



## **GENERAL SALES CONDITIONS APPLICABLE TO PROFESSIONALS**

This document is a translation of the **Conditions Générales de Vente** (General Sales Conditions) issued by the Syndicat des Industriels de la Mécatronique, edition of 2007.

It is meant for information only, and only the French document shall be deemed authentic.

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## **I - GENERAL PROVISIONS**

These professional sales conditions are a set of rules of customary practice designed to complete the common intention of the parties as regards all points where this common intention has not been clearly expressed and in particular, for suppliers of gears, mechanical transmission parts and devices, hereinafter referred to as the seller.

These professional sales conditions constitute the legal basis of sales agreements as regards all provisions which are not covered under a special written agreement.

These professional sales conditions prevail over any clause to the contrary expressed by the customer in any way whatsoever if the seller has not accepted such clause in writing. However, in the event a customer or a group of customers would like to engage in more serious partnership relations with its suppliers, these conditions shall serve as a basis, together with the customer general conditions, for the drafting of specific trade conditions witnessing the agreement made among them.

The prices and information printed in catalogues, brochures and rate sheets are given as an indication only. Unless otherwise specified, they are considered to be without VAT included (before VAT).

The seller reserves the right to make any changes to lay-out, formats, sizes or materials of its devices, machinery and machine parts, the plating registration numbers and descriptions of which are set forth in printed advertising documents.

The seller is not bound by commitments that may be made by its representatives or employees unless the seller itself gives confirmation thereof.

Procurement of supplies shall include exactly and solely the equipment specified in the quote. The normal period of validity of an offer is thirty days, except for special option periods specified in that offer.

Weights indicated on quotes are only approximate. In no event may they be used as grounds for a complaint or a price reduction when the equipment is sold for a fixed price.

In the event the value of the product offered is less than a minimum invoicing value - which the supplier has informed the customer of - such minimum value shall be considered the invoicing value.

Acceptance of offers by the buyer automatically entails the buyer's acceptance without reserve of these sales conditions.

Even if a quote or preliminary offer has been made, the sales agreement shall only be valid once the seller has sent an acknowledgement of receipt of the order. After the order, the seller is not required to supply the shop drawings, but only the overall dimensional drawings for equipment, for the equipment ordered. The dimensions of foundation units are given as an indication only. The buyer is responsible for establishing these units and must take into account changes required due to local conditions.

For additional supplies procured, the prices and new delivery dates will be specifically discussed between the seller and the customer.

The conditions applicable to new supplies procured may not be established to the detriment of the main order under any circumstances.

## **II - STUDIES AND PROJECTS**

### **II.1 - General provisions**

Projects, studies and documents of any type remitted or sent by the seller shall remain the sole property of the seller at all times and they may not be copied. They must be returned to the seller upon the seller's request. They are supplied free of charge if a subsequent order relating to them is placed. If not, the cost of studies and travel expenses must be reimbursed to the seller.

The seller retains full ownership of the intellectual property rights to its projects, studies and documents. They may not be disclosed, performed or copied without the seller's written authorization.

Operating features for units are under the responsibility of the prime contractor or the buyer. The seller agrees to supply the prime contractor or the buyer with the information required for the study.

## **II.2 - Critical speeds causing damage - Noise - Vibrations**

Torsion vibrations may potentially cause damage to the transmissions, as well as outages. It is the prime contractor's or buyer's responsibility to ensure that the unit operates without critical speeds, without vibrating or torsion and/or bending oscillations.

The seller will provide the rigidity and inertia rates for equipment it supplies upon request and at a charge.

Customers who act as assemblers shall be liable for compliance with the rules in force in the field of noise, hygiene and safety.

Devices shall be built based on the best technical knowledge on the date of the order so as to avoid discharge of noise and vibrations. The noise and vibration levels shall be provided at the request of the buyer and at a charge. These measurements shall be taken in the manufacturer's workshop according to standards and procedures accepted by way of common agreement and in writing between the seller and the customer.

## **II.3 - Lifetime - Yield**

Metal fatigue is a statistical fact and as such, no warranty is provided covering the expected lifetime, understood as the theoretical computed lifetime of gears, bearings and other parts that are procured.

In addition, any information given regarding yield must be understood as a result that has been computed and not as a result based on quantified performance validated by tests. This information is therefore only relative and given as an indication only.

Yield is approximate and computed on the theoretical basis of the equipment and its components and may in no way be used as a reference for penalties incurred for default to perform - refusal to accept delivery.

## **III - DELIVERY AND PRICES**

### **III.1 - General provisions - unless special conditions are stated in the seller's offer**

Regardless of the destination of the equipment and the sales conditions, delivery shall be deemed to have been performed at the seller's plants or warehouses.

Prices do not include VAT and are ex-works for unpackaged equipment at the sellers' plants or warehouses.

Prices must be established in Euros (EUR) or in the legal currency in use at the time of invoicing, not including VAT, ex-works. The customer agrees to comply with legal and tax obligations relating to the application of intra-community VAT (identification number, appointment of a tax representative), failing which, French VAT will be applied to the Euro-based (EUR) price on due date.

Delivery shall be performed either by way of direct remittal to customer, by way of ordinary notice that the order is available or by way of delivery of the equipment in the seller's factories or warehouses to a forwarder or carrier designated by the customer or failing which, chosen by the seller. The principle of the delivery taking place in the seller's factories or warehouses cannot be derogated from through statements such as: free on station, on platform, at domicile or reimbursement of all or part of shipping expenses, which must be deemed to constitute only price concessions without any transfer of liability.

Additional expenses required to disassemble and reassemble at the location where the equipment is used shall be debited as additional charges if the buyer wants these operations to be performed under the seller's responsibility. If the shipment is delayed for any reason whatsoever that is beyond the control of the seller, after giving fifteen days' prior notice remaining without effect, the seller may proceed with the packaging, shipment and storage of the equipment, including if necessary, disassembly and reassembly, at the cost and risk of the buyer. The seller declines all consequential liability.

These provisions in no way modify the obligation to pay for the supplies procured and do not constitute any novation of contract whatsoever.

Set dates for delivery are given as an indication only and shall be maintained to the extent possible. No liability shall be incurred in the event of late delivery. Delivery periods shall start running on the date of receipt of all information and documents to be supplied by the customer. In no event may delays justify a cancellation of the order.

In the event of a delay in availability compared to the delivery date stipulated at the time of order:

✧ if special agreements provide for penalties, such penalties may in no event exceed 5% of 90% of the value of the contractual price of the equipment not yet delivered,

✧ if no special agreement has been made, a penalty of 0.5% may be applied for each full week of delay as of the end of the third week of delay, with a maximum aggregate amount of 5% of the value of the contractual price.

✧ penalties only apply when the delay is attributable to the seller and if it causes a real prejudice witnessed by both parties.

No late delivery penalties may be applied for a period of sixty days after the equipment has been made available on the grounds of late delivery (shipment or forwarding or lack of various certificates allowing shipment to take place).

The seller shall automatically be released from all commitment to delivery dates:

1. in the event the buyer does not comply with payment conditions,
2. in the event the information to be provided by the buyer is not received within the required time,
3. in case of force majeure or an event such as: lockout, strike, epidemic, war, requisition, fire, flood, plant accident, scrapping of major parts during manufacturing, interruption or delay in transport services or any other cause generating a total or partial work stoppage for the seller or the seller's suppliers.

The seller shall keep the buyer informed within due time of the cases and events listed above.

Payments cannot be deferred on account of penalties that may apply.

The price upon delivery shall be increased or decreased via application of a price revision formula indicated on the quote or on the acknowledgement of receipt for the order. This revision formula applies to the contractual delivery date.

In the event an order is postponed or cancelled, the customer shall be invoiced:

- a) the expenses incurred, computed *pro rata* to the progress made on the order,
- b) plus 10% of the difference between the amount of the order and the above figure.

### **III.2 - Import license**

The buyer shall be personally responsible for complying with all rules governing the export of parts built into its product and may not claim a force majeure event has occurred if its customer is prohibited from importing these products or their components.

In any event, the invoice must be paid according to the terms and conditions defined in these sales conditions or in the special conditions.

### **IV - PACKAGING**

Packaging must be paid for by the customer in all cases and will not be recovered by the seller unless otherwise stipulated. If no special instructions are given on the subject, packaging shall be prepared by the seller who shall act in the customer's best interests.

### **V - PAYMENT CONDITIONS**

In accordance with French Law No. 2001-420 dated May 15, 2001 and European Directive 2000/35 EC dated June 29, 2000:

- payments shall be made unless expressly agreed otherwise, on the 30th day following the date delivery of the equipment is accepted, according to the definition of delivery within the meaning of "Article III - DELIVERY AND PRICES" above. Down payments must be made immediately however,
- all late payments shall give rise to the application of late payment interest at the latest refinancing rate of the European Central Bank, increased by seven percentage points.

Any clause or request for the purpose of setting or obtaining a payment date which exceeds the above 30-day period which is customary in the mechanical industry profession and except for an objective reason proven by the customer, may be deemed to be considered abusive within the meaning of Article L.442-6-7 of the French Commercial Code as amended by the May 15, 2001 Law referred to above.

Payments must be made to the seller's headquarters and except if otherwise agreed, must be made net and with no discounting.

Unless other provisions are agreed to between the parties, additional work and supplies shall be paid according to the same terms as the principal amount, with net payment and no discounting.

Payments must not be delayed on any pretext whatsoever. Payment shall not be considered complete until the funds on the seller's account are effectively available.

In all cases, trade notes must be returned at the latest fifteen days before due date. Refusal of acceptance shall automatically render the amount immediately due and payable at the cost and expense of the drawee.

Any delay or dispute between the parties or failure to return trade notes within the fifteen day period prior to due date shall entail:

- ◇ termination of the agreement,
- ◇ immediate maturity of all amounts owed on any account,
- ◇ the option to no longer accept any orders.

In the event of the sale, transfer, pledge or contribution of business or equipment to a company by the buyer, as well as in the event that one of the payments or the acceptance of one of the trade notes is not executed on the required date, the amounts due shall automatically become immediately due and payable without prior notice, regardless of the conditions previously agreed.

The seller reserves the right to transfer its receivables to a third party.

## **VI - SELLER'S LIEN**

**The seller shall retain ownership of the goods sold until effective payment of the full price in principal and incidental expenses. Default of payment on any due date whatsoever may entail a claim for the return of the seller's goods.**

Consequently, remittance of a promissory note, a bill of exchange or a check does not constitute effective payment. In the event the buyer fails to pay on any one of the due dates, the seller may require the return of the goods using any means, at the buyer's expense, without the seller waiving any of its rights.

As of delivery, the buyer shall bear all liability for damages that these goods may suffer or cause for any reason whatsoever.

In the event of non-payment and transfer of the goods by the buyer to a customer, the account of the beneficiary of the transfer may be attached for the amounts due.

As regards fungible goods with no supply date, those products still in the possession of the buyer shall be assumed to be the goods that remain unpaid.

## **VII –CONFIDENTIALITY AGREEMENT**

**The parties commit themselves on a reciprocal basis to a general obligation of confidentiality bearing on all verbal or written information of any kind whatsoever and on any media whatsoever (reports on discussions, plans, exchange of computerized data, business activities, facilities, projects, know how, products, etc.) exchanged in connection with the preparation and the performance of the agreement except for that information generally known to the public or that becomes known to the public through other means than due to the fault or action of the Customer.**

Consequently, the parties hereby agree to:

- keep totally secret all confidential information and in particular, to never disclose or communicate in any way whatsoever, directly or indirectly, all or part of such information to any person whatsoever, without the prior written consent of the other party;
- not to use all or part of the confidential information for purposes or for business other than the performance of the agreement;
- not to copy or imitate all or part of the confidential information.

The Customer agrees to take all measures required in order to ensure that this confidentiality obligation is complied without throughout the entire duration of this agreement and even after its expiration and further guarantees that all of its

employees will comply with this obligation. This obligation constitutes the obligation to achieve a certain result under French law (*obligation de résultat*).

### **VIII - TRANSPORT - CUSTOMS - INSURANCE, etc.**

All operations related to transport, insurance, customs, handling and hauling on-site are at the cost and expense and at the risk of the buyer. It is the buyer's responsibility to verify shipments upon arrival and if relevant, to take action against the shippers, even if the shipment was sent on a free basis.

In the event the seller ensures shipment, shipment shall be made on a freight due by the buyer basis, under the best conditions according to the seller's possibilities, unless an express request otherwise is made by the buyer. In all cases, the buyer shall remain fully liable in connection with shipment. In no event may the seller be held liable for the type of transport selected and the rates applied by the shipper.

### **IX - CONTROL**

The equipment is manufactured based on current technical knowledge. The materials used are controlled according to the methods in force in the mechanical industries. Controls specific to certain industries, such as the aeronautics or nuclear industries, etc., which are particularly costly, are not included in the prices stipulated on the quotes, offers and invoices and shall give rise to a special quote.

### **X - WARRANTIES**

#### **X.1 - Defects giving rise to implementation of the warranty**

The seller agrees to remedy any operating defect originating in a defect in design, materials or execution (including assembly if the seller is entrusted with this) up to the limits contained in the following provisions.

The seller's obligation does not apply if the defect originates either from the materials supplied by the buyer or a design imposed by the buyer.

Likewise, no warranty shall apply to those incidents related to unforeseeable or force majeure events or to replacement or repair required due to normal use, or to damage or accidents originating from negligence, surveillance or maintenance failure, faulty use of the equipment or use which is not in compliance with the seller's instructions.

#### **X.2 - Duration and starting point of the warranty**

This warranty obligation, unless special conditions are stipulated, applies only to those defects which become apparent throughout a period of six months (referred to as the warranty period) after delivery.

In all cases, if the equipment is used by several teams, this period will mandatorily be cut in half. The warranty period starts running on the day the buyer is notified in writing by the seller that the equipment is available to the buyer.

If shipment is deferred, the warranty period is extended for the duration of the delay. However, if such delay is due to a cause outside of the control of the seller, the extension may not exceed nine months.

Replacement parts or repaired parts delivered by the seller are covered by warranty under the same terms and conditions as the original equipment and for a new period equal to that defined in the paragraphs applicable to the duration of the warranty. This provision does not apply to other equipment parts, the warranty period for which shall be extended only for a duration equal to the period during which the equipment was immobilized.

#### **X.3 - Buyer's obligations**

In order to claim the benefit of these provisions, the buyer must inform the seller in writing no later than eight days of the date the buyer observes a defect in the equipment and must provide all proof that such defect is real. The buyer must facilitate the seller when proceeding with formal observation of such defect and the remedy thereof. In addition, the buyer must not, unless the seller has given its express agreement in writing, disassemble without the presence of a duly appointed representative of the seller or repair on its own or have repairs performed by a third party. Disassembly outside of compliance with this rule shall lead to termination of the warranty covering the equipment.

#### **X.4 - Terms and conditions applicable to implementation of the warranty**

It is then the responsibility of the seller, once duly notified, to remedy the defect at its expense and in a timely fashion. The seller reserves the right, if necessary, to modify the materials so as to fulfill its obligations. The works generated by the warranty obligation shall be performed, in principle, in the seller's workshops after the buyer has sent the defective equipment or parts to the seller for the purposes of repair or replacement.

However, in the event that due to the type of equipment, repair work must be done at the location where it is installed, the seller shall bear the costs of the corresponding workmanship for such repair work, excluding time spent on preliminary or accessibility works or on disassembly or reassembly operations made necessary due to the conditions of use or location of this equipment and for parts not included in the supplies in question.

The cost to ship the defective equipment or parts, as well as the cost to return the equipment or parts that are repaired or replaced shall be at the expense of the buyer. Likewise, in the event the repairs are performed at the location where the equipment is installed, travel and lodging expenses of the seller's agents shall be borne by the buyer. The parts replaced free of charge shall be returned to the seller and the seller shall resume ownership thereof.

When an expert appraisal or repair work on the equipment performed in the seller's workshops or at the location where the equipment is installed demonstrates that the seller's liability is not incurred and that the defect observed is not attributable to the seller and does not give rise to implementation of the warranty, the seller shall have the right to demand payment of compensation for the costs incurred, including the cost of repair personnel, shipment and replacement or repair of parts.

#### **X.5 - Damages and interest**

The seller's liability is strictly limited to the obligations under the contractual warranty as defined in the provisions of Article X herein. It is hereby expressly agreed between the parties that the seller shall not be liable for any other compensation of any type whatsoever.

#### **X.6 - Special case of guarantees related to industrial results**

When guarantees are given as to industrial or financial results, the consequences of such a guarantee shall be covered under a special agreement between the parties. In this case, if the results are not achieved and if penalties are not specified, such penalties may not exceed a sum total equal to a maximum of 5% of the value, not including VAT, in the workshop or warehouse, of the equipment or the part of the equipment in question.

#### **X.7 - Case of repair work**

Repair work, with the exception of good workmanship, is not covered by any warranty whatsoever unless by way of an express agreement between the parties.

### **XI – FORCE MAJEURE**

The seller shall be released from liability in the event of an unforeseeable or force majeure event. In any case, the seller's liability cannot be triggered, in particular for failure to comply with delivery dates, in the following cases: failure to comply with payment conditions, failure by the buyer to supply all information necessary within the required time to execute the order, in case of force majeure or an event such as: total or partial strike, lockout, interruption or disturbance of transport services, fire, natural disasters, scrapping of materials, supply problems and more generally, any cause outside of the seller's control.

### **XII - DISPUTES**

In the event a dispute arises over supplies procured, the Court having jurisdiction at the seller's domicile shall have sole competence, even in the event of action taken to implement guarantees or multiple defendants.

However, it is hereby recalled that in the case of a petition for an order to pay, action must be taken before the court having jurisdiction at the debtor's domicile, in accordance with Article 1406 of the French Civil Code.

The rules laid down in the above paragraphs are a matter of public policy. Any clause to the contrary shall be deemed not to exist. A judge petitioned to hear the case must decline jurisdiction of his own motion.