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# ARS GENERAL CONDITIONS OF SALE AS OF 1<sup>st</sup> MAY 2004

## I. ACCEPTANCE AND AGREEMENT

These conditions will apply to all the offers and sale contracts concluded by ARS. Any clause added by the Buyer in his Purchase Order or in any other document will be void unless accepted in writing by ARS. Should the Buyer fail to send written notice of reservation within 24 hours of receiving the Purchase Order Acknowledgment, he will be deemed to have consented to ARS' general conditions of sale.

## II. CREATIONS OF CONTRACTUAL RELATIONS

Any commitments entered into by ARS or its agents are valid only after formal acceptance and written confirmation by an authorised representative of ARS.

Any modification to an order in quality, quantity or dimension, or any change to the requested delivery date must be expressly accepted by ARS; in this case ARS reserves the right to regard previously established conventions as being inapplicable and to fix, as a result of the modifications, the prices and conditions in conformity with those in force on the day of modification.

The delivery instructions must be included by the Buyer on his Purchase Order to enable ARS to dispatch the goods without delay after manufacture. In the absence of contrary stipulations, ARS reserves the right to consider that the manufactured portions should be delivered as one lot to a single destination.

Equally, ARS reserves the right, at its discretion, to cancel or invoice as available and awaiting payment, subject to the conditions set out in the contract, any goods which have been manufactured and for which ARS has not received delivery instructions.

Except in case of exceptions duly accepted in writing by ARS, goods are delivered in substantial conformance with conventional industry tolerances on dimensions and weights, as well as with the standards specified in the Purchase Order Acknowledgment.

In the event of a dispute, ARS and the Buyer will nominate a neutral organisation by mutual agreement.

## III. ONGOING CONTRACTS

Ongoing contracts will automatically cease upon expiry of the defined term, without notice or warning. Any goods which, at that point in time, have not been dispatched to the Buyer as a result of its actions, will be carried over onto a new year after fresh negotiations of the conditions of contract depending on the state of the "market".

Monthly production orders cannot be carried over onto the following months without our formal acceptance. The fact that ARS might continue supplying the Buyer, by mistake or through leniency, beyond the contract's expiry date, cannot be invoked against us as a renewal by tacit agreement of the duration of the contract.

## IV. PRICE - PAYMENT - GUARANTEES

Unless otherwise specified in the Purchase Order Acknowledgment, invoices will be payable thirty days after the end of the month in which the delivery was made, net, without discount. Any complaints regarding the goods do not dispense the Buyer from settling his invoices at their due date.

Invoices are payable on the due date, to ARS, or to any other named person or company.

In all cases ARS reserves the right to request the Buyer to pay by accepted bank draft, as provided for by Article 124 of the French Commercial Code.

ARS reserves the right, even after partial dispatch of the goods corresponding to an order, whether or not any instalments have gone unpaid, to require from the Buyer such guarantees as it may think proper for the satisfactory fulfilment of the Buyer's engagements, and to terminate the outstanding part of the contract if guarantees are not provided or appear insufficient.

It will be in particular the case if a change occurs in the Buyer's capacity, notably in case of death, or work incapacity, or should his company be wound up or modified, or should he re-mortgage any of his properties, hypothecate his goodwill, or should preferential rights be registered against him, then ARS reserves the right, even after partial dispatch of an order, to require guarantees of payment or to cancel any outstanding orders, and demand full, immediate payment for the manufacture of any new order.

## V. LATE OR NON-PAYMENT

Should payment not have arrived on the invoice due date, ARS reserves the right to demand payment by accepted draft with bank aval, or an equivalent guarantee. Should satisfactory guarantees not be forthcoming, ARS is entitled either to suspend manufacture and delivery without warning, or, if the required guarantees were not provided within 15 days, to cancel the outstanding portions of an order by simple registered letter. Default of payment, for any reason, of all or part of the goods ordered from ARS, authorises the company, should it deem necessary, to stop any pending deliveries and regard the remainder of the order or any subsequent orders as cancelled with immediate effect, without the need for any warning or legal formality, all rights to damages remaining reserved.

In no case may the Buyer withhold payment due to the Seller or undertake to write off monies owing to the Seller by way of obtaining compensation of any claims, even in the event of a dispute.

In the event of a late payment, the Buyer may not take any measures which might affect the goods, in particular resale or alterations. A fixed sum of 40€ is due to compensate recovery costs in case of late payment. (French Law 2012-387 dated from 22/3/12 - Decree 2012-115 dated from 02/10/12). In the event of late payment or non-payment, penalties can be requested by right from the day following the invoice due date and will be calculated using an interest rate 10 percentage points above the European Central Bank's (ECB) refinancing rate and without a reminder being necessary (Article L441-6 of the Commercial Code).

## VI. MANUFACTURING LEAD TIMES - FORCE MAJEURE

The manufacturing lead times given for each order are only estimated, and can in no case constitute a firm commitment from ARS to deliver on a given date. Penalties for delays or other causes will only be recognised if they were the subject of a special agreement, expressly accepted in writing and fixing their amount at the time of the conclusion of the contract or at the acceptance of the order.

Consequently, no recourse or blame can be brought against ARS, nor may damages be claimed under any pretext, in the case of disagreements occurring between the Buyer and his own customers.

Any delay or interruption of manufacture caused by a demonstration, war, riot, total or partial strike, lockout of ARS factories or in industries or the public services which contribute to their supply and operation, power cuts, breakdown of machinery or cylinders, fires, collapse, floods, epidemics, extreme temperatures, scarcity of raw materials, personnel shortages, unavailability of carriers, canal and river maintenance, and transportation delays will be, by express agreement, considered as cases of force majeure, which rightfully entail the interruption of deliveries and an equal postponement of the lead times for goods yet to be manufactured. Moreover, if following these events ARS were forced to alter its manufacturing schedule, it would have the right to cancel orders, without compensation, for all or some of the goods whose production had had to be abandoned, the Buyer being nonetheless obliged to accept the delivery of the portions ready at the moment of cancellation.

## VII. DELIVERY - PASSING OF RISK

Time of delivery shall not be the essence of the contract, and quoted delivery dates are only approximate. If a quantity of goods has been ordered by weight, this weight is considered approximate, and the actual quantity delivered by ARS can vary by:

➤ for an ordered quantity of less than 20 kg: +/- 30%

➤ for an ordered quantity between 20 and 499 kg: +/- 20%

➤ for an ordered quantity of 500 kg and more: +/- 10%

ARS shall not be liable for any consequence or damage, direct or indirect, due to a late delivery. Except if the parties have defined different terms of delivery, our goods are delivered to the Buyer's factories or to those of his suppliers or to their stores.

Whatever the delivery arrangements, the risk in the goods shall pass to the Buyer on delivery.

Should the goods be damaged in transit, the Buyer or recipient is responsible for instituting proceedings against the carrier or insurer. The recipient is responsible for stating in a timely and effective manner those reservations imposed by national laws and regulations, in order to preserve his rights to possible compensation.

In the case of transport by lorry, the carrier is solely responsible for the loading and stowing of the goods. ARS personnel will only participate in loading, and ARS equipment will only be used, at the request of the carrier and under his supervision; the carrier will be solely responsible for the conduct of loading operations. Consequently, ARS shall not be liable for any damage caused to its manufactured goods, to the carrier, or to a third party as a result of inadequate loading provisions, such as faulty or insufficient stowing, poor distribution of the goods or excessive load.

ARS shall not be liable for any infringements of road transport legislation likely to incur penalties or fines of any kind. The carrier will be responsible for providing ARS with a written discharge when collecting the goods. The above provisions shall also apply in exceptional cases where ARS has accepted that the Buyer may collect the goods to undertake "own account" road haulage.

## VIII. CONFORMANCE - INSPECTION

All deliveries are subject to conventional industry tolerances as regards the goods' weight and dimensions. As soon as the goods are delivered, the Buyer must inspect them in situ to check their conformance with the quantity, weight and width indicated on Purchase Order Acknowledgment and any apparent defect or damage must be notified to ARS by the Buyer. The Buyer will be deemed to have accepted the goods at delivery if no reservations have been notified in writing by the Buyer within 3 days following delivery, and before any alteration of the goods. ARS will not admit a claim relating to defects, damage or instances of non-conformance which could have been observed during a reasonable inspection before use and if the aforementioned inspection did not take place.

## IX. CLAIMS

ARS guarantees that the delivered goods conform to the specifications included in the Purchase Order Acknowledgment. The Buyer recognises that ARS has wholly fulfilled its compliance obligations when goods correspond to these specifications at the time of the delivery. Any technical advice offered by an ARS agent orally, in writing or through tests, before and/or during use of any goods, is provided in good faith but without guarantee. Advice proffered by ARS does not release the Buyer in any case from his obligation to check the suitability of the goods provided by the company for the modifications and the uses for which they are intended.

The Buyer is solely responsible for the use and any modifications of the goods. Any claims concerning defects which were not detectable at delivery must be communicated to ARS by registered letter with acknowledgement of receipt as soon as they are discovered and at the latest 6 months after delivery (the Buyer being obliged to inspect the goods thoroughly during this period and before the goods undergo any alteration). The Buyer must always seek to minimise his damages. Under no circumstances may he delay payment of any unpaid invoices. If ARS recognises that the goods are defective, it agrees only, at its discretion, to replace or refund the aforesaid goods, or if the invoice were not yet paid by the Buyer, to reduce the price or to rescind the contract. ARS accepts no responsibility for losses caused by any modification to the goods, for loss of production, loss of use, and/or any losses whatsoever or any direct, indirect or consequential damages suffered by the Buyer or by any other person. ARS only accepts responsibility for damages caused by its gross negligence or wilful misconduct for which the burden of proof is on the Buyer; in all circumstances, ARS' responsibility will be limited to 100% of the invoiced value of the defective or damaged goods.

## X. PASSING OF OWNERSHIP

By express agreement and notwithstanding any clause to the contrary:

a) ARS retains ownership of the goods until receipt of payment in full, being specified that only the effective cashing of cheques and other paper instruments shall constitute payment.

b) Throughout the duration of reservation of title, the risk in the goods and the custody of the delivered goods are transferred to the Buyer as soon as they exit ARS factories, warehouses or stores.

c) In the event of total or partial non-payment of the price at the due date, ARS reserves the right to require the restitution of the goods at the costs, risks and perils of the Buyer. This restitution shall not be deemed to cancel the sale. ARS reserves the right to retrieve all of the goods which are in the Buyer's possession or under its control and for which ARS holds legal title and ARS shall be permitted to enter any grounds or premises where the goods are stored in order to recover them.

d) If the Buyer's credit becomes impaired, then ARS reserves the right, even after partial dispatch of an order, to demand of the Buyer the guarantees that it deems suitable for the satisfactory fulfilment of the buyer's commitments. Should the Buyer refuse to comply, ARS may cancel all or part of the order.

The Buyer's payments shall be considered as settlement for those of ARS' invoices which correspond to goods which have been used or resold. It will be presumed that any goods present on the Buyer's premises which correspond to those described on an ARS dispatch note or any other equivalent document are those delivered by ARS.

## XI. APPLICABLE LAW

By express agreement, only the Commercial Courts of BESANCON (French department No. 25) and SAINT-MAXIMIN (French department No. 60) will be qualified to rule on any disputes relating to the interpretation and the execution of the orders, contracts or their consequences, or to our supplies and their payment, whatever the place of payment, even in the event of the introduction of third parties or of proceedings involving several defendants.

However, ARS reserves the right, should it be petitioning, to take action against the Buyer at the place of jurisdiction of his headquarters or of that of his sites concerned by the dispute. In case of dispute or disagreement, the Buyer can link it neither to other former disputes, nor to orders which are taking their normal course.



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