



Sûreté des Procédés Industriels

# **TERMS AND CONDITIONS OF SALE - GEORGIN France - 2015 VERSION**

All orders passed to the vendor imply the buyer's acceptance of these terms and conditions of sale and the waiving of its own purchase terms and conditions.

## **1. INTRODUCTION**

Prices and information given in catalogues, brochures and price lists are given for guidance only; the vendor reserves the right to make changes to the design, form, dimensions or materials of its devices, machines and machine parts whose images and descriptions feature in its promotional materials.

Supply covers precisely and solely the equipment specified on a quote and acceptance of an offer similarly implies adherence to these terms and conditions.

Even in the event of a quote or prior offer, the sales agreement is only considered binding upon express acceptance, by the vendor, of the buyer's order. Weights given in a quote or contract are for guidance only; they can in no event give rise to complaints or price reductions if equipment is sold at the fixed rate.

When materials are sold by weight or by length, prices are billed on the basis of the weight or length supplied. Having placed an order, the vendor shall, where relevant, supply installation or foundation drawings for each device, excluding any production drawings.

Quotations for foundation blocks are given as a guide only; the blocks must be set up by the buyer, under its liability, and taking into account variations inherent in local conditions.

For additional supplies, prices and new schedules are discussed specially between vendor and buyer. In no event shall the terms and conditions for additional supplies have any bearing on those of the main order.

## **2. INTELLECTUAL PROPERTY**

The vendor retains all of its intellectual property rights over its projects, studies and documentation of all kinds, and they may not be circulated or executed without its express permission. In the case of written communication, they shall be returned to the vendor on first request.

The technology and expertise, whether patented or not, inherent in the goods and services, as well as all industrial and intellectual property rights pertaining to goods and services, shall remain the exclusive property of the vendor. Only the non-exclusive, non-transferable right to use these products is granted to the buyer.

## **3. DELIVERY AND PRICE**

Delivery is deemed to be made to the vendor's factory or store premises. Prices given are exclusive of VAT for equipment in vendor's factory or store premises.

Delivery is carried out either by direct delivery to the customer, either by simple notice of readiness or through issue via the vendor's factory or stores to a delivery or transport company appointed by the customer, or where no such appointment has been made, as selected by the vendor.

The principle of delivery in the vendor's factories or stores shall not be subject to any exemptions due to instructions such as: free on rail, free alongside, free domicile or partial reimbursement of transport expenses either in whole or in part. Should despatch be delayed due to any cause whatsoever outside of the vendor's control, and where the latter consents to it, equipment shall be stored and handled, where required, at the expense and liability of the buyer, the vendor disclaiming all responsibility in this respect. These provisions in no way affect the obligation to pay for supply and in no way constitute a novation.

Delivery schedules run from the latest of the following dates: that of the confirmation of receipt of order; those on which the vendor receives the documentation, deposit or equipment which the buyer has undertaken to submit.

Delays shall not form the basis for a cancellation of the order. In the event of a delivery delay in relation to contractually-agreed deadlines: where a special agreement stipulates a penalty, this shall not, in any case, exceed 5% of the value of the delayed equipment in the workshop or store premises. Where no special agreement is in place, the following may be applied: for each whole week's delay with effect from the third week, a penalty of 0.5% with a maximum cumulative value of 5% of the cost of the delayed equipment in workshop or store premises.

Penalties shall only apply when the delay is the fault of the vendor. It shall not apply where the buyer has not informed the vendor in writing at the time of the order, and confirmed, at the scheduled delivery time, its intention to apply this penalty.

These penalties constitute contractual damages in full discharge, exclusive of any other form of compensation.

The vendor is, ipso jure, freed of all obligation with regard to delivery schedules where conditions of payment are not observed by the buyer or in the event of force majeure or events outside of the vendor's control, including: lock out, strike, epidemic, war, requisition, fire, flood, equipment problems, major parts failure during production, disruption or delay to transportation or any other cause leading to total redundancies or part-time working for the vendor or its suppliers.

The vendor shall keep the buyer informed of issues or events of this kind in a timely fashion. Where penalties are applied, payments for goods can be neither deferred nor amended.

## **4. PACKAGING**

The customer shall always be charged for undelivered packages non-returnable to the vendor. Where there are no specific instructions on this matter, packaging shall be prepared by the vendor who will act in the customer's best interests.

## **5. PAYMENT TERMS**

The contract stipulates conditions of payment.

Invoice payments should be settled within 30 days of the billing date. The invoice shall state the date on which payment must be made as well as the penalty rate payable, payable as of the day following the settlement date on the invoice.

Pursuant to Act No. 2001-420 of 15 May 2001, any delay in payment in relation to contract dates will automatically incur a late payment fee, calculated by applying to the amount outstanding a rate equal to the rate of interest applied by the European Central Bank's most recent refinancing operation with a minimum surcharge of at least seven percentage points, this penalty without detriment to the payment of the debt. Late payment penalties are payable without the requirement for a reminder.

According to the articles 441-6 et D. 441-5 of the French Commercial Code, any delay in payment rightfully results, in addition to the penalties for delay, an obligation for the debtor pay fixed compensation of 40€ for recovery costs.

Payment is deemed made on the date on which funds are made available by the customer, either to the beneficiary or its appointed agent.

In the event of a dispute or partial execution of the contract, payment is still due for the uncontested or partially executed part of the contract.

In the event that the buyer decides to sell, transfer, make a security demand, or make contribution of its business or material to another company or if one of the payments or draft acceptances are not carried out on a due date, the due amounts for all orders are payable immediately whatever the previously agreed conditions may be.

Repair and maintenance work, as well as additional supplies or supplies delivered during assembly are billed monthly and payable in cash, net without discount.

## **6. PROPERTY RESERVE**

The vendor shall retain ownership of goods sold until payment in full price in principal and associated costs. Failure to make any of the payments by their due date may lead to such claim of these goods.

The buyer assumes, however after the delivery, as per paragraph 2, section 3 above, the risk of loss or damage to these goods as well as responsibility for any damage it may cause.

## **7. TRANSPORT, CUSTOMS CLEARANCE, INSURANCE, etc.**

All transportation, insurance, customs, handling and transport of supplies to base of works, are

carried out at the buyer's liability, expense and risk. It is also the buyer's responsibility to inspect shipments on arrival and if necessary address any issues with the carriers, even where transport has been arranged free of charge. In the event of despatch by the vendor, despatch is done on a cash-on-delivery basis, at the lowest rates, except where expressly requested otherwise by the buyer, and in all events, entirely at its liability.

## **8. WARRANTIES**

### **8.1. Defects covered by the warranty**

The vendor undertakes to remedy any defects in operation resulting from a defect in design, materials or performance (including assembly if this process is entrusted to it) within the scope of the clauses below. The vendor shall not be held liable in the event of defects arising either from equipment supplied by the buyer or any designs which it has imposed.

Any warranty is also exempt in the event of: unforeseeable circumstances or force majeure; replacements or repairs deemed to be necessitated by reasonable wear and tear; damage or accident arising from negligence; faults in installation, supervision or maintenance; usage which is abnormal or which otherwise deviates from the instructions of the vendor of such equipment.

### **8.2. Warranty Duration and Validity date**

Except where there is a specific written agreement stating otherwise, this undertaking applies only to defects which become apparent within the one-year warranty period.

The warranty period is valid from the date of delivery as specified in paragraph 3 of §3, above.

Where despatch is delayed, the warranty period is extended by the delay period. However, where this delay relates to a cause outside of the vendor's control, the extension period may not exceed three months. Replacement parts or replaced parts are guaranteed for the remainder of the valid warranty period as stipulated in paragraph 1, section 8.2.

### **8.3. Obligations of the Buyer**

To claim the benefit of these provisions, the buyer must:

- communicate to the vendor prior to the order, the destination and conditions of use of the equipment;
- notify the vendor, promptly and in writing, of any alleged defects to the equipment and provide any proof of their existence;
- give the vendor every opportunity to investigate these defects and to put them right;
- to further refrain, without the express permission of the vendor, from either carrying out repairs itself or having a third party do so.

### **8.4. Conditions of Warranty**

It is incumbent upon the vendor, thus advised, to rectify the defect at its expense and with all due diligence; where necessary, the vendor reserves the right to alter equipment parts in order to meet its obligations. The work resulting from the warranty obligation is carried out in the vendor's workshops of the vendor after the buyer has returned to it the defective equipment or parts for repair or replacement.

At the written request of the buyer, the repair can be carried out on the installation site and shall be subject to a detailed proposal, covering all expenses other than the labour costs for said repairs.

The cost of transporting equipment or defective parts, as well as the return of repaired or replaced parts or equipment shall be borne by the buyer, and also, in the event of repair on the installation site, the costs of travel and accommodation for the vendor's agents.

When a device, whether under warranty or not, is returned as faulty when it is not, a standard minimum fee of 79 euros is chargeable to cover diagnostics.

Parts replaced free of charge shall be made available to the vendor and once again become its property.

## **9. LIABILITY**

### **9.1. Liability for Direct Damages**

It is the vendor's responsibility to repair direct damages caused to the buyer resulting from errors attributable to the vendor in its fulfilment of the contract. Consequently, the vendor is neither required to repair either the injurious consequences of mistakes by the buyer or third parties in fulfilling the contract, or those damages resulting from the use by the Vendor of technical documents, data, or any other means provided or whose use is required by the buyer and which contain errors undetected by the vendor.

### **9.2. Liability for Consequential or Intangible Damages.**

Under no circumstances shall the Supplier be required to provide compensation for intangible and consequential damage such as: operating losses, loss of profits, commercial damage, etc.

The vendor's liability is strictly limited to the obligations expressly stipulated in the contract. All penalties and compensation provided for therein shall constitute lump-sum compensation providing full discharge and shall be exclusive of any other sanction or compensation.

With the exception of physical injuries or gross negligence on the part of the vendor, its responsibility shall be limited, in all cases, to a sum which, unless otherwise specified in the agreement, shall not exceed the contractual value of the goods or services giving rise to the claim.

The buyer shall guarantee renunciation of proceedings by its insurers or third parties that have contractual relations with it against the vendor or its insurers, above and beyond the limits and exclusions stipulated above.

## **10. INDIVIDUAL CONTRACTS**

### **10.1. Bespoke Work**

Where bespoke work is carried out, the manufacturer exclusively guarantees work carried out in accordance with the dimensions, tolerances and specifications which it has been given.

When the manufacturer is responsible for supplying the item, it is only required, in the case of non-compliant or defective parts, inasmuch as their dimensions exceed the tolerances, to replace said items free of charge, without incurring any liability for compensation/damages.

Where equipment or parts are supplied by the customer, the manufacturer, in the event of non-compliant work which does not result from faults inherent in them and which applies to a number of parts exceeding the tolerances, shall be at the customer's discretion: either to make out a credit note to the value of the cost of manufacturing the rejected parts, or to re-do the work using the requisite parts or equipment supplied to it by the customer.

Unless expressly stipulated in the agreement, the manufacturer shall not vouch for any loss or damage to equipment or parts consigned to it unless it observes a serious breach of the usual rules of prudence and diligence governing such work.

### **10.2. Repairs**

Unless expressly agreed otherwise, repair work shall give rise to no other guarantee than that for the correct execution of said work.

### **10.3. Service Provision**

Prices given on the order or contract are exclusive of the provision of any services other than those due under warranty. Services such as, inter alia, support for set-up, training, inspection of correct installation, periodic checks, etc. should be specifically stipulated in the order or contract or in subsequent addenda and are subject to specific costing.

## **11. DISPUTES**

Should an amicable agreement not be reached, it is expressly agreed that any dispute relating to the contract shall fall exclusively under the authority of the court in the jurisdiction where the vendor has its domicile, even in the event of the introduction of third parties or several defendants.