

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

These terms and conditions form part of every contract for the purchase of goods by Sojitz Europe plc (Milano Branch) ("Buyer" or "Sojitz") from Seller except if expressly agreed otherwise with Buyer. No terms or conditions endorsed upon, delivered with or contained in Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract.

Each order for Goods by Buyer shall be deemed to be an offer by Buyer to buy Goods subject to these terms and conditions.

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

**2. COST** All customs, duties, taxes, fees, stamp duty and charges incurred on the Goods, containers and documents concerned herewith, including the certificates of origin, the consular invoices and any other documents required to import into the country of destination stipulated on the face hereof, in the country of shipment and/or origin and any other countries for transit shall be borne by Seller.

**3. 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 Seller. (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 fees shall be borne by Seller.

**4. 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 the Contract after the date of the Contract, shall be borne by Seller.

**5. SHIPMENT** The Goods shall be shipped strictly within the period stipulated on the face hereof. If under this Contract, Seller is required to arrange the shipping space, Seller shall ship the Goods by the usual route in a properly equipped seaworthy vessel owned and/or operated by a first class shipping company agreeable to Buyer; transshipment and partial shipment shall not be allowed; and notice of the particulars of the shipment shall be received by Buyer within three (3) days after the shipment thereof. If shipment or delivery is delayed in whole or in part by reason of acts of God, Buyer may extend the time of shipment or delivery for and to the extent prevented thereby, provided that, if shipment or delivery is so delayed more than twenty-one (21) days, Buyer shall have the right to cancel forthwith all or any part of this Contract at any time by giving notice of cancellation to Seller.

**6. INSURANCE** If under this Contract Seller is required to provide insurance, as stipulated on the face hereof such insurance shall be provided with first class insurance companies satisfactory to Buyer for an amount equivalent to one hundred and ten percent (110%) of invoice amount, covering marine insurance of "All Risks" and "War and S.R.C.C. Risks," unless otherwise agreed. Any additional insurance shall be provided by Seller in favour of Buyer at Seller's cost upon the specific request of Buyer. If Buyer is required to provide insurance, Seller shall timely and accurately advise Buyer of shipping particulars so as to enable Buyer to provide necessary insurance. Should Seller fail to perform as stipulated above, Seller shall, notwithstanding the terms of shipment to the contrary, bear all risks on the Goods until delivery at destination stipulated on the face hereof.

**7. INTELLECTUAL PROPERTY** Seller warrants that Goods do not infringe any third party's intellectual property rights, including patents, utility models, trademarks, tradenames, service marks, designs, copyright, and database rights, anywhere in the world. If any dispute or claim arises out of or in relation to any such intellectual property rights this Contract shall be terminated pursuant to article 1456 of the Civil Code, without prejudice to Seller's obligation to indemnify and hold Buyer harmless against any Losses arising therefrom.

**8. PRODUCT LIABILITY** Seller shall indemnify and hold Buyer harmless from any Losses arising from any product liability claims anywhere in the world. Notwithstanding clause 10 below, any claim under this clause may be made at any time after delivery of the Goods. If any dispute or claim arises out of or in connection with such product liability, this Contract shall be terminated pursuant to article 1456 of the Civil Code, without prejudice to Seller's responsibility for all loss and/or damage caused thereby or resulting therefrom.

**9. WARRANTY** In addition to any warranties set forth by the law, Seller warrants that any and all of the Goods shall be free from any defects whatsoever, well made, of satisfactory quality and fit for the particular purpose for which such Goods are sold and used. Seller further expressly warrants that any and all of the Goods shall strictly conform to the applicable specifications, instructions, drawings, data and samples. Any inspection of or payment for Goods by Buyer shall not constitute a waiver of Buyer's remedies for any breach by Seller of any warranty whether express or implied. Seller shall indemnify and hold Buyer harmless from any Losses arising from any alleged defect in the Goods or any other similar claim arising from the sale and/or use of the Goods. If Buyer should find any defect in the Goods and notify Seller of that fact, Seller shall immediately replace, repair and/or compensate for any defective Goods at Seller's own risk and expense upon the request of Buyer. Buyer shall not lose its right to claim for any loss and damage, including consequential and incidental damage and damage caused to any customer purchasing the Goods from Buyer, caused thereby in spite of such replacement, repair and/or compensation.

**10. CLAIM** Any or all claims for defects or unsuitability or lack of quality of the Goods shall be sent to Seller within ninety (90) days after Buyer became aware of such claim. Such claim shall be deemed to have been accepted by Seller unless Seller objects in writing within fifteen (15) days after being notified. Even after the expiration of the above mentioned ninety (90) day periods, Seller shall indemnify and hold Buyer harmless from any Losses suffered by Buyer's customer and/or any other third party due to any defect, unfitness or unsuitability of the Goods sold hereunder.

**11. EXPRESS RESOLUTIVE CLAUSE – CONDITIONS SUBSEQUENT** The Contract will be terminated, pursuant to article 1456 of the Civil Code, Buyer's failure to obtain any export license or the like.

The Contract will be terminated pursuant to article 1353 of the Civil Code in the event any of the following circumstances occurs: (i) arising of any dispute or claim related to alleged infringement of any third parties' intellectual property rights with reference to the Goods; (ii) arising of any dispute or claim related to alleged product liability with reference to the Goods; (iii) occurrence of an Insolvency Event of Seller. Such conditions subsequent shall be expressly considered in the interest of Seller, who may waive any of them within thirty (30) days from the occurrence of the respective event, by written notice.

Should this Contract be cancelled, Seller shall immediately refund all money already paid by Buyer together with interest thereon at the rate applied by the European Central Bank from time to time, as published in the Official Gazette of the Republic of Italy, increased by seven (7) percentage points. Interest shall automatically accrue starting from the day following the payment becomes due. In any such case, Seller shall be liable to Buyer for any loss and damage, including consequential and incidental damage, caused thereby.

**12. SET-OFF** Buyer may at any time set-off any debts payable to Seller with credits receivable from Seller.

**13. SUSPENSION** Buyer may cancel or suspend the performance of all or any part of this Contract in the event of closing of the foreign exchange, prohibition of import, refusal of issue of import licenses, or restriction by laws, regulations, ordinances, rules, governmental orders or directions, or administrative guidance, without any liability whatsoever.

**14. FORCE MAJEURE** Buyer shall not be responsible for or liable for any failure or delay to perform any part of this Contract if and to the extent caused (directly or indirectly) by the occurrence of events beyond Buyer's control, including acts of God, war, riots, marine strike or other incidents of force majeure. Should such condition continue for more than ninety (90) days, Buyer shall have the right to cancel forthwith all or any part of this Contract at any time by giving notice of cancellation to Seller, without any liability for any loss or damage caused thereby.

**15. GOVERNING LAW AND TRADE TERMS** The formation, validity, construction and performance of this Contract shall be governed by and construed under the laws of Italy. The trade terms under this Contract as stipulated on the face hereof, unless otherwise the context requires, shall be governed by and interpreted under the provisions of the International Rules for the Interpretation of Trade Terms (Incoterms) and its Supplements, prevailing at the date of the shipment of the Goods hereunder.

**16. PLACE OF JURISDICTION** Any dispute arising out of or in connection with this Contract, including any question

regarding its existence, validity, interpretation or termination, shall be subject to the exclusive jurisdiction of the Court of Milan.

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

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

**19. 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.

**20. 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 provisions to which they refer.

**21. DATA PROTECTION** For the fulfilment of the obligations provided for in Legislative Decree No. 196 of 30 June 2003, "Personal Data Protection Code", according to article 13 Sojitz, being in charge of data handling, hereby communicates that:

- the personal data of the Seller shall be collected, recorded, organised, stored and used with the aim of fulfilling the execution of the Contract, as well as for management, statistical and commercial purposes, for safeguarding and managing the credit;
- the assignment of the aforementioned data is optional but, in any case, shall be necessary for the agreement and the maintaining of the supply relations;
- any refusal to the assignment of this data would make it impossible to establish or maintain relations of a commercial nature;
- in view of Sojitz belonging to the Sojitz Group, the data may be forwarded and/or transferred also abroad in case the above is needed for the purposes of the treatment;
- the aforesaid data may be communicated, or the possibility of access may be granted to third-party Companies charged with carrying out administrative, financial, fiscal and legal activities, also to any Consultancy Companies Sojitz may avail itself of, Public Bodies, Associations and Banking Institutions having the safeguarding of the credit, as well as those persons responsible for the audit of the balance sheet, and to Public Authorities or Administrations for the discharging of the laws. Moreover, personal data may also be communicated to persons in charge, appointed by Sojitz, proposed for the execution of the Contract;
- the person in charge of data handling, ex article 29, Legislative Decree 196/2003, shall be the person of the pro-tempore office General Manager;
- data handling shall also be carried out by computerised means and, therefore, with the adoption of all precautionary measures for the security and privacy of the data provided for by articles 34 and 35 of Legislative Decree 196/2003;
- the data shall be preserved at Sojitz's registered office, for the period of time provided for by the applicable laws;

Finally, Sojitz would like to point out that article 7 of Legislative Decree 196/2003 confers to the interested party the exercise of specific rights, among which those of obtaining the confirmation of the existence, or not, of their personal data, even if not yet registered, the communication, in intelligible form, of the same data, the origin thereof, the purpose and modality of the data handling, as well as the logic applied in the case of handling carried out using computerised means. Furthermore, the interested party may obtain the updated ratification or, if they are concerned, the integration of personal data, including the cancellation, transformation, in anonymous form, or the block of data handled in violation of laws. The interested party also has the right to oppose, in whole or in part, for legitimate reasons, the handling of their personal data even if it is pertinent to the purpose of collection.

**22. ENTIRE AGREEMENT** This Contract constitutes the entire agreement between Buyer and Seller. Each Party acknowledges that in entering into this Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.

### **23. DEFINITIONS**

In these terms and conditions:

"Goods" means the goods specified on the face hereof;

"Insolvency Event" means where Seller 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 the Seller, such as bankruptcy, administration, reorganization, rehabilitation, or composition is instituted by or against the Seller, or any receiver or trustee is appointed for the Seller, or in case of transformation of the Seller, such as transfer of any or all of its business or important assets, winding-up, liquidation, dissolution or modification of partnership of the Seller.

"Losses" all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses).

FORACCEPTANCE

Stamp and Signature

Date

According to article 1341 of the Civil Code, we hereby declare to specifically approve the following clauses of the aforesaid General Terms and Conditions of Purchase:

- Clause 5 (Shipment);
- Clause 8 (Product Liability);
- Clause 9 (Warranty);
- Clause 10 (Claims);
- Clause 11 (Express Resolutive Clause – Conditions Subsequent);
- Clause 13 (Suspension);
- Clause 14 (Force Majeure);
- Clause 16 (Place of Jurisdiction);
- Clause 17 (Assignment).

FORACCEPTANCE

Stamp and Signature

Date

**Sojitz Europe plc Milano-Branch Piazza della Repubblica, 3220124 Milano, Italy**