

# Standard Terms and Conditions of Sale

## 1. DEFINITIONS

In these Terms and Conditions of Sale, "Seller" means Asco Numatics S.p.a. ; "Buyer" means the person, firm, company or corporation by whom the order is given; "Goods" means Equipment (including Software and Documentation, as defined in Clause 9) described in the Seller's Acknowledgement of Order form; "Services" means the services described in the Seller's Acknowledgement of Order form; "Contract" means these Terms and Conditions of Sale, the Quotation, the Acknowledgement of Order form and if applicable a written agreement made between Buyer and Seller for the supply of the Goods and/or provision of Services; and "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services and "Seller Affiliate" means any company which manufactures, assembles and/or supplies Goods and/or Services to Seller and of which more than half the capital or business assets is directly or indirectly owned by a company which directly or indirectly own more than half the capital or business assets of Seller.

## 2. THE CONTRACT

**2.1** All orders must be in writing and are accepted subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

**2.2** The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form or upon the date of fulfillment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date"). If the details of the Goods described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.

**2.3** No alteration or variation to the Contract shall apply until agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

## 3. VALIDITY OF QUOTATION AND PRICES

**3.1** Unless previously withdrawn, Seller's quotation is open for acceptance only in its entirety and within the period stated therein or, when no period is so stated, within thirty days after its date.

**3.2** Prices are firm for delivery within the period stated in Seller's quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges arising outside or inside Seller's country in connection with the performance of the Contract. If applicable Value Added Tax and other like charges as mentioned above will be added. All Buyer's orders with an order value less than EUR 250 will be charged an administration fee of EUR 50.

**3.3** Prices are for Goods delivered EXW (INCOTERMS 2000) Seller's shipping point and exclusive of freight, insurance, handling and packing, unless otherwise agreed. If the Goods are to be packed, packing materials are non-returnable.

## 4. PAYMENT

**4.1** Unless otherwise agreed, payments shall be made by the Customer within the terms provided in the written confirmation of acceptance of order at the Supplier's domicile or with the Bank indicated by him. Goods will be invoiced at any time after their readiness for despatch has been notified to Buyer. Without prejudice to the Seller's other rights, Seller reserves the right to: charge default interest on any overdue sums in accordance with applicable law; and to suspend performance of the Contract (including withholding shipment, or if applicable Configuration, Installation and Site Work) in the event that Buyer fails to make payment when due under the Contract or any other contract.

**4.2** Any disputes which may arise between the parties shall not release the Customer from the obligation of observing the payment terms and conditions.

## 5. DELIVERY PERIOD

**5.1** Unless otherwise stated in Seller's quotation, all periods stated for delivery run from the Effective Date and shall be estimates only and not treated as contractual obligations.

**5.2** Unless there is agreement to the contrary, the supplies shall be deemed to be goods supplied ex works, without packing

**5.3** The delivery deadlines shall be regarded as an indication and shall be reckoned in working days.

**5.4** If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery period and the Contract Price shall both be adjusted accordingly.

**5.5** If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.

## 6. FORCE MAJEURE

**6.1** The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) may be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses); or labour trouble, strike, lockout or injunction. Seller shall have no obligation to supply any Goods, Services or technology unless and until it has received any necessary licenses or authorisations or has qualified for general licenses or license exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdiction in which Seller or Seller Affiliate is established or from which the items are supplied. If for any reason any such licenses, authorisations or approvals are denied or revoked, or if there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller or Seller Affiliate from fulfilling the Agreement, or would in the reasonable judgment of Seller or Seller Affiliate otherwise expose Seller and Seller's Affiliate(s) to a risk of liability under applicable laws, regulations, orders or requirements, Seller or Seller Affiliate shall be relieved without liability of all obligations under this Contract and/or any collateral Contract.

**6.2** If either party is prevented from performance of its obligations for by reason of this Clause for more than 180 consecutive calendar days, either party may cancel the then unperformed portion of the Contract by notice in writing to the other party, without liability.

## 7. INSPECTION AND TESTING

**7.1** Goods will be inspected by Seller or manufacturer and, where practicable, submitted to Seller's or manufacturer's standard tests before despatch. Any additional tests and/or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative) or the supply of test certificates and/or detailed test results shall be subject to Seller's prior written agreement and Seller reserves the right to charge therefore; if Buyer or its representative fails to attend such tests or inspection after seven days' notice that the Goods are ready therefore, the tests and/or inspection will proceed and shall be deemed to have been made in the presence of Buyer or its representative and the Seller's statement that the Goods have passed such testing and/or inspection shall be conclusive.

**7.2** No claims for shortfalls in quantity or for incorrect delivery may be made more than 14 days after delivery. Any other claims must be made within 14 days of the cause of the claim having arisen.

## 8. DELIVERY, RISK & TITLE

**8.1** Unless otherwise expressly stated in the Contract, the Goods shall be delivered "Ex Works" (EXW) or "Carriage Paid To" (CPT) the destination named in the Contract; freight, packing and handling will be charged at Seller's standard rates. Risk of loss of or damage to the Goods shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Goods after risk has so passed. Alternative, if it is expressly stated in the Contract that Seller is responsible for the insurance of the Goods after their delivery to the carrier, such insurance will be charged at Seller's Standard rates. "Ex-works", "FCA", "CPT" and any other delivery terms used in the Contract shall be defined in accordance with the latest version of Incoterms.

**8.2** Subject to Clause 9, title to the Goods shall pass to the Buyer upon delivery in accordance with Clause 8.1.

## 9. DOCUMENTATION AND SOFTWARE

**9.1** Title to and ownership of the copyrights in software and/or firmware incorporated into or provided for use with the Goods ("Software") and documentation supplied with the Goods ("Documentation") shall remain with Seller (or such other party as may have supplied the Software and/or Documentation to Seller) and is not transferred hereby to Buyer.

**9.2** Buyer is hereby granted a non-exclusive, royalty-free licence to use the Software and Documentation only in conjunction with the Goods, provided that and for so long as the Software and Documentation are not copied and Buyer holds the Software and Documentation in strict confidence and does not disclose them to others, or permit others to have access to them (other than Seller's standard operating and maintenance manuals). Buyer may transfer the above licence to another party which purchases, rents or leases the Goods, provided the other party agrees to be bound by the conditions of this Clause 9.

**9.3** Notwithstanding Sub-clause 9.2, Buyer's use of certain Software, as specified in writing, shall be governed exclusively by the applicable Seller Affiliate or third party license agreement.

**9.4** Seller shall retain ownership of all inventions, designs and processes made or evolved by it and save as set out in this Clause 9 no rights in intellectual property are hereby granted.

## 10. GUARANTEE

**10.1** Seller warrants (I) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods and (II) that Goods manufactured by Seller or Seller's Affiliates shall conform with Seller's specifications therefore and be free of defects in materials and workmanship and (III) Services provided by Seller or Seller affiliates will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice. Seller will make good, by repair or at Seller's option by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance, appear in Goods of its own or Seller's Affiliates' manufacture and which are reported to Seller within 12 calendar months

from putting such Goods into operation or 18 calendar months after their delivery, whichever period expires the sooner, (90 days after delivery in the case of consumables and spare parts) ("Warranty Period") and which arise solely from faulty materials or workmanship: provided always that defective items are returned carriage and insurance prepaid within the Warranty Period. Defective items shall be returned to Seller or, if Buyer or Buyer's site is located outside of Seller's country, to another location for repair and replacement outside of Seller's country and which in accordance with Seller's reasonable instruction is applicable to Buyer or Buyer's site. Buyer shall prior to returning any defective items contact Seller to receive a return material authorisation (RMA). Replaced items shall become Seller's property. Repaired or replacement items will be delivered by Seller to Buyer's mainland site in Seller's country or, if Buyer or Buyer's site is located outside Seller's country, EXW Seller's location for repair and replacement outside of Seller's country and which in accordance with Seller's reasonable instruction is applicable to Buyer or Buyer's site. Seller will correct defects in Services provided by Seller or Seller Affiliates and reported to Seller within ninety days after completion of such Services. Goods and Services repaired or replaced in accordance with this Clause 10.1 shall be subject to the foregoing warranty for the unexpired portion of the Warranty Period or for ninety days from the date of their return to Buyer (or completion or correction in the case of Services), whichever expires the later.

**10.2** Products or Services sourced by Seller from a third party (not being a Seller Affiliate) for resale to Buyer shall carry only the warranty extended by the original manufacturer.

**10.3** Notwithstanding Clauses 10.1 and 10.2, Seller shall not be liable for any defects caused by: fair wear and tear; materials or workmanship made, furnished or specified by Buyer; non-compliance with Seller's storage, installation, operation or environmental requirements; lack of proper maintenance; any modification or repair not previously authorised by Seller in writing; nor the use of non-authorised software or spare or replacement parts. Seller's costs incurred in investigating and rectifying such defects shall be paid by Buyer upon demand. Buyer shall at all times remain solely responsible for the adequacy and accuracy of all information supplied by it.

**10.4** The foregoing constitutes Seller's sole warranty and Buyer's exclusive remedy for breach thereof. No representations, warranties or conditions of any kind, express or implied, shall apply as to merchantability, fitness for any particular purpose or any other matter with respect to any of the Goods or Services.

## 11. PATENT, ETC. INFRINGEMENT

**11.1** Subject to the limitations set forth in Clause 12, Seller shall indemnify Buyer in the event of any claim for infringement of Letters Patent, Registered Design, Design Right, Trade Mark or Copyright ("Intellectual Property Rights") issued at the date of formation of the Contract arising from the use or sale of the Goods, against all reasonable costs and damages awarded against Buyer in any action for such infringement, or for which Buyer may become liable in any such action, provided always that Seller shall not be liable to so indemnify Buyer in the event that:

(I) such infringement arises as a result of Seller having followed a design or instruction furnished or given by Buyer, or the Goods have been used in a manner or for a purpose or in a country not specified by or disclosed to Seller prior to the date of the Contract or in association or combination with any other equipment or software, or (II) Seller has at its expense procured for Buyer the right to continue to use the Goods or has modified or replaced the Goods so that the Goods no longer infringe. (III) Buyer has failed to give Seller the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Buyer and/or Buyer has failed to permit Seller, at Seller's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim, (IV) Buyer has made without Seller's prior written consent any admission which is or may be prejudicial to Seller in respect of any such claim or action, or (V) the Goods have been modified without Seller's prior written authorization.

**11.2** Buyer warrants that any design or instructions furnished or given by it shall not cause Seller to infringe any Intellectual Property Rights in the performance of Seller's obligations under the Contract and shall indemnify Seller against all reasonable costs and damages which Seller may incur as a result of any breach of such warranty.

## 12. LIMITATION OF LIABILITY

**12.1** Notwithstanding any other provision of the Contract, but subject to Sub-clause 12.2, Seller's and Seller's Affiliate total liability for any and all losses, liabilities, expenses (including legal expenses), damages, claims or causes of action incurred under or in connection with this Contract or any collateral contract between the parties, arising in or by virtue of breach of contract, misrepresentation, tort (including negligence), breach of statutory duty, strict liability or infringement of Intellectual Property Rights) or otherwise shall in no circumstances exceed: a sum equal to the Contract Price.

**12.2** Notwithstanding any other provision of the Contract but without prejudice to Sub-clause 12.3, neither Seller nor Seller's Affiliates shall be liable to Buyer in any circumstances under or in connection with this Contract or any collateral contract between the parties for any loss of income, loss of actual or anticipated profits, loss of anticipated savings, loss of business, loss of contracts, loss of goodwill or reputation, loss of use, loss of damage to or corruption of data or any indirect or consequential loss or damage of any kind, however caused and whether arising in or by virtue of breach of contract, misrepresentation, tort (including negligence), breach of statutory duty, strict liability or infringement of Intellectual Property Rights.

**12.3** Nothing in this Contract or any collateral contract shall exclude or in any way limit Seller's liability (I) for gross negligence or wilful misconduct, (II) for any liability to the extent that such liability may not be limited or excluded as a matter of law.

## 13. STATUTORY AND OTHER REGULATIONS

**13.1** If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate.

**13.2** Buyer's personnel shall, whilst on Seller's premises, comply with Seller's applicable site regulations and Seller's reasonable instructions, including but not limited to those relating to safety, security and electrostatic discharge.

## 14. COMPLIANCE WITH LAWS

Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union, and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto will apply to its receipt and use of Goods, Services and technology. In no event shall Buyer use, transfer, release, export or re-export any such Goods, Services or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorizations or license exceptions relating thereto.

## 15. DEFAULT, INSOLVENCY AND CANCELLATION

Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to Buyer, if a) Buyer is in default of any of its obligations under the Contract (and fails, within 30 (thirty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default or b) any step, application, order or proceeding is taken in relation to a moratorium of any indebtedness, winding-up, dissolution, administration or re-organisation (by way of voluntary arrangement, scheme or otherwise) of Buyer or any affiliate of Buyer (including but limited to Parent(s) at any tier), other than a solvent liquidation or re-organisation for the purpose of amalgamation or reconstruction. Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

## 16. SUPPLEMENTARY TERMS AND CONDITIONS:

If the Goods comprise or include a control system, Seller's Supplementary Terms and Conditions Applicable to the Supply of Control Systems and Related Services shall apply to the control system and related services only. Such Supplementary Terms and Conditions shall take precedence over these Standard Terms and Conditions of Sale; copies are available from Seller upon request.

## 17. MISCELLANEOUS:

**17.1** No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

**17.2** If any clause, sub-clause or other provision of the Contract is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract.

**17.3** Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.

**17.4** Seller enters into the Contract as principal. Buyer agrees to look only to Seller for due performance of the Contract.

**17.5** GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer (I) accepts Goods and Services in accordance with the foregoing restriction, (II) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (III) agrees to defend, indemnify and hold harmless Seller and Seller's Affiliates from any and all claims, losses, liabilities, suits, judgements and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

**17.6** The Contract shall in all respects be construed in accordance with the laws of Italy excluding, however, any effect on such laws of the 1980 Vienna Convention on Contracts for the International Sale of Goods. All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the Milan courts.

**17.7** The headings to the Clauses and paragraphs of the Contract are for guidance only and shall not affect the interpretation thereof.

**17.8** All notices and claims in connection with the Contract must be in writing.

**17.9** All items (including goods, software or technology) subject to Dual-use Regulations may require an export licence if exported from the European Union ("EU"). The person responsible for export of this item from the EU must consider the circumstances relating to the export from the EU, and where necessary, obtain any necessary licence. The exporter shall be responsible for any loss or damage suffered, where any export out the EU takes place without the necessary licence.

Buyer

Seller

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