

GENERAL TERMS AND CONDITIONS OF BUSINESS TRANSACTIONS

1 - General statements

1.1 - Customary professional practices

These general terms and conditions of business transactions codify the customary professional practices for suppliers of pumps, vacuum pumps, compressors, valves, taps and accessories, and for provision of services. In that regard, as a professional reference, they are filed with the Bureau of customary practices at the Clerk's Office of the Commercial Court of Paris.

1.2 - Application of the General Terms and Conditions

They conform to the regulations of competition law.

Pursuant to article L441-6 of the Commercial Code, the supplier's general terms and conditions constitute the legal basis of commercial negotiations.

They apply to the contractual relationships between the « Supplier » and the purchaser company hereinafter referred to as « the Purchaser ».

Any departure from these general terms and conditions must be expressly accepted by the Supplier in writing.

1.3 - Legal status of contracts

These general terms and conditions are governed by the law of sales when they apply to the supply of standard products. They are governed by business contract law and, when appropriate, by the law of subcontracts, when they apply to the manufacturing of a product based on specifications or to a provision of service.

1.4 - Cooperation of the parties

The Purchaser has the duty to cooperate with the Supplier and to provide it in writing with all complete, specific and reliable information regarding :

- its clearly expressed needs,
- the conditions for operation of the equipment and for the environmental requirements thereof,
- the composition and special characteristics of products that it must treat with the equipment.

The conformity of a contract shall be assessed as a function of the Purchaser's fulfilling of these obligations. In no event shall the Supplier be held responsible for the consequences of an omission or error in elements that the Purchaser provides. These obligations also involve possible phases of study, realization and development of the equipment.

These obligations apply as well to the Purchaser's agent or representative.

The Supplier shall be attentive to the Purchaser's requests, and shall satisfy them to the extent that it is feasible to do so, providing that they comply with the contract and the professional standards. The Supplier shall advise, within the limit of its technical knowledge, of any possible construction constraints and effects of which it may become aware regarding use of the equipment.

2 - Contractual documents

These general terms and conditions, as well as the particular terms and conditions agreed by the two parties constitute an integral part of the contract.

The Supplier's technical specifications constitute the technical basis of contracts unless otherwise specifically agreed.

Documents such as promotional materials, catalogues, advertising, and prices that are not expressly specified in the particular terms and conditions are not part of the contract. Information, photos, weights, prices and drawings appearing in catalogues, leaflets and price lists are provided only for indicative purposes, and are not contractual documents. The Supplier reserves the right to make any changes therein.

3 - Orders, training and content of the contract

3.1 - Offer, prices and acceptance

Unless otherwise provided, the offer is valid for one month.

The prices are established "ex-factory" net of taxes, customs duties, costs of transport, insurance and packing, and are billed pursuant to the contractual terms.

For catalogue products, a change of price shall be transmitted to the Purchaser within 2 months prior to the application thereof. Unless otherwise agreed beforehand on a specific price, any delivery of catalogue products is invoiced at the price indicated on the order's acknowledgement of receipt.

Payments are made in euros unless otherwise specified in the contract.

If, in order to satisfy the Purchaser's requests, specific prior studies are required for establishing the offer, but this offer is not followed by an order, these studies shall be subject to a specific charge.

Completion of the contract occurs only with the Supplier's express acceptance of the order in writing by any means.

An intention to place an order shall not be deemed to constitute an order.

3.2 - Content of supplies

The contract shall be limited strictly to the supplies and services that are expressly specified by the Supplier in its offer or catalogue.

The Supplier reserves the right:

- to replace the contractual products by products of equivalent specifications, provided that the Purchaser does not suffer any price increase or a change in quality.
- and to entrust to any subcontractor of its choice the totality or part of the subject studies, supplies or services.

3.3 - Change

Any change in the contract requested by the Purchaser must be expressly accepted by the Supplier and formalized in a written agreement, which shall take into account the additional costs and times resulting therefrom.

3.4 - Suspension

Any suspension of the contract requested by the Purchaser must be expressly accepted by the Supplier and formalized in a written agreement, in which the duration of suspension, the additional costs and times as a result thereof shall be defined.

In any event, the Supplier may invoice the part of the order that is already in process.

3.5 - Cancellation of order

The order expresses the Purchaser's irrevocable commitment ; hence, the Purchaser cannot cancel it unless the Supplier expressly consents thereto beforehand. Consequently, if the Purchaser requests cancellation of all or part of the order, the Supplier has the right to demand execution of the contract and full payment of the sums stipulated therein.

3.6 - Returns of products

A return - i.e. the return of goods and the establishment of a credit for the Purchaser - may be effectuated only with the express prior written agreement of the Supplier, which will specify the conditions thereof. The fact that the Supplier agrees to take back a product, does not confer on the Purchaser the right to return other products, even if identical.

If the Supplier consents to a return, it must, in particular, meet the following cumulative conditions :

- a return is accepted only of products displayed in the Supplier's catalogue in effect at the time of the return request ;
- the Purchaser must return the product carriage paid, at its expense and risk, to the place indicated by the Supplier ;
- the product must be returned in perfect condition, protected and packed in its original packing ;
- a return does not exempt the Purchaser from its obligation to pay ;

- a return gives rise to the establishment of a credit corresponding to the price of the products involved, after verification of the condition thereof, less a fixed deduction for administrative processing of the return.

In the case of the manufacturing of a product pursuant to specifications meeting the Purchaser's technical specifications, no return shall be accepted.

4 - Trial sale

For commercial reasons, the parties might decide to conclude a «trial» sale only for a standard product, based on specifications and a trial period that have been agreed upon.

The sale shall be definitive if, during the trial period, the Purchaser does not provide the Supplier a written documentation of non-conformity with the specifications, which must be approved by the Supplier.

In the event of non-conformity, the Purchaser must return the product at its expense, risk and peril within 8 days. The Purchaser shall be responsible for the expert evaluation and possible restoration of the product.

Throughout the trial period, the Purchaser shall assume the risks in the possession and use of the product, and shall subscribe to relevant insurance.

5 - Characteristics and status of ordered products

5.1 - Purpose of products

Delivered products conform to the technical regulations applicable thereto and to technical standards in respect to which the Supplier has expressly declared the conformity thereof.

The Purchaser is responsible for installing the product pursuant to the ordinary conditions of use and in accordance with the safety and environmental laws that are in effect at the place of use, as well as with the proper procedures of its profession.

In particular, it is the Client's responsibility to select a product that meets its technical requirements and, if necessary, to ensure with the Supplier that the product is suitable for the envisaged application.

5.2 - Packing of products

Non-returnable packing is not taken back by the Supplier. Packing is effectuated according to the Supplier's standard. It conforms to the applicable environmental regulations according to the purpose of the products. If the Purchaser desires a specific packing, it must expressly request it from the Supplier upon conclusion of the contract. The costs of special packing shall be covered by the Purchaser. The Purchaser commits to eliminate the packing pursuant to the local environmental laws.

6 - Intellectual property and confidentiality

6.1 - Intellectual property and knowledge of documents and products

All of the intellectual property rights, as well as the knowledge included in transmitted documents, delivered products and provided services remain the Supplier's exclusive property. Any transfer of intellectual property rights or knowledge must be subject to a specific contract. The Supplier reserves the right to make use of its knowledge and results in its research and development work.

All plans, descriptions, technical documents or estimates provided to the other party are transmitted thereto as a gratis loan, the purpose of which is to evaluate and discuss the Supplier's commercial offer. They shall not be used by the other party for any other purposes. These documents must be returned to the Supplier upon first request.

6.2 - Confidentiality

The parties are reciprocally committed to a general obligation of confidentiality regarding any oral or written information, regardless of the medium thereof (discussion reports, plans, exchanges of computerized data, activities, installations, projects, expertise, prototypes developed at the Purchaser's requests, products, etc.) that are exchanged when preparing and executing the contract, unless said information is a matter of common knowledge or will become so by means other than through the Purchaser's wrongful act or omission.

Therefore, the parties commit to:

- keep strictly secret all confidential information and, in particular, refrain from disclosing or transmitting all or part thereof to any person by any means, directly or indirectly, without the other party's written authorization beforehand;

- refrain from using all or part of confidential information for purposes or an activity other than execution of the contract;

- refrain from making copies or imitations of all or part of confidential information.

The parties commit to take all necessary measures to ensure compliance with this obligation of confidentiality throughout the duration of the contract and even after the expiration thereof, and guarantee compliance therewith by all of their employees and subcontractors or other contracting parties. This obligation is absolute.

6.3 - Guarantee in the event of infringement

Each party guarantees that the elements it provides or designs for execution of the contract (plans, specifications, processes, and their conditions of application, etc...) do not use intellectual rights or proprietary expertise owned by third parties. They guarantee that they have the right of free disposal of said elements without conflicting with a contractual or legal obligation.

They mutually guarantee each other against the direct or indirect consequences of any action for civil or criminal liability, particularly an action for infringement or unfair competition.

7 - Delivery, transport, verification and acceptance of products

7.1 - Times for delivery

Delivery times commence to run from the latest of the following dates :

- date of the order's acknowledgement of receipt ;

- date of receipt of all of the information, approvals, materials, details of execution due from the Purchaser or which are necessary for execution of the contract, or, when applicable, receipt of the down payment ;

- date of execution of preliminary contractual or legal obligations incumbent on the Purchaser.

The agreed time limits are important elements that must be specified in the contract, including their nature (times for availability, presentation for acceptance, delivery, legal acceptance, etc.). However, the stipulated time limits are only indicative and shall not be invoked in circumstances that are beyond the Supplier's control, particularly in the event of the Purchaser's failure to perform its contractual obligations.

7.2 - Terms of delivery

Unless otherwise stipulated in the offer, delivery is deemed to be made ex-factories or warehouses of the Supplier, « Ex-Works», pursuant to the last publication of the INCOTERMS of the International Chamber of Commerce, in effect on the date of conclusion of the contract. The risks are thus transferred to the Purchaser upon delivery as specified above, without prejudice to the Supplier's right to invoke the reservation of ownership clause or use its right of retention.

In the event that the Purchaser contracts for the transport and assumes the cost thereof, it shall assume responsibility for all financial consequences of a direct action of the carrier against the Supplier.

Any storage requested by the Purchaser shall be subject to an express agreement in which the financial terms, duration and risks must be specified.

7.3 - Verification of products upon delivery

Whatever the terms of delivery, it is up to the recipient, at its expense and under its responsibility, to verify the products or have them verified upon their arrival.

In the event of damage or non-conformity with the purchase order, the recipient :

- shall note its reservations on the delivery slip, and shall immediately inform the Supplier in writing ;

- shall express its reservations to the carrier according to the procedures and within the times specified by the regulations applicable to the mode of transport, with a copy thereof to the Supplier.

7.4 – Taking over

Upon the unpacking, the Purchaser must verify the conformity of the products with the terms and conditions of the contract, and must report to the Supplier any visible or detectable defects within 7 days of delivery.

Any collections, controls, inspections, tests and certificates requested by the Purchaser are at its expense. These additional operations shall be carried out in factory or on site at the Supplier's discretion.

In the case of products manufactured pursuant to specifications, the contract may specify conditions of taking over.

Each of these acceptances may be effectuated with or without reservations. If acceptance is pronounced with reservations, the parties shall agree on a deadline for the lifting thereof.

The Supplier shall notify the Purchaser of the date of these acceptances which, unless otherwise agreed to, must occur within a maximum of 10 business days of receipt of the notification.

If the Purchaser, having been advised of the date of these operations, is not present, a report of failure to attend, and acceptance shall be deemed to have occurred on the date that was set, without reservations.

Acceptance shall also be deemed to be given without reservations if the Purchaser uses the product (even in a limited way) or if he expresses reservations considered to be minor, which do not prevent use of the product in normal conditions independent of the level of the observed performance.

8 - Hardship and force majeure

8.1 - Hardship

If an event that is beyond the parties' control compromises the equilibrium of the contract to such an extent that one of the parties is unable to execute its obligations, the parties agree to negotiate in good faith a modification of the contract. Such events include particularly the occurrence of a fluctuation in the price of raw materials, a change in customs duties, a change in the exchange rate or in the applicable laws and regulations. Should the parties fail in their negotiations, they agree to appoint a mediator or to call for a conciliation with the Presiding Judge of the competent Commercial Court acting as the arbitrator.

8.2 - Force majeure

Neither party in this contract shall be held liable for its delay or failure to execute its obligations hereunder if such delay or failure is the direct or indirect consequence of an event of force majeure, defined in a broader scope than that of the French case law, such as the occurrence of a natural disaster, earthquakes, storms, fires, floods, conflicts, wars, attacks, labour conflicts, total or partial strikes at the premises of the Supplier, Purchaser, or the suppliers, subcontractors, providers of services, carriers, post, public services, etc, mandatory orders of the public authorities (import prohibitions, embargos), operating accidents, machine breakdowns, explosions.

Each party shall immediately inform the other party of the occurrence of an event of force majeure brought to its knowledge which, in its opinion, is of such a nature as to affect the performance of the contract.

The parties must consult with each other within the shortest possible time to examine in good faith the consequences of the event of force majeure, and mutually consider the measures to be taken.

9 - Payment

9.1 – Payment periods

Pursuant to the Economy Modernisation Law (LME) n°2008-776 of 4 August 2008 (article L441-6, French Commercial Code), the period agreed between the parties for payment of sums due may not exceed forty-five days from the end of the month or sixty days from issue of the invoice.

Pursuant to the Economy Modernisation Law (LME) n°2008-776 of 4 August 2008 (article L442-6, French Commercial Code), the following shall be punishable with a civil fine of up to two million euros:

- the imposition on a partner of payment terms which do not comply with the legal ceiling;
- requesting the supplier, without any objective grounds, to postpone the date of issue of the invoice.

Within the meaning of these general conditions, the payment period, unless otherwise agreed, shall be 45 days from the end of the month as from the date of issue of the invoice. This provision may be avoided under special conditions by specifying a shorter period. Application of the law shall not affect shorter payment periods previously agreed.

A down payment is by definition paid in full, without payment terms.

Dates of payment contractually agreed may not be challenged unilaterally by the Client on any grounds, including in the event of dispute.

Premature payments shall be made without discount, unless specially agreed.

9.2 – Late payment

According to Article L441-6, § 12, of the French Commercial Code, as amended by the Act N°2012-387 dated March 22, 2012, transposing the Directive 2011/7/EU, any delayed payment makes automatically applicable, from the first day after the payment date mentioned on the invoice :

1/ Late payment penalties :

The late payment penalties shall be determined by application of the refinancing rate of the European Central Bank, increased by ten points.

2/ A fixed compensation of 40 Euros for the recovery costs :

This fixed sum is due by the application of a provision of the Act dated March 22, 2012, applicable from the 1st of January 2013. Its amount is determined by the Article D441-5 of the French Commercial Code.

According to the aforementioned Article L441-6, when the recovery costs incurred are exceeding this fixed compensation, the Supplier is also entitled to obtain a justified additional compensation.

Any late payment of a sum due shall entail, at the Supplier's option, expiry of the contractual term, all sums due becoming immediately payable. The fact that the Supplier avails itself of either or both of these provisions shall not deprive it of the right to apply the reservation of ownership clause set out in clause 9.5.

In the event of late payment, the Supplier shall benefit, pursuant to article 2286, French Civil Code, from a right of retention over manufactured products and related supplies.

9.3 - Changes in the Purchaser's situation

In the event of deterioration in the Purchaser's situation observed by any means and/or attested by late payment or repeated tardiness, or when its financial situation substantially differs from data that are provided, delivery of orders in process shall be made only in consideration of the immediate payment thereof.

In such event, or in the event that the Purchaser sells, transfers, pledges or contributes its business to a company, or a significant part of its assets or equipment, or if a draft has not been honoured within seven business days of its sending, the Supplier reserves the right without notice to:

- declare a default resulting in the immediate pay ability of all sums that remains owed in any respect whatsoever ;
- suspend any shipment ;
- establish first the rescission of all current contracts and, second, retain the instalments, tooling equipment and parts that it received ;
- reject any new order.

9.4 - Offsetting of payments

The Purchaser is strictly prohibited from any illegal practice such as automatic debiting or invoicing of the Supplier for sums that the latter has not expressly recognized to be its responsibility.

Any automatic debiting constitutes an outstanding payment giving rise to the application of the provisions regarding late payments, and may be sanctioned pursuant to article L442-6 I 8° of the Commercial Code. Only an offsetting effectuated under conditions specified by law is permitted.

9.5 - Reservation of ownership

The Supplier retains full ownership of the subject products until the effective payment of the entire principal and ancillary items. Default of payment on any due date may entail the repossession of these products. However, upon delivery, the Purchaser assumes liability for damage that these products might incur or cause.

10 - Warranty and liability

10.1 - Exclusions of warranty and liability

The warranty does not apply, with all liability of the Supplier being excluded, in the following cases:

- parts subjected to normal wear and tear ;
- installation or use that is not in conformity with the proper professional standards, or with the defined technical specifications ;
- failure to comply with the installation, use or maintenance instructions ;
- defective oversight, storage or maintenance ;
- a change or intervention by the Purchaser or a third party in the product that is not authorized by the Supplier, or which is made with parts and/or consumables that are not original.

The warranty does not apply, with all liability of the Supplier being excluded, in the event of default of payment by the Purchaser, without the latter having the right to prevail thereon in order to suspend or defer its payments.

10.2 - Contractual warranty

Unless otherwise stipulated, the Supplier provides a 12-month warranty from the date of provision of the products in the Supplier's premises. Said warranty covers only defective materials and manufacturing. To invoke the warranty, the Purchaser must immediately notify the Supplier in writing of defects it has observed in the product, and specify the operating circumstances in which these defects were noticed.

The warranty, at the Supplier's discretion, consists only of repairing or replacing products that it finds defective upon their arrival at its premises.

Travel, transport and shipment costs and assembly and disassembly costs such as handling costs are not included in the warranty.

10.3 - Liability

The Supplier's liability is strictly limited to compliance with contractual specifications. The Supplier shall manufacture the product or provide the service requested by the Purchaser in compliance with the standards of its profession.

The Supplier's liability shall be limited to direct material damage suffered by the Purchaser due to wrongful acts or omissions of the Supplier when executing the contract.

The Supplier shall not be required to indemnify consequential or indirect damage such as operating losses, profits, deprivation of a right or opportunity, commercial injury, financial loss.

The Supplier is not required to redress the injurious consequences of wrongful acts or omissions of the Purchaser or third parties in respect to execution of the contract, and that is especially so in the events listed in article 10.1.

The Supplier is not liable for damage resulting from the Purchaser's use of technical documents, information or data coming from, or imposed by, the Purchaser.

The Supplier's civil liability, for any causes except for bodily injuries and gross negligence, is limited to the cost of supplies collected on the date of the service.

The Purchaser guarantees the Supplier or its insurers against recourse taken by its insurers or third parties in contractual relationships therewith, above the limits and exclusions specified above.

11 - Penalties

When penalties are mutually agreed, they are deemed to serve as a fixed and liquidated indemnification, and exclude any other type of sanction or indemnification. These contractual penalties are capped, and apply only to the part of supplies or services that is involved.

12 - Disputes and applicable law

The parties commit to resolve their disputes by amicable means before submitting them to the competent Court.

In the absence of amicable settlement, it is expressly agreed that any dispute related to the contract shall be adjudicated exclusively by the Court located in the area of the Supplier's domicile, even in the event of an action for enforcement of a guarantee or a multiplicity of defendants.

Only French law and, when applicable, the Vienna Convention regarding international sales of goods, shall apply.

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INDUSTRIES MECANIQUES



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DES CONSTRUCTEURS
DE POMPES



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A VIDE ET OUTILS A AIR
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