

GIMEF
French association of sheet metal working industries

SHEET METAL WORKING INDUSTRY'S GENERAL TERMS AND CONDITIONS OF SUPPLY

1. General

These general terms and conditions of supply codify the commercial practices of the sheet metal working, stamping, spinning industries and suppliers of tooling components. These terms and conditions comply with the rules laid down in contract law and competition law, and have been registered with the Bureau des usages du Greffe du tribunal de commerce de Paris (Bureau of industry practices at the Paris Commercial Court Clerk's Office). They complement the common will of the parties whenever it has not been clearly expressed. They form the legal basis of contracts, unless provisions to the contrary have been stipulated.

These general terms and conditions are applicable to contractual relations between "the Manufacturer" and the customer company hereinafter referred to as "the Customer".

These general terms and conditions are governed by the law of sale when they apply to the supply of standard products or products whose characteristics are previously determined by the Manufacturer. They are governed by the law of contracts for work and, where applicable, by the law of subcontracting contracts when they apply to the manufacture of a product according to specifications, or when they apply to the provision of services.

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

For the purpose of these general terms and conditions, "in writing" or "written means any paper, electronic or fax document.

These general terms and conditions shall apply to all contracts, agreements, and orders, as well as orders placed as part of an "open order".

2. Scope of the contract

The following form an integral part of the contract:

- these general terms and conditions;
- the special conditions agreed by the two parties;
- the order accepted by any means, in particular by means of an acknowledgement of receipt or by a confirmation of order;
- the Manufacturer's documents complementing these general terms and conditions;
- the studies, quotations, design and engineering documents which have been submitted before the formation of the main contract and accepted by both parties;
- the delivery slip; and
- the invoice.

Documents, advertisements, price lists which are not expressly mentioned in the Special Conditions do not form part of the contract.

3. Order placement procedure

The order shall be placed in writing.

The contract shall be deemed to have been completed only when the Manufacturer has formally accepted the order.

Acceptance of the order may be made in any written form.

An order, whether closed or open, which has been formally accepted by the Manufacturer shall be deemed to imply acceptance of the Manufacturer's offer by the Customer.

3.1 Closed order

A closed order shall firmly specify quantities, prices and time limits.

3.2 Open order

Without prejudice to the conditions defined by Article 1174 of the Civil Code, an open order shall meet the following conditions:-

- It shall be limited in time by an agreed time limit;
- It shall specify the characteristics and price of the product;
- On conclusion of the open order, minimum and maximum quantities and lead times shall be specified;
- The schedule of delivery orders shall define precise quantities and delivery times which fall within the range of the open order.

If the adjustments made by the Customer to the provisional estimates of the schedule of the total open order or of the delivery orders vary by more than plus or minus twenty percent from these estimates, the Manufacturer shall evaluate the consequences of such variations.

In case of upward or downward variation, the parties shall consult together for the purpose of resolving the consequences of any such variation which may affect the equilibrium of the contract to the detriment of the Manufacturer.

In case of an upward variation, the Manufacturer shall do his utmost to meet the Customer's demand in quantities and within time limits compatible with his (manufacturing, transport, subcontracting, human, financial, etc.) capacities.

3.3 Modification of orders

Any change in the contract required by the Customer shall be subject to formal acceptance by the Manufacturer.

3.4 Cancellation of order

The order expresses the Customer's consent in an irrevocable manner. The Customer may not therefore cancel it, except with the prior express consent of the Manufacturer. In such case, the Customer shall indemnify the Manufacturer against all expenses incurred (e.g. specific equipment, design costs, labour and supplies costs, tooling) and all direct and indirect consequences arising thereof. Moreover, the down payment already remitted shall remain the property of the Manufacturer.

3.5 Contract changes – Effects on stocks

The Manufacturer shall build stocks (materials, tools, work-in-process, finished products) in accordance with the Customer's needs and in the interest of the Customer, either at the

latter's explicit request, or as appropriate to meet the predictive programmes established by the Customer.

Any modification, non execution or suspension of the contract, which would not allow the movement of stocks in the conditions foreseen in the contract, shall entail a renegotiation of the initial economic conditions for the purpose of indemnifying the Manufacturer thereagainst.

4. Preparatory and ancillary work in connection with the order

4.1 Drawings, design and descriptive documents

All drawings, blueprints, studies, design documents, descriptions, technical documents and quotations submitted to the other party are provided within a loan for use for the purpose of assessing and discussing the Manufacturer's commercial offer. They shall not be used by the other party for any other purposes. The Manufacturer shall retain full ownership and intellectual property rights over the lent documents. These shall be returned to the Manufacturer at first request. The same applies to the design developments that the Manufacturer proposes to improve the quality or cost of the parts through an original modification of the specifications. These modifications when accepted by the Customer shall not entail a transfer of responsibility against the Manufacturer.

Transfer of intellectual property rights or know-how shall be finalized under an agreement signed between the Manufacturer and the Customer.

4.2 Design of parts

a) Unless otherwise agreed, the Manufacturer is not the designer of the parts that he manufactures. His role is that of an industrial subcontractor. The design which results in the complete definition of a product may however be wholly or partly included in the industrial subcontracting work, provided that the Customer assumes full responsibility for it in the last resort as to the sought industrial result. This particularly applies to parts which have been computer designed by the Manufacturer at the Customer's request and on the basis of specifications or a functional diagram provided by the Customer.

b) In the event of the Manufacturer being entirely the designer and manufacturer of parts intended for customers, this situation should be covered by a specific separate contract.

4.3 Provision of samples

Samples or prototypes provided to the Customer, before or after the conclusion of the contract, are subject to strict confidentiality. They may not be disclosed to third parties without the express authorisation of the Manufacturer.

Models and prototypes, when not managed under the contract, shall be the subject of a specific order.

4.4 Tooling

a) When supplied by the Customer, tools and dies shall imperatively and distinctly bear assembling or operational marks and shall be supplied free of charge to the site specified by the Manufacturer. The Customer shall be responsible for ensuring that these tools and dies are fully in concordance with the drawings and specifications.

However, at the Customer's request, the Manufacturer shall check such concordance and shall reserve the right to charge costs for any such checking operations.

If the Manufacturer deems necessary to bring changes to ensure that parts are manufactured successfully, costs arising therefrom shall be borne by the Customer, after the Manufacturer has advised him in writing thereof.

For series orders, the Customer shall require that specimens are manufactured and submitted to him by the Manufacturer for approval. After all necessary inspections and tests have been carried out for approval purposes, the parts shall be deemed to be accepted by the Customer, if he has not sent any written observations within fifteen days after receiving the parts.

Should the Customer's drawings and specifications not allow to completely check that they are fully in concordance with the tools and dies supplied by him, the shapes, dimensions and thickness of the parts obtained would, in that case, be entirely or partly determined by these tools.

Responsibility for the result obtained with regard to these data would then exclusively rest with the Customer who would be previously advised thereof in writing by the Manufacturer.

In all cases, if the tools and dies received by the Manufacturer are not suitable for the purpose that he was reasonably entitled to expect, the Manufacturer shall ask for a revision of the price of the parts which had been initially agreed, on the understanding that such revision shall be agreed with the Customer before manufacture of the parts begins.

b) When the Manufacturer is asked by the Customer to manufacture tools or dies, the Manufacturer shall produce them in agreement with the Customer in accordance with the requirements of his own manufacturing technique. The tool manufacturing costs as well as the costs for replacing or repairing worn tools shall be paid to the Manufacturer independently of the parts supply.

The Manufacturer shall only bear tool replacement costs within the limits of the supply of part quantities which has been contractually agreed, or as resulting from normal wear.

Unless a price increase has been previously agreed with the Manufacturer to cover such risk, the Customer shall either supply a new replacing tool, or pay for its manufacture or repair by the Manufacturer.

c) The price of tooling designed by the Manufacturer, whether it is manufactured by him or not, shall not include the Manufacturer's intellectual property over this tooling, i.e. the application of his know-how or patents for its study or development. The same applies to any adjustments that the Manufacturer may make on the tooling supplied by the Customer in order to ensure that parts are correctly manufactured or to increase productivity.

Tools and dies shall remain in the Manufacturer's facilities after fulfilment of the order, and the Customer shall only regain possession of the said tools after the conditions for use of the Manufacturer's intellectual property have been agreed in writing, in accordance with the provisions of the intellectual property code, and after all invoices due to the Manufacturer on any account whatsoever have been remitted. These tools and dies shall be kept in good operating condition by the Manufacturer, and the consequences arising from their wear, repair or replacement shall be borne by the Customer.

Unless otherwise agreed between the parties, tooling shall be paid in the following way: fifty percent on placement of the order, and the balance either on completion of its manufacture, or on the date of presentation, or upon acceptance of specimens, if any. Acceptance of specimens shall be effected within a maximum of thirty days after the date of presentation.

d) In the event that the Customer would decide to start the production of parts despite a provisional acceptance, or acceptance with reservations being made about the tools or specimens, the Customer shall not be entitled to delay payment for the tools after the date when production was started. This provision shall apply without prejudice to the possibility for

the Customer to withhold a maximum of five percent of the amount due in the conditions laid down in the Act n° 71-584 of July 16th, 1971 which is mandatory law.

e) The Manufacturer undertakes not to use the tools mentioned in the above paragraphs a, b and c on behalf of third parties under any circumstances whatsoever, whether he is the owner of the tools or not, without prior written authorisation by the Customer.

4.5 Tool storage

It is the responsibility of the Customer, who remains entirely responsible for the tools and dies covered by clause 4.4 hereabove, of which he is the owner, to take out an insurance policy covering their damage or destruction in the company for any reason whatsoever, waiving all claims against the Manufacturer. These tools shall be returned to the Customer, either at his request or when the Manufacturer so chooses, in the condition in which they are at that time, on condition that full payment has been received for the tools and manufactured parts. If the tools remain with the Manufacturer, they shall be stored free of charge during three years after the date of the last delivery. After this period of three years, if the Customer has not asked for the tools to be returned to him, or if he has not agreed with the Manufacturer upon the principle and conditions for an extension of their storage, the Manufacturer shall be entitled to destroy the tools, after a formal demand has been sent to the Customer by registered letter and has remained ineffective during a period of three months.

5 Characteristics and status of the ordered products

5.1 Intended purpose of the products

The Customer shall be responsible for using the product in the normal foreseeable conditions of use and in conformity with the safety and environmental legislation applicable in the place of use, as well as in accordance with the good engineering practice in his industry.

In particular, it is the Customer's responsibility to choose an appropriate product to meet his technical needs and, if necessary, to make sure with the Manufacturer that the product is suitable for the intended application.

5.2 Product packaging

a) Containers, frames, spreaders, pallets and any other permanent equipment owned by the Manufacturer shall be returned to him by the Customer in good condition and carriage paid within thirty days after their reception; failing that, they will be charged by the Manufacturer to the Customer. If the aforementioned equipment belongs to the Customer, the latter shall ship them in good condition no later than the date previously agreed with the Manufacturer, and to the site specified by the latter. The Manufacturer shall be informed of any delay in the delivery of packaging by the Customer, and the Manufacturer shall not incur penalties of any sort whatsoever therefor.

b) At the Customer's request, special protective measures may be taken to protect the parts. These protective operations shall be determined by the Customer and their cost shall be charged to him by the Manufacturer.

5.3 Transmission of information relative to the product

The Customer undertakes to provide any subpurchaser with all useful information for using the product. The Manufacturer shall ensure traceability of the product up to the date of its delivery to the Customer, in accordance with clause 7.2 of these general terms and conditions.

6 Intellectual property and confidentiality

6.1 Intellectual property and know-how of documents and products

All intellectual property rights and know-how incorporated in the documents, products and services supplied shall remain the exclusive property of the Manufacturer.

Any transfer of intellectual property rights or know-how shall be covered by a contract with the Manufacturer.

The Manufacturer reserves the right to dispose of his know-how and of the results of his own research and development work.

6.2 Confidentiality clause

The parties mutually undertake to fulfil a general obligation of confidentiality regarding any oral or written information of any sort whatsoever and in any form whatsoever (e.g. discussion reports, drawings, exchange of computer data, activities, installations, projects, know-how, products) exchanged during the preparation and execution of the contract, with the exception of information that is generally known to the public or that will become so through no act or fault of the Customer.

Consequently, the parties undertake:

- to keep all confidential information strictly secret, and in particular to abstain from disclosing or transmitting all or part of the confidential information in any way whatsoever, directly or indirectly, to whomsoever, without the prior written consent of the other party;
- not to use all or part of the confidential information for purposes or for activities other than the execution of the contract;
- not to duplicate or copy all or part of the confidential information.

The Customer undertakes to take all necessary measures to ensure the fulfilment of this obligation of confidentiality throughout the duration of the contract and even after its expiration, and vouches for the fulfilment of this obligation by all his employees. This obligation is an obligation of result.

6.3 Guarantee clause in case of counterfeiting

The Customer vouches that on conclusion of the contract the contents of the drawings and specifications and their conditions of use do not use the intellectual property rights or a know-how owned by a third party. The Customer guarantees that he can freely dispose of them without infringing any contractual or legal obligation.

The Customer shall hold harmless the Manufacturer from and against the direct or indirect consequences of any action involving civil or criminal responsibility arising in particular from acts of counterfeiting or unfair competition.

7 Delivery, transport, verification and acceptance of products

7.1 Delivery time

Delivery times shall start from the latest of the following dates:-

- date of acknowledgement of receipt of the order;
- date of reception of all materials, equipment, machinery, tooling, special packaging, manufacturing details to be provided by the Customer;
- date of execution of the contractual or legal obligations which must be previously fulfilled by the Customer.

Agreed times and deadlines are important elements which shall be specified in the contract. The type of time or deadline (e.g. availability deadline, deadline for submission for approval, delivery time, legal acceptance deadline) shall also be indicated. The stipulated times and deadlines are however given for information only, and may be changed due to the occurrence of circumstances beyond the Manufacturer's control.

7.2 Terms of delivery

Delivery shall be deemed to be effected in the Manufacturer's factories or warehouses. Risk shall therefore be transferred to the Customer as soon as delivery is effected without prejudice to the Manufacturer's right to invoke the reservation of title clause or to use his right of retention.

Delivery shall be completed either:

- by notice of availability; or
- where foreseen by the contract, by handing over the goods to a third party or a carrier appointed by the Customer; or
- where foreseen by the contract, by delivery to the Customer's factories or warehouses.

In the event that the Customer has hired a transportation company and pays for the transportation costs, all the pecuniary consequences arising from a direct action taken by the carrier against the Manufacturer shall be borne by the Customer.

7.3 Transport – Customs – Insurance

Unless otherwise agreed, all operations relating to transport, insurance, customs, handling and on site installation shall be the responsibility of the Customer and shall be at his risk and expense. The Customer shall be responsible for checking shipments on their arrival and for initiating proceedings against carriers, where necessary, even for carriage-paid shipments. When shipped by the Manufacturer, goods shall be shipped carriage forward at the lowest prices, unless otherwise requested by the Customer, in which case additional transportation costs will be charged to the Customer.

7.4 Verification of products

The Customer shall, at his own expense and under his own responsibility, check the products' conformity with the terms of the order.

7.5 Acceptance of parts

The Customer shall be obliged to perform the legal acceptance of the products, whereby he shall recognize their conformity with the terms of the contract. Acceptance shall be deemed to imply recognition of the absence of patent defects.

a) The Customer shall therefore decide the technical terms of reference which determine the specifications that will define all the aspects of the parts to be manufactured, as well as the nature and procedures of inspections, checks and tests required for their acceptance.

b) In all cases, the nature and scope of the necessary inspections and tests, the applicable standards and severity classes, as well as the tolerances of all sorts shall be specified in the drawings and specifications which shall be necessarily attached by the Customer to his request for quotation, and shall be confirmed in the contract agreed between the Manufacturer and the Customer, with a view in particular to determining the conditions for exercising the warranty defined in clause 12 hereafter.

In the case of manufacture of composite parts or weld assembly of parts by the Manufacturer, the parties shall agree on the delimitations of each component part and on the size and type of weld junctions.

c) In the absence of any specifications about the inspections and tests to be carried out on the parts, the Manufacturer shall only perform a simple visual and dimensional inspection of the major dimensions.

d) Inspections and tests which are deemed necessary by the Customer shall be carried out at his request either by the Manufacturer, or by the Customer himself or by a third-party laboratory or body.

This shall be clearly stipulated before signing the contract, and the nature and scope of the inspections and tests shall also be indicated. Acceptance shall take place on the production site at the Customer's expense, and no later than within a week after the notice of availability for acceptance has been sent by the Manufacturer to the Customer or to the body in charge of the acceptance. In case of failure by the Customer or by the inspection body to perform the acceptance procedure, the parts shall be stored by the Manufacturer at the Customer's expense and risk.

After a second notice from the Manufacturer which would be of no effect within fifteen days after it has been sent, the parts shall be deemed to be accepted and the Manufacturer shall be entitled to ship and invoice them. Likewise, should the parts be used by the Customer, they shall be deemed to have been accepted.

e) The price of inspections and tests shall generally be distinct from the price of the parts, but may be included in it where agreed between the Manufacturer and the Customer. The price of inspections and tests shall include the cost of special work which must be done to obtain the necessary conditions for the good performance of these inspections and tests, in particular in the event of destructive testing.

f) When parts are to be manufactured under a Quality Assurance scheme, this shall be mentioned by the Customer in his request for quotation and in his order, and the Manufacturer for his part shall confirm this in his offer and in his acceptance of the order, without prejudice to the provisions of the preceding clauses.

8 Unforeseen and force majeure events

8.1 Hardship clause

In case of the occurrence of an event beyond the control of the parties which may impair the equilibrium of the contract to the extent that fulfilment by the Manufacturer of his obligations would be detrimental to him, the parties shall agree to negotiate the modification of the contract in good faith. This clause particularly refers to the following events: variation in material prices, change of customs duties, change of exchange rates, changes in legislations, modification of the Customer's financial situation. Failing agreement between the parties, the Manufacturer shall have the option to terminate the contract subject to one month's notice.

8.2 Force majeure

Neither party to the contract shall be held responsible for his delay or failure to fulfil one of the obligations incumbent on him under the contract, if such delay or failure directly or indirectly results from a case of force majeure understood in a wider sense than French jurisprudence, such as:-

- occurrence of a natural cataclysm;
- earthquake, storm, fire, flood, etc.;

- armed conflict, war, conflict, bombing;
- labour dispute, total or partial strike in the Manufacturer's or Customer's plants;
- labour dispute, total or partial strike of manufacturers, service providers, carriers, postal services, public services, etc.;
- an imperative injunction issued by the authorities (e.g. ban on imports, embargo);
- operating or production accidents, broken machines, explosion.

Each party shall inform the other party, without delay, of any occurrence of a force majeure event when they are aware of it and where they believe that it is likely to affect the execution of the contract.

Where the duration of the impediment exceeds ten working days, the parties shall consult each other within the five working days after expiry of the ten working day period to examine in good faith whether the contract should be continued or terminated.

9 Pricing

Prices shall be established in Euros, exclusive of taxes, and "ex-work", unless otherwise stipulated in the contract. Prices shall be invoiced in accordance with the terms and conditions of the contract.

The price shall exclusively cover the products and services mentioned in the offer.

10 Quantities in a "closed" order

a) Completed quantities

From a quantitative point of view the number of parts mentioned in the contract shall be the rule. However, a certain tolerance on the number of manufactured and delivered parts is admitted, which shall be agreed between the Manufacturer and the Customer when negotiating the contract. In the absence of any such previous agreement, the generally accepted tolerance is between + 10 and – 5 percent of the number of parts mentioned in the contract.

b) Weigh counting

Unless otherwise agreed, when parts are weigh counted, in particular in case of delivery of large series, the actual part weight determined by a representative sample shall be used to determine the quantity.

Part quantity disputes shall only be received by the Manufacturer, if the dispute has been lodged with him within a maximum of 48 hours.

11 Payment

11.1 Term of payment

According to the article L441-6 of the commercial law resulting from the Law for Modernization of Economy n°2008-776 dated August 4th 2008, called LME, the payment period agreed between client and customer cannot exceed 45 days end of month or 60 days at the invoice emission.

Any clause or demand which would tend to fix or obtain a payment period longer than the aforementioned period of thirty days, which is current industry practice in the mechanical engineering industries, and unless an objective reason can be substantiated by the Customer, may be considered as unfair or unreasonable in pursuance of article L442-6-7 of the commercial law as resulting from Law of Modernization of Economy n°2008-776 dated August 4th 2008 and is subject to a civil penalty up to 2 million Euros.

11.2 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.

Late payment of any instalment shall, if the Manufacturer thinks fit, constitute an event of default resulting in all outstanding payments becoming immediately due.

The fact that the Manufacturer benefits from either or both aforementioned provisions shall not deprive him of the right to invoke the retention of title clause laid down in article 11.6 hereafter.

11.3 Change in Customer's situation

Should the Customer's situation deteriorate as ascertained by a financial institution or as shown by a significant lateness in paying or in returning drafts with acceptance, or when the financial situation significantly differs from the data made available, delivery shall only be made against immediate payment.

In the event of late payment, the Manufacturer shall be entitled to a right of retention over the manufactured products and ancillary supplies.

In the event that the Customer would sell or transfer his business or a significant part of his assets or equipment, or would place a lien on the aforesaid, or would bring the aforesaid as assets into a business, the Manufacturer reserves the right, without notice:

- to declare the occurrence of an event of default, and consequently all sums due on any account whatsoever to be payable immediately;
- to suspend all shipments;
- to note the rescission of all ongoing contracts, and to retain any instalments received, as well as tools and parts in his possession, until a possible compensation amount is set.

11.4 Compensation of payments

The Customer shall abstain from any illegal arbitrary debit or credit practices, and from invoicing the Manufacturer any sum which is not expressly recognised by the latter as being his responsibility.

Any arbitrary debit shall be considered as an outstanding payment and as such shall be subject to the provisions of clause 11.2 hereabove regarding late payments.

The parties however reserve the right to resort to compensation of debts either by operation of law or by reconvention.

11.5 Legal guarantee of payment in case of subcontracting contract

When the signed contract is part of a chain of contracts for work in pursuance of Act n° 75-1334 of December 31st, 1975, the Customer is under legal obligation to ensure that the Manufacturer is accepted by his own principal. The Customer is also under an obligation to ensure that the Manufacturer's terms of payment are accepted by his principal.

If the principal is not the end customer, the Customer shall undertake to require that the principal abides by the provisions of the abovementioned 1975 act.

In pursuance of article 3 of the 1975 act, the fact that the Manufacturer has not been introduced to the principal or approved by him entails the impossibility for the Customer to invoke the contract against the Manufacturer. Such impossibility covers, inter alia, claims for any non-conformity with the specifications. However, in accordance with the aforementioned article, the Customer shall remain bound to fulfil his contractual obligations towards the subcontractor.

Under these general terms and conditions, the aforementioned 1975 act shall be considered as an international policy law which is applicable to foreign end customers through the Customer.

11.6 Retention of title

The Manufacturer shall retain full title to the goods covered by the contract until effective payment in full of the price including the principal and ancillary costs. Failure to pay any one of the instalments due may lead to a claim for recovery of these goods. However, the Customer shall be responsible for any damage undergone or caused by the goods as from their delivery.

12 Liability and warranty

12.1 Definition of the Manufacturer's liability

The Manufacturer's liability shall be strictly limited to the observance of the Customer's specifications as stipulated in the terms of reference.

Due to his professional expertise in his area of business and according to the industrial means of production which are available to him, the Customer acting as "principal" is able to define the work accurately on the basis of his own industrial data or his customers' data.

The Manufacturer shall perform the work required by the Customer according to the good engineering practices prevailing in his industry.

For series orders, the Customer shall require that specimens are manufactured and submitted to him for approval after completion of all necessary tests and inspections. The specimens approval shall be sent by the Customer to the Manufacturer in writing within fifteen days after the date when the Customer received the specimens.

In the event that the Customer would complain about the delivered parts, the Manufacturer shall reserve the right to examine the parts on site.

In case of non-conformity, the Manufacturer undertakes, after agreeing with the Customer, either:

- to credit to the Customer the value of the parts which have been considered to be non conforming with the contractual drawings and technical specifications or with the specimens approved by the Customer; or
- to replace the discarded parts and issue a credit note on them, replacement parts being invoiced at the same price as replaced parts; or
- to bring parts into conformity or have them brought into conformity.

Bringing into conformity shall be effected as decided by mutual agreement. The costs shall be borne by the Manufacturer if he is responsible for ensuring conformity, or the Manufacturer's consent shall be sought if the Customer decides to bring the parts into conformity at a price that will be previously indicated to the Manufacturer.

Parts to be replaced or brought into conformity by the Manufacturer shall be returned to him carriage forward. The Manufacturer reserves the right to choose the carrier.

Should parts be brought into conformity by the Customer without the Manufacturer's consent about the principle and cost of this operation, the Customer shall lose the right to lodge a complaint.

12.2 Limits and exclusion of the Manufacturer's liability

The Manufacturer's liability shall be limited to the direct property damage suffered by the Customer as a result of faults attributable to the Manufacturer in the execution of the contract.

The Manufacturer shall not be held liable for any damage and prejudicial consequences resulting from faults committed by the Customer or by third parties in relation with the execution of the contract.

The Manufacturer shall not be liable for any damage resulting from any use by the Customer of technical documents, information or data provided by the Customer or imposed by him.

The Manufacturer shall not, under any circumstances whatsoever, be liable for compensation for immaterial or consequential damage or loss, such as e.g. loss of production, lost profits, loss of opportunity, commercial loss, lost income.

The Manufacturer shall not be held liable:

- for any defects arising from the materials supplied by the Customer;
- for any defects arising from a design made by the Customer;
- for any defects resulting wholly or partly from the normal wear of the part, from damage or accidents attributable to the Customer or a third party;
- in the event of a modification, abnormal or unusual or unintended use of the product, or of its being used not in conformity with good engineering practice or with the Manufacturer's instructions or recommendations.

Where penalties and compensation have been agreed by common consent, these shall amount to a lump-sum compensation in full discharge, excluding any other penalties or compensation.

The Manufacturer's third-party liability, for all causes combined with the exception of physical injury and gross negligence, shall be limited to a sum which shall not exceed the amount collected at the time when the goods were supplied.

The Customer shall vouch that his insurers or any third parties having contractual relationships with him will renounce all claims against the Manufacturer or his insurers beyond the limits and exclusions stipulated hereabove.

13 Contract termination

In the event that one of the parties would be in serious default of meeting one single contractual obligation, the contract shall be terminated as of right thirty days after a notice of default has been sent and remained ineffective.

14 Amicable settlement of disputes

The parties shall undertake to try and settle their dispute amicably before referring it to the competent court.

In the event of a dispute of a technical nature regarding the Manufacturer's products or work, and failing an amicable agreement between the parties in the presence of their respective insurers or not, the parties shall agree to initiate a "codified amicable expert review" procedure whereby an expert's opinion is obtained in accordance with the regulations of the CNIDECA (National association of qualified engineers appointed as judicial experts by the French judicial and administrative courts of appeal).

15 Jurisdiction

Failing amicable agreement, it is expressly agreed that all disputes arising in connection with the contract shall fall within the exclusive competence of the court in whose jurisdiction the Manufacturer's domicile is located, even in the event of an appeal being lodged and of several defendants.

Registered with the Bureau of industry practices on 28/12/2012, under number **2012079837**

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