

**GENERAL CONDITIONS OF SALE**

Buyer's acceptance of Seller's quotation ("Purchase Order"), as evidenced by a purchase order form or other authorization, shall be subject to Seller's acknowledgement or confirmation. Such acknowledgement or confirmation shall constitute the agreement for the sale and purchase of the products listed on the front hereof. Like Seller's quotation, the agreement is governed by these terms and conditions ("Terms and Conditions"). Conflicting terms in Buyer's Purchase Order shall not be applicable unless specifically confirmed by Seller in writing.

If this document is used as a response to Buyer's purchase order form, the purchase order form shall be deemed to be a request for a quotation only.

**• Quotation - Acceptance - Acknowledgement / Confirmation**

Seller's quotation is open for acceptance within the period stated by Seller or, when no period is stated, within thirty (30) days from the date of the quotation.

Any Purchase Order not conforming with Seller's quotation is subject to Seller's specific confirmation. Any conforming Purchase Order may be acknowledged or confirmed. Any acceptance, acknowledgement and/or confirmation shall be in writing, by fax, cable, or EDI.

**• Prices - Taxes**

Prices are in EURO ( € ), exclusive of taxes and based upon delivery Ex-Works Seller's premises and upon Buyers' purchase of the agreed aggregate quantities. Sales taxes, duties or similar levies will be added by Seller to the prices where Seller is required by law to pay or collect them.

It is fully understood that it is a matter of principle to the agreement that, unless expressly stated otherwise, the prices specified reflect a standard allocation of risks provided by the limited remedies and limitations of liability set forth here. Any modification of the allocation of risks would affect the prices. Failure of any limited remedy in the Terms and Conditions to fulfil its essential purpose shall not be ground to set aside the limitations of Seller's liability.

**• Invoices - Payment**

Each (partial) delivery will be accompanied by an invoice. Full payment is due within thirty (30) days of date of invoice. Seller will invoice against price level at invoice date.

Seller may charge interest on any overdue payment and if so, at a rate of 18% on a yearly basis, with a minimum of 1½%.

If due to Buyer's failure to pay when payments are due, Seller would incur exchange rate losses which it would not have incurred when payment would have been made in time, Seller shall be entitled to equivalent compensation from Buyer for such losses.

Seller retains ownership in all goods delivered until these goods have been paid for in full and without conditions.

If at any time the financial condition of Buyer so warrants, or if Buyer fails to make payment when due, or defaults in any way, Seller may either alter the terms of payment, suspend credit and delay shipment or pursue any remedies available at law or under this agreement. In such event, Seller will be entitled to compensation from Buyer for its reasonable expenses, including attorneys' fees.

Payment by Buyer of special design, engineering or production charges required for Seller's performance on purchase agreements for products deviating from Seller's established product line shall not convey title to either the design or materials, but title shall remain in Seller.

**• Delivery - Rescheduling**

Seller will exercise reasonable business practice to meet the delivery date(s) set forth on the front or as otherwise agreed, provided Buyer has given all shipping information sufficiently prior to the shipment date(s).

If Buyer is not ready to accept delivery, then Seller reserves the right to deliver the products in consignment at Buyer's cost. Seller may under- or overship deliveries to a maximum of two percent (2%) of the quantity of any purchase order line item. Rescheduling requests are subject to Seller's rescheduling policy. Seller's minimum order level requirements shall apply.

In the event of shortages Seller may allocate products among its customers.

**• Trade terms**

Any trade terms mentioned shall be interpreted in accordance with the latest edition of Incoterms of the International Chamber of Commerce, it however being understood that under "F.C.A." Seller shall contract, on usual terms and at Buyer's risk and expense, for carriage of the products to Buyer's designated destination and, subject to the terms of payment, furnish the corresponding bill of lading to Buyer against payment of any and all expenses so incurred.

**• Excusable delay - Force Majeure**

A failure in the performance of the agreement cannot be imputed to Seller if:

- (i) such failure results from the fact that Seller's manufacturing volume of the products concerned is lower than anticipated due to interruptions in the manufacturing process; or
- (ii) such failure does not result from its fault; or
- (iii) Seller cannot be held accountable for such failure because of Force Majeure as defined below or by law.

In case of such a non-attributable failure, the performance of the relevant part(s) of the agreement will be suspended, without Seller being responsible for any damage resulting therefrom to Buyer. \*

Seller will inform Buyer on the occurrence of such failure and the estimated duration as soon as possible. In the event the suspension has lasted for five (5) consecutive months, either party is entitled to terminate as far as suspended the agreement without being held liable to any indemnity whatsoever towards the other party.

The expression "Force Majeure" shall mean and include circumstances or occurrences beyond one party's reasonable control - whether or not foreseeable at the time of the acknowledgement or confirmation of the Purchase Order - in consequence of which one party cannot reasonably be required to execute its obligations under the agreement. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrections, fires, floods, labour disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and inability or impracticability to secure transportation, facilities, fuel, energy, labour, materials or components.

**• Warranties**

Seller will perform its standard inspections and tests with respect to the products prior to shipment to Buyer. Seller warrants that the products delivered pursuant to this agreement shall at the time of delivery and, if properly used, for the period of one (1) year thereafter be free from defects in material or workmanship and shall conform to the specifications as specified in the enclosed Quality Description Sheet or such other specifications as Seller has agreed to in writing, it being understood that such warranty does not cover:

- damage sustained by normal wear and tear;
- damage arising in consequence of negligence, misuse or improper storage, installation, repair, alteration, or return handling of the products or parts thereof; or
- damage resulting from environmental or stress testing.

Seller's sole obligation with respect to claims under this warranty shall be limited, at its option, to (i) repair or replacement of such non-conforming or defective products or (ii) an appropriate credit for the purchase price thereof, provided always that Seller is informed by Buyer in writing promptly after the defects have revealed themselves and, if requested the defective products have been returned to the address or location indicated by Seller. Seller will have a reasonable time to repair, replace or credit. The non-conforming or defective products shall become Seller's property as soon as they have been replaced or credited for. Buyer must comply with the conditions of the attached Quality Complaint Procedure in order to Buyer to receive an above-mentioned warranty adjustment for the returned products.

**• PATENT WARRANTY**

SELLER SHALL, AT ITS OWN EXPENSE, DEFEND ANY SUIT BROUGHT AGAINST BUYER INSOFAR AS SUCH SUIT IS BASED UPON A CLAIM THAT ANY PRODUCT IN THE FORM AS DELIVERED BY SELLER HEREUNDER AND NOT MODIFIED IN ANY WAY BY BUYER, ALONE AND NOT IN COMBINATION WITH ANY OTHER PRODUCT, DIRECTLY INFRINGES ANY INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY, PROVIDED, HOWEVER, BUYER GIVES SELLER PROMPT WRITTEN NOTICE OF ANY CLAIM OR SUIT FOR INFRINGEMENT, FULL AUTHORITY, AT SELLER'S OPTION, TO SETTLE OR TO CONDUCT THE DEFENSE THEREOF AND FULL ASSISTANCE AND COOPERATION IN SAID DEFENSE. SELLER SHALL NOT REIMBURSE COSTS OR EXPENSES MADE WITHOUT ITS PRIOR WRITTEN CONSENT.

IN THE EVENT THAT PRODUCTS DELIVERED BY SELLER UNDER THE AGREEMENT IN THE FORM AS SPECIFIED ABOVE ARE IN SUCH SUIT HELD TO CONSTITUTE INFRINGEMENT AND THEIR USE IS ENJOINED, SELLER SHALL, AT ITS OWN ELECTION AND ITS OWN EXPENSE, EITHER PROCURE FOR BUYER THE RIGHT TO CONTINUE THE USE, OR REPLACE SUCH INFRINGING PRODUCTS BY NON- INFRINGING PRODUCTS, OR MODIFY SUCH PRODUCTS TO BECOME NON-INFRINGING, OR AUTHORIZE THE RETURN OF SUCH PRODUCTS AND CREDIT BUYER FOR THE PURCHASE PRICE THEREOF LESS REASONABLE DEPRECIATION.

SELLER ASSUMES NO LIABILITY FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS COVERING ANY PRODUCT OTHER THAN PRODUCTS AS SUCH HEREUNDER, IN THE FORM AS SUPPLIED AND NOT MODIFIED IN ANY WAY, NOR FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS COVERING ANY ASSEMBLY, CIRCUIT, COMBINATION, METHOD OR PROCESS IN WHICH, OR IN THE MANUFACTURE, TESTING OR APPLICATION OF WHICH, SUCH PRODUCTS MAY HAVE BEEN USED. FURTHERMORE, SELLER SHALL NOT BE LIABLE FOR ANY INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ARISING FROM COMPLIANCE WITH BUYER'S DESIGN, SPECIFICATIONS OR INSTRUCTIONS.

BUYER SHALL INDEMNIFY SELLER AGAINST ANY FINAL AWARD OF DAMAGES OR COSTS FOR SUCH INFRINGEMENT AND SHALL REIMBURSE ALL COSTS INCURRED BY SELLER IN DEFENDING ANY SUIT OR PROCEEDING FOR SUCH INFRINGEMENT, PROVIDED SELLER GIVES BUYER PROMPT NOTICE IN WRITING OF ANY SUCH SUIT OR PROCEEDING FOR INFRINGEMENT AND, IF SO REQUESTED, FULL AUTHORITY TO CONDUCT THE DEFENCE THEREOF AND FULL ASSISTANCE AND COOPERATION IN SAID DEFENCE.

THE FOREGOING STATES THE ENTIRE LIABILITY OF SELLER IN CONNECTION WITH THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES BY PRODUCTS SUPPLIED BY SELLER HEREUNDER AND EXCEPT AS STATED HEREABOVE, SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, INCLUDING ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, SUFFERED OR INCURRED BY BUYER OR ITS MEDIATE OR IMMEDIATE CUSTOMERS IN RESPECT OF OR IN CONNECTION WITH THE INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

THE SALE OF ANY PRODUCT HEREUNDER DOES NOT CONVEY ANY LICENSE, BY IMPLICATION, ESTOPPEL OR OTHERWISE, UNDER ANY INTELLECTUAL PROPERTY RIGHTS OF SELLER COVERING ANY PRODUCT SUPPLIED HEREUNDER OR ANY COMBINATION IN WHICH ANY PRODUCT SUPPLIED BY SELLER HEREUNDER IS COMBINED WITH ANY OTHER PRODUCT, WHETHER OR NOT SUPPLIED BY SELLER, OR ANY METHOD OR PROCESS IN WHICH ANY SUCH PRODUCT OF SELLER MAY BE USED, EXCEPT THE IMPLIED LICENSE TO USE AND RESELL THE PRODUCTS UNDER ANY OF SELLER'S INTELLECTUAL PROPERTY RIGHTS.

**• DISCLAIMER/LIMITATION OF LIABILITY**

THE EXPRESS WARRANTY GRANTED SHALL EXTEND DIRECTLY TO BUYER AND NOT TO BUYER'S CUSTOMERS, AGENTS OR REPRESENTATIVES AND EXCEPT FOR WARRANTY OF TITLE, IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY BREACH OR ALLEGED BREACH OF THE AGREEMENT EXCEED THE PURCHASE PRICE FOR THE PRODUCT(S) CAUSING ANY LIABILITY, NOR SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH BREACH OR ALLEGED BREACH INCLUDING BUT NOT LIMITED TO EXCESS REPROCUREMENT CHARGES.

SELLER'S PRODUCTS ARE NOT DESIGNED FOR USE IN LIFE SUPPORT DEVICES, APPLIANCES OR SYSTEMS WHERE MALFUNCTION CAN REASONABLY BE EXPECTED TO RESULT IN A PERSONAL INJURY. BUYER USING OR SELLING SELLER'S PRODUCTS FOR USE IN SAID EQUIPMENT DOES SO AT ITS OWN RISK AND AGREES TO FULLY INDEMNIFY AND HOLD SELLER HARMLESS FOR ANY DAMAGES RESULTING FROM SUCH USE OR SALE.

**• Proprietary Information and Publicity**

Except where intended to serve as instructions for use or advertising matter, all technical information in relation to Seller's products and their maintenance remains Seller's property and may without its consent not to be utilized or copied, reproduced, transmitted or communicated to third parties. Illustrations, catalogues, colours, drawings, dimensions, statements of weight and measurements etc. made available by Seller are only meant to present a general idea of the products to which they refer; they are approximate only and therefore not binding upon Seller.

Neither party shall, without the other party's prior written consent, use the other party's name or trademark as such and/or use same in connection with any advertisement or sales literature.

**• Assignment**

Buyer shall not have the right to assign or otherwise transfer its rights or obligations under the agreement except with Seller's prior written consent.

**• Severability**

In the event that any provision(s) of the agreement shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof.

**• Waiver**

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or future exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.

**• Setoff**

Buyer hereby waives any and all rights to offset existing and future claims against any payments due for products sold hereunder or under any other agreement that Buyer and Seller may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

**• Governing Law - Dispute Resolution - UNCC not applicable**

The agreement shall be construed in accordance with and governed by the laws of the Netherlands. Any and all disputes arising in connection with this agreement which cannot be solved amicably shall exclusively be determined by the competent court(s) of Rotterdam, the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the agreement.

**• Compliance with laws**

Each party warrants that it is legally authorized to enter into this agreement and, with respect to its performance hereunder, will comply with any and all applicable laws and regulations.

**• Product and production changes**

Seller reserves the right to make at any time product and/or production changes. In such event Seller warrants that said changes shall not negatively affect form, fit or function of the products and their performance characteristics.

**• Entire Agreement**

The Terms and Conditions constitute the entire agreement between Buyer and Seller regarding the sale and purchase of the products listed on the front hereof and supersede and replace all prior or contemporaneous agreements between parties regarding said products.