



# **CORPORATE GENERAL TERMS AND CONDITIONS OF SALE**

**TUBACEX GROUP**

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## 1.- CONTRACTS

- 1.1 Every agreement entered into by any of the Tubacex Group Companies (hereinafter referred to as the "SELLER") with any of their purchasers (hereinafter referred to as the "PURCHASER") of its goods will be subject exclusively to these terms, unless otherwise agreed in writing.
- 1.2 In the event of any discrepancy between these General Conditions of Sale and any other purchasing conditions of the PURCHASER, those established herein shall at all times hold precedence, unless previously confirmed by the SELLER in writing.
- 1.3 The SELLER's offers shall only become binding upon written confirmation of the order. If the goods are intended for a specific application, the PURCHASER must previously inform the SELLER and specify it in writing in the relevant purchase order and, previously, in the request for quotation. Agreements, undertakings and declarations of all kinds must be made in writing in order to be legally valid. Any waiver of the written form must be formalized in writing.
- 1.4 Any variations in quantities must be specifically agreed in writing in the relevant order for their validity. The quantities binding for the invoiced amounts shall be those determined through the calibrated measurement taken by the SELLER.
- 1.5 In the event of unilateral suspension or cancellation by any of the parties without due cause, the non-suspending/terminating party shall be indemnified for all loss and damage arising from it.

Moreover and for the specific cases of cancellation, any confirmed order which is cancelled will lead to a **penalty of FIVE PER CENT (5%)** of the order value and, additionally, if the order's production has begun at the factory, the SELLER will be indemnified on the basis of the value of the work in progress.

- 1.6 The last valid version of INCOTERMS shall be applied whenever stated in the confirmation of the relevant order. The SELLER proposes the applicability of the INCOTERMS CIP, CIP, CFR or CIF.

## 2.- ACCEPTANCE AND DELIVERY

- 2.1 Delivery deadlines and other terms commence on the date of confirmation of the order by the SELLER. Notwithstanding the foregoing, in the particular case of *Pre-Production Meeting* (PPM), it will take place during the following calendar week subsequent to the order's confirmation. Failing this, the SELLER shall not be liable for any subsequent delay of the delivery.
- 2.2 Partial deliveries are admissible.
- 2.3 The SELLER's delivery obligation will also be deemed fulfilled when the PURCHASER is notified that the shipment is being prepared or that it has been accepted, even if for reasons that are of no fault of the SELLER, the goods are not accepted, collected or shipped on time.
- 2.4 In the event of a default of acceptance, the SELLER reserves the right to withdraw from the contract. Insofar as this default is caused by the PURCHASER -or the persons employed by him/her to fulfill the obligations- due to gross negligence or willful misconduct, the PURCHASER shall indemnify the SELLER for all damages and loss (including consequential damages and loss of profits).
- 2.5 If the PURCHASER gets into default of acceptance or if, in the case of blanket orders, the relevant order is not affected within **FOURTEEN (14) calendar days** following the agreed order date, the SELLER is entitled to ship the goods at the risk and expense of the PURCHASER at the SELLER's discretion, or optionally to store them (all storage and financial costs are to be assumed by the PURCHASER).
- 2.6 At this point in time, the goods are considered to be delivered as per the agreement in every respect and the risk is transferred to the PURCHASER, if it has not already been transferred. The PURCHASER must immediately proceed with the corresponding payments, which are due for the case of delivery, or which are caused by the delivery itself.

### 3.- SHIPMENT AND TRANSFER OF RISK

- 3.1 All goods shall be regarded as shipped under proper conditions, and damage shall only be considered to have occurred during transportation until proven otherwise. If, as per the applicable INCOTERM, the damage has occurred in the area of risk taking of the SELLER, the PURCHASER must uphold the SELLER's rights before the carrier or its transport insurer with the otherwise loss of possible claims against the SELLER.
- 3.2 For possible loss, damage or confusion, the PURCHASER is obliged to immediately effect the official confirmation required for the assertion of claims for compensation on receipt of the goods and to pass it on to the SELLER.

### 4.- PRICE AND PAYMENT

- 4.1 All prices are understood as net, excluding taxes.
- 4.2 The agreed place of payment is the territory of the SELLER and it will be regarded as such in the order confirmation. Payment will be made in cash, free of charge. Set-off or retention in connection with asserted counterclaims is excluded. No invoice discounts made by the PURCHASER shall be allowed by the SELLER.
- 4.3 The PURCHASER shall make payment within the period established in the order confirmation, which shall not exceed the payment period provided by the applicable law.
- 4.4 The SELLER reserves the right to accept discountable and regularly charged bills; however, it takes place on account of payment in any case. Credit notes over received bills of exchange and checks are always valid subject to the correct entry of the value. The resulting discount interest and charges are to be borne by the PURCHASER. The SELLER accepts no liability for the timely presentation, protesting, notification and re-transfer of the bill if not cashed.
- 4.5 In case of default in the payment of the invoices, the PURCHASER will be charged default interest and further applicable charges notwithstanding further legal consequences. **It is agreed that default interest shall amount the respective country's market official interest rate plus FIVE PER CENT (5%).** Moreover, if there were outstanding deliveries pending invoicing, the SELLER shall be entitled to withhold the same, until the payment of the outstanding invoices plus the accrued interests, if any, is made by the PURCHASER.
- 4.6 Incoming payments are notwithstanding contradictory payment dedications charged up against the respectively oldest outstanding claim; first of all, to the costs and other supplementary fees, then to interests and finally, to the capital.
- 4.7 **The goods remain property of the SELLER and shall retain at all times their legal title, until the complete payment of the purchase price (including interest and fees) is made.**
- 4.8 The PURCHASER undertakes to reimburse the fines and collection charges arising for the SELLER in case of default with the PURCHASER's contractual payment obligations.
- 4.9 In case the terms of payment are not fulfilled or the SELLER is made aware of circumstances, which in their opinion are suitable to reduce the credit standing of the PURCHASER, all claims of SELLER, as well as those from other contracts, become immediately due, regardless of the term of possibly taken in and credited bills. The SELLER is then also entitled to execute still outstanding deliveries against advance payment only.

### 5.- TAXES

- 5.1 All taxes which the SELLER may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby shall be for the account of the PURCHASER, and the PURCHASER shall promptly pay the amount hereof to the SELLER.

## 6.- OBLIGATION TO EXAMINE AND REPORT DEFECTS

- 6.1 The PURCHASER must inspect and examine deliveries of the SELLER immediately after receipt and shall notify the SELLER, **not later than the following calendar week**, about any possible complaints, especially deviations from the order. This applies to material defects, short deliveries and/or differing deliveries.
- 6.2 Hidden defects as well as other deviations from the order confirmation, which are not immediately recognizable, must be asserted legally within **TWELVE (12) MONTHS** in any case.
- 6.3 On violation of the obligation for examination and to give notice of defects or on assertion later than **TWELVE (12) months** (not in service) after delivery, all legal dispositive rights and claims for damage to the PURCHASER from a possible deviation of the delivery from the order are barred and excluded.

## 7.- WARRANTY AND GUARANTEE

- 7.1 Unless proven otherwise upon their handover, the goods are considered delivered as per contract and fit for purpose, which need to be previously informed by the PURCHASER and accepted by the SELLER. **In any case, the warranty obligation is TWELVE (12) MONTHS from delivery of the goods.**
- 7.2 In case of defects, which should be perfectly verified and exclude the applicability of the warranty to the goods in the event of absence of the verification set forth in point 6, the SELLER accepts to either –at its discretion-:
- a) Take back the goods at the calculated price;
  - b) Eliminate the defect; or
  - c) Replace the goods free of charge with new ones, which correspond to those in the order.

The claimed goods are to be sent back on demand or after request for the approval of the SELLER.

- 7.3 Warranty claims going beyond this -i.e. as expressed in sections 7.1 and 7.2-, from whichever title, are expressly excluded, as far as this is legally admissible.
- 7.4 Warranty does not cover the goods if after delivery:
- a) The goods are processed in a way that may deteriorate the characteristics of the material (e.g. thermal treatments, inaccurate welding, etc.);
  - b) There are material upgrades -understood as substantial upgrades arising from tests and documentation- not previously accepted in writing by the SELLER.
  - c) The PURCHASER uses the goods for a specific application without the prior knowledge and approval of the SELLER in breach of the provision set forth in section 1.3.

## 8.- FORCE MAJEURE

- 8.1 Events of force majeure and other circumstances beyond the sphere of influence of the SELLER, e.g. operational interferences, traffic interferences as well as difficulties in supplying factories with power, raw materials, fuels and auxiliary materials, acts of God, and further hindrances in production and delivery exclude claims for damages to the PURCHASER and entitle the SELLER either to extend the delivery deadline or to completely or partially withdraw from the contract.
- 8.2 Force majeure further includes strikes of any kind - both internal and external-, lockout, international economic blockades, trade bans imposed in those countries in which any of the Parties conducts business and further circumstances, which essentially complicate the delivery or even make it impossible, whereby it is of no importance, whether they occur to the SELLER or one of its sub-suppliers.

- 8.3 The SELLER undertakes to inform the PURCHASER promptly about the occurrence and the termination of such delivery hindrances.
- 8.4 In case of a justified withdrawal by the PURCHASER due to force majeure or similar delivery hindrances, the costs and charges accrued by the SELLER are borne by both contract parties by one half each according to equity.
- 8.5 If the circumstances under which the contract was concluded changed so considerably that it may rightly be assumed that the conclusion would not have taken place at all under the changed circumstances or at least at other terms, the SELLER is entitled to withdraw from the contract or to demand a change of the contractual provisions, e.g. payment in another currency, change of the delivery modalities, etc., which would take the changed circumstances into account. The change of circumstances can also be justified with substantial changes in the economic and financial conditions of the PURCHASER.

## 9.- LIABILITY

- 9.1 All claims for damages, especially those for consequential damage of defects against the SELLER or the persons employed in the performance of its obligations, are excluded as far as this is legally admissible and they are not based on willful misconduct or gross negligence by the SELLER.
- 9.2 The PURCHASER must provide proof of the presence of willful misconduct or gross negligence.
- 9.3 The PURCHASER relinquishes possible claims of recourses, which may arise against the SELLER due to their own liability. The PURCHASER undertakes to transfer relinquishments of damages and recourse as well as the handover obligation in case of reselling the goods to their PURCHASERS. In case of violation of this obligation, the PURCHASER shall indemnify the SELLER for all claims from third parties caused by that as well as against legal actions. Notwithstanding the foregoing, the PURCHASER undertakes to reach an agreement with the End User by virtue of which the SELLER could be involved from the beginning with the End User in order to provide, as the case may be, a proper and effective solution. The PURCHASER shall be fully liable if this clause is not complied with.
- 9.4 Claims for damages and recourses must be legally asserted against the SELLER within **TWELVE (12) MONTHS** (not processed material), otherwise they will not be valid.
- 9.5 The **SELLER will not be responsible in any case:**
- (i) of the processing done to the goods after delivery that may deteriorate the characteristics of the material (e.g. thermal treatments, inaccurate welding, etc.).
  - (ii) for consequences derived from material upgrades -as defined in section 7.4.b) above- if not previously accepted in writing by the SELLER.
  - (iii) for any claims of any kind derived from the use of the goods by the PURCHASER in a specific application which has not been previously informed and accepted by the SELLER in accordance with section 1.3.

## 10.- INDEMNITY

- 10.1 The PURCHASER shall exculpate, defend, indemnify and hold harmless the SELLER and its affiliates from all loss, claim, damage, or liability, joint or several, resulting either directly or indirectly from acts and/or omission by the PURCHASER and/or third parties, including the PURCHASER's employees, agents, invitees, and affiliates, whether negligent or otherwise and including those resulting from the sole negligence of the SELLER, its employees, agents, invitees, and affiliates, for which loss, claim, damage, or liability would not have arisen except for the relationship created by this order between the PURCHASER and the SELLER and/or omissions for which the PURCHASER is responsible hereunder.

## 11.- SECURITY INTEREST

- 11.1 As security of the PURCHASER'S obligation to the SELLER to pay for the goods purchased hereunder, the PURCHASER grants the SELLER a purchase money security interest on the goods shipped hereunder and

authorizes the SELLER to take any and all steps to perfect or otherwise protect or maintain such security interest.

## **12.- PROPRIETARY RIGHTS, DRAWINGS, SAMPLES**

- 12.1 If domestic or foreign proprietary rights of third parties, especially rights regarding patents, trademarks or samples, are violated with the utilization of drawings, samples or other remedies provided by the customer or with the execution of provisions about quality or further characteristics or of similar provisions of the customer, the customer must indemnify the SELLER for all expenses resulting from that and indemnify the SELLER against legal action.
- 12.2 For loss or damage of provided drawings, samples and the like, the liability of the SELLER for accident and slight negligence is excluded. The existence of gross negligence is to be verified by the PURCHASER. Insurance policies are taken out by the SELLER only, with the express order and at the expense of the PURCHASER.

## **13.- RESERVATION OF PROPERTY RIGHTS**

- 13.1 As set forth in section 4.7, **until the complete payment of the purchase price, interest and supplementary fees, the goods remain property of the SELLER.** The PURCHASER must immediately notify the SELLER about a seizure or another laying claim on the goods by third parties and must take all legally required measures against the violation of the proprietary rights of the SELLER at its own expense.
- 13.2 Reselling the reserved goods is admissible with the express approval of the SELLER and against cash payment or a transfer of the proprietary rights to the acquiring party only.
- 13.3 Any claims and rights from reselling, processing, confusion or other utilization of the reserved goods as well as possible claims arising from a damage to or a utilization of the reserved goods are assigned by the PURCHASER to the SELLER already in advance and he/she must also document this in the legally required manner. The PURCHASER will immediately pay out the collected amounts to the SELLER or keep them safe until then separately and on behalf of the SELLER.
- 13.4 As far as this is possible and in accordance with the respective applicable law, it is agreed that the reservation of proprietary rights is maintained regardless of possible processing or selling, provided that not all claims, also from other business deals of the SELLER, against this customer are fulfilled.

## **14.- EXPORT RULES AND CONTROLS**

- 14.1 Tubacex Group products procured by the PURCHASER from any subsidiary of Tubacex Group may not be used, resold, diverted, transferred or otherwise exported, directly or indirectly in any manner that would violate any of the applicable export rules and controls.
- 14.2 The PURCHASER undertakes to comply with these rules and controls and to indemnify and hold harmless the SELLER in any case of breach of those rules and controls.

## **15.- MISCELLANEOUS**

- 15.1 Should individual provisions of these terms of sale be or become completely or partially ineffective, invalid or unenforceable, this does not affect the effectiveness, validity or enforceability of the further provisions.
- 15.2 The SELLER 's territorial law is applicable to the legal relations of the contract parties.
- 15.3 In case of lawsuits, both parties submit to the relevant competent courts of the domicile of the SELLER but the SELLER reserves the right to attend the Courts of the PURCHASER'S country to claim any amount pending payment.