

Sojitz Europe plc – General Terms and Conditions of Sale (Istanbul Branch)

These terms and conditions form part of every contract for the sale of goods specified on the face hereof ("Goods") from Seller to Buyer except if expressly agreed otherwise with Seller. All other terms and conditions pursuant to which Buyer makes an order or purports to make an order are expressly excluded and shall not apply.

Each Contract shall consist of these terms and conditions and the quote or acknowledgment of Buyer's order stipulated on the face hereof. Such quote or acknowledgment shall become a binding and enforceable contract ("Contract") against Buyer when (i) signed or accepted by Buyer or its agent, (ii) signed and delivered by Seller to Buyer unless Buyer gives Seller written notice of objection to its contents within ten (10) days after thereof, (iii) any instructions have been given to Seller as to delivery or specifications of the Goods, (iv) the Letter of Credit has been opened or (v) Buyer has paid for or accepted delivery of any part of the Goods, whichever is earlier.

1. QUANTITY The quantity of Goods stipulated on the face hereof shall be subject to a variation of plus or minus ten percent (10%) at Seller's option.

2. PAYMENT Any and all payments from Buyer to Seller shall be deemed to be duly made when Seller has actually received such payments in the currency stipulated on the face hereof. Buyer shall not withhold, make deduction from or set-off against payments owed to it by Seller for any reason.

(1) In case of L/C payment terms, promptly after the date of this Contract, Buyer shall establish in favour of Seller an irrevocable, confirmed, transferable and without recourse Letter of Credit, complying with full terms and conditions stipulated herein and available for beneficiary's draft drawn at sight. Said Letter of Credit shall be opened by an internationally reputable first class bank satisfactory to Seller, without restricting the negotiating bank, negotiable for up to 110% of the full contract amount and shall be valid for at least fifteen (15) days after the last day of the shipping month stipulated on the face hereof and also shall provide for availability against partial shipment and transshipment. Said Letter of Credit shall refer to this Contract number and shall authorize the reimbursement to Seller for such sums, if any, as may be advanced by Seller for consular invoice charges, inspection fees and other expenses incurred by Seller on Buyer's account. Should Buyer fail to establish such Letter of Credit within the time and in the form specified in this Contract, Seller may exercise any of its rights stipulated in clause 14 hereof.

(2) In case of payment terms other than L/C, such as D/P or D/A, if Seller has reason to suspect that the payment will not be duly made, upon Seller's request, Buyer shall submit certain and valuable security, covering the full payment hereunder, and which is satisfactory to Seller in such form and substance as Seller may designate. Seller shall have the right to stop or suspend the shipment, unless and until the said security is received by Seller, without prejudice to any of its rights stipulated in clause 14 or any other rights under the general law. Upon Seller's request, Buyer shall promptly submit to Seller the latest audited financial reports of Buyer and other reports as Seller may request. In the event Buyer fails to make any payment under this Contract, Buyer shall pay overdue interest to Seller on any overdue amount from the due date until the date of Seller's actual receipt of full payment at the statutory rate of the rediscount interest as determined by the Turkish Central Bank, unless otherwise agreed. The parties acknowledge that this clause provides a substantial contractual remedy for the late payment of sums due under this Contract.

3. MAKE-UP, PACKING, MARKING, ETC. Buyer shall furnish Seller with necessary instructions for make-up, description of origin, packing, and/or other arrangement, if any, in time for reparation or shipment of the Goods, otherwise Seller's discretion shall be accepted by Buyer.

4. BANKING CHARGES (1) In case of L/C payment terms, all banking charges such as acceptance commission, payment commission and/or confirming commission, if any, shall be borne by Buyer.

(2) In case of payment terms other than L/C, such as D/P or D/A, all banking charges such as collecting commission, acceptance commission and/or stamp fee shall be borne by Buyer.

5. INCREASED COST All additional, new and/or increased customs, duties, taxes, fees, charges, freight, freight surcharges, insurance premiums, import and export surcharges and/or other extra expenses which become payable relating to the performance of this Contract after the date of this Contract, shall be borne by Buyer, even if the Goods are sold on any terms such as "Duty Paid" terms.

6. SHIPMENT Where Seller is required to arrange the shipment, shipment of the Goods within the time stipulated on the face hereof shall be subject to shipping space being available. Where Buyer is required to arrange the shipment, Buyer shall provide necessary shipping space and give shipping instructions in a timely manner, otherwise, upon giving notice Seller may make such shipping arrangements including prepayment of insurance and/or freight at Buyer's cost and risk without prejudice to any of its rights stipulated in clause 14. Transshipments and partial shipments shall be allowed at Seller's option. In case of partial shipments, each lot shall be regarded as a separate and independent contract. The date of the Bill of Lading or of similar documents of title shall be accepted as conclusive of the date of shipment.

7. TITLE AND RISK OF LOSS Upon delivery, all risk of loss shall pass to Buyer, and title to the Goods shall pass to Buyer only upon (i) receipt by Seller of the full payment for such Goods, and (ii) all other sums which are due or which become due to the Seller from Buyer on any account. Until the ownership of the Goods passes to Buyer, Buyer shall: (a) hold the Goods on a fiduciary basis as Seller's bailee; (b) store the Goods (at no cost to Seller) separately from all other goods of Buyer or any third party in such a way that they are readily identifiable as Seller's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risk to the reasonable satisfaction of Seller. Buyer may sell the Goods in the ordinary course of its business before ownership has passed provided that any such sale shall be a sale of Seller's property on Buyer's own behalf and Buyer will deal as principal when making such a sale. Buyer's right to possession of the Goods shall immediately terminate if: Buyer suffers or is the subject of an Insolvency Event; or Buyer encumbers or in any way charges any of the Goods. Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Seller. Buyer grants Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where Buyer's right to possession has terminated, to recover them.

8. EXPORT CONTROL If the Goods and/or technology contained therein are re-exported or resold to the end-user(s), Buyer shall notify, prior to the shipment by Seller, to Seller the details of final destination and end-user(s) in writing. Buyer shall at all times conduct its operations and the re-export and resale of the Goods and technology contained therein in strict compliance with all applicable existing and future laws, rules and regulations. Buyer shall be responsible for obtaining all approvals, permits or licenses as may be required in connection with the re-export and resale of the Goods and technology contained therein.

9. INSURANCE If under this Contract Seller is required to provide insurance, such insurance shall be provided for an amount equivalent to one hundred and ten percent (110%) of invoice amount, covering marine insurance of "Free from Particular Average (F.P.A.)" and "War and S.R.C.C. Risks", unless otherwise agreed. Any additional insurance requested by Buyer shall be at Buyer's cost and shall be added to the invoice amount for which the Letter of Credit and/or terms of payment shall provide accordingly. If Buyer shall provide marine insurance, Buyer shall provide open cover or provisional insurance before the time of shipment and the Letter of Credit shall clearly exempt Seller from providing insurance certificates. If Buyer shall provide marine insurance under D/P or D/A payment terms, Buyer shall inform Seller of open policy number and the name of insurance companies before the time of shipment.

10. INTELLECTUAL PROPERTY Buyer shall ensure that any tradenames or marks that Seller uses on or in connection with the Goods are not supplemented by any mark of Buyer, interfered with or obscured, without Seller written consent. Nothing herein contained may be construed as passing the ownership or giving the right of use of any such intellectual property rights and such ownership and right shall be expressly reserved to the true and lawful owner(s) thereof.

11. WARRANTY TO THE FULLEST EXTENT PERMITTED BY LAW ALL WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE HEREBY EXCLUDED. For the avoidance of doubt, nothing in this contract shall exclude or limit liability for death or personal injury caused by seller's negligence, or for defective products under the relevant provisions of the Law on Protection of Consumer numbered 6502 and the relevant Turkish consumer protection legislation or for any liability which arises under any safety regulation made under the relevant provision of the Turkish consumer protection legislation and which such regulation does not allow to be excluded, or for fraud or fraudulent misrepresentation. If any model or sample of the Goods was shown to Buyer, such model or sample was shown to illustrate the general type and quality of the Goods and is not necessarily a representation that the Goods will conform to the model or sample. Except as detailed above, Seller shall not be liable for normal manufacturing defects or for customary variations from specifications or for any damage or deterioration in quality or loss in weight during transit or due to natural causes.

12. CLAIMS Any claims made by the Buyer against Seller of any kind or nature, except for latent defects, are barred and waived unless made in writing delivered to Seller within thirty (30) days after discharge of the Goods at the destination specified on the face hereof. Claims for latent defects are barred and waived unless made in writing delivered to Seller within ninety (90) days after such discharge of the Goods. Unless any such claims, accompanied by proof certified by an authorized surveyor, arrives at Seller's office during such abovementioned period, Buyer shall be deemed to have waived any such claim. In no event may Buyer assert a claim for any reason whatsoever after the Goods are used, sold, cut, processed or otherwise altered, or if Buyer is in default of any of the terms for payment stipulated herein. In the event any claim shall be made pursuant to this clause and Seller shall accept such claim, Seller shall have the option, in full settlement of such claim, to repair the defective Goods, replace with conforming Goods or repay the purchase price. Subject to clause 11, in no event shall Seller be liable for prospective profits, or indirect, incidental, or consequential damages for any breach of warranty. No action shall be taken by Buyer against Seller for any recovery hereunder after one (1) year from the shipment of the Goods.

13. LIMITATION OF LIABILITY Subject to clause 11, Seller's total liability on any or all claims from Buyer shall in no event exceed the price of the Goods with respect to which such claim or claims are made.

14. CANCELLATION Notwithstanding any of the provisions of this or any other contract between Seller and Buyer, in the event Buyer fails to obtain any import license or the like or to make any payment for any or all the Goods when due and payable or to perform any of its obligations under this or any other contract with Seller, or in the event of the change of control, death or Insolvency Event of Buyer, (I) Seller shall have the right (i) to cancel forthwith any or all of this and/or any other contract with Buyer by giving notice of cancellation to Buyer, (ii) to stop and/or suspend the performance of any or all of its obligations under this and/or any other contracts with Buyer without giving any notice, (iii) to stop the Goods in transit and/or (iv) to dispose of or hold any or all of the Goods on Buyer's own account and risk, and (II) any and all sums payable by Buyer to Seller, together with the interest thereon and any other indebtedness owing to Seller, under this and any other contract with Buyer, shall at Seller's discretion immediately become due and payable. In any such cases, Buyer shall be liable to Seller for any loss and damage, including consequential and incidental damage, caused thereby.

15. SET-OFF Seller may at any time set-off any debts payable to Buyer with credits receivable from Buyer whether under this Contract or otherwise.

16. FORCE MAJEURE Seller shall not be liable for any delay in shipment or delivery, non-delivery, or destruction or deterioration of any or all of the Goods, or for any default in the performance of this Contract if and to the extent caused directly or indirectly by acts of God such as flood, tidal wave, lightning, typhoon, storm, earthquake, plague or other epidemics; or by the public enemy such as war, warlike conditions, insurrection, or revolution; or by any occurrence whatsoever not reasonably within Seller's control or otherwise unavoidable, including but not limited to casualties such as fire, explosion, accidents, wreck, blockades, civil commotion, strikes, lockouts or other labour disputes, riots, boycotting of the Goods, bankruptcy or Insolvency Event of any of the manufacturers or suppliers used by Seller for the Goods, shortage or control of energy supply or raw materials, unavailability of transport facilities or loading or discharging facilities, port congestion, and the restriction by laws, regulations, orders or administrative guidance of governmental authorities such as quarantine, embargoes, mobilization, requisition, prohibition of export refusal of issuing export licenses or any other statutory, administrative or governmental restriction, affecting Seller, its agents, any shipping agent, any carrier, any supplier of the Goods to Seller, any manufacturer of the Goods or any supplier to such manufacturer of the materials for the Goods. IN ANY SUCH EVENT, UNLESS BOTH PARTIES OTHERWISE AGREE, SELLER SHALL HAVE THE RIGHT TO CANCEL FORTHWITH ANY OR ALL OF THIS CONTRACT BY GIVING NOTICE OF CANCELLATION TO BUYER. BUYER SHALL ACCEPT ANY DELAY IN SHIPMENT OR DELIVERY OF ANY OR ALL OF THE GOODS, AND/OR SHALL ACCEPT THE SAID CANCELLATION. IN ANY SUCH CASE, SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED THEREBY.

17. GOVERNING LAW AND TRADE TERMS The formation, validity, construction and performance of this Contract shall be governed by and construed under the laws of the Republic of Turkey excluding the Convention of International Sale of Goods (CISG). The trade terms under this Contract stipulated on the face hereof shall be the Incoterms prevailing at the date of the shipment of the Goods hereunder.

18. JURISDICTION The courts of Istanbul, Turkey shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract, including any question regarding its existence, validity or termination. Nothing in this clause shall limit Seller's right to take proceedings against Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

19. ASSIGNMENT No assignment of this Contract or of any right or obligation accruing hereunder shall be made, in whole or in part, by Buyer without prior written consent of Seller.

20. NO WAIVER The waiver by Seller of any breach of any of Buyer's obligations under this Contract shall not be construed as a waiver of any other prior or subsequent breach and Seller's rights shall not be affected by any delay, failure, or omission to enforce any obligation of Buyer.

21. INVALID PROVISION The provision of this Contract shall be deemed to be severable, and any invalidity of the whole or any part of any provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

22. HEADING The headings used in this Contract are for the purpose of reference and convenience only, and shall not limit or effect the meaning of the provisions to which they refer.

23. ENTIRE AGREEMENT This Contract constitutes the entire agreement between Seller and Buyer. Each Party acknowledges that in entering into this Contract it has not relied on any statement, representation, assurance or warranty other than as expressly set out in this Contract.

24. DEFINITION "Insolvency Event" means where a party is deemed for the purposes of any law unable to pay its debts, or insolvent; or if any proceeding in relation to the credit standing of that party, such as bankruptcy, administration, reorganization, rehabilitation, or composition is instituted by or against that party, or any receiver or trustee is appointed for that party, or in case of transformation of that party, such as transfer of any or all of its business or important assets, winding-up, liquidation, dissolution or modification of partnership of that party.