



**Article 1 – Object and scope**

1.1 These terms and conditions of sale (hereafter referred to as "TCS") apply in all cases of the sale of products (hereafter referred to as the "Product") or the provision of services by ASD to a professional Customer (hereafter referred to as the "Customer"). In consequence, when a Customer places an order said Customer shall be deemed to unreservedly accept these TCS, unless otherwise agreed in writing by ASD to the Customer. The TCS shall prevail over all conditions not expressly accepted by ASD and, in particular, the terms and conditions of purchase of the Customer.

**Article 2 – Intellectual Property / Documents**

2.1 All the technical documents forwarded to our Customers, all intellectual property rights in addition to the know-how belonging to ASD and incorporated in the delivered Products and/or the documents provided to the Customer shall remain the exclusive property of ASD, sole holder of the intellectual property rights concerning these documents and must be returned to it when it so requests.

Our Customers undertake not to make any use of these documents liable to infringe the industrial or intellectual property rights of ASD and undertake not to disclose them to any third parties.

2.2 The Customer represents and warrants that it holds all the intellectual or industrial property rights required to perform the services which it entrusts to ASD or with regard to any element which it might have to provide to ASD. Failing this, the Customer shall assume all liability which might result from this.

**Article 3 – Orders**

**3.1 Definition**

"Order" herein shall mean all purchase orders sent by the Customer concerning our Services and/or our Products featured in the ASD catalogue or in our offers made to the Customer, and accepted by ASD, along with the payment of the advance payment which might be specified on the purchase order.

All the orders for Products and/or Services specify the ordered Products and/or Services. The orders are deemed perfect and are only binding on us after an Acknowledgement of Receipt of an Order has been raised and sent by ASD. Unless otherwise stated, our offers and quotations are only valid for a period of one month after being issued.

**3.2 Modification/ cancellation**

3.2.1 The orders sent to ASD are irrevocable for the Customer, unless written acceptance is provided by ASD. All orders express the consent of the Customer in an irrevocable manner.

In consequence, any cancellation or modification of an order requested by the Customer in particular concerning the quantities, quality, specifications or the delivery schedule is dependent on the written acceptance of ASD.

3.2.2. In the event of the Customer modifying the order, ASD shall no longer be bound by the lead-times agreed for its execution. Moreover, the Customer shall pay ASD for all costs incurred and all the direct or indirect consequences resulting from the modification of an order (in particular additional costs charged, returning the Product to our stock, logistics costs, inspections).

In such an event, the Customer shall reimburse ASD all the costs incurred (in particular, special equipment, design costs, the costs of labour and supply, tooling) and all the direct or indirect consequences.

No cancellation of an order may be taken into consideration if it has not been accepted by ASD. Services already provided and/or the Products which are the subject of an order and available at the time of the cancellation of the order shall nevertheless be forwarded to the Customer which shall be obliged to accept the delivery. Moreover, all advance payments already made shall be irrevocably forfeited to ASD.

**Article 4 – Deliveries**

The Products shall be delivered to the address of the Customer as indicated on the purchase order.

**4.1 Delivery times**

Herein, "delivery times" shall mean factory shipping date. Delivery times are given for information purposes and as an indication solely; they are dependent, in particular, on the availability of carriers, supplying conditions and the timing of receiving an order in respect of the other orders we receive from different customers.

ASD shall not be held liable for a delay beyond its control in particular for an event of force majeure, failure on the part of a carrier, modifications requested by the Customer, delay in the approval of the documents...

Delivery delays shall not give rise to any penalty or compensation, or justify the cancellation or termination of the order or refusal of the delivered Products.

In the event of failure to pay an invoice which is due in full, after formal notice going unheeded in a period of 48 hours, ASD reserves the right to suspend all ongoing and/or future deliveries.

**4.2 Transport**

Unless otherwise agreed and indicated on the order accepted by ASD, shipping operations (transport, insurance, availability) and deliveries are made in accordance with the conditions of the Free Carrier (Factory) INCOTERM. The cost of transporting the Products shall be borne by the Customer and risk in the Products will pass to the the Customer on delivery. The latter must verify the condition of the Products upon their delivery.

Upon receiving the Products, the Customer must, in the event of damage to the delivered goods or missing items, make all the necessary reservations, observations and comments known to the carrier.

All Products which are not the subject of reservations sent by registered letter with acknowledgement of receipt to the carrier within 3 (three) days of delivery, in accordance with article L.133-3 of the French Commercial Code, with a copy being simultaneously sent to ASD, shall be deemed to have been accepted by the Customer.

**4.3 Receipt of the Products**

4.3.1 Without prejudice to the steps to be taken by the Customer vis-à-vis the carrier as described in article 4.2, in the event of apparent defects or missing items, all claims, irrespective of their nature, with regard to the delivered Products, shall only be accepted by ASD if they are made in writing, sent by registered letter with acknowledgement of receipt, within the period of three days specified in article 4.2.

4.3.2 Except in the event of the delivered Product(s) being commissioned by ASD, it is the responsibility of the Customer to provide all justifications with regard to the reality of the missing goods or non-compliance of the delivered Products with the specifications indicated in the Operating Instructions of the Product.

4.3.3 Within this period, the Customer may only return the goods with the prior express agreement in writing of ASD, obtained by telecopy or electronic mail. The Products must be returned in their original packing. The costs of returning the goods shall be met by the Customer.

4.3.4 The Customer may, in all cases, request ASD to replace or recondition the Products or Components which are not compliant with the Specifications and/or the additional items to be provided in order to provide the missing goods with regard to the Specifications, at the latter's expense, without the Customer being entitled to claim any compensation or cancel the order.

4.3.5 Acceptance is deemed to represent acknowledgement of the perfect condition of the delivered Product. All reservations must be confirmed in accordance with the conditions specified in article 4.3.1.

4.3.6 A claim made by the Customer in accordance with the conditions and the procedure described in this article shall not suspend the payment by the Customer of the Products concerned.

4.3.7 Our company shall not be held liable under any circumstances for events having occurred during transport such as destruction, damage, loss or theft, even if it has chosen the carrier, except in the event of an incoterm to the contrary.

**4.4 Payment in cash**

No reductions for early payment. All orders which we accept to execute shall be done so, provided that the Customer provides evidence of sufficient financial guarantees, and that it pays the sums owed when they become due, in accordance with the provisions of these TCS. In consequence, if ASD has serious or particular reasons to fear payment difficulties on the part of the Customer on the date of the order, or following it, ASD may make acceptance of the order or its execution dependent on cash payment or payment upon delivery, by the Customer, of guarantees in favour of ASD. In the event of refusal by the Customer of the cash payment, without any sufficient guarantee provided by the latter, our company may refuse to honour the order(s) placed and refuse to deliver the goods concerned, without the Customer being entitled to claim unjustified refusal to sell, or claim compensation of any nature whatsoever.

Similarly, should there be a significant worsening in respect of the solvency of the Customer and in the event of the sale of the company or its business assets, the hiring out or pledging, wholly or partially, of its business assets, ASD may choose either to demand the payment in advance or request additional guarantees.

**4.5 Refusal of orders**

In the event of a Customer placing an order with ASD without having paid for previous order(s), ASD may refuse to honour the order and not deliver the goods concerned, without the Customer being entitled to claim any compensation for any reason whatsoever.

In the event of failure to pay a due invoice in full, after formal notice going unheeded for 48 hours, ASD reserves the right to suspend all ongoing or future deliveries.

**Article 5 – Performing Services**

When the order of the Customer comprises the performance of Services, said work shall be carried out by the personnel of ASD or of a service provider chosen by ASD, bound by a duty of care, which shall decide alone on the composition of its team, the organisation of tasks and the method of supervision. The Services shall be performed in compliance with the conditions agreed in the Acknowledgement of Receipt of the Order.

**Article 6 – Price List - Prices**

6.1 The orders are placed on the basis of the prices exclusive of VAT indicated in the ASD catalogue or on the sheet sent to the Customer at the beginning of the year by ASD, or in the last offer sent by ASD.

All changes concerning prices notified by ASD shall be automatically applicable to orders following the date indicated on the new price list.

**6.2 Prices**

6.2.1 Our prices are confirmed on the acknowledgement of receipt de order issued by ASD which specifies the price of the Products, Services (in particular commissioning, installation) and in accordance with the confirmed conditions, transport costs where applicable.

6.2.2 They are calculated net, without discount, and payable when the order is placed, except particular conditions specified in the offer and confirmed in the acknowledged receipt of order.

6.2.3 Unless otherwise agreed, standard packing is determined and prepared by ASD. Non-standard packing, specifically developed for the Customer is invoiced in addition to the indicated prices, in accordance with the price indicated in the order and the order confirmation is not taken back.

**Article 7 – Terms of payment**

**7.1 Payment**

All invoices must be paid cash when orders are placed, except particular conditions specified in the offer and confirmed in the acknowledged receipt of order.

**7.2 Non-payment**

7.2.1 No discounts shall be granted for early payment. In accordance with article L441-6 to 12 of the French Commercial Code, all delays in payment shall give rise to the application of late-payment interest corresponding to the most recent refinancing rate of the Central European Bank increased by 10 (ten) percentage. In addition to the late payment interest, the Customer shall, in the event of a delay in payment and by operation of law, pay a fixed compensation charge for recovery costs with the amount fixed by decree, which stands at €40 (forty euros) on the date of these terms and conditions being drawn up.

In the event of a payment not being made on the due date, all the sums outstanding, even those which are not yet due, shall immediately become payable without prior formal notice.

7.2.2 Moreover, ASD reserves the right to refer the case to the court with jurisdiction in order for the latter to order payment to be made, subject to a daily penalty for each day of delay.

**Article 8 – Retention of title**

8.1 Title in our Products will only pass to the Customer following full payment of their price by the Customer, in principal and related charges, followed by clearance of the corresponding sums even in the event of granting additional time to pay.

8.2 It is expressly agreed that ASD may invoke the rights which it holds in respect of this retention of title clause, for any of its receivables, with regard to all its Products in the possession of the Customer, said Products being presumed to be those unpaid, and ASD may take them back or claim them as compensation in respect of all its unpaid invoices, without prejudice to its right to cancel ongoing sales.

8.3 The Customer may only resell its unpaid Products as part of the normal operations of its company, and cannot, under any circumstances, pledge or grant as security in respect of its unpaid stocks. In the event of failure to pay, the Customer shall undertake to resell its stocks up to the quantity of the unpaid Products.

8.4 ASD may also demand, in the event of non-payment of a due invoice, the cancellation of the sale after sending formal notice. Similarly, ASD may unilaterally, after sending formal notice, draw up or have drawn up, an inventory of its Products in the possession of the Customer, which hereby undertakes, to allow free access to its storage facilities, warehouses or other buildings for this purpose, ensuring that it is always possible to identify the Products of the company.

8.5 In the event of receivership or compulsory winding-up order, the orders in progress shall be automatically cancelled, and ASD reserves the right to claim the goods in stock. All the legal and court costs generated by the process of recovering the unpaid Products shall be borne by the Customer.

8.6 Irrespective of this clause, risk in the goods passes to the buyer upon delivery to said buyer.

8.7 With effect from the delivery, the Customer is deemed the custodian and keeper of said goods. In the event of non-payment and unless we prefer to request the full execution of the sale, we reserve the right to cancel the sale after formal notice being issued and claim the delivered goods, with the costs of their return and any reconditioning which might prove necessary being met by the buyer with the payments made being irrevocably forfeited in respect of a penalty clause.

#### **Article 9 – Contractual Warranty**

9.1 Unless otherwise agreed by the Parties and indicated in the order and the Acknowledgement of receipt of the Order, the Products are guaranteed for a period of 12 (twelve) months with effect from their delivery date. In this respect, ASD guarantees during this period the compliance of the Products with the Operating Instructions delivered with the Product or presented to the Customer at the beginning of the year when placing its first annual order.

9.2 The warranty covers manufacturing and material defects resulting in non-compliance of the Product with the specifications indicated in its Operating Instructions, with the exclusion of apparent defects and consists of us repairing the manufacturing and material defects acknowledged as defective. The warranty includes the cost of shipping and the replacement or the repair of the part judged defective due to being non-compliant with the specifications indicated in the Operating Instructions but does not include however, under any circumstances, the travelling expenses of the ASD personnel to repair Products on the site of the Customer or the site of the customer of our Customer. Moreover, the warranty does not include, under any circumstances, the costs of removing and replacing the Products.

9.3 The warranty shall only be granted in cases where the Product has been installed in accordance with the standards in force and in compliance with the Operating Instructions of the Products and the recommendations made by ASD. ASD shall, under no circumstances, be held liable for any fault of a Product resulting from its installation and/or incorrect use except in the event of the installation of the Product being entrusted to ASD as indicated in the order and the Acknowledgement of Receipt of the Order.

9.4 As a general rule, the warranty excludes: damage due to transport, defective installation which is not compliant with our Operating Instructions, use of the Products which is not compliant with the Operating Instructions, modifications made to our Products, incorrect maintenance, abnormal wear and tear, damage due to cleaning with a substance other than the one recommended by ASD, or all defects related to atmospheric overvoltage. Abnormal use of the Product excludes it from the warranty.

ASD shall not accept any liability, in particular in respect of the contractual warranty, for installation work, with the liability being assumed entirely by the installers and companies which undertake assembly and installation.

9.5 In all cases, our warranty only covers, as ASD shall choose, and after verification by ASD of the defects reported by the Customer, the replacement or reconditioning of the Products deemed to be defective, after taking into account dilapidation and excludes all other obligations.

The warranty includes shipping, replacing or repairing the part deemed defective due to it not being compliant with the specifications set out in the Operating Instructions but, however excludes, under all circumstances, calling out ASD to repair said part to the site of the Customer or the site of the customer of our Customer.

9.6 In the event of the Customer failing to make the payments stipulated by the agreed on the due dates, our warranty shall be suspended until settlement of the late payments and without this suspension increasing the duration of the warranty which takes effect from the date of delivery of the Product.

9.7 Any defects and damage caused to the delivered Products following abnormal storage and/or abnormal storage and/or conservation conditions on the site of the Customer, in particular in the event of an accident of any nature whatsoever, shall not entitle the Customer to invoke the warranty of our company.

9.8 Our warranty ceases by operation of law after a period of one year following the date of delivery of the Product. Moreover, our warranty ceases by operation of law should our Customer fail to inform us of the alleged defect within a period of 20 clear days after discovering it. The Customer must prove the day of discovering this defect.

#### **Article 10 – Force majeure**

ASD shall not be held liable in the event of non-performance or unsatisfactory execution of an order due, either to the actions of the Customer, or to the insurmountable and unforeseeable actions of a third party to the agreement, or because of an event of force majeure. Events of force majeure or acts of God are defined as events beyond the control of the parties, which the latter could not be reasonably expected to foresee, and which they could not be reasonably expected to avoid or overcome, insofar as their occurrence makes fulfilling obligations completely impossible. Strikes, fire, bad weather such as in particular lightning, disruption to or interruptions in terms of transport, difficulties receiving supplies of raw materials or energy, significant accidents affecting the production of sub-contractors, receivership or the court-ordered winding-up of sub-contractors, accidents of all natures affecting the storage of the Products and, in general, all events beyond the control of the Customer resulting in preventing or delaying production, the availability or delivery of the Products shall be deemed events of force majeure which release ASD from all obligations to execute the orders and pay compensation, late-delivery penalties or damages.

#### **Article 11 – Liability**

The liability of ASD for all claims, responsibility or costs, of any nature whatsoever, is limited to the amount of the disputed Product(s).

The indirect damage suffered by the Customer, in particular loss of sales, an operating loss, loss of business, opportunity cost or any claim whatsoever made by a third party against the Customer, are excluded from all claims for compensation.

The Parties acknowledge that the provisions of this clause are determining factors in their willingness to enter into this agreement and that the agreed price reflects the sharing of the risk between the Parties and the resulting limitation of liability.

When the Services ordered by the Customer involve commissioned work conducted by ASD on the Products made available by the Customer, the latter is presumed, for each order, to have taken out an insurance policy covering all damage suffered by its Products made available to ASD in order to perform Services. All costs incurred as a result of requests made by the Customer for ASD to take out special insurance due to the specific nature of an order shall be borne by the Customer.

The Customer remains responsible for using the Product in accordance with the standard conditions of use and in compliance with the safety and environmental legislation in force in the location where said Product shall be used in addition to complying with the best practice of the industry. The Customer is solely liable for

compliance with the instructions for the use of the Products as they are indicated in the Operating Instructions included with the Product and for any consequences with regard to its own customers with respect to any instructions whatsoever, in particular those relating to safety (e.g. compulsory surveillance in spite of the presence of the roller shutter). ASD shall not be held liable in respect of this under any circumstances.

#### **Article 12 – Confidentiality**

All documents forwarded by ASD to the Customer including in particular drawings, technical characteristics or test results are confidential and the Customer undertakes not to communicate them, wholly or partially, to third parties, without the prior written authorisation of ASD or use them for purposes other than those for which they were intended.

#### **Article 13 – Cancellation**

In the event of failure by the Customer to fulfil the obligations concerning it not being remedied within a period of 30 (thirty) days with effect from receiving a registered letter with acknowledgement of receipt notifying this non-fulfilment, ASD reserves the right to cancel the order by operation of law, without prejudice to the damages which ASD might claim.

#### **Article 14 – Jurisdiction**

14.1 The address for service for ASD is its registered office in St Maurice de Beynost (01700), Chemin du Pilon.

14.2 All disputes concerning the application of these terms and conditions and, in particular, their interpretation, execution and the sales agreements entered into by ASD, or related to the payment of prices, shall be submitted to the jurisdiction of the *tribunal de commerce de Bourg en Bresse* (Bourg en Bresse Commercial Court), regardless of the location of the order, delivery, and the payment and the method of payment, and even in the event of the introduction of third parties or multiple defendants.

Bills of exchange shall not effect novation, or be exempt in respect of this jurisdiction clause.

14.3 Moreover, in the event of legal action or any other action to recover receivables by ASD, the cost of formal notice, legal fees, in addition to solicitor and bailiff fees, and all related costs shall be borne by the Customer at fault, as well as the costs related to or resulting from the failure of the Customer to respect the conditions of payment or delivery of the order concerned.

#### **Article 15 – Waiver**

Should ASD decide not to invoke, at a given moment in time, any of the clauses herein, this shall not be interpreted as a waiver of its right to invoke the same clauses at a later date.

#### **Article 16 – Governing law**

All questions related to these general terms and conditions of sale in addition to the sales which they govern, which are not covered by these contractual stipulations, shall be governed by French law with the exclusion of any other body of law. The application of the Vienna Convention on Contracts for the International Sale of Goods is expressly excluded.