

General Professional Business Terms

These general professional business terms have been formalised by the ARTEMA. They codify the practices of the Sealing profession as regards relations with its customers. They comply with contract law and competition law rules and have been filed with the Practices' Office (*Bureau des Usages*) at the Registry of the Paris Commercial Court (*Greffe du Tribunal de Commerce de Paris*).

They are governed by sales' law when applied to the supply of standard products, or products for which the features are determined by the Supplier beforehand. They are also governed by legislation relating to work contracts when they apply to the manufacturing of a product on the basis of specifications or to the furnishing of a service.

I – Generalities

In accordance with Article L441-6 of the French Commercial Code, the Supplier's general terms represent the basis for sales negotiations. The Supplier may not waive entitlement to invoke such terms in advance.

Any and all departure from these general terms shall be subject to the Supplier's written acceptance which refers explicitly hereto. Unless there is an express agreement to the contrary, a departure from these general terms shall only be valid in respect of the contract for which it has been requested and accepted.

Should the Supplier fail to invoke any of the clauses of the general terms at a given time, this shall not be construed as representing its waiver of entitlement to invoke such clause at a later date.

Similarly, the fact that one of the clauses of these general terms may be null and void shall not affect the validity of the other clauses.

The Supplier reserves the right to modify the general terms subject to notifying the Customer two months prior to their effective application date.

II – Orders – contractual documents

II – 1. The contractual documents

The following are part of the contract, in descending order of priority:

- the special terms agreed to by the Parties,
- these general terms,
- the Suppliers' documents which supplement these general terms,
- the acknowledgement of receipt of the order issued by the Supplier,
- the Customer's order,
- the delivery slip,
- the invoice.

The prices, information and features set forth in the catalogues, circulars, prospectuses, technical sheets or other documents are provided in said documents as an indication and shall under no circumstances be deemed as representing firm offers. Moreover, the Supplier reserves the right, at any time and without notice, to make any changes or improvements to all standard products which it considers to be necessary, without the Customer being entitled to invoke any form of loss.



II – 2. Orders

a) Orders

Orders shall be established in writing. The contract is only formed subject to the Supplier's express acceptance of the order. The order shall be accepted by any written means.

Orders given to the Supplier's agents or representatives, or taken by the latter, and those sent directly to the Supplier's offices, shall only be binding upon the latter once it has accepted such in writing.

b) Cancellation or modification of orders

The order irrevocably expresses the Customer's agreement. Consequently, it may not cancel it, unless the Supplier has provided its express agreement beforehand. In this case, the Customer shall compensate the Supplier for all the direct or indirect consequences arising therefrom and, in particular, for the expenses incurred in respect of specific equipment, study expenses, labour and procurement expenditure. In all cases, on-account payments which have already been made shall be definitively acquired by the Supplier.

The changes and additions to the order, in particular as regards delivery lead-times, volumes, or the products themselves, shall be referred to the Supplier for its express agreement, and the latter shall advise the Customer of the conditions and consequences as regards the terms of sale.

III – Studies and projects

III – 1. Studies and projects

The projects, studies and documents of any nature provided or sent by the Supplier shall always remain its entire property, and the Customer hereby recognises the Supplier's industrial and intellectual property rights in respect of the latter. They shall be returned to it at its first request. They may not be either disclosed or used without its prior, written authorisation. Any and all reproduction or representation, even if such is only partial, using any process whatsoever, of said documents, which is carried-out without the Supplier's written authorisation, shall be illegal and shall represent either infringement or unfair competition.

Any transfer of intellectual property rights shall be subject to a separate contract between the Supplier and the Customer.

III – 2. Confidentiality

The Parties reciprocally commit themselves to a general non-disclosure obligation in respect of the elements (documents on any medium whatsoever: reports on discussions, drawings, exchanges of computerised data...) which are exchanged within the framework of the preparation and performance of the contract.

Generally, the Customer hereby acknowledges that all the confidential information whatsoever, relating to the Supplier, is sent to it solely for the purposes of the contract and solely in order to enable it to make its decision. Nevertheless, information which is in the public domain when the contract is executed, or which the Customer has already become aware of in a lawful manner, is not subject to the non-disclosure obligation.

Should studies, conducted at the Customer's request, or documents provided to the latter, not be followed by orders for products, the expenses which may have been incurred shall be invoiced to it and the documents shall be returned.

III – 3. Specifications – special manufacturing

The Customer is obliged and responsible for establishing specifications (in particular, drawings, equipment, technical specifications) which define the features of the service to be provided.

The Customer is a competent professional in its specialist field and solely responsible for the completion of the item to be developed. It shall accurately and relevantly define its requirements and direct the Supplier towards the resources which the latter shall have to implement in order to meet such requirements.

The specifications shall be sufficiently precise, adapted to the service and complete. The Supplier may not be held liable in respect of an omission or error in the specifications provided by the Customer.

The drawings, studies and projects which may be sent by the Supplier only represent proposals which may not be assimilated to any involvement in the design of the final product or cause it to incur liability. In this respect, the drawings require the Customer's approval and shall be returned to the Supplier within 15 days, at the latest.

IV – PRICES

IV – 1. Prices

The offers are valid for three months.

Unless there is a specific agreement:

- an on-account payment of at least 30% of the amount of the order shall be owed for all major orders and for all orders of so-called "special" supplies, regardless of the amount thereof. Said on-account payment shall be paid in cash.
- prices are established "ex works" (EXW – according to the effective Incoterm on the date when the contract is executed) and are always exclusive of packaging and carriage, which is always paid by the Customer.

IV – 2. Price revision

In the event of the occurrence of an event which is outside its control and which compromises the contract's balance, the Supplier may revise its prices on the basis of terms and conditions which shall be predetermined by the Parties in the special terms (in particular, in the event of changes in the price of raw materials, the reform of customs' law, exchange rate fluctuations, legislative reform).

All changes made by the Customer to the contract may cause the prices granted to be revised.

IV – 3. Conditions for opening an account

Any and all opening of an account may lead to payment of an on-account payment or cash payment when ordering.

The Supplier reserves the right to make the opening of an account subject to obtaining accounting, financial and legal documents and, where applicable, guarantees, from the Customer.

V – CONDITIONS OF PAYMENT

V – 1. Payment periods

In accordance with the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008 (article L441-6 of the French Commercial Code) the period agreed by the parties for the settlement of the sums owed cannot exceed forty-five days end of month or sixty days from the date on which the invoice is issued. These provisions apply to all contracts concluded as of the 1st January 2009 – i.e. any firm order accepted as of this date.

Under these general terms, the payment period is either 45 days end of month or 60 days net. Derogation from this provision may be included in the specific terms, by agreeing on either a shorter "end of month" period or a net period of less than 60 days. The application of this law does not require shorter payment periods previously agreed to be modified.

Down-payment : It is recalled that a down-payment is by definition paid in cash, without conditions of payment.

V – 2. Compulsory application in France and for export

This law is a law of public order, from which there can be no derogation. It is a “public order act” and applies whenever the delivery destination, Customer’s registered head-office or other element of the contract is located in a country other than France, provided there is a connection to France, such as the Supplier’s registered head-office,

V – 3. Legal sanctions

In accordance with the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008 (article L442-6 of the French Commercial Code) the following are notably punishable by a civil fine of up to two million euros:

- subjecting a partner to conditions of payment which do not respect the legal limit,
- requesting that the supplier postpone the date on which the invoice is issued without a valid reason.

V – 4. Contractual sanctions

→ The non-payment of an invoice or a down-payment shall entail the following :

- a) In accordance with the version of article L441-6 of the French Commercial Code introduced by the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008, any delay in payment shall result in the application of late-payment interest equal to the European Central Bank’s latest refinancing rate, plus a further ten points.
- b) At the seller’s discretion, the buyer shall be required to pay premiums amounting to three times the legal rate of interest.
- c) At the seller’s discretion, the balance of the price and invoices on account shall become immediately payable, regardless of the supplies to which they correspond.

Payment is only taken into account following actual receipt of funds.

Payments are made to the seller’s registered head-office and, failing agreement to the contrary, are made net and without discount.

Except in case of provisions agreed by the parties, any repair or maintenance work, as well as additional supplies or supplies delivered during assembly, are invoiced on a monthly basis and are payable in cash, net and without discount.

→ Any delays or disputes between the parties or failure to return bills of exchange within the fifteen days prior to the date of payment shall result in :

- ✧ the cancellation of the contract,
- ✧ the immediate payability of the sums owed for any reason whatsoever,
- ✧ the right to refuse any further orders.

Should the buyer choose to sell, transfer, use as collateral security or contribute its business assets or equipment or should a payment not be made or a bill of exchange not be accepted by the scheduled date, the sums owed become immediately payable as of right, without serving formal notice, regardless of the conditions previously agreed.

The seller reserves the right to transfer its debt-claim to a third party.

→ The furnishing of a commercial paper shall not alter the receivable. Consequently, the original receivable shall remain due with all the guarantees related thereto [including reservation of title] until said commercial paper has actually been paid.

V – 5. Changes affecting the Customer’s circumstances

In the event of deterioration in the Customer’s circumstances as established by financial information and/or as witnessed by a delay in payment, or when the financial circumstances are significantly different from the data provided, deliveries shall only be made in consideration of immediate payment.

In the event of the sale, assignment, pledging or contribution to a company of its business, or a significant proportion of its assets or equipment by the Customer, and in the event of failure to comply with the payment lead-times, or in the event that the bill of exchange has not been returned with acceptance within 15 days, the Supplier reserves the right, without serving formal notice:

- to declare an event of default and, consequently, the immediate payability of amounts which are still outstanding in any respect whatsoever,
- to suspend all deliveries or all services,
- to note, on the one hand, the cancellation of all the then-ongoing contracts and, on the other hand, to withhold the on-account payments received, and to retain products held, until the amount of any indemnity is set.

The fact that the Supplier may invoke any of these provisions shall not obstruct the reservation of title clause, or prevent the Supplier from requesting a fixed indemnity, as a penalty clause.

VI – RESERVATION OF TITLE

The Supplier shall retain ownership of the supplied products until actual payment of the whole price (principal amount and incidentals).

Failure to pay any of the instalments may lead to the products being reclaimed.

Nevertheless, as from delivery, the Customer shall assume the risks of loss of, or damage to, the products, and liability for any damage / loss which they may cause.

VII – DELIVERY

VII – 1. Terms of delivery

Delivery is deemed to have been made once the goods are made available in the Supplier’s premises. The risks relating to the goods are transferred to the Customer as from said availability and for the whole term of the reservation of title in favour of the Supplier.

Delays shall not justify cancellation of the order. In the event of a delay in delivery in terms of the lead-times agreed upon by the Parties: should special agreements provide for penalties, the latter shall under no circumstances exceed 0.5% per week of delay, up to an aggregate maximum of 5% of the workshop or warehouse value of the equipment for which the delivery has been delayed.

A penalty for delay may only be applied if the delay is exclusively attributable to the Supplier and if it has caused actual loss. If the Customer failed to advise the Supplier in writing, when the order was placed, and failed to confirm, at the scheduled delivery time, its intention of applying this penalty, the latter may not be applied. These penalties represent fixed, discharging damages, and are exclusive of any other form of compensation.

Payments for supplies may not be deferred or modified owing to these penalties.

The Supplier shall be automatically discharged from any and all commitment relating to delivery lead-times should the Customer fail to comply with the terms of payment, or in the event of the occurrence of a case of force majeure as defined in Article IX.

VII – 2. Delivery lead-times

The delivery lead-times begin to run as from the date of final acceptance of the order by the Supplier, subject to the possible payment of an on-account payment. Moreover, the start date for such lead-times is conditional, where applicable, upon receipt of all the items required to manufacture the products or possibly, acceptance of the pre-project, as required to start performance of the contract.

The delivery and performance lead-times provided to the Customer are defined on the basis of a schedule drawn-up by the Parties in the specifications.

In the event of a change to the schedule which is attributable to the Customer, the Supplier shall be entitled to request an additional payment in respect of the resulting changes and reorganisation. A new schedule shall be established and the Customer may not claim any penalty from the Supplier in the event of a delay owing to its breach.

VII – 3. Taking-back standard equipment

Taking-back standard equipment shall be subject to the Supplier's written agreement and shall relate to new products in their original packaging, during the 15 days following the delivery date. Returns shall be sent with shipping and packing paid, stating the delivery slip number and may be subject only to partial repayment as determined by the Supplier. Under no circumstances shall the Supplier take-back specific products which have been developed on request or according to specifications.

VIII – ACCEPTANCE

The Customer shall be bound to carry-out legal acceptance of the products for which it has acknowledged compliance with the contract. Acceptance represents the acknowledgement of the absence of patent defects. Such acceptance shall be formalised in writing.

In all cases, the nature and scope of the control work, tests and acceptance procedures shall be specified in the contract.

Should the acceptance procedure not take place in the presence of both Parties, acceptance shall be deemed to have been given in the event that:

- the Supplier has complied with its main contractual obligations, even if minor reservations have been expressed,
- the Customer has authorised the products which are the subject of the contract

IX – FORCE MAJEURE

Neither Party may be held liable for its delay or failure to comply with any of its obligations under the contract if such delay or breach is the direct or indirect consequence of an event of force majeure, understood within a wider sense than that allowed by French case law, such as:

- the occurrence of an Act of God,
- earthquake, storm, fire, flood, etc.
- armed conflict, war, terrorist attacks,
- labour unrest, total or partial strike in the Supplier's or Customer's company,
- labour unrest, total or partial strike in the suppliers', service providers' carriers' companies, or in the postal service and public services, etc.,
- an imperative injunction from the public authorities (ban on imports, embargo),
- operating accidents, broken machinery, explosions,
- a breach by suppliers.

Each Party shall inform the other Party, as soon as reasonably possible, and by registered letter with acknowledgment of receipt, of the occurrence of a case of force majeure of which it becomes aware and which, in its opinion, may affect performance of the contract.

X – CONTRACTUAL WARRANTY

The warranty exclusively covers repair work in our workshops or the supply of replacements for the parts which are defective owing to a manufacturing defect, or a material defect, with the latter having been duly noted or admitted by the Supplier beforehand.

No indemnity may be claimed on any grounds whatsoever, such as for the labour required for dismantling or reassembly work, immobilisation or operating expenses, carriage, accommodation and travel expenses, personal injury or for incidents which may occur.

The Supplier undertakes to provide a warranty for its products for a maximum of 6 months as from the delivery date.

The warranty exclusively covers the original products of the brand or those which are marketed by the Supplier.

The warranty shall not apply:

- for parts subject to wear-and-tear,
- in the event of the use of products other than original products, or materials procured from another supplier,
- in the event of the intervention, repair or adjustment by the Customer or a third party without the Supplier's prior agreement,
- in the event of negligence, lack of supervision, poor assembly, or use which is non-compliant with the technical features recommended by the Supplier or a warehousing error, attributable to the Customer.

All warranties shall also be excluded in the event of the Customer's failure to pay. The Customer may not invoke the existence of a warranty so as to either suspend or defer its payments.

Under no circumstances shall a change to a part in a set extend the warranty lead-times for such set.

So as to invoke the warranty, the Customer shall advise the Supplier, in writing and within 48 hours as from their occurrence, at the latest, of the defects which it is attributing to the equipment and provide all supporting documents in respect of the reality of such defects.

XI – LIABILITY

Definition of the Supplier's liability :

The Supplier's liability is strictly limited, on the one hand, to compliance with the Customer's provisions as set forth in the specifications and, on the other hand, to good trade practice.

Limitations of the Supplier's liability :

The Supplier's liability is limited to the direct physical damage / loss caused to the Customer owing to breaches which are exclusively attributable to the Supplier whilst performing the contract.

The Supplier is not bound to pay compensation for either the harmful consequences of breaches by the Customer or third parties relating to performance of the contract, nor for the damage / loss arising from the Customer's use of technical documents, information or data which are either issued or imposed by the latter.

Under no circumstances shall the Supplier be bound to compensate for direct and/or indirect physical damage / loss such as loss of operations, profit, loss of sales...

In all cases, with the exception of bodily injury, fraud or gross negligence, the Supplier's general liability may not exceed the amount, exclusive of taxes, received in respect of the contract.

Exclusion of liability :

The Supplier's liability is excluded:

- for defects originating from the design produced by the Customer,
- for defects originating from the materials supplied by the Customer,
- for damage / loss originating from the use of products other than original products, or of materials procured from another supplier,
- in the event of the intervention, repair or adjustment by the Customer or a third party without the Supplier's prior agreement,
- in the event of negligence, lack of supervision, poor assembly, or use which is non-compliant with the technical features recommended by the Supplier or a warehousing error, attributable to the Customer.

XII – JURISDICTION

In the absence of an out-of-court settlement, by express agreement, only the Courts having jurisdiction within the geographic location of the Supplier's registered office shall be competent to hear any dispute relating to the interpretation or performance of the contract, even in the event of the introduction of third parties or plurality of defendants, or stipulations as regards the place of payment or delivery.

The contract shall be governed exclusively by French law.

All documents shall be drafted in French. In the event of differences in interpretation between a text written in French and a text written in a foreign language, the French text shall take precedence.

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