

# GENERAL CONDITIONS OF SALE AND DELIVERY FOR THE BI-QEM GROUP (v. 2018:1)

## 1. GENERAL

1.1 These general terms and conditions of sale and delivery (the "GTC") shall exclusively apply to all supplies of goods or services provided by a company in the BI-QEM Group ("Seller"), unless otherwise expressly stated in writing by Seller in an offer or a confirmation of an order issued by Seller or otherwise in a signed and valid written contract with its customers ("Buyer"). These GTC will thus take precedence over and exclude the application of any conflicting or deviating general or specific terms or conditions of Buyer.

1.2 The contracting party from Seller shall be the company within the BI-QEM Group which has confirmed Buyer's order, entered into agreement with Buyer or delivered the goods or service in question, as the case may be. If, for whatever reason, more than one company within the BI-QEM Group has been involved in the process, the company which has delivered the goods or service in question shall be deemed to be the contracting party with which Buyer has entered into contract and thus act as Seller under these GTC.

1.3 No waiver or modification of any provision hereof shall be binding upon Seller, unless agreed in writing by a duly authorized representative of Seller.

1.4 Seller reserves the right to update the GTC at any time. Buyer hereby agrees that such revised version shall come into force and be binding for Buyer thirty (30) days after being published on Seller's webpage with regard to orders submitted after the end of the thirty-day period. If orders are submitted during the aforesaid thirty-day period, the then current version of the GTC shall apply to such orders. For the avoidance of doubt, the previous version of the GTC shall always apply with regard to already delivered goods.

## 2. OFFER AND ACCEPTANCE

2.1 With respect to each separate order for supply of products or services submitted by Buyer, the parties are legally bound by an agreement thereof as soon as Seller has sent Buyer an order confirmation, in writing or by electronic means such as e-mail (however, cf. clause 2.2 below).

2.2 By submitting an order upon receipt of a quotation, offer or other information from Seller containing reference to these GTC, Buyer agrees that the GTC in their entirety shall apply, unless the parties explicitly agree otherwise in writing. If an order is placed without any preceding quotation, offer or other information from Seller containing reference to these GTC, Buyer shall be bound by these GTC after Buyer's receipt of Seller's order confirmation containing reference to

these GTC unless Buyer objects thereto within five (5) business days. In such case no agreement shall be deemed to have been entered into and Seller shall have no obligation to make any delivery of the ordered goods or services.

2.3 Any condition stated in an order, or in any other document drawn up by Buyer, that is contrary to these GTC, shall not be binding or valid, unless there is a written agreement to that effect. Should Seller fail to object to such a condition, this omission shall not be construed as an acceptance, partial or entire, or an alteration of these GTC.

## 3. TECHNICAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

3.1 Specifications, formulations, measures, weights, prices and other information being part of Seller's catalogues, brochures, advertisements, circulars, data sheets and price lists are an invitation to treat only and shall not constitute an offer by Seller. Only such specifications, formulations, measures, weights, prices and other information that are expressly specified in the final contract between Seller and Buyer may be relied upon by Buyer.

3.2 If goods delivered by Seller to Buyer constitute an infringement of a third party's patent right, industrial design or any other intellectual property right, Seller undertakes to take repossession of the goods and repay the original purchase price but shall not be obliged to pay to Buyer any damages or any other sum whatsoever resulting from such infringement. Notwithstanding the foregoing, if the goods were sold for a particular purpose recommended by Seller, as expressly set forth and identified in the contractual documents, Seller shall in addition to what is set forth above in this clause 3.2 reimburse Buyer for reasonable direct costs incurred by Buyer due to such infringement, however, always subject to the general limitations of liability set forth in Clause 8 below.

3.3 If any action is brought against Seller for infringement of a third party's patent right, industrial design or similar intellectual property right arising out of Seller's production of goods based on express or implied instructions or specifications by Buyer, Buyer shall indemnify, defend and hold Seller harmless against all damages, claims, liabilities legal fees and demands resulting from such action, including reasonable legal costs.

## 4. DELIVERY

4.1 Unless otherwise agreed in writing by Seller, delivery is made FCA, Seller's premises, INCOTERMS 2010.

4.2 If delivery cannot take place within the agreed time of delivery, Seller shall have the right to extend the agreed time of delivery with the time required. Seller shall notify Buyer of this without delay and, if possible, state the date when delivery is expected to be able to take place.

4.3 Should the extension of the time of delivery exceed two (2) weeks, Buyer is entitled to cancel the contract, provided that the cancellation is made in writing within five (5) days from the time Buyer has been notified of the new time of delivery, save for when the delayed delivery is due to a circumstance referred to in clause 9 (force majeure) or on grounds of any action or omission on the part of Buyer. Should Buyer not cancel the contract within such time, the time of delivery stated by Seller shall be considered as the new time of delivery.

4.4 Cancellation of contract pursuant to clause 4.3 shall be Buyer's sole remedy in case of delay in delivery and Buyer shall not be entitled to damages, penalty, remuneration or any other compensation. Under no circumstances shall Buyer be entitled to compensation for any indirect or consequential damages, costs or losses due to any delay in delivery.

4.5 Should Buyer find that it will not be able to take delivery of the goods on the agreed date of delivery or should delay on Buyer's part appear probable, Buyer shall immediately notify Seller thereof and state the date when Buyer can take delivery of the goods. Seller shall arrange for storage of the goods at Buyer's risk and expense.

4.6 Unless the failure of Buyer as set out in clause 4.5 is due to a circumstance referred to in clause 9 (force majeure), Seller has the right to request Buyer to take delivery of the goods within a reasonable time. If Buyer, irrespective of the cause, fails to do this within such a period, Seller has the right to give Buyer written notice cancelling the contract with regard to such part of the goods as has not been accepted, and to receive from Buyer full indemnity for all loss and damages which has been caused to Seller.

4.7 In case of deliveries by installments, each delivery shall be considered as an independent sale. Buyer is not entitled to cancel an agreement in respect of other deliveries, as a result of delay, defect or shortcoming in an independent delivery.

## 5. QUANTITY OF SHIPMENT

Seller reserves the right to deliver quantities of goods deviating from the agreed quantity, upwards or downwards, by ten (10) per cent. In such event, Buyer shall pay for the actual quantity delivered.

## **6. PAYMENT, RETENTION OF TITLE, ETC.**

6.1 Unless otherwise agreed between the parties in writing, payment for goods and services delivered shall be made against invoice, within thirty (30) days from the date of the invoice.

6.2 All prices are exclusive of value added tax, duties and other types of official or governmental charges. Such taxes, duties and charges will be added to the price and are payable by Buyer.

6.3 Should a change in currency exchange rates, raw material prices, taxes, duties or other public charges or the like occur after the date of the offer, price list or signed contract, Seller has the right to adjust the price accordingly.

6.4 If Buyer does not make payment on or before the date on which it is due, Seller shall be entitled to (i) suspend further deliveries of goods to Buyer and to (ii) require Buyer to return the relevant goods not paid for and if Buyer fails to do so promptly, enter any premises of Buyer or of any third party where the relevant goods are stored, in order to recover them. Penalty interest on arrears shall accrue automatically on the overdue amount from the due date at an interest rate of two (2) per cent per month and be payable by Buyer.

6.5 If Buyer has not paid within sixty (60) days from the due date, Seller has the right to cancel the contract. In that case, Seller has, in addition to penalty interest, a right to full indemnity from Buyer for all loss and damages which is suffered.

6.6 Should, before completion of the delivery, Seller find reason to believe that Buyer will not duly fulfill its obligation to make payment, is suffering from reduced or potentially reduced solvency or some material change in its financial or legal status, Seller shall have the right to demand adequate security or, without any liabilities towards Buyer, to cancel the contract, unless Buyer provides a payment guarantee approved by Seller.

6.7 Delivered goods remain the property of Seller until they have been paid for in full, to the extent that such a reservation of right of ownership is valid under the applicable law. However, Buyer shall carry all risk for such goods after delivery by Seller.

## **7. LIABILITY FOR DEFECTS IN THE GOODS**

7.1 Seller undertakes to deliver goods which conform with the specifications set forth in Seller's written order confirmation or in the contract (as the case may be). Material deviations from such specifications shall for the purpose of this clause 7 be referred to as "Defects".

7.2 Seller is only liable for Defects which are attributable to Seller's production. Seller's liability shall not apply (i) to Defects which are due to material supplied by Buyer, to

designs prescribed or specified by Buyer or specifications provided by Buyer, which shall be Buyer's sole responsibility, (ii) to Defects resulting from failure by Buyer (or its employees and customers) to comply with laws, regulations or applicable standards governing the use, handling or storing of the goods or with other information about the goods provided by Seller, (iii) to Defects resulting from any damage to the goods or breakage of packaging during transportation for which Seller is not responsible, (iv) to goods which have been misused, incorrectly installed, improperly or inadequately maintained, operated in excess of specifications, modified or repaired by someone else than Seller or incorrectly assembled by Buyer, (v) to Defects resulting from failure by Buyer (or its employees and customers) to comply with Seller's storage instruction, or (vi) to Defects resulting from normal wear and deterioration.

7.3 Buyer shall examine and perform approval test of the goods without delay upon delivery, and within seven (7) days after delivery notify Seller, in writing or by e-mail, of any visible Defects or deviations in quantity. Seller shall not be liable for visible Defects or deviations in quantity unless Buyer reports such deviation within the stipulated time period. Any other claim towards Seller shall be notified to Seller within thirty (30) days from the date when the Defect was discovered or from the date when Buyer should reasonably have discovered the Defect. Seller is under all circumstances only liable for Defects (whether visible or not) and any other defects or non-conformities in delivered goods, which appear and is notified to Seller within six (6) months from the date of delivery. Failure to notify Seller of Defects or deviations in quantity within said time periods shall mean that Buyer shall be deemed to have accepted the goods and that Seller has no liability of any form for such goods.

7.4 Should goods delivered turn out to be Defective, for which Defect Seller is responsible and if Buyer has notified Seller within the time periods set forth in clause 7.3, the sole liability of Seller and the sole remedy of Buyer, is limited to, at Seller's discretion and expense, (i) replacement delivery of the Defective goods, (ii) repair of the Defective goods, or (iii) refund of such proportion of the purchase price received as may be reasonable having regard to the Defect in question.

7.5 All transportation in conjunction with replacement repair or return of the goods pursuant to clause 7.4, shall take place at Seller's risk and expense. Buyer shall follow Seller's instructions concerning the transportation. Buyer shall bear the additional costs of remedying Defects, which Seller's incurs as a result of the fact that the goods are elsewhere than at the place of delivery stated in the contract between the parties.

7.6 Seller shall have no liability for any Defects, beyond what is explicitly set forth in this clause 7.

## **8. LIMITATION OF LIABILITY AND INDEMNITY**

8.1 Other than expressly stated in clause 7.1, no representation or warranty on the part of Seller (express or implied) including, without limitation, any implied warranty of merchantability or fitness for a particular purpose and/or any other warranty as to the quantity, quality, kind, character or condition of any goods or the adequacy of any warnings concerning the possession, handling, storage, transport, action, use or other disposition of material, whether used singly or in combination with other substances, shall apply to any goods delivered by Seller to Buyer, all such warranties and representations being hereby disclaimed to the maximum extent permissible by applicable law.

8.2 To the maximum extent permitted by applicable law, Seller shall in no event be liable for special, multiple, indirect, incidental, exemplary, consequential or punitive damages and losses, whether in contract, warranty, tort (including, but not limited to negligence, failure to warn or failure to test), strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the goods, delay or claims of customers of Buyer or other users of the goods, and in no event shall the aggregate liability of Seller for any loss or damage arising out of, connected with or resulting from the contract between Seller and Buyer exceed the purchase price actually paid by Buyer to Seller with respect to the goods in question, even if Seller is advised in advance of the possibility of any such losses or damages. Notwithstanding the foregoing, Seller does not exclude or restrict its liability in respect of death or personal injury caused by Seller's gross negligence or fraud, or to the extent such claims cannot be excluded or waived by applicable law.

8.3 Buyer agrees to indemnify, hold harmless and defend Seller, its directors, officers and agents from any and all liabilities, losses, damages, costs, claims or actions, causes of actions or lawsuits (including reasonable legal fees and costs), settlements, judgment amounts and expenses, arising out of the use and/or misuse of the goods, whether such liabilities, claims or lawsuits results from the negligent acts or omissions of Buyer, or otherwise from the use of goods by Buyer or by a third party either singly or in combination with other goods or substances.

## **9. FORCE MAJEURE**

9.1 Should any of the parties' obligations be prevented, obstructed or delayed due to force majeure, such party shall be relieved of all liability for the fulfillment of such obligation until the obstacle has been removed and, if it continues for more than three (3) consecutive months, the other party shall be entitled to terminate the contract.

9.2 The term force majeure includes acts of God, labor disputes, strike, military mobilization, war, failure of the financial system, export and import restrictions and other governmental interferences, fire, accidents, floods and other natural events, water shortage, machine damage and other unforeseen disturbances in the production, general shortage of means of transportation or traffic disturbances at railroads, harbors or other traffic institutions, or default or delayed delivery from sub-suppliers or any other circumstances of whatever nature beyond a party's control and preventing such party's ability to fulfill its obligations.

#### **10. CONFIDENTIALITY**

Any technical, commercial or other information related to the

goods or services delivered hereunder, supplied or disclosed by Seller to Buyer or otherwise obtained by Buyer whether prior to or after the conclusion of the contract with Seller, shall be treated as strictly confidential by Buyer. The confidentiality obligation shall not apply to any information, which Buyer can show was in its possession or in the public domain at its disclosure or subsequently has come into the public domain without any default on the part of Buyer.

#### **11. MISCELLANEOUS**

12.1 If any provision of these GTC or the contract between the parties (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

12.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid or enforceable.

12.3 Buyer may not assign, transfer or sub-contract any of its rights, benefits or obligations under these GTC or any contract between the parties, without the prior written consent of Seller. Seller shall be entitled to assign and transfer its rights, benefits or obligations under these GTC or any contract between the parties to another company in the BI-QEM Group.

#### **12. GOVERNING LAW AND DISPUTES**

12.1 These GTC, and any other contract between Seller and Buyer referring to these GTC, shall be governed by the substantive laws of the country where Seller's principal place of business is located (cf. clause 1.2 above). In the event the goods or services has been sold or provided in the United States, the law of the state in which the Seller has its principal place of business shall govern the terms of the GTC. The UN Convention on International Sale of Goods shall not apply.

12.2 The parties agree that any claims, demands, suits or proceedings for the settlement or resolution of any dispute arising out of or related to these GTC shall be brought in the public courts (state or federal, as applicable) in the judicial district where Seller's principal place of business is located (cf. clause 1.2 above), and the parties hereby consent to the exclusive jurisdiction of such courts.

12.3 In any action to enforce the provisions of these GTC, the prevailing party shall be awarded, in addition to and not as part of any award of damages, all arbitration and/or court costs and any reasonable attorney and expert witness fees incurred by such party in connection therewith, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

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