

# GENERAL TERMS AND CONDITIONS OF SALE

These terms and conditions form part of every contract for the sale of goods from Sojitz Europe plc (Milano Branch) ("Seller" or "Sojitz") 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.

**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—LOSS OF BENEFIT OF TIME LIMIT** 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) L/C payment terms: 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 will have title to terminate this Contract pursuant to article 1456 of the Civil Code and in any case to suspend the shipment of the Products and/or the performance of any obligation of the Seller under this Contract. (2) Other payment terms: In case of payment terms other than L/C, such as DP 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. Payment shall not be delayed, even in case of dispute. 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 a rate equal to 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 (article 5 of the Legislative Decree 231/2002). Interest shall automatically accrue starting from the day following the date the payment becomes due (article 4 of the Legislative Decree 231/2002).

Any and all sums payable by Buyer to Seller, under this and any other contract between Buyer and Seller, shall become immediately due and payable notwithstanding any term granted to Buyer for payment, upon occurrence of any of the following events: (i) Buyer's failure to make any payment when due and payable; (ii) Buyer's failure to obtain any import license or the like; (iii) change of control (in the meaning of article 2359 of the Civil Code) of the Buyer; (iv) any Insolvency Event.

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

**4. BANKING CHARGES** (1) L/C payment terms: 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) Other payment terms: In case of payment terms other than L/C, such as DP 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 coming into force, 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 receipt by Seller of the full payment for such Goods. 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's right to possession of the Goods shall immediately terminate if: (i) Buyer suffers or is the subject of an Insolvency Event; or (ii) Buyer encumbers or in any way changes 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 re-sold 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 trademarks 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 ANY LIABILITY WHICH ARISES UNDER ANY SAFETY REGULATION FOR THE CONSUMER'S PROTECTION 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 exclusively 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 are barred and waived unless made in writing and delivered to Seller within thirty (30) days after discharge of the Goods at the destination specified on the face hereof. 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, out, 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 occurred to the Buyer or to third parties in connection with the purchase or the use of the Products. No action shall be taken by Buyer against Seller for any recovery hereunder after one (1) year from the delivery 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. EXPRESS RESOLUTIVE CLAUSE—FAILURE OF PAYMENT—CONDITIONS SUBSEQUENT**

14.1 The Contract will be terminated pursuant to article 1456 of the Civil Code, in the event any of the following infringements are made by Buyer: (i) Buyer's failure to obtain any import license or the like; (ii) Buyer's failure to make any payment for any or all the Goods when due and payable; (iii) Buyer's failure to perform the obligations provided for by clause 7 regarding custody and maintenance of goods until the ownership passes to Buyer.

14.2 In the event Buyer fails to make any payment for any or all the Goods when due and payable, the Seller will have the faculty, at its discretion: (i) to claim the immediate performance of the payment obligation, subject to the provision of Article 2, last paragraph; or (ii) to avail itself of the express resolutive clause under Article 14.1 above.

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

14.3 The Contract will be terminated pursuant to article 1353 of the Civil Code in case of occurrence of an Insolvency Event of Buyer. Such a condition subsequent shall be expressly considered in the interest of Seller, who may waive it within thirty (30) days from the occurrence of the Event, by written notice.

**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 Japanese 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 Italy. The trade terms under this Contract stipulated on the face hereof, unless the context otherwise requires, shall be governed by and interpreted under the provision 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.

**18. 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.

**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. DATA PROTECTION** For the fulfillment 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 Buyer 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 updating, 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.

**24. 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, 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.

**25. DEFINITIONS** In these terms and conditions:

- "Goods" means the goods specified on the face hereof;
- "Losses" means 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);
- "Insolvency Event" means where Buyer or third 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 Buyer or third party, such as bankruptcy, administration, reorganization, rehabilitation, or composition is instituted by or against that Buyer or third party, or any receiver or trustee is appointed for that Buyer or third party, or in case of transformation of that Buyer or third party, such as transfer of any or all of its business or important assets, winding-up, liquidation, dissolution or modification of partnership of that Buyer or third party.

FOR ACCEPTANCE

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 Sale:

- Clause 2 (Payment—Loss of Benefit of Time Limit);
- Clause 7 (Title and Risk of Loss);
- Clause 11 (Warranty);
- Clause 12 (Claims);
- Clause 13 (Limitation of Liability);
- Clause 14 (Express Resolutive Clause—Failure of payment—Condition Subsequent);
- Clause 16 (Force Majeure);
- Clause 18 (Place of Jurisdiction)
- Clause 19 (Assignment).

FOR ACCEPTANCE

Stamp and Signature

Date