

# Conditions of Sale of Sojitz Europe plc Madrid Branch

## 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) 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.
- (d) Any amendments or modifications to this contract as well as any collateral arrangements are only valid if agreed in writing.
- (e) These terms and conditions fall under the scope of the Spanish Act on Contracts subject to General Conditions ("*Ley 7/1998, de 13 de abril, sobre Condiciones Generales de la Contratación*") and therefore the signature of the Customer at the bottom of this document evidences (i) that these terms and conditions have been fully disclosed to the Customer, (ii) that the Customer has been informed of the contents of these terms and conditions and (iii) that the Customer has accepted them and adhered to them entirely, so that these terms and conditions form a binding part of the agreement entered into by and between the Customer and ourselves.

## 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, we are entitled to increase the purchase price accordingly regardless whether the goods are sold on the basis of DDU (delivered duties unpaid) or DDP (delivered duties paid). This also applies if additional costs arise due to war, riots, strike or comparable reasons or force majeure, respectively.

## 3. Payment

- (a) Payment has to be effected in the currency stipulated in the contract.
- (b) If not contractually agreed otherwise, payment of the purchase price is due upon placing the goods at the disposition of the Customer and the respective notification of the Customer. In case the notification is not made, the purchase price is due upon the delivery of the goods according to No. 4b) of these Terms and Conditions.
- (c) In cases of default of payment, the statutory law (sec. 341 of the Spanish Commercial Code) applies, unless agreed otherwise. Furthermore, the provisions of the Spanish Bad Debt Act ("*Ley 3/2004, dated 29 December, por la que se establecen medidas de lucha contra la morosidad en las operaciones comerciales*") shall apply.
- (d) The Customer is not entitled to any set-off, unless the counterclaims are undisputed or have been legally fixed as valid and binding. The Customer has no right to retain the purchase price.
- (e) The payment is deemed as not having been 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.
- (f) 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 it can be evidenced that the timely delivery to us could not be effected due to our own fault.
- (b) 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 is in default of acceptance pursuant to sec. 332 of the Spanish Commercial Code.
- (c) If the delivery of the goods or parts of them 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. 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.
- (d) The fulfillment 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. In case of a Free on Board (FOB) or "ex work" contract we reserve the right – at our choice and upon our written notice - to make appropriate shipping arrangements at the Customer's expense and risk or to dispose of the goods if the Customer does not supply sufficient shipping space in time.
- (e) We are entitled to make partial delivery and/or trans-shipment to a reasonable extent. Each partial delivery shall be separately invoiced and separately paid for unless agreed otherwise.
- (f) In case we arrange the transportation, transportation within the time stipulated in the contract is subject to the availability of sufficient freight capacity space.
- (g) 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.
- (h) If not agreed otherwise 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.
- (i) If delivery is delayed or goods cannot be collected by the Customer for reasons we are not responsible for, the Customer shall bear the storage costs and the risk of transport to another storage facility if such transport is necessary. Otherwise, we are liable for delays in delivery pursuant to No. 7 of these conditions.
- (j) As soon as delivery according to No. 4b) has been effected, the risk in the goods is passed to the Customer.

## 5. Warranties

- (a) Pursuant to article 336 *in fine* of the Spanish Commercial Code, the Customer is under the obligation to examine and inspect the delivered goods upon delivery and report any defects of the goods to us without undue delay, at the latest within four days after having received the goods or, in case of hidden defects, thirty days after the receipt of the goods, pursuant to article 342 of the Spanish Commercial Code. 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) In case defects to the goods arise during transportation via an independent freight manager, the Customer has to immediately notify the freight manager according to the transportation conditions which apply to the transportation in this case.
- (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 condition of goods can exclusively be taken from the written description in the contract.
- (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 the 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) Upon a justified notice of defects, we shall have the right – upon our choice - to three re-delivery attempts or replacement of the goods or parts thereof which are proven to be useless or the serviceability of which becomes seriously impaired due to circumstances occurring before the date of passing of risk. Upon our request, the property of replaced parts has to be transferred back to us. If all re-delivery attempts fail or are unreasonable for the Customer, it shall have the right to either claim a reduction in the purchase price or repudiate the contract. Claims for damages pursuant to No. 7 remain unaffected.
- (f) Claims due to defects of the goods become time-barred one year after delivery according to No. 4 b), provided that the relevant notice has been sent to us within the four-day and thirty-day deadlines set forth in No. 5 a) for general defects and hidden defects, respectively. This time-bar 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 the Product Liability Act. In these cases the statutory provisions shall apply.
- (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 be final and binding.
- (h) Pursuant to article 345 of the Spanish Commercial Code, we assume no liability vis-à-vis the Customer if the latter is dispossessed of the goods as a result of a legal action by a third party who proves to hold a preferential and / or prior legal title to the goods, unless it can be evidenced that, before the sale, we were aware of the existence of the third party's preferential and / or prior title to the goods.

## 6. Reservation of Title.

- (a) Property in the goods shall not pass to the Customer until the Customer has unconditionally and fully paid to us all outstanding amounts resulting from all existing or future claims of the business relation, including all balances due to related companies. The retention of title refers to the acknowledged balance.

- (b) Until the Customer becomes the owner of the goods, the Customer shall store them safely and insured on its premises on our behalf, free of charge and separately from its own goods or those of any other person and in a manner which makes them readily identifiable as our goods (alternatively: and marked as our goods with visible name plates stating "property of/ Propiedad de Sojitz Europe plc."). We shall be entitled to inspect the goods at all reasonable times without prior notice.
- (c) In case the goods which are subject to the reservation of title are processed, we shall be awarded the preferential rights acknowledged to sellers or repairing contractors ("*acreedores refaccionarios*") by paragraph 1<sup>o</sup> of article 1.922 of the Spanish Civil Code..
- (d) If the goods under reservation of title are irrevocably processed together with other materials which are not owned by us, we shall acquire joint property in the new product in proportion to the invoice value of the goods sold under reservation of title in relation to the other materials. If as a consequence of combination or blending or mixture of goods, other goods are considered to be the main product, joint property in the new product will be transferred to us to the extent of the invoice value of the goods sold under reservation of title. The arising ownership rights are deemed to constitute goods with retained title in the meaning of this paragraph.
- (e) The Customer may only sell goods with retained title in the course of its ordinary business and under the usual conditions as long as it is not in default of payment and provided that the claims resulting from the sale are assigned to us in accordance with the subsequent provisions. The Customer is not entitled to otherwise dispose of the goods. It must in particular not use them as pledge or other security.
- (f) The Customer hereby assigns all claims resulting from the resale of goods with retained title including all accessory rights to us in advance. The claims serve to protect our rights in the same manner as the goods to which the title has been retained. We hereby accept the assignment.
- (g) Where goods with retained titles are sold together with other goods not purchased from us, the assignment of claim resulting from the sale shall be limited to the amount of the invoice value of such sold goods to which we had retained the title. If the Customer uses goods with retained title for manufacture or assembly, the foregoing sentence applies correspondingly to the claim arising therefrom.
- (h) The Customer is entitled to collect the claims which it has assigned to us unless we revoke his authorisation. We will only revoke the authorisation if there is a legitimate interest, in particular if the Customer is in default with payment or insolvency proceedings have been initiated. With such a legitimate interest we are also entitled to disclose the assignment to the Customer's clients at the Customer's expense and collect the claim ourselves. Upon our request, the Customer is obliged to inform its customers immediately about the assignment of claims under this contract and to submit all information and documents to us which are required for collecting the claim, in particular the amount of the claim and the names of the assigned debtors.
- (i) If the value of the securities which have been transferred to us exceeds our entire claims against the Customer by more than 15%, we are always prepared, upon the request of the Customer, to release security rights subject to our choice to this extent to the Customer.
- (j) The Customer shall inform us immediately in writing about all claims enforced by third parties in respect of goods with retained title or claims assigned to us.
- (k) If the goods are delivered to another country than Spain, the Customer is obliged to ensure by taking all necessary and appropriate steps and measures that a protection equivalent to the foregoing provision regarding the retention of title will be provided.
- (l) Notwithstanding any other of the provisions in these General Conditions, in the event of material breach of the contract by the Customer, the retention of title on the goods sold shall allow us to seek the recovery of said goods from the Customer's warehouse, along with the compensation of the damages and loss of profit resulting from the Customer's breach of contract.
- (m) Pursuant to article 17.2 of the Spanish Retail Trading Act ("*Ley 7/1996, dated 15 January, de Ordenación del Comercio Minorista*"), each of our invoices to the Customer shall include a clause stating that the goods sold are subject to reservation of title in our favour, subject to the provisions of these General Conditions.

## 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) For a culpable fundamental breach of contract we are liable according to the statutory provisions.
- (c) If we are in delay with any of our obligations, our only liability vis-à-vis the Customer shall be the one set forth by article 341 of the Spanish Commercial Code.
- (d) Our further liability for damages 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 ordinary 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 products 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 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) Pursuant to article 1.467 of the Spanish Civil Code, we shall be released of our obligation to deliver the goods if, after the confirmation of the order, the Customer is found to be insolvent, so that we are at risk of not receiving the price of sale. This provision will not apply if the Customer sets up a sufficient guarantee to secure the payment of the outstanding price.
- (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 Spanish 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) We are entitled to save and use data within the range of the business relations with the Customer in accordance with the federal data protection law.