

## GENERAL TERMS AND CONDITIONS FOR PURCHASE

Nizi International S.A. (hereinafter referred to as “Purchaser”) has entered the Sale and Purchase agreement (hereinafter referred to as “Agreement”) of the “Goods” subject to these General Terms and Conditions of Purchase (hereinafter referred to as “Conditions of Purchase”) with the counterparty (hereinafter referred to as “Seller”).

Purchaser’s entering into each Agreement is expressly conditioned upon Seller’s consent to these Conditions of Purchase. Purchaser objects to any different or additional terms or conditions contained in Seller’s purchase order confirmation or any other document submitted by Seller.

### 1. Scope of application

- 1.1. Unless otherwise specifically agreed in writing, the following Conditions of Purchase shall be regarded as an integral part of each agreement entered into by Purchaser and shall prevail over and above any other terms and conditions stated or expressed by any other party to such agreement.
- 1.2. By submitting an offer or issuing purchase order confirmation, at the latest upon delivery of the ordered Goods, Seller accepts the exclusive binding force of these Conditions of Purchase.
- 1.3. No employee or agent of the Purchaser has the authority (either express or implied) to vary or waive any of these Conditions of purchase and the Seller shall not rely upon any variation or waiver unless confirmed in writing by Purchaser acting through a Commercial Director and CEO of the Purchaser and marked as special conditions.

### 2. Conclusion of and Modifications to the Agreement

- 2.1. Seller’s offer to sell shall be binding and cannot be revoked.
- 2.2. The Agreement is concluded by written purchase order made by Purchaser.
- 2.3. Oral promises and agreements, as well as all statements scheduled to conclude, amend or terminate agreements must be recorded in writing to become valid.

### 3. Delivery and documentation

#### 3.1. Delivery term and place

- 3.1.1. Delivery of Goods, including the transfer of damage risk to Goods, shall be governed by the applicable provision of INCOTERMS 2010 defined in the Agreement.
- 3.1.2. The Goods shall be delivered to the address indicated in the order by Purchaser.
- 3.1.3. The agreed delivery dates indicated in each order shall be binding and must be complied with by Seller. Delivery dates agreed between the parties shall be deemed met as soon as the Goods are received by Purchaser at the agreed final destination address at the agreed date.
- 3.1.4. The Seller shall inform Purchaser immediately of any foreseeable delays or partial delays, stating the reasons for and the estimated time of the delay. Such notice shall not relieve Seller from his liability for the consequences of such delay, including but not limited to coverage of damages.
- 3.1.5. The Purchaser shall be allowed to accept or reject the delayed deliveries. In any case the unconditional acceptance of a delayed delivery of Goods shall not constitute a waiver of claims to which Purchaser is entitled due to the delayed delivery of Goods; this applies pending full payment of the amounts owed by Purchaser for the delivery in question.
- 3.1.6. After allowing a period of grace of 2 (two) weeks after the agreed delivery date, Purchaser is entitled to rescind the Agreement and claim damages instead of performance.

#### 3.2. Documents to be provided

- 3.2.1. The Seller agrees to provide the Purchaser with all the necessary documents and information that might be required by law and common business practice for Purchaser to receive the Goods

and make a payment, including but not limited to certificate of origin (both preferential and non-preferential), bill of lading, mandatory certificates required by the relevant export/import regulations, etc.

### **3.3. Deviations**

- 3.3.1. All data relating to measurements, weight, quality, performance and other characteristics in Purchaser's order shall be binding for Seller.
- 3.3.2. Unless otherwise agreed in writing, the liability of the Seller to supply the Goods shall be fulfilled if the goods are supplied with a quantity tolerance of +/- 5% compared to the quantity agreed upon in the Agreement (the "Agreed Tolerance"). In this case Purchaser shall pay the price for the factually delivered quantity.
- 3.3.3. Deliveries deviating from Purchaser issued documents and orders more than Agreed Tolerance as well as early, late, partial, excess or short deliveries are only admissible if given Purchaser's prior written approval. Goods and materials in excess of purchase order are subject to rejection on Purchaser's discretion.

## **4. Price**

- 4.1. The prices agreed upon between Purchaser and Seller shall be indicated in the Agreement. Seller shall not be entitled to change or adjust the price without prior written consent of Purchaser.

## **5. Payment**

- 5.1. Purchaser shall pay the price under the terms and conditions agreed between the parties in the Agreement.
- 5.2. Seller shall provide Purchaser with the invoice which should contain the order number, the respective date and all relevant information needed to make the payment.
- 5.3. In case of default supplies of Goods or lacking relevant documents, or if required information is missing or is incorrect, Purchaser shall be entitled to a proportionate withholding of payments until the due performance of the Agreements or until the relevant information is provided, without any consequences of late payment.
- 5.4. Payment shall not represent a waiver of warranty rights for the Goods supplied neither does it excludes any subsequent notice of defects relating to the same.
- 5.5. Any claim existing against the Seller can be offset by Purchaser against the claims held by the Seller.

## **6. Retention of title and Transfer of Risk**

### **6.1. Retention of Title**

- 6.1.1. Purchaser does not recognize any reservations of title.

### **6.2. Transfer of risk**

- 6.2.1. Risk shall pass from the Seller to the Purchaser in accordance with the rules set out in international chamber of Commerce publication "Incoterms 2010" specified in the Agreement.

## **7. Representations and Warranties**

- 7.1. Seller expressly warrants to Purchaser at the date of the purchase order and at the date or dates of delivery or performance of the Agreement that the Goods will:
  - a) Conform with all requirements, quantity, quality, specifications, conditions, samples or other descriptions and data furnished by or on behalf of Purchaser in purchase order and other documents as well as documents issued by or on behalf of Seller;

- b) Be fit and sufficient for the purpose(s) for which they were manufactured and sold and, if Seller was previously informed about any other particular purposes for which Goods are intended to be used, will be fit for such particular purpose;
- c) Be new and merchantable;
- d) Be of first class quality and material and free from any material or manufacturing defects, whether latent or patent, which eliminate or reduce the value of the Goods supplied;
- e) Comply with the performance specifications in the Agreement;
- f) Comply with all statutory and public-authority approvals;
- g) Be free from any claim or right of any nature by any third person.

## **8. Non-conformity and Claims Based of Defects**

- 8.1. Payment for the Goods shall not constitute a waiver of any warranty claims Purchaser may have.
- 8.2. The Purchaser shall upon receipt of Goods examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other deficiencies.
- 8.3. Should the Purchaser discover any deficiency in the course of these inspections, it shall inform the Seller without delay of such deficiency. Should the Purchaser discover a deficiency at any later stage, it shall also notify the Seller without delay according to the procedure described below.
- 8.4. Complaints on visible defects may be raised within 15 (fifteen) calendar days from the date of arrival of the Goods at the final agreed destination as indicated in Purchaser's purchase order. Insofar as deficiencies are not discovered until commissioning, processing or first use by the Purchaser or its clients, the complaint on defects may be raised within one month of detection of defects. To this extent the Seller waives the objection to delayed notification of defects.
- 8.5. If non-conformity (both visible and hidden defects) are found Purchaser will notify the Seller specifying type of goods, production plant, transport, weight/weight loss, date of delivery and date of arrival/reception, description of defect, description of what is claimed, quality, minimum written evidence to prove defects.
- 8.6. If the quality/quantity claim has been lodged by Purchaser, Seller can agree with the claim and rectify the defect immediately or request for inspection, sampling and assaying of the material in question (hereinafter referred as to "Inspection").
- 8.7. The Inspection shall be carried out by mutually acceptable and independent surveyor. Findings established by such procedure shall be binding as final for both parties for determination of the actual quality/quantity of material delivered. Costs thereof shall be borne by the losing party.

## **9. Remedies**

- 9.1. Without prejudice to Purchaser's rights, in the event of a warranty claim Purchaser shall be entitled to require at his discretion replacement of Goods free of charge, elimination of the defect free of charge or a suitable price reduction, price refund, that the defect be repaired at the Seller's expense after prior notification or the combination of the above. The Seller shall also bear the costs and risk related to the return of deficient products.
- 9.2. The Seller may refuse the type of remedy which Purchaser selected if it is only possible at disproportionate expense. In such case the Purchaser has the discretion to choose another remedy.
- 9.3. Notwithstanding Purchaser's rights to remedies under this article, Purchaser is entitled for any and all damages occurred as a result of non-delivery or default in delivery of the Goods.
- 9.4. In case of defects of title, the Seller shall hold Purchaser harmless from any third party claims possibly existing, unless the Seller is not accountable for the defect of title.
- 9.5. Should the Seller fail to rectify any defect immediately after Purchaser's request to remedy it, at its own discretion Purchaser is entitled to:

- a) cancel the Agreement in whole or in part without being subject to any liability for damages; or/and
- b) demand a reduction in price or price refund; or/and
- c) undertake such rectification himself or to have it undertaken by a third party at the expense of the Seller; or/and
- d) claim damages in lieu of performance.

## **10. Liability**

- 10.1. Where Seller is responsible for a product defect, the cause of which does not lie within Purchaser's sphere of control, Seller is obliged to compensate Purchaser for all damages and to indemnify against any third party claims upon first demand.
- 10.2. Seller shall indemnify and keep Purchaser harmless from and against any and all damages and damage claims of third parties arising out of or in connection with the supply of defective Goods, including but not limited to claims, liabilities, torts, losses, costs and expenses arising out of or relating to any actual or alleged damage to any property, or any other damage or loss that results or is acclaimed to result in whole or in part from actual or alleged defects in the Goods or any breach of any of the terms and conditions of the purchase order or specifications and terms furnished by or on behalf of Purchaser or by and on behalf of Seller.
- 10.3. Seller will maintain adequate insurance (including, without limitation product liability insurance) to protect Purchaser against such damages, claims, liabilities, losses, costs and expenses and Seller agrees to produce evidence of such insurance cover when requested by Purchaser.
- 10.4. Prior to any recall action which is partially or wholly due to a defect in the Goods supplied by the Seller, Purchaser shall notify the Seller, give the Seller the opportunity to collaborate and discuss with the Seller the efficient conduct of the recall action, unless no notification of or collaboration by the Seller is possible on account of the particular urgency. The costs of the recall action shall be borne by the Seller insofar as a recall action is due to a defect in the Goods supplied by the Seller.
- 10.5. If any third party wishes to enforce any claims against Purchaser regarding the goods delivered or in connection therewith, or in connection with the circumstances of delivery, or anyone files a legal process on such grounds, Seller shall upon request from Purchaser do everything necessary to avoid such claims or processes. Should negotiations or legal process be started, Seller is obliged to enter into proceedings for Purchaser during negotiations or in the litigation, and do everything possible to have Purchaser dismissed from the litigation. Failing to reach so, or in case Seller doesn't fulfill this obligation, Seller shall reimburse Purchaser the amount enforced against Purchaser (including the amount to be paid by settlement), including all costs and damages occurring directly or indirectly in connection with the negotiations and the process, also including the costs of legal representation. All obligations of such nature have to be paid directly by the Seller. Such obligation of Seller as set forth in this article shall also apply to any and all consequential and/or incidental losses and/or damages as the case may be.

## **11. Force Majeure**

- 11.1. Neither party shall be liable, or be deemed to be in default, to the other party hereunder by reason or account of any delay or omission in performance caused by epidemic, fire, power outages, action of the elements, strikes, lockouts, sabotage, labor disputes, governmental law, regulations, ordinances, order of a court of competent jurisdiction, executive order, act of God or public enemy, war, riot, civil commotion, earthquake, flood, explosion, casualty, embargo or any other similar cause beyond the control of such party (hereinafter referred to as "Force Majeure").
- 11.2. The party affected by Force Majeure shall immediately but not later than 72 hours after the occurrence of Force Majeure notify the other party in writing of such event and furnish the other party with all

relevant information and proof relating thereto, and particularly to the period of time said event may delay the timely performance of the Agreement. Where such notice is not given within the time required, Force Majeure shall not justify the non-fulfillment of any obligations under the Agreement.

- 11.3. If the events described in article 11.1. last for more than 30 days, both parties have the right to rescind the Agreement with immediate effect, without there being any claims to compensation for possible damages or losses except for the rights and remedies previously accrued under the Agreement and for so long as the event of Force Majeure exists and to the extent that performance is hindered by the event of force majeure. In such cases, rescission must be performed by notice in writing to the respective party.

## **12. Cancellation/Termination of Agreement**

- 12.1. If the Seller is in default with its delivery or its warranty obligations pursuant to the Agreement, and if a reasonable grace period has elapsed in vain, Purchaser shall be entitled to rescind the agreement, waive its claims to the supply of the Goods, recover any advanced payments made for such Goods and claim damages.
- 12.2. Purchaser may further terminate the Agreement and rescind any pending order if insolvency or similar proceedings are being instituted against the Seller or if the Seller has permanently become insolvent.
- 12.3. In case of termination of the Agreement Purchaser shall have the right to start – immediately upon such notification to Seller – looking for an alternative Seller of the Goods to be delivered and Seller shall cover any differences in prices.
- 12.4. The aforementioned rights to rescind or terminate an agreement or an order shall not prevent Purchaser from asserting any other remedies he may have at law.

## **13. Applicable law**

- 13.1. The Agreement between the parties is governed by the laws of the Grand Duchy of Luxembourg, including the United Nations 1980 Convention on International Sales of Goods.

## **14. Jurisdiction**

- 14.1. All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Luxembourg; the language of arbitration shall be English. The arbitral award shall be final and shall not be subject to appeal. The losing party shall bear all the costs of the proceedings and the reasonable legal and other costs of the overall winning party of the arbitration.

## **15. Final provisions**

- 15.1. If any provision (or part of a provision) of these Conditions of Purchase is found by any competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 15.2. Should one or more provisions of these Conditions of Purchase be or become void or unenforceable, the void or unenforceable provision shall, taking equitably into consideration the interests of both parties, be replaced by a provision which comes closest to the economic intent the parties had envisioned by the void or unenforceable provision.
- 15.3. Seller shall not assign this agreement or any rights or delegate any duties under the Agreement, in whole or in part, without the prior written consent of the Purchaser.
- 15.4. English is the only official language of these Conditions of Purchase.