

# MSS - GENERAL CONDITIONS OF SALE

VERSION 1.1 – 01-05-2018

## SCOPE

1. These general conditions of sale (hereinafter referred to as "GCS") shall apply to all products, accessories or services ("Goods") that are sold by the seller ("Seller") to the customer ("Customer").
2. GCS, together with Seller's specific conditions contained in its order confirmation or contract of sale ("Order Confirmation") and only such other documents, as are specifically incorporated herein by reference, constitute the entire agreement between Customer and Seller, and supersede, in their entirety, any other conflicting terms and conditions proposed by Customer and any oral or written communications that are not expressly incorporated herein.
3. Agreements entered into between Customer, or its agents and third parties shall only become valid upon Seller's express written confirmation.
4. Any exception or modification to the GCS, which take the form of Specific Conditions and will only, be valid if made in writing, accepted and signed by the legal representatives of the parties, these prevailing on the first.
5. Will void any conditions or specifications that the Customer will enter into any kind of documentation that are conflicting with the provisions of the General or Special Conditions.
6. In the absence of a clause to the contrary, documentation, catalogues and estimates are sent for information purposes only, and Seller's offers are not binding without Order Confirmation.
7. No additions to or variations from the terms hereof, whether set forth in Customer's purchase order or in any other documents, including shipping documents, shall be binding upon Seller unless expressly agreed in writing by Seller.
8. If any of GCS or part thereof shall be determined to be void, unenforceable or illegal in whole or contained in part, such determination shall not affect the validity of the other terms and conditions herein.
9. In case of conflict between the provisions in the Order Confirmation and the wording of the present GCS the provisions in the Seller Order Confirmation shall prevail.

## OFFERS

10. Preliminary offers and quotes are valid for 1 week and after confirmation of availability. The Goods supplied are only the precisely specified in the preliminary offer or quote. The sales agreement is not valid until the Seller has expressly accepted the purchase order.
11. If the Customer's Order or Seller's Order Confirmation is not in Euros the validity of 1 week doesn't apply and will be affected by the difference of the rate from the day of the Offer to the day of the Order Confirmation.
12. The delivery time of the offer is only valid after Seller's order confirmation.
13. The Customer is solely responsible for the selection of the product under the purchase and sale as well as the use or function intended.

## ORDERS

14. Unless disputed by the Customer within 3 working days of the Seller's order confirmation receipt, the terms and conditions set out in the Seller's order confirmation shall be deemed as accepted.
15. Minimum invoicing is 200 €.
16. If the order is cancelled, the Customer will be liable for the cost of the services already performed and a cancellation fee of at least 10% of the amount of the contract shall be payable and still matter to forfeiture of advance payment of the price in favor of Seller, as compensation for the non performance of the business.
17. The cancellation of the order by Seller only and only imports the return of the amounts advanced by the Customer in respect of advance payment of the price, to the exclusion of any other liabilities.
18. All requests for additional work or order modification requests must be made in writing. Any change or modification to the contract will result in a new quote being issued and an amendment to the contract duly signed by both parties. If the changes result in extra cost to the Seller the Customer will be responsible for it.
19. Under no circumstances may the terms and conditions for additional supplies be more prejudicial to those in the initial order. Any postponement of delivery requested by the Purchaser and agreed to by the Seller will imply storage charges and financial cost (as described in the payment terms) to be paid by the Customer.
20. All information and data contained in the Customer's general product documentation and price lists shall be binding only to the extent that they are by reference in writing expressly included in the Contract.
21. Documentation regarding export (example of Certificate of Origin, EUR1 or Certificate of inspection by a third party company) need to be requested at the moment of the purchase order.

## PROPERTY AND NO-DISCLOSURE

22. The Customer shall not disclose any information, equipment, models, plans, specifications, data, technical formulas or designs that it may acquire during the term of this contract and shall regard them as strictly confidential. The scope of the Customer obligation under this clause also includes its employees. However, this clause shall not be applicable if the information disclosed is already in the public domain or if the Customer was aware of it or obtained it from third parties by legitimate means. Likewise, the Seller shall regard any information he obtains during the performance of this contract as strictly confidential and may not disclose it to third parties either during the term of this agreement or after the termination thereof.
23. The Seller shall retain ownership of the goods until the purchase price and all other amounts owed have been paid in full. The risks of loss or deterioration of the goods shall pass to the Customer at the time of delivery, along with the liability for any damages they may cause. If the Seller is regarded as a subcontractor in an agreement, the Customer shall notify this to the end-purchaser, together with the contents of this retention clause. In all cases, the Seller expressly reserves the right to require direct payment of the amounts owed.

## ACCEPTANCE TESTS

24. All extra acceptance tests, other than the ones required in the product norms, provided for in the Purchase Order shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Purchase Order does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.
25. The Seller shall notify the Customer in writing of the Acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Customer is not represented, the test report shall be sent to the Customer and shall be accepted as accurate.

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26. If the Acceptance tests show the Product not to be in accordance with the Contract, the Seller shall without delay remedy any deficiencies in order to ensure that the Product complies with the Order. New tests shall then be carried out at the Customer's request, unless the deficiency is insignificant.
27. The Seller shall bear all costs for acceptance tests carried out at the place of manufacture. The Customer shall, however, bear all travelling and living expenses for its representatives in connection with such tests.

### DELIVERY AND TRANSPORT

28. The delivery terms are calculated from the latest of the following dates: the date of acknowledgement of the Order Confirmation by the Customer or the supplies that the Customer has undertaken to supply.
29. All delivery dates are indicative of the week of delivery.
30. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term has been specifically agreed, the delivery shall be Ex-Works. If, in the case of delivery Free Carrier (FCA), the Supplier, at the request of the Customer, undertakes to send the Product to its destination, the risk will pass to the customer not later than when the Product is handed over to the first carrier.
31. All delivery dates with transport under Seller's responsibility are an estimation of the date of delivery. All delivery dates regarding sea transport are an estimation given by the shipping agent and depend on the availability of container at the moment of the load. The Seller can't be responsible for late deliveries, nor for any consequence of them, that occur after the departure from our factory.
32. Orders may not be cancelled on the grounds of late delivery unless as stated in Clause 37 and 38.
33. The Seller is automatically released from any commitment regarding the delivery date if the Customer does not abide by the payment terms of all supplied and to be supplied order, or any other reason, in particularly the event of force majeure.
34. Force majeure includes any circumstances that are beyond the Seller's control and impede its normal functioning at the product manufacturing and shipping stage; In the case of events such as lock-outs, total or partial strikes preventing the smooth running of our company or that of one of our suppliers, subcontractors or carriers, interruption of transport, power supplies, raw materials or spare parts, epidemics, wars, requisitions, government acts, seizures, fires, adverse weather conditions, natural disasters, machinery breakdowns, transport delays or any other event resulting in working hours being lost; When the information to be supplied by the Purchaser does not reach us in time and in the case of modifications or new specifications.
35. If the Seller anticipates that he will not be able to deliver the Product at the time of delivery, he shall forthwith notify the Customer thereof in writing with at least 5 working days' notice, stating the reason and, if possible, the time when delivery can be expected. If the Seller fails to give such notice, the Customer may claim compensation according to Clause 37.
36. In the event of failure to meet the contractual delivery time, a 0.5% penalty may be applied for each full week of delay after the end of the third week, up to a maximum penalty of 5% of the factory or retail value of the equipment delivered late. The penalties are in the nature of assessed damages and interest and exclude any other form of indemnification. The Purchaser shall forfeit its right to liquidated damages if he has not lodged a claim in writing for such damages within 1 week after the time when delivery should have taken place.
37. If the delay in delivery is such that the Seller is entitled to maximum liquidated damages under Clause 37 and if the Product is still not delivered, the Seller may in writing demand delivery within a final reasonable period which shall not be less than one week. If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Customer, then the Customer may by notice in Writing to the Seller terminate the Contract in respect of such part of the Product as it cannot in consequence of the Seller's failure to deliver be used as intended by the parties.
38. If the Customer terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Seller's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 37, shall not exceed 8 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.
39. The Purchaser shall also have the right to terminate the Contract by notice in writing to the Supplier if it is clear from the circumstances that there will be a delay in delivery which, under Clause 36, would entitle the Customer to maximum liquidated damages. In case of termination for this reason, the Customer shall be entitled to maximum liquidated damages and compensation under Clause 38.
40. If the Customer anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Seller in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. The Seller shall arrange for storage of the Product at the risk and expense of the Customer. The Seller shall also, if the Customer so requires, insure the Product at the Customer's expense.
41. At the time of delivery, the Customer must check the shipment and note in the shipping document any reservations and file any pertinent claims against the carrier and in writing inform the Seller in 2 working days. The Customer, consignee or any other representative of the Customer is responsible for unloading the goods as the driver is not allowed to do so himself, if the unload is contracted the Customer must give support to the driver.
42. The total time of delivery can't exceed 3 hours for a full truck order or 45 minutes for a partial shipment.
43. Waiting time in excess of 30 minutes by a driver before, during and after unloading will be billed to the Purchaser at a rate of 30€ per hour.
44. The Seller disclaims all liability for the delivered goods unless a representative of the Purchaser is present and makes written reservation at the time of the delivery.

### CLAIMS

45. By signing the delivery note, the CUSTOMER or his representative, certifies that he has checked the delivered goods, their quantity, quality and compliance with the order.
46. Any defects or non-compliance must be reported by registered mail with acknowledgement of receipt within 5 working days as of the date of delivery. If in 5 working days, the Seller doesn't reply, the claims considered to be declined. Claims regarding the damage of the product during transport or missing parts will only be accepted with a reservation on the delivery at the moment of the delivery.
47. Goods may only be returned with written consent of the seller, in perfect condition and in their original packaging.
48. Unless expressly agreed otherwise by the Seller, the transport charges for the return of goods will be paid by the Customer. However, when the fault or error is not caused by the Customer, the credit note for the returned standard equipment will be of the invoiced amount.
49. Returns of specifically manufactured equipment will not be accepted.
50. The Seller shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Customer, defects due to materials provided by the Customer, defects due to faulty maintenance, stock conditions, incorrect use or faulty repair by the Customer or to alterations carried out without the Seller's consent in writing. The Customer shall neither be liable for normal wear and tear nor for deterioration.

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51. The Seller shall not be liable for any loss of production, loss of profit and other indirect loss. This limitation of the Seller's liability shall not apply if he has been guilty of Gross Negligence.
52. The Seller shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Customer. Nor shall the Seller be liable for any damage to products manufactured by the Customer or to products of which the Customer's products form a part.
53. If the Seller incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Customer shall indemnify, defend and hold the Seller harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.
54. The Seller and the Customer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 64 and 65.
55. Where the Goods are non-conforming the Seller shall at its option and sole discretion: (A) replace the goods with conforming goods without additional expenses to both parties; (B) repair the goods without additional expenses to both parties; (C) Reimburse to the Customer the price paid for the non-conforming goods and terminate the GCS as regards to those goods; (D) Reimburse the Customer the fair depreciation of the non-conforming goods determined as per the quality claim provision of the goods. Any other rights or claims that Customer may have in relation to non-conforming goods are excluded.
56. After receiving written confirmation, by email or registered letter, the Seller must reply in: (A) 1 week if the Customer supplies all information needed to evaluate the claim; (B) 2 weeks if the Customer doesn't supply all information needed to evaluate the claim; In the case the claim is accepted the Seller has 1 week to inform the Customer which option he will use as per Clause 55.
57. The Seller cannot be responsible for any cost that was not previously agreed between the Seller and the Customer.
58. The Seller shall not be liable for defects in any part of the Product for more than one year from the end of the liability period or from the end of any other liability period agreed upon by the parties.
59. The storage, in the Seller facilities, of goods for production and owned by Customers it is done without costs in the first 10 weeks. After that period if the Customer doesn't define or request the production of material or if doesn't pick up the goods already produced the seller will be entitled for a compensation of 2€/ton per month of storage. After 20 weeks and at least 3 written communications (by email or letter) the seller will be entitled to sell the goods as scrap and credit that value to the Customer minus the storage cost since the day of arrival to the sellers facilities. If the Customers picks up any goods without any transformation the seller will be entitled to invoice 10€/ton.
60. The Sellers it is not responsible for the quality and control of the product owned by the Customer at the sellers facilities and unless otherwise agreed the only control to be done at the reception is the weighting of the goods. If the difference between the weight stated in the documents and the weighting done in the Sellers facilities is higher than 2% the Seller shall inform the Customer and wait for instructions, if not, the weight consider as correct will the weighting done at the reception.

## PAYMENT

61. Unless specified in the Confirmation Order or accepted in written by the seller all payments should be done by bank transfer to account detailed in the Invoices or any other account supplied by the Seller.
62. Late payment shall imply a penalty of at least 1.5 times the official rate of interest, at the rate applied by the European Central Bank in its most recent refinancing operation, plus 7 percentage points, without affecting the due date of the debt. Failure in payment of any amount due and payable shall automatically result in an event of default and all the remaining amounts owed, even those due at a later date shall become immediately due and payable. If a Purchaser fails to fulfill its obligations (late payment or a check that cannot be cashed), it may be refused purchase, unless it pays cash or provides sufficient warranties. No rebates or discounts shall be granted for payments in cash or early settlement.
63. If the Customer has any amount of due payment the Customer will lose its right to claim and activate any warranty till the due amount is paid.
64. In case of late payment and in case the Customer fails to give an agreed security by the stipulated date the Seller may, after having notified the Customer in writing, suspend its performance of the Contract until he receives payment or, where appropriate, until the Customer gives the agreed security.
65. In the event of late payment of an invoice, and checking if its continuation after the questioning of the Customer for payment by the Seller, Customer shall pay to Seller, in addition to the amount relating to the principal and interest debt, an amount equal to 8% of the outstanding amount by way of penalty clause.
66. The Seller reserves the right, if the Customer for reasons that are attributed to him, missing deadlines defined in the Purchase Order to apply the penalties for storage, below, without prejudice to compensation for damage and excess the right of termination of the Purchase Order:
  - 66.1.1. If the Contractor has not completed their obligations within the prescribed time shall be subject to a penalty corresponding to 0.5% (half percent) per calendar day of delay value, calculated on the value of the position of the Purchase Order in that integrates the property or properties in default;
  - 66.1.2. If the breach in question exceeds the ten (10) calendar days, the penalty to be applied from the end of that period shall be increased to 1% (one percent), calculated on the same terms as the previous point, up to 10% in the first month and a rent of 5€/m2 per month of storage use of the goods.

## DISPUTES AND APPLICABLE LAW

67. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
68. The Contract shall be governed by the substantive law of the Seller's country.