



**GENERAL TERMS AND CONDITIONS FOR SALES**  
**(VALID FOR THE UNITED STATES OF AMERICA)**

**I. General Stipulations**

1. All deliveries and services (hereinafter "Deliveries") shall be taken on and carried out exclusively on the basis of these General Terms and Conditions. The Purchaser's terms and conditions shall not become content of the contract, even if Seller does not expressly object to them or Seller accepts payments unconditionally. Deviations from Seller's Terms and Conditions shall only be effective, if Seller acknowledges them in writing.
2. In principle, Seller's quotations shall be subject to change without notice and be non-binding. Contracts (purchase orders and order acknowledgements), as well as amendments, additions and collateral agreements must, in principle, be in writing.
3. Seller's order acknowledgements shall be exclusively authoritative for the scope and nature of the delivery. Any order shall only be deemed accepted upon its written acknowledgement on Seller's part. Verbal collateral agreements or verbal representations which go beyond the written contract shall be ineffective.

**II. Prices and Payment**

1. Seller's prices shall be in U.S. Dollars and shall apply to deliveries of goods EXW Sellers plant (as per Incoterms 2010), or such other place as Seller may determine, except where otherwise expressly agreed upon in writing. Incidental expenses such as costs in connection with packaging, insurance, freight, storage, external inspection etc. shall not be included. The minimum order amount is \$100.
2. Seller must receive payment by the agreed dates without any deduction.
3. The Purchaser shall not be permitted to retain payments or set off payments against any counterclaims disputed by Seller.
4. In the event of non-compliance with the dates for payment, interest at a rate of one percent (1%) per month, or the highest rate permissible under applicable law, except where prohibited by law, shall accrue from the day following the due date for payment.
5. In the event of default in payment or in the event that Seller's receivables are jeopardized by a material deterioration in the Purchaser's creditworthiness, we shall be entitled to declare our receivables due immediately or demand security. Seller shall also be entitled to make the execution of Deliveries still outstanding conditional upon advance payment or the provision of security.

**III. Delivery Period**

1. Delivery periods given shall always be regarded as approximate and shall be subject to timely clarification of all details of the order, particularly the provision of all documents and approvals to be procured by the Purchaser, the clearance of drawings, the punctual receipt of any agreed down payment and the punctual provision of any agreed security for payment.



2. The agreed dates for delivery shall be deemed complied with upon notification of readiness for shipment, particularly if the delivery items are unable to be dispatched in due time through no fault of Seller. Even a defective delivery may comply with a date for delivery.
3. The delivery period shall be appropriately extended in cases of force majeure, labor dispute measures, particularly strike and lockout, and upon the occurrence of unforeseen impediments which are beyond Seller's control, in so far as such impediments provably have a substantial impact upon the completion or delivery of the delivery item. This shall also apply, if the circumstances occur at sub-suppliers.
4. In the event of default on Seller's part, the Purchaser shall be entitled to set a reasonable grace period of at least three weeks and rescind the contract after the grace period has expired to no avail. The stipulations of section IX shall also apply to any losses in connection with noncompliance with periods for delivery.

#### IV. Acceptance

1. If an acceptance inspection by the Purchaser has been agreed upon, it must be carried out without undue delay following notification of readiness for acceptance. If the execution of the acceptance inspection is delayed or is incomplete through no fault of Seller, the delivery item shall be deemed accepted upon Seller's written request for an acceptance inspection and upon expiration of a reasonable time limit set by Seller, in so far as Seller has specifically identified this consequence. The Purchaser shall, without prejudice to its rights under section VIII, not be entitled to refuse acceptance on account of insubstantial defects. In any event, acceptance shall also enter into effect, if the delivery item is put into operation without Seller's consent.
2. The Purchaser shall bear the total costs associated with the acceptance inspection, except for Seller's personnel costs.

#### V. Passage of Risk, Delivery

1. The risk shall pass to the Purchaser upon provision of the goods at the place of performance.
2. Shipment shall occur on the Purchaser's account and at the Purchaser's risk, regardless of agreed upon delivery method or if partial deliveries are made.
3. Delivery items notified as being ready for shipment must be called off for delivery immediately. Otherwise, Seller shall be entitled to store them at the Purchaser's expense and risk at Seller's discretion and charge for them as if they had been delivered.
4. Seller shall be entitled to carry out and charge for partial deliveries.

#### VI. Reservation for Security

1. All Deliveries shall be made under reservation for security as outlined in Article 2 of the Uniform Commercial Code (UCC), Section 2-401. Title shall only pass to the Purchaser upon payment of its entire liabilities arising from its business relationship with Seller. In the case of a running account, the reservation for security shall be for Seller's balance on the receivable. Any bills of exchange or checks given for payment shall only be deemed payment when honored.



2. The Purchaser shall be entitled to process, commingle and dispose of the goods in the ordinary course of its business. However, the Purchaser shall not be permitted to pledge the goods or transfer the title therein as security.
3. The Purchaser hereby assigns to Seller its receivable arising from reselling the goods which are under reservation for security, regardless of whether the goods under reservation for security are resold without having been commingled or after having been commingled. Seller accepts this assignment. The receivable assigned shall serve as Seller's security, however, only in the sum of the value of the respective goods sold under reservation for security.
4. In the event that the goods under reservation for security are commingled, Seller - rather than the Purchaser - shall acquire a security interest in the new item as per section 9-336 in Article 9 of the UCC. The goods commingled shall serve as security only in the sum of the value of the goods under reservation for security. In the event that the Purchaser commingles the said goods together with other goods not belonging to Seller, Seller shall be entitled to a security interest in the new item in the ratio of the value of the goods under reservation for security to the value of the other processed goods at the time of processing. The new items created as a result of commingling shall be deemed to be goods under reservation for security as defined by these terms and conditions and Article 9 of the UCC.
5. Once Purchaser makes payment in full and the risk of loss has passed from Seller to Purchaser, Seller releases any and all reservations for security on the goods, commingled or otherwise. Seller shall then make no further claim to retention and Purchaser may process, commingle, and/or dispose of the goods as it sees fit in its ordinary course of business.

#### VII. Maintenance of Secrecy, Data Protection

1. Seller shall retain intellectual property rights in drawings, models, calculations and other documents. The Purchaser shall, without undue delay, notify us in the event that it becomes aware of infringements of Seller's intellectual property rights.
2. The Purchaser shall be obliged to keep secret all drawings, models, calculations, business secrets or company secrets received from Seller in physical or electronic form, as well as all other confidential documents and information. These may only be made accessible to third parties with Seller's written consent and in so far as necessary. The obligation to maintain secrecy shall also apply after the implementation of the contract. It shall only lapse if and in so far as information has become generally known.
3. Subject to the stipulated purpose of the respective contract and to observance of the data protection stipulations, Seller shall be authorized to process data provided to Seller in compliance with any applicable data security or data privacy laws.

#### VIII. Liability for Defects

Seller shall provide warranty for defects in our Products, including any absence of features which have been guaranteed, for a period not to exceed twelve (12) months as follows:

1. Purchaser shall notify Seller in writing of any defects or inadequacies in the materials provided hereunder. Seller shall have thirty (30) days from the date of receipt of such notice to correct such defect.



2. Seller's warranty shall not extend to losses due to improper intermediate storage, incorrect assembly, excessive use, improper servicing, incorrect product design on the part of the Purchaser or errors of interpretation on account of incorrect / incomplete particulars from the Purchaser. Nor shall it extend to the replacement of wear and tear parts or to the consequences of normal wear and tear. Purchased parts used by Seller shall be subject to the manufacturer's terms and conditions of guarantee. Seller shall not recognize complaints in cases where alterations or rectification work have been carried out on the delivered items without Seller's consent.
3. The warranty for defects recognized by Seller shall, at Seller's option, be honored either by rectification or by delivery or performance on Seller's part without defects.
4. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS SECTION OR EXPRESSLY PROVIDED IN THE AGREEMENT OF SALE, SELLER MAKES NO OTHER WARRANTIES TO PURCHASER, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO THE PRODUCTS SOLD OR ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

#### IX. Liability Limitations

Seller shall be liable solely in accordance with and subject to the following terms and conditions:

1. Seller hereby agrees to comply fully and completely with any and all federal, state and local statutes, regulations or executive orders. Seller further agrees to obtain and pay for all necessary permits, licenses, and fees pertaining to its work hereunder.
2. Seller hereby agrees to comply fully and completely with all state and federal fair labor standards laws and federal safety laws issued by the Occupational Safety and Health Administration (OSHA) and shall indemnify and hold harmless Purchaser from any loss or damages resulting from Seller's failure to comply.
3. Seller shall obtain and maintain, at its own cost, public liability insurance, property damage insurance, and workmen's compensation insurance (or the equivalent) in amounts and in form satisfactory to Purchaser and shall furnish certificates of insurance upon request. Purchaser may withhold payments until receipt of a satisfactory insurance certificate.
4. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY UNDER THIS AGREEMENT FOR A GIVEN CLAIM EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID TO SELLER BY PURCHASER FOR THE PRODUCTS PURCHASED OR THE SERVICES PERFORMED PURSUANT TO THIS AGREEMENT.



## X. Place of Performance, Arbitration, Applicable Law, Other Stipulations

1. The place of performance for Seller's Deliveries is the MALMEDIE plant in Solingen, Germany. If Seller is also required to render support services, the place where the services are to be rendered shall be the place of performance. The point of payment stated on Seller's invoice shall be the place of performance for the Purchaser's payment obligation.
2. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
3. Collateral agreements must be in writing. This also applies to any nullification of the written form requirement itself.
4. Any disputes arising out of this Agreement that cannot be resolved by the parties shall be resolved by final and binding arbitration in Philadelphia, Pennsylvania by the American Arbitration Association (AAA) in accordance with the commercial arbitration rules of AAA then in effect, by a single arbitrator mutually selected by the parties. If the parties cannot agree upon an arbitrator, an arbitrator will be appointed by AAA. The arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The parties agree that any claimant, defendant, attorney, witness, and any other participant may participate in the arbitration proceedings via teleconference, video conference, or other remote communications means. Notwithstanding the foregoing agreement to arbitrate, Seller may bring an action in any court of competent jurisdiction located in the Commonwealth of Pennsylvania with respect to any claim for non-payment and both parties hereby waive their right to a trial by jury. The prevailing or substantially prevailing party in any dispute shall be entitled to recover its costs of the dispute, including without limitation its reasonable attorney fees. The parties hereby submit to the exclusive jurisdiction of AAA and any state or federal court sitting in the Commonwealth of Pennsylvania and irrevocably waive and agree not to assert by way of motion, defense, or otherwise any claim of forum non conveniens, improper jurisdiction or venue, or that such party is not subject to personal jurisdiction or that its property is exempt or immune from attachment or execution.