

Sojitz Europe Plc Paris Branch General Conditions of Sale

1. Acceptance/Scope

- (a) All quotations and orders which have been accepted by us are exclusively subject to the terms and conditions hereinafter.
- (b) An order shall only be deemed accepted if we have confirmed the acceptance of such order in writing or if the goods have been delivered by us.
- (c) In the event the credit insurance obtained by us in connection with the customer's order is withdrawn by the insurance provider for reasons other than our default but after our acceptance of the order and before delivery, we may, upon written notification informing the customer of the withdrawal of the credit insurance, terminate any contract between the customer and us with immediate effect, unless the customer can, within 7 days, procure equivalent credit insurance or any other guarantees acceptable to us.
- (d) Herewith we object to any adverse customers' conditions unless we agree to them in writing. We do not accept the customer's purchase conditions even if we do not object to them explicitly after we have received them.
- (e) Any amendments or modifications to this contract as well as any collateral arrangements are only valid if agreed in writing.

2. Prices

- (a) All prices shall be exclusive of VAT.
- (b) Our offers are made subject to change without notice. If during the validity of the contract the goods are burdened with additional charges, freight costs, taxes, duties, insurances or other additional costs which are usually discharged by the purchase price or should those costs be increased, unless otherwise agreed in writing between us and the customer, we are entitled to increase the purchase price accordingly regardless of applicable Incoterm rule. This also applies if additional costs arise due to war, riots, strike or comparable reasons constituting force majeure, respectively.
- (c) If the acknowledgement of the order from us lays down delivery terms CIF or CIP, we will, unless expressly stipulated to the contrary, subscribe to an insurance policy covering a hundred and ten percent (110%) of the price of the goods on the relevant invoice; any complementary insurance requires guaranteed FPA (free from particular average). We may, if it is considered necessary by the customer, insure the goods against the war risks at the expenses of the customer.
- (d) It is expressly agreed that we do not allow a discount in the event of prepayment.

3. Payment

- (a) Time for the payment shall be of the essence. Any and all payments from the customer to us shall be deemed to be made on the date of actual receipt by us of payment in the currency stipulated in the contract.
- (b) Unless otherwise agreed in writing, payment is due thirty (30) days following the date of invoice.
- (c) In cases of default of payment, the customer shall pay interest on all sums not paid on due date at the rate of the most recent interest rate of the European Central Bank for its refinancing operation increased by 10 percentage points and interest shall accrue at such rate until payment in full (after as well as before any judgment) unless agreed otherwise. Moreover, all sums not paid on the due date shall give rise automatically to the payment, save as any other indemnities for late payment, of a fixed sum of 40€ for debt collection fees in conformity with articles 441-6 and D441-5 of Commerce Code.
- (d) We are entitled to set-off any amount payable to the customer against any amount due and to be due from the customer. The customer is only entitled to set-off undisputed amounts or amounts which have been fixed by non-appealable court decision.
- (e) No complaint on the quality of the goods will entitle suspension of payment if its defect were not notified to us:
 - with the handing-over of the goods in the event of delivery by our company, in its buildings or in the buildings of the customer; or
 - within eight days in the event of delivery by a conveyor and allowed by us. A suspension of payment could be authorized by our company only on the value of invoicing of the only accused goods.
- (f) The payment made with the order is an installment on the price and cannot, in any event, be regarded as down payment whose abandonment would authorize the parties to be disengaged from the contract.
- (g) The payment is deemed not to be effected as long as the payment has not been made in cash, a cheque has not been cleared or a bill of exchange has not been drawn and honoured in full.
- (h) All bank charges shall be for the account of the customer.

4. Delivery and Passing of Risk

- (a) Our obligation of delivery is subject to timely delivery to ourselves unless the timely delivery to us could not be effected due to our own fault. The delays of delivery can in no case justify the cancellation of the order, nor give place to penalties or allowances unspecified, except expressly stipulated in the acknowledgement of delivery of order.
- (b) In the event of missing goods, of damages (damage, breaking, destruction, loss) or of delay, the customer must do all the reserves which it will consider useful against the responsible conveyor within the deadlines and in the forms imposed by the law, so as not to irrevocably lose any recourse action against us and the conveyor.
- (c) Delivery is effected when the goods are in the custody of the customer or its employees, vicarious agents or other persons who are entitled to exercise the custody on behalf of the customer. Delivery is also deemed to have been effected if the goods have been offered to the customer and the customer has refused acceptance without justified reason.
- (d) If the delivery of the goods or parts of it is delayed or prevented by any unforeseen incidents outside our responsibility and beyond our control, including but without limitation to export or import prohibitions, other governmental restrictions, war, blockade, revolutions, riots, strikes, blockades, public disturbances, floods, fire, earthquakes, shortage or exceptional price increases of raw materials or transportation we are not obliged to deliver during the obstruction and a reasonable period of time thereafter to restart business again. We will inform the customer in convenient time of the supervening event enumerated therein, and will endeavour to erase the effects of them as soon as possible. The customer hereby accepts the supply of less than the quantity ordered. If the obstruction will presumably not come to an end in a reasonable period of time we are entitled to cancel the contract entirely or partially whereby the customer has no right to claim loss or damages for breach of contract or default unless in cases of gross negligence or intent.
- (e) We will have the right to deliver or dispatch by sea, and the customer shall accept and pay the quantity of goods ordered, plus or minus ten percent (10%). The delivery or forwarding by sea by our company (whether in one or several shipments) of quantities within above-mentioned tolerance will be regarded as the perfect execution by ourselves of its obligations under this clause.
- (f) The fulfilment of our obligation of delivery requires that the customer meets its co-operation duties. If those duties are not met we reserve the right to plead non-performance of the contract and to suspend the fulfilment of our obligation until that time that the customer has met its obligation duties. In case of a Free on Board (FOB) or "ex work" contract we reserve the right – at our choice and upon our written notice and at the customer's expense and risk - to make appropriate shipping arrangements and/or to store the goods in such a manner as we consider appropriate and/or to dispose of the goods if the customer does not supply sufficient shipping space in time.
- (g) We are entitled to make partial delivery and/or make trans-shipment to a reasonable extent. Each partial delivery shall be separately invoiced and separately paid for unless agreed otherwise.
- (h) In case we arrange the transportation, transportation within the time stipulated in the contract is subject to the availability of sufficient freight capacity space.
- (i) In case the place of delivery agreed upon is either our premises or the premises of one of our suppliers the customer has to remove the delivered goods as soon as reasonably possible, but not later than five working days after the written notification of placing the goods at the customer's disposal. After that the risk in the goods passes to the customer.
- (j) If not agreed otherwise, or unless otherwise stated herein, we generally do not conclude insurance contracts for the delivery of the goods. If this, however, is contractually agreed upon, we conclude such an insurance contract on account of the customer subject to conditions within our discretion.
- (k) If delivery is delayed or goods cannot be collected by the customer for reasons we are not responsible for, the customer bears the storage costs and the risk of transport to another storage facility if such transport is necessary. Otherwise we are only liable for delays in delivery pursuant to Clause 7 of these conditions.
- (l) As soon as delivery has been effected according to Clause 4(c), the risk of accidental loss and accidental deterioration of the goods is passed to the customer. If the goods have to be delivered to another place than the initially agreed place of delivery, the risk of accidental loss and accidental deterioration of the goods is passed to the customer by the time the goods are handed over to the conveyor.

5. Warranties

- (a) The customer has to immediately examine the delivered goods and report any visible defects of the goods to us without undue delay, at the latest within 48 hours, after having received the goods, or in case of delayed discovery of hidden defects without undue delay, at the latest within 8 days after having received the goods. A notice of defects of goods has to be submitted in writing with exact details as to type and extent of the defects. Otherwise the goods are deemed to be faultless.
- (b) Clause 4 (b) above shall apply if defects to the goods arise during transportation via an independent conveyor.
- (c) The goods supplied shall be free from defects to the extent they are fit for their ordinary and normally expected use unless agreed otherwise. The agreed condition of goods can exclusively be taken from the order confirmation. Except the aforesaid, all the other warranties (whether express, implied or statutory) whether made by us or our representative or agent are, to the maximum extent permitted by the applicable law, hereby excluded.
- (d) Where a complaint or a claim has been made in respect of goods proved or alleged to be defective we may suspend further deliveries of goods under this contract until the validity of such complaint or claim has been

finally determined. In such an event any applicable delivery date or dates shall be postponed accordingly. We reserve the right to claim compensation for expenditures if the notice of defects was unjustified.

- (e) So long as we are to be held liable under this Clause, we are entitled in full settlement of the claim from the customer to replace or repair the goods subject to the claim.
- (f) Claims due to defects of the goods become time-barred one year after delivery according to Clause 4 (c). This shall not apply in case we fraudulently concealed the defect and in cases of personal injury, intent or gross negligence, breach of fundamental contractual obligation, in cases of recourse pursuant to the provisions concerning the purchase of consumer goods and for claims pursuant to product liability.
- (g) The goods may only be returned to us if so agreed upon and our certificate as to weight or quantity of the returned goods shall, save as manifest error or court decision against it, be final and binding. The return of goods will have to be accepted by ourselves in advance and to be accompanied by the label of authorization of return deliver by our services to hardly be incontestable at our company. Any return will made at the expenses and risks of our company if carried out under the above mentioned conditions. In all the cases, the return will have to be carried out in the month which follows the delivery.

6. Reservation of Title

- (a) Title to goods sold to the customer shall not pass to the customer until the full purchase price thereof (including any accessory amounts), has been credited without recourse to our bank account. The title retention hereunder shall be subject to Articles 2367 and following of the Civil Code.
- (b) Notwithstanding the foregoing, so long as the goods are in the possession of the customer, the customer shall be solely liable for any loss of or damage to the goods, or for any damage that may be caused by the goods, and the customer shall insure the goods for their full replacement value and furnish to us, upon our request, evidence that the goods are so insured.
- (c) Until the customer becomes the owner of the goods, the customer shall store the goods safely and in a manner that permits their ready identification as goods acquired from us and, with the exception of fungible goods acquired from us, as goods subject to our title retention. We shall be entitled to inspect the goods at all reasonable times without prior notice.
- (d) The customer may only sell goods in the ordinary course of its business and under the usual conditions and so long as it is not in default of payment. The customer is not entitled to dispose of goods in any other manner and must not grant a pledge or other security interest therein. The customer shall inform us immediately in writing of any attachment, lien or claim filed by any third party against any goods and shall take all actions necessary or appropriate to protect our ownership interest in such goods.
- (e) In accordance with Article 2372 of the Civil Code, we are subrogated, within the limit of the unpaid purchase price of the goods, to the customer's rights to unpaid resale price of the goods and to insurance proceeds payable due to loss of or damage to the goods and the customer shall not act or fail to act in any way that may adversely affect such rights.
- (f) If the customer (i) fails to pay any overdue instalment of the purchase price of the goods within seven (7) days following the relevant due date, (ii) defaults, subject to the same condition, in any other obligation to us of any nature whatsoever, or (iii) becomes unable to meet its obligations as they become due or the object of any proceeding designed to protect its creditors, we may in our discretion and upon so notifying the customer: (aa) suspend the customer's right to resell the goods, (bb) accelerate the due dates for all amounts owed to us by the customer for any reason whatsoever, (cc) require immediate return of the goods, pursuant to Article 2371 of the Civil Code (including, where possible without damage thereto, after their removal from any goods or other property in which they may have been incorporated) and (dd) notify persons having purchased any goods from the customer to thereafter pay to us any unpaid purchase price for such goods as such price becomes due.
- (g) If goods are delivered to a country other than France, the customer is obliged to take all necessary measures under the laws of such country to preserve our retention of title in such goods or, if this should not be possible, to provide us with equivalent security for payment of the purchase price thereof.

7. Liability for Damages and Indemnity

- (a) If claims for damages are raised by the customer we are liable according to the statutory provisions in so far as our liability results from gross negligence or intent. As far as our liability does not result from an intentional breach of contract our liability is restricted to predictable and typically occurring damages.
- (b) The sum we will be obliged to pay as damages shall be limited to the amount of the price paid by the customer on the goods in question.
- (c) Save as in the event of gross negligence or wilful misconduct solely attributable to us, we exclude any liability caused as a result of delay in the performance of our obligations.
- (d) Our further liability for damages, save as in the event of gross negligence or wilful misconduct solely attributable to us, is excluded regardless whether the claim is based on contractual or statutory rights. In particular, this exclusion applies to claims from pre-contractual relationships and claims based on the breach of accessory contractual duties.
- (e) Any claims of the customer in cases of personal injury and under a right of recourse pursuant to the statutory provisions concerning the purchase of consumer goods and the Product Liability Act remain unaffected. The customer has to inform us about any possible case of recourse immediately.
- (f) As far as liability is excluded or restricted in relation to us this shall also apply to any liability of our representatives, staff members, vicarious agents and any person entrusted with fulfilling our obligations under this contract.
- (g) If possible we assign warranty claims which we have against our suppliers to the customer.
- (h) The customer is responsible for any infringement of patent rights, trademarks, firm names, design rights, copy rights, licences or other intellectual property rights of third persons (a) in every country except the country of destination named in the contract (b) in every country if the infringement has been caused at the customer's request. The customer is obliged to indemnify us against third persons' claims due to an infringement of the rights mentioned in this paragraph.
- (i) The customer shall indemnify us against any claim made by any third party and all damages awarded against us and all costs and disbursements (including solicitor and counsel fees) incurred by us arising from the use of goods by any third party:
 - (i) which have been modified or adapted by the customer or which have been combined with other goods by the customer not specifically supplied by us for combination with such goods; and
 - (ii) which have had any process, operation or treatment applied to them unless specifically recommended by us.

8. Customer's Breach of Contractual Duties

- (a) In case the customer does not comply with any of its duties under this or another contract between the customer and us or if it is in default with the performance of such a duty we are – at our choice and upon written notice to the customer- entitled to one or more of the following:
 - (i) to terminate the contract,
 - (ii) to entirely or partially refuse the delivery of the goods which have been ordered,
 - (iii) to take back the goods which have been delivered under reservation of title and to enter the customer's premises for this purpose after the contract has been cancelled,
 - (iv) to demand from the customer immediate payment of the purchase price and settlement of all claims,
 - (v) to sell the goods at conditions at our choice without special notice to the customer.
- (b) We are entitled, to the extent permitted by law, to terminate the contract immediately for good reason if the customer is bankrupt or insolvency proceedings over its assets have been opened.
- (c) In case of breach of fundamental contractual duties by the customer we are entitled to cancel the contract upon a lapse of 14 days since the customer has been notified to cure the breach.

9. Assignments

The customer may not assign any right or claim deriving from this contract to third parties without our prior consent.

10. Notices

All notices referred to in these conditions can be sent by post, fax or e-mail and are deemed to be served seventy-two hours after posting.

11. Governing Law and Jurisdiction

- (a) This contract shall be governed by French law excluding the Convention of International Sale of Goods (CISG).
- (b) The Incoterms applicable at the time at which the order is accepted by us are decisive for the interpretation of the trade terms.
- (c) Place of jurisdiction is the place of our office which has issued the order confirmation. We shall also have the right to sue the customer at the place of its registered office.

12. Saving Clause/Miscellaneous

- (a) If any provision of the contract is held to be invalid or unenforceable, the validity of the other provisions of the contract shall not be affected.
- (b) If we waive our right to enforce any of our claims this does not mean that we waive further claims arising from this contract.
- (c) In case of any interpretation discrepancies between the French and the English version the French version shall prevail.
- (d) We are entitled to save and use data within the range of the business relations with the customer in accordance with the Act 78-17 of January 6, 1978 on Data Processing, Files and Individual Liberties.