

# GENERAL TERMS AND CONDITIONS OF SALE – NMB MINEBEA Sarl

## 1. APPLICATION OF THE GENERAL TERMS AND CONDITIONS OF SALE

- 1.1 The purpose of these general terms and conditions of sale (the "GTCS") is to define and specify the terms on which the Seller supplies the Purchaser with goods and services in connection with the sale of goods (the "Good(s)"). The Purchaser's placement of an order entails the Purchaser's full and entire acceptance of the GTCS. No modification and/or addition suggested by the Purchaser shall be binding on the Seller unless it appears on a document signed by a duly authorized representative of the Seller.
- 1.2 All the information appearing in the Seller's catalogs, notices and brochures, particularly information relating to the Goods, shall have no contractual value whatsoever and shall be provided by the Seller for indicative purposes only, which the Purchaser expressly acknowledges.
- 1.3 The Purchaser acknowledges that the Goods' reference details as well as the Goods' technical characteristics are subject to change unless otherwise agreed by the parties. It is thus up to the Purchaser to manifest to the Seller any need it may have for a specific Good to be kept available over a given period.

## 2. ORDERS

- 2.1 Any order form sent by the Purchaser must be confirmed by the Seller (through an "Acknowledgment of Receipt"). Only orders that have been confirmed by an Acknowledgment of Receipt shall be considered as validly received by the Seller. The Acknowledgment of Receipt may contain special terms and/or technical specifications that confirm and/or supplement and/or replace the GTCSs in case of contradiction with the latter.
- 2.2 An order may not be cancelled or modified by the Purchaser without the Seller's prior consent and must in all cases be justified. In the event that an order is modified or cancelled, cancellation or modification costs may be charged to the Purchaser. In case of modifications, the Seller reserves the right to invoice additional administrative fees in the event that the Purchaser has modified the order multiple times.

## 3. PRICES

- 3.1 Goods shall be sold at the price in force on the date of the Order Confirmation.
- 3.2 The prices are stated on a tax-exclusive basis. The prices do not include shipping and packaging costs, unless otherwise agreed by the parties.

## 4. DELIVERY

- 4.1 The mode of delivery shall be at the choice of the Seller, save for any specific transport instructions from the Purchaser unless the parties have agreed to a particular means of transport.
- 4.2 The delivery shall, unless otherwise specifically agreed between the Purchaser and the Seller, be carried out ex-works from NMB SARDL's premises in Baillet en France (95560), according to the EXW incoterm (Incoterms 2020). The Purchaser undertakes to retain evidence of the delivery and to communicate it without delay to the Seller upon request. Unless the parties have agreed to apply an incoterm that provides otherwise, the Goods shall be shipped at the risk and peril of the Purchaser, who shall in particular bear the expense of any damage to or loss of the goods, whatever the cause or origin thereof.
- 4.3 The delivery periods are communicated for indicative purposes only. They are to be understood as the period between the Acknowledgment of Receipt of the order and the making available of the Goods at the Seller's premises. Said periods depend on the availability of the goods or of the parts composing them as well as the manufacturing or routing periods. The Seller is authorized to make partial deliveries for the purpose of supplying the Purchaser as quickly as possible. In case of successive deliveries for a single order, said deliveries shall be made according to the timetable provided by the Seller, which timetable shall however remain purely indicative. In any event, the delivery may not take place unless the Purchaser is up to date on its obligations to the Seller.
- 4.4 In case of any delay in delivery, the Purchaser shall be obligated to accept partial deliveries. The Purchaser undertakes not to interrupt its payments in case of partial delivery by the Seller nor to claim or automatically deduct any damages, withholdings or other penalties against the Seller.
- 4.5 Delivery period overruns may not give rise to any damages or withholdings nor be grounds for cancelling the order or any other orders in progress. All penalties for lateness are excluded. Any suspension of pending orders in the event of a payment default and any delays justified by the Purchaser's failure to communicate required information or modification thereof during the course of execution of the order or by an event that is out of the Seller's control, by a production impossibility or one qualifying as force majeure or by a case of force majeure as defined in Article 9 hereinafter, shall not entitle the Purchaser to cancel the order or to claim damages. The Seller shall not be obligated to compensate for any indirect and/or immaterial harm that may result from a delivery delay.
- 4.6 In the event of any damaged or missing item, it shall be up to the Purchaser to express all necessary reservations to the carrier via registered letter with return receipt requested or extrajudicial process, within three business days following receipt of the goods in accordance with the provisions of Article L.133-3 of the French Commercial Code, under pain of forfeiting all remedies and of bearing all the consequences of a damage or loss.
- 4.7 The verification or acceptance procedure for checking the conformity of the Goods is set at a maximum period of 15 business days from delivery of the Goods to the Purchaser. The duration of the acceptance or verification procedure cannot have the effect of either increasing the duration or altering the starting point of the payment period agreed between the parties.

## 5. RETENTION OF TITLE AND PASSING OF RISKS

- 5.1 In the event that the Purchaser defaults on the payment of all or part of the price of the order, the Seller shall, until full payment, retain a right of title to the Goods delivered to the Purchaser, enabling it to retake possession of said Goods. Consequently, the Seller retains all of the rights attached to ownership of the Goods delivered to the Purchaser, as well as on all proceeds deriving therefrom, for as long as the purchase price and all other amounts owed to the Seller in respect of the order have not been collected in full (including but not limited to taxes, duties and any other charge). The Purchaser may not resell, transfer, modify or pledge all or part of the Goods. The Purchaser is responsible for the necessary maintenance of the Goods sold and shall pay all costs relating to the return of the Goods in their original condition, if the Purchaser is required to return the Goods not paid for.
- 5.2 The risks relating to the Goods shall pass to the Purchaser as soon as the Goods leave the Seller's plants or facilities, notwithstanding the present retention of title clause. To this end, the Purchaser shall take out an insurance policy "for the benefit of whomsoever it may concern," for risks arising as from the delivery. In case of a total or partial loss, the Purchaser shall be responsible for restoring the Merchandise, at its expense. It shall also pay the amount of the Goods in the event that they disappear for any reason whatsoever.
- 5.3 The Purchaser undertakes to keep the Seller immediately informed of any change in its situation and particularly of the commencement, with the respect to the Purchaser, of any proceedings to manage business difficulties, particularly any judicial safeguard, reorganization or liquidation proceedings, as from the day of the commencement thereof so as to allow the Seller to claim its rights to the Goods (or, failing which, to the price receivable in case of resale by the Purchaser) within the statutory period provided for by the provisions of the French Commercial Code. The Purchaser shall also immediately inform the Seller of any threat, action, attachment, requisition, confiscation or any other measure that may jeopardize its right of title to the Goods. Any failure by the Purchaser to fulfill these provisions would render it liable and would authorize the Seller to provoke the cancellation of the sale via registered letter with return receipt requested, to take back the goods still in inventory and to refuse to deliver any non-executed orders.
- 5.4 The provisions of this retention of title clause prevail over any other clause dealing with the passing of title and risks that may appear in the Purchaser's terms and conditions of purchase or in any other document exchanged between the parties.

## 6. TERMS OF PAYMENT

- 6.1 Payment shall be made by the Purchaser within thirty days of the date of issuance of the invoice. The Seller requires all Purchasers to be covered by a well-known credit institution. If the Purchaser's rating by that institution was to drop, the Seller reserves the right to modify the terms of orders and of payment of those orders. With respect to Purchasers with whom the Seller does not have regular commercial dealings and/or whose rating by a credit institution is lower than the rating requested by the Seller, the Seller reserves the right to modify the terms of order and/or to deliver the Goods subject to full payment in advance or in cash, prior to delivery.
- 6.2 Payment may be made via a bank transfer, check, bill of exchange, promissory note or any other negotiable instrument. Payment is considered to be made upon actual collection of the price; delivery of a check, a bill of exchange, a promissory note or any other negotiable instrument creating an obligation to pay shall not constitute a payment. No discount shall be granted for payment in cash or early payment.
- 6.3 For any sum due but not paid by the due date, the Seller shall be entitled to require the Purchaser (i) to pay late-payment interest accruing as from the due date shown on the invoice, whose rate shall be equal to three (3) times the legal interest rate in force on the due date provided for, as well as an indemnity for collection costs ranging from a minimum of forty (40) euros to 1,500 euros or any higher indemnity if such an increase is justified. The application of this provision shall not preclude the Seller from implementing its other rights, including but not limited to:
  - suspending deliveries of pending orders that have not yet been executed; and/or
  - seeking any damages it may be entitled to in compensation for the harm caused by the late payment; and/or
  - seeking, subject to a prior formal notice, a close-out of the entire amount of its receivable from the Purchaser and an immediate payment of the entire balance owed by the Purchaser to the Seller; and/or
  - seeking the posting by the Purchaser of a guarantee in favor of the Seller.
- 6.4 The Purchaser shall not make any offsetting between a debt it has to the Seller and any receivable it may claim to have from the Seller, unless the Purchaser's claimed receivable from the Seller is uncontested by the latter or judicially established.

## 7. WARRANTY

- 7.1 To the exclusion of any apparent defects observed by the Purchaser in accordance with Article 4.6, and subject to the provisions set forth herein, the Seller warrants the Purchaser against any manufacturing defect or raw materials defect of the Goods for a period of one (1) year from delivery.
- 7.2 The Seller's liability under this warranty is limited to replacing, repairing or reimbursing the defective Goods, provided that the defect is established, that the Seller has been able to acknowledge it and that it is attributable to the Seller. The Purchaser's only recourse under the above-mentioned warranty are that of repair, replacement or reimbursement. The Seller may decide (i) that all or part of the Goods must be sent back to it (in which case any transport costs reasonably incurred by the Purchaser shall be reimbursed to the Purchaser by the Seller) and/or (ii) to send at its expense any person it may appoint to the place where the defective Goods are located, provided that the defect is established and that the Seller has been provided with proof thereof in any manner whatsoever. In the event that, upon examination of the Goods in question by the Seller, it is established that the part or the Good was not defective, the costs or expenses relating to such travel shall be invoiced in full to the Purchaser. The treatment of such complaint may also have given rise to complaint management costs and/or technical appraisal costs that shall be invoiced to the Purchaser.
- 7.3 The Purchaser undertakes to allow the Seller the opportunity and time necessary to repair the part or Good acknowledged to be defective.
- 7.4 The warranty does not cover any deficiencies, failures or defects resulting from any abuse, improper use, abnormal use, accident, modification, negligence, poor maintenance, repair or installation carried out incorrectly or without the Seller's prior consent. The limited warranty provided for above is the sole warranty granted by the Seller, subject however to the mandatory provisions of French law. The Purchaser waives its right to any other warranty, particularly any warranty of fitness for a specific use or an expected performance that has not been indicated in writing by the Purchaser to the Seller.
- 7.5 This warranty applies solely to the Purchaser. The Seller does not assume any warranty vis-à-vis any third party to which the Purchaser may have transferred all or part of the warranted Goods, unless such transfer has been made with the prior consent of the Seller.

## 8. LIMITATION OF LIABILITY

- 8.1 Subject to the mandatory provisions of law, the only liability incurred by the Seller and the sole recourse available to the Purchaser in respect of the Goods shall be the repair, replacement or reimbursement thereof. The Seller shall not incur any liability concerning any reparations or works that either the Purchaser or a third party may carry out on the Goods, unless said reparations or works were specifically ordered by the Seller.
- 8.2 Notwithstanding any clause to the contrary, the Seller disclaims all liability for any indirect or immaterial damages, including but not limited to any liability for loss of revenue, loss of earnings, operating loss, financial cost, loss of orders, business disturbance whatsoever, etc., and the Purchaser waives the right, both in its own name and in the name of its insurers, to any recourse against the Seller and its insurers.
- 8.3 In any event, the Seller's total liability may not exceed the amount (excluding taxes) paid by the Purchaser to the Seller for the Goods delivered.

## 9. FORCE MAJEURE

- 9.1 The Seller shall not be held liable in the event that the performance of its obligations is delayed, restricted or made impossible due to the occurrence of a case of force majeure or unforeseeable circumstances (hereinafter referred to as "Force Majeure"). In the event of the occurrence of a case of Force Majeure, the performance of the Seller's obligations shall be suspended. If the Force Majeure lasts for more than three (3) months, the order may be terminated at the request of the first party to take the initiative, in which case neither party may seek to hold the other liable. Each of the parties shall bear the expense of any costs falling to it which result from the occurrence of a case of Force Majeure.
- 9.2 By express agreement between the parties, the following shall be considered to be a case of Force Majeure: any event that is unavoidable (i) and unforeseeable or whose foreseeability did not allow the Seller to prevent the effects and (ii) where the Seller has taken all measures normally required of a diligent professional to avoid the occurrence thereof.
- 9.3 The following events are, in particular and without limitation, considered as a case of Force Majeure: act of government, war (declared or not), terrorism, invasion, rebellion, blockade, sabotage, vandalism, total or partial strike, labor conflict internal or external to the Seller, civil unrest, bad weather, natural disaster, fire, epidemic, interruption of transport facilities or supplies particularly of energy, breakdown in the supply of electricity, heat, air conditioning, telecommunication networks, data transport, satellite failures, disruption in supplies to the Seller's suppliers and, more generally, any event of such kind that may affect the Seller's suppliers or subcontractors.

## 10. GOVERNING LAW AND CHOICE OF JURISDICTION

Unless otherwise agreed, the contractual relations between the parties, including these GTCS, shall be governed by French law to the exclusion of the Vienna Convention on the international sale of goods. In the event of a dispute, the parties shall seek in good faith to settle their disagreements amicably. In the absence of an amicable resolution, the dispute shall be brought before the competent Courts within the jurisdiction of the Court of Appeals of Paris, even in the event of warranty a joinder application.