR HEALTH. A change in the burden of proof to the detriment of the BUYER is not linked with the above provisions.**

**7.2. THE TOTAL CUMULATIVE AMOUNT, FOR WHICH SELLER, ITS SUBCONTRACTORS, AND THEIR RESPECTIVE INSURERS, SHALL BE LIABLE (INCLUDING WARRANTIES), SHALL NOT EXCEED THE AMOUNT, EXCLUDING TAXES, RECEIVED BY SELLER PURSUANT TO THE CONTRACT.**

**7.3.** BUYER agrees to defend, indemnify or hold harmless SELLER, its subcontractors, and their respective insurers, for any amount above the limit set forth in Article 7.2 and/or for damages in set forth in Article 7.1.

**7.4.** In case penalties are specified in the Contract, such penalties shall be construed as liquidated damages (i.e. exclusive of and in lieu of all other actions or claims resulting from non-achievement of the Contract's requirements) and shall not exceed a total and cumulative amount equivalent to 5% of the Contract value (excluding taxes).

**7.5.** BUYER shall not introduce any claim at any time more than 12 months from the delivery date of Goods.

## **Article 8 - Confidentiality - Intellectual Property - Patent Infringement**

**8.1.** SELLER has a proprietary interest in all of the drawings, designs, specifications, documents, information or know-how which may be provided under the Contract and in any know-how, improvement, discovery or invention which may be made, developed or conceived in the performance of the Contract or which may arise or result therefrom ("PI"). BUYER shall maintain and shall require its employees, agents, suppliers and contractors to maintain all PI in confidence and shall not use, copy, reproduce, release, disclose or publish, in any manner or allow access to or possession of any PI to any third party without the prior written consent of SELLER. All PI remains SELLER's property and shall be deemed to have been loaned to

BUYER only for the purpose of performing the Contract.

**8.2.** SELLER shall, with respect to the regular sale and use of Goods designed by SELLER, indemnify BUYER from any and all damages and costs awarded in any suit or proceedings for infringement of any intellectual property rights ("IPR") valid in the manufacturing country of the Goods, provided that (i) SELLER is notified promptly in writing and given full authority, information and assistance for the defence of said suit or proceedings and (ii) the infringement does not result from any application, use of such Goods in association or combination with any other material, equipment, device or item not supplied by SELLER, or modifications of such Goods by anyone. In case the Goods or any part thereof furnished hereunder is held in any such suit or proceedings to constitute an infringement and its use is enjoined, SELLER shall, at its option and at its own expense, take one of the following actions: (i) procure for BUYER the right to continue using said Goods or part thereof; (ii) replace it with substantially equivalent non-infringing Goods; or (iii) modify it so it becomes non-infringing. SELLER's defence and indemnity, as provided herein, shall constitute complete fulfilment of all its obligations or liabilities to BUYER with respect to any IPR infringement and shall constitute BUYER's exclusive remedy with respect thereto.

**8.3.** BUYER shall fully defend, indemnify and hold SELLER (including its suppliers) harmless from all expenses (including attorney's fees), damages, losses and/or proceedings arising from any claim, suit or demand that any Goods manufactured according to BUYER's (including BUYER's subcontractors) design, changes, specifications or instructions infringe any IPR.

**Article 9 - Tooling:** Any tools, machinery, dies, jigs, fixtures or items of like nature manufactured or purchased by SELLER ("Tools") for the performance of the Contract are the exclusive property of SELLER, even if BUYER has contributed to part of the costs of the Tools.

**Article 10 - Force Majeure:** SELLER shall not be considered in default in the performance of any of its obligations to the extent that such performance is delayed by a force majeure event. Force majeure shall mean any event beyond SELLER's reasonable control, such as: acts of God, terrorism acts, storm, flood, fire, riot, sabotage, prohibition of trade, strike, any combination of workmen, effects of energy and/or raw materials shortage, equipment breakdown, delays in the transport of the same from causes listed herein as force majeure, interference by civil authorities, acts, regulations or orders of any governmental authority (including delay or failure to issue licenses, permits or authorisations of any kind whatsoever), acts of war, acts or failure to act of BUYER. The contractual dates shall be postponed to the extent necessary to overcome the consequences of the force majeure event. If the force majeure event lasts for more than 3 months, then both parties may terminate the Contract *ipso jure* (without prior approval of any tribunal) and will mutually agreed upon in good faith on the consequences of such termination.

#### **Article 11 - Suspension - Termination**

**11.1.** In case BUYER fails to pay any sum due to SELLER under the Contract or SELLER considers, at its sole discretion, that BUYER's financial conditions are or become unsatisfactory (with or without notice from BUYER), SELLER shall be entitled to (i) suspend the Contract's performance, or extend the time limit for the Contract's performance, until full payment of any overdue invoice(s) by BUYER, and/or (ii) demand immediate payment before delivery.

**11.2.** SELLER shall be entitled to terminate the Contract *ipso jure* (without prior approval of any tribunal) by giving written notice thereof to BUYER with immediate effect in case BUYER is in material breach of any of its obligations such as

delay in payment. In such case, BUYER shall pay all Goods delivered and/or in progress at the date of termination, in addition to any other remedies or rights available at law.

**11.3.** SELLER shall have the right to suspend all deliveries or to terminate the Contract *ipso jure* (without prior approval of any tribunal) by giving written notice with immediate effect if: (i) BUYER becomes insolvent or, (ii) SELLER is of the opinion that BUYER will not be in a position to fulfil its obligations under the Contract. Such suspension or termination shall be without prejudice to any other rights or remedies available at law. In any case, BUYER shall: (i) do its best efforts to preserve the physical integrity of the Tools in BUYER's custody and of all Goods which have been delivered by SELLER and not fully paid for, (ii) affix indelible stamps on Tools showing SELLER's property, and (iii) upon SELLER's first request, immediately return said Goods and/or Tools to SELLER and/or give SELLER full assistance in order for said Goods or Tools to be promptly sent back to SELLER.

**Article 12 - Applicable Law - Dispute Settlement: THE CONTRACT SHALL BE GOVERNED BY GERMAN LAW WITH THE EXCLUSION OF ANY RULES OF CONFLICTS OF LAWS OR CONNEXITY INCOMPATIBLE WITH THIS CHOICE OF LAW. ANY DISPUTE ARISING OUT OR RELATING TO THE CONTRACT, AND WHICH CANNOT BE AMICABLY SETTLED BY THE PARTIES, SHALL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF NUREMBERG (GERMANY), NOTWITHSTANDING PLURALITY OF DEFENDANTS AND/OR CALL IN GUARANTEE, EVEN IN CASE OF SUMMARY PROCEEDINGS.**

#### **Article 13 - Other Terms**

**13.1.** Any waiver of any of the terms hereunder by SELLER shall not be deemed to be a waiver of any subsequent breach or default of any of the terms herein.

**13.2.** BUYER shall not assign and/or transfer all or part of its rights and/or obligations under the Contract to any person or entity without SELLER's prior written consent. SELLER is entitled to assign or transfer any of its rights or obligations under the Contract to any of its affiliates. SELLER is entitled to sub-contract to one or more sub-contractors all or part of its obligations under the Contract.

**13.3.** BUYER shall be responsible for all dealings with any relevant governmental authorities and regulatory agencies and shall obtain and maintain, at its own expense, such permits, licences and authorisations as may be required for the performance of the Contract (including for the use, sale or distribution of the Goods or performance of Services by SELLER) in such country or countries, and shall assist SELLER in obtaining any other visas, permits and customs clearances in this respect, if any.

**13.4.** The regulations, codes and standards applicable to the performance of the Contract shall be those applicable in the manufacturing place of the Goods. SELLER has in place and adheres to a code of business conduct and ethics.

**13.5.** Any technical advice, recommendations or services rendered by SELLER are based on data believed to be reliable and are intended for use by skilled and professional persons at their own risks. SELLER assumes no liability whatsoever for events resulting or damages or losses incurred from their use. They are not intended to suggest nor shall they be construed as instructions or license to operate under any process. All descriptions, specifications, drawings and illustration contained in SELLER's catalogues and any other advertisement matters are indicative only, and none of these shall be deemed binding on SELLER.

**13.6.** The invalidity in whole or in part of any provision of the Contract shall not affect the validity of any other provision.