

MATAROX International AG

TERMS AND CONDITIONS OF SALE



1 DEFINITIONS

In these Terms and Conditions of Sale:

"Seller" refers to MATAROX International AG (registered in Switzerland, company number CHE-482.343.135, place of business: Geuensestrasse 5, 6210 Sursee, Switzerland).

"Buyer" refers to the company whose Order for the purchase of Goods is accepted by the Seller.

"Acknowledgement of Order" refers to the Seller's written acknowledgement of the Buyer's Order.

"Conditions" refers to the standard Terms and Conditions of Sale as set out in this document and (unless the context otherwise requires) also includes any other special terms and conditions as agreed in an Acknowledgement of Order.

"Contract" refers to the contract for the purchase and sale of the Goods between Buyer and Seller.

"Goods" refers to the product/s which the Seller agrees to supply in accordance with these Conditions.

"Incoterms" refers to the International Commercial Terms published by the International Chamber of Commerce, version 2010.

"Order" refers to a purchase order issued by the Buyer detailing the Goods it wishes to purchase and the price/s of those Goods.

"Quotation" refers to an offer made, in writing, by the Seller to the Buyer.

"Writing" includes any facsimile transmission, electronic mail, letter or similar means of communication.

2 SCOPE OF APPLICATION OF TERMS AND CONDITIONS OF SALE

Any Quotation, Order and Acknowledgement of Order (whether written or oral) is made based on the following Conditions. When placing any Order with the Seller, the Buyer agrees to accept these Conditions without qualification and in their entirety to the exclusion of any other document, agreement or any specific terms agreed in an Acknowledgement of Order.

The parties agree that they have not entered into the Contract in reliance upon any statement, representative, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) except as expressly set out in the Contract. Nothing in this clause, however, shall exclude any liability on the part of Buyer or Seller for fraudulent misrepresentation.

These Conditions shall prevail over any inconsistent terms and over any terms and conditions of purchase or delivery contained in or referred to in any Buyer's Order, document, correspondence or elsewhere established by trade, custom, practice or course of dealing. In case of conflict between the English version of these Conditions and versions in other languages, the English version shall prevail.

No variation to these Conditions shall be binding unless expressly agreed in Writing between authorised representatives of the Seller and the Buyer.

3 PROVISIONS OF THE SALE

The Seller is obligated to sell and the Buyer is obligated to purchase the Goods in accordance with any Order from the Buyer which is accepted in an Acknowledgement of Order by the Seller. On receipt of a Quotation from the Seller, the Buyer is entitled to issue an Order for the Goods.

No Contract will come into place and no Order shall be deemed to be accepted by the Seller unless confirmed in Writing by an authorised representative of the Seller in an Acknowledgement of Order.

Unless otherwise stated on the Quotation, any Quotation is valid for a period of 30 days from its date of issue provided that the Seller has not previously withdrawn it by means of written notice to the Buyer.

No Order which has been accepted in an Acknowledgement of Order by the Seller may be cancelled by the Buyer except with the explicit agreement of the Seller in Writing and on terms that the Buyer shall indemnify the Seller in full against all loss, including loss of profit, costs, including the costs of all labour and materials used, damages, charges and expenses incurred by the Seller as a result of cancellation. Any Order cancellation by the Buyer must be done in Writing.

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, Acknowledgement of Order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

4 ORDERS AND PRODUCT SPECIFICATIONS

The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to carry out the Contract in accordance with its terms.

Quantity, quality, description and name of the product or any other specification related to the Goods shall be those set out in the Buyer's Order provided that they are accepted by the Seller in the Acknowledgement of Order.

The Seller reserves the right to make any changes in the specification of the Goods upon giving reasonable notice to the Buyer, in order to conform to any applicable safety or other legal requirements, which do not materially affect their quality or performance.

If the Goods are to be manufactured or any process is to be applied by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in respect of any third party claim for infringement of any third party claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

5 DELIVERY

Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or another place in accordance with the Incoterms as agreed on and specified in the Acknowledgment of Order and/or in the invoice.

Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused and such delay shall not entitle the Buyer to repudiate or cancel the Contract. In no event shall the Seller in case of delay in delivery of the Goods be liable for any business interruption losses or damages of the Buyer. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to and with the consent of the Buyer.

If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or by reason of the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

If the Buyer or the Buyer's employees or agents wrongfully fail to take delivery of the Goods or any part thereof, or fail to give the Seller adequate delivery instructions at the time stated for delivery (for a reason other than by any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- (a) store the Goods until actual delivery and charge the Buyer for the reasonable storage costs, extra delivery costs, insurance; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, selling, delivery and insurance expenses) charge the Buyer for any shortfall below the price under the Contract.

6 TRANSFER OF RISK AND PROPERTY

The risk of damage to or loss of the Goods shall pass to the Buyer on the delivery date at the place of delivery, or in accordance with the relevant provisions of the Incoterms agreed upon and specified in the Acknowledgment of Order and/or in the invoice.

If the Buyer falls into default of acceptance of the delivery as set out in clause 5, risk of damage to or loss of the Goods shall pass to the Buyer at the time and the place the Seller tenders delivery.

The parties explicitly agree that notwithstanding delivery, passing of risk of damage to or loss of the Goods to the Buyer, or any other provision of these Conditions, property of or any title to the Goods shall not pass to the Buyer until the Seller has received cleared funds in settlement of full value (according to the Payment Terms in clause 7) of the contract price for the Goods agreed under this Contract (including any default interest) plus any costs arising from any other contract between Buyer and Seller, whether or not the payment of the same is immediately due.

7 PRICING AND PAYMENT TERMS

The price of the Goods refers to the Seller's quoted or offered price or, where no price has been quoted or offered, to the price listed in the Seller's published price list currently valid at the date of acceptance of the Order.

The price is exclusive of any applicable Value Added Taxes, excise taxes, and other government charges which the Buyer shall be additionally liable to pay to the Seller.

The Seller reserves the right, by giving notice to the Buyer at any reasonable time before delivery, to increase the price of the Goods without limitation to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), due to any changes in delivery dates, quantities or specifications of the Goods requested by the Buyer, due to any delay caused by any instructions of the Buyer or its employees or agents, or due to failure of the Buyer to give the Seller adequate notice, information or instructions.

Unless otherwise stated in an Acknowledgement of Order, the Buyer shall make all payments according to the invoice value and without any deductions whatsoever by way of set-off, counterclaim, withholding (including taxes), discount, or otherwise. All sums payable by the Buyer shall be paid in full in the currency as reflected on the invoice.

Unless otherwise stated in an Acknowledgement of Order, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods. The Buyer shall make payment within the payment term as agreed between the Buyer and the Seller and reflected on the invoice. Receipts for payments will be issued only upon request.

The time of payment of the price shall be of the essence of the Contract, and the Buyer shall indemnify the Seller against all expenses and legal costs incurred by the Seller in recovering overdue sums.

If the Buyer fails to make any payment by or on the due date, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- (a) cancel the Contract or suspend any further deliveries under this or any other contract with the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5% per cent per annum, until payment is made in full (a part of a month will be treated as a full month for the purposes of calculating the interest due); and
- (d) review the payment terms applicable for any future deliveries to the Buyer.

8 WARRANTY

Subject to the conditions set out below, the Seller warrants that the Goods will correspond with their specification at the time and place of delivery and will be free from defects on delivery.

The Seller shall not be held liable under the abovementioned warranty (or any other warranty, condition or guarantee) if:

- (a) the Buyer or any third party acting on the Buyer's behalf fails to follow the Seller's or the manufacturer's instructions (whether Oral or in Writing) or in case of misuse of the Goods;
- (b) the Goods are used without the Seller's written approval after they have exceeded their shelf-life date according to the manufacturers' specification and/or according to the certificate of analysis accompanying the Goods on delivery;
- (c) the Goods have been specifically manufactured or modified according to the Buyer's specifications; or
- (d) the total amount due for the Goods has not been paid by the due date for payment (in accordance with clause 7).

All warranties, conditions, guarantees or other terms, other than those expressly provided in these Conditions are excluded to the fullest extent permitted by law.

Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the manufacturer's specification shall (whether or not delivery is refused by the Buyer) be notified in Writing to the Seller within seven (7) days from the date of delivery or, where the defect was not apparent on reasonable inspection at delivery, within three (3) days after discovery of the defect. Buyer's failure to comply with this duty to notify the Seller of any defect in

quality or specification of the Goods renders the above warranty null and void. In this case, the Buyer shall not be entitled to reject the Goods and shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.

The abovementioned warranty of the Seller expires with the expiration of the shelf-life date of the Goods according to the manufacturers' specification and/or according to the certificate of analysis accompanying the Goods on delivery, or in any case after a maximum of two (2) years from the date of delivery.

Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the manufacturer's specification is notified to the Seller in accordance with these Conditions (in particular with clause 8), the Seller shall be entitled at its sole discretion to:

- (a) replace the Goods (or the part of the goods in question) free of charge, or
- (b) refund to the Buyer the value of the Goods (or a proportionate part of such value) according to the invoice value, but the Seller shall in this case have no further liability towards the Buyer.

9 LIABILITY AND FORCE MAJEURE

Nothing in the Contract or these Conditions shall exclude or limit the liability of the Seller for any death or any personal injury caused by any negligence on the part of the Seller.

The Seller's total liability under the Contract shall be strictly limited to the invoice value of the Goods.

The Seller will not be liable to the Buyer in contract, tort, *culpa in contrahendo* or otherwise for any economic loss of any kind (including but without limitation of loss of use, loss of profit, loss of anticipated profit, loss of data, loss of business, overhead recovery, machining costs, revenue, or anticipated savings), any damage to the Buyer's reputation or goodwill, any product recall or business interruption costs or any other special, indirect or consequential loss or damage (even if the Seller has been advised of such loss or damage) arising out of or in connection with the Contract.

Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents with regard to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause of *force majeure*. Without prejudice to the generality of the foregoing, the following shall be regarded as causes of *force majeure*: act of God, explosion, flood, tempest, fire or accident, war or threat of war, acts of terrorism or threats of terrorism, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller, Buyer or of a third-party), unpredictable shortages of raw materials, labour, fuel, parts of machinery, power failure or breakdown in machinery or any other unpredictable event beyond the Seller's reasonable control. In an event of *force majeure* lasting more than three (3) months, the Seller shall be entitled to terminate the contract upon giving reasonable notice in Writing to the Buyer.

The provisions of this clause 9 shall survive the termination or expiry (for whatever reason) of the Contract.

10 INDEMNITY

Without prejudice to any rights implied by law, regulation or under any provision of these Conditions, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including legal and other professional fees), actions, proceedings and damages suffered or incurred by the Seller arising out of or in connection with any act or omissions of the Buyer, its employees, agents or sub-contractors.

11 INTELLECTUAL PROPERTY

All patents, copyrights, trademarks, confidential information such as colour schemes, know-how and other industrial and intellectual property rights of any nature in all Goods, services or correspondence (Intellectual Property) by the Seller are owned by the Seller and/or its suppliers. The Seller reserves the right at any time to require the Buyer forthwith to discontinue the use in any manner whatsoever of any such Intellectual Property.

12 DEFAULT ON THE PART OF THE BUYER

In the event of default on the part of the Buyer, the Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Buyer without prejudice to any other right or remedy available to the Seller. If the Goods have been delivered but not paid for in full (in accordance with clause 7 of these Conditions), the price shall become immediately due and payable notwithstanding any previous agreement, arrangement to the contrary or any other remedy or right under these Conditions.

Default on the part of the Buyer within the meaning of this clause shall be deemed to pertain if:

- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession of, or a receiver is appointed for any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
- (e) the Buyer commits a material breach of any of its obligations and duties under the Contract and these Conditions.

13 FINAL PROVISIONS

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

If any provisions, terms, conditions, clauses or sub-clauses of these Conditions are found by any authority or court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby and they shall remain in full force and effect. Such invalid or unenforceable provisions shall be replaced with valid provisions coming as close as possible to these Conditions. The same shall apply *mutatis mutandis* in the event of any contractual loopholes.

Any dispute in any way arising from or in connection with the interpretation or performance under these Conditions, or of the Contract, shall be exclusively governed by Swiss law and shall be subject to the sole jurisdiction of the competent Swiss Courts.