

BMS TERMS AND CONDITIONS OF PURCHASE

Any and all purchases by Buyer of Goods and Services, as defined hereafter, shall be subject to all the terms and conditions set forth below (the "Terms and Conditions of Purchase") to the extent such terms and conditions are not incompatible with the provisions which may be contained in a written contract between Buyer and Seller. No other terms and conditions of Seller that may be referred to in Seller's order acknowledgement and/or any other document issued by Seller shall apply, even if these have not been rejected explicitly by Buyer.

1. DEFINITIONS - ORDER OF PRECEDENCE – PURCHASE ORDER ACCEPTANCE

1.1 As used herein:

"Purchase Order" shall mean the purchase order document as well as any attachments (including without limitation these Terms and Conditions of Purchase, the specifications, drawings and other documents) and/or amendments thereto issued by Buyer to Seller for the purchase of Goods and Services.

"Goods and Services" shall mean any and all items ordered under the Purchase Order and specified therein.

"Price" shall mean the price of the Goods and Services as specified in the Purchase Order.

1.2 In case of conflict between the documents forming the Purchase Order, Seller shall inform Buyer of such conflict and the order of precedence in resolving such conflict shall be as follows: (a) the purchase order document, as amended, (b) the attachments to the purchase order document, as amended and (c) these Terms and Conditions of Purchase.

1.3 Seller's failure to object against or reject Buyer's Purchase Order within eight (8) days as from the date of the Purchase Order in question shall be an unconditional acceptance thereof by Seller. In the event Seller's order acknowledgement contains exceptions or remarks to the Purchase Order, Buyer may cancel the Purchase Order without incurring any liability.

2. SPECIFICATIONS, DRAWINGS, TECHNICAL DOCUMENTATION AND OTHER ITEMS

The specifications, drawings, technical documentation and other documents as well as any models, moulds, dies, tooling and other items supplied or paid for by Buyer under the Purchase Order shall be the exclusive property of Buyer and may be used by Seller solely in connection with the manufacture and provision of the Goods and Services. Buyer's approval of such specifications, drawings, technical documentation and other items shall not relieve Seller of any of its obligations and responsibilities under the Purchase Order.

3. CHANGES

Without invalidating the Purchase Order, Buyer may at any time make changes to the Goods and Services, the scope of supply, the specifications, drawings, technical documentation and other documents as well as any models, moulds, dies, tooling and other items, to issue additional instructions, to request Seller to perform additional work or to omit certain Goods and Services or a part thereof and Seller shall promptly comply with any such request. Any adjustment of the Price, the delivery time or any other provision resulting from such change, addition or omission shall be agreed upon in writing between Buyer and Seller. Seller shall not make any change without the prior written consent of Buyer.

4. APPROVALS - LICENSES

Seller shall comply with any standards, codes and regulations (including without limitation technical standards, health and safety codes, and import and export control regulations ...), which apply to the Goods and Services ordered by Buyer. Seller shall, at its cost, obtain any and all licenses and permits, certificates, attestations and other documents and perform any tests, as required by the applicable standards, codes and regulations. No delay on the part of official authorities in relation to the foregoing shall be considered as a case of force majeure.

5. SUBCONTRACTING - SUB-SUPPLY

Any subcontracting or sub-supply by Seller shall be subject to Buyer's prior written permission. In the event of any unauthorized subcontracting or sub-supply by Seller, Buyer shall not be obligated to receive the Goods and Services supplied by an unauthorized subcontractor or supplier and pay the Price thereof. Buyer's permission shall not relieve Seller from any responsibility for the Goods and Services supplied by a subcontractor or supplier of Seller. Seller shall at all times be responsible for the direction and control of its subcontractors and suppliers and shall cause its subcontractors to comply with Buyer's internal policies and procedures while being on Buyer's premises.

6. EXPEDITING, INSPECTION AND TESTING

6.1 Seller shall give Buyer at least ten (10) working days prior written notice of readiness of the Goods and Services for inspection and/or testing in accordance with the provisions of the Purchase Order, or in the absence thereof, such inspection and/or testing at least consistent with generally accepted practice for the type of Goods and Services in question. At Buyer's option, the inspection and/or testing of the Goods and Services shall be performed at Buyer's facilities and/or Seller's facilities. In the latter case, Buyer may witness such inspection and/or testing at its cost. Promptly after the completion of the inspection and testing, Seller shall deliver to Buyer a written report thereof. All costs related to inspection and/or testing and the written report shall be deemed included in the Price, unless otherwise agreed in writing.

6.2 During normal working hours or at such other times as mutually agreed upon, Buyer or its nominee shall be granted access to Seller's premises and/or the premises of Seller's subcontractors and suppliers, where Goods are located and/or Services are being performed, to monitor the progress of any and all work relating to the Goods and Services and/or to inspect and/or to test the Goods and Services at any and all stages of the production and/or performance process and/or review of all licenses and permits, certificates, attestations and other documents, specified in the Purchase Order or in the absence thereof as generally required for the type of Goods and Services in question. Seller, at its expense, shall make available to Buyer or its nominee all tools, instruments, facilities, services and labor for conducting such inspection and/or tests.

6.3 Any inspection and/or testing of the Goods and Services, the work related thereto, and/or any models, moulds, dies, tooling and other items related thereto and/or the inspection of licenses and permits, certificates, attestations, drawings, technical documentation and any other documents, related to the Goods and Services shall not constitute nor be deemed to constitute final acceptance in part or in whole of the Goods and Services or any part thereof, nor shall it relieve Seller from any of its responsibilities under the Purchase Order.

7. PACKING AND MARKING

Seller shall, in accordance with the requirements of Buyer, adequately protect, pack and mark the Goods for transportation to their final destination and/or for prolonged storage and, in the absence thereof, at least in conditions consistent with generally accepted practice for the type of Goods in question.

Each package shall be numbered and labeled with Buyer's Purchase Order number, stock number and any other marks specified in the Purchase Order. An itemized list of the contents shall be fastened in a waterproof covering on the outside of each package. All costs for such protection, packing and marking shall be deemed included in the Price, unless otherwise agreed in writing.

8. ACCEPTANCE - DELIVERY TIME AND TERMS – CERTIFICATES

8.1 Any acceptance of the Goods and Services shall be subject to the successful completion of the acceptance procedures and tests specified in the Purchase Order. In the event the Purchase Order does not provide for specific acceptance procedures and tests, Buyer's failure to object against or reject the Goods and/or Services in question within forty five (45) days as from the delivery of the Goods and Services concerned, shall constitute an unconditional acceptance thereof by Buyer. Acceptance of the Goods and Services shall not relieve Seller from any of its responsibilities under the Purchase Order, such as its responsibility to meet the Warranties set forth in Article 10.

8.2 Buyer has the right to refuse acceptance of the Goods and Services or any part thereof if not accompanied by the documentation specified in the Purchase Order and/or the documentation customary for the type of Goods and Services in question.

8.3 As soon as Seller is or becomes aware of any circumstances or events which may reasonably be anticipated to cause a delay to an agreed upon delivery date, Seller shall promptly advise Buyer thereof in writing.

If Seller is unable to meet an agreed upon delivery date, Buyer may, without summons, deduct from any invoice an amount of two (2) percent of the value of the Purchase Order for each full week of delay after the delivery date, up to a maximum of ten (10) percent of the value of the Purchase Order. The deduction by Buyer of the amount specified in this article shall not relieve Seller of any responsibility for delivering to Buyer the Goods and Services ordered.

8.4 Seller shall give Buyer not less than twelve (12) months prior written notice in the event of the discontinuance of the production of the Goods and/or the availability of the Services or any major part thereof and shall give Buyer a last time opportunity to purchase Goods and/or Services in such quantity as Buyer may request at terms and conditions which are no worse than those contained in the Purchase Order for the Goods or Services in question.

8.5 Subject to a force majeure event, in the event Seller fails or is unable to deliver the Goods and/or Services in accordance with the terms of the Purchase Order, and Buyer is compelled to source the Goods and/or Services and/or "form, fit, function, performance" equivalents from an alternative source at a cost to Buyer exceeding the Price for such Goods and Services, Buyer may charge and Seller shall pay the incremental cost incurred by Buyer in obtaining such Goods and Services from such alternative source during a period of maximum one (1) year.

8.6 Seller shall supply certificates of origin of materials, components and/or of the Goods as specified in the Purchase Order or as required by laws and regulations. In addition, Seller shall for each item of the Goods supply a certificate of conformity with the specifications and/or reference samples and models. All costs for such certificates shall be deemed included in the Price, unless otherwise agreed in writing.

8.7 Title in Goods and Services and the risk of damage to or loss of Goods and Services or any portion thereof sold hereunder shall pass to Buyer as from the moment the Goods and Services have been delivered to Buyer in accordance with the delivery term set forth in article 9.1 below. The delivery term shall be interpreted according to the Incoterms 2000 as published by the International Chamber of Commerce, which are made a part hereof (the "Incoterms").

9. PRICE - TERMS OF PAYMENT – TAXES AND DUTIES

9.1 The Price is valid for delivery of the Goods and Services "Delivered named point of destination, loaded onto arriving vehicle, duties and taxes paid", unless otherwise expressly agreed upon in the Purchase Order.

9.2 Except as otherwise provided for under these Terms and Conditions of Purchase or under the Purchase Order, the Price is firm and not subject to any escalation or adjustment of any kind.

9.3 Seller will invoice the Price in EUR after delivery of the Goods and Services.

9.4 Seller's invoice(s) will be paid by Buyer within sixty (60) days end of month as from the date of invoice(s). Domestic invoices shall be rendered in duplicate and international invoices shall be rendered in fivefold on a shipment per shipment basis and be based on the quantities actually delivered and the unit prices specified in the Purchase Order. In addition to the legally required data, each invoice shall contain (i) the correct Purchase Order number, (ii) the correct corporate name, form and address of Buyer and (iii) the correct VAT nr. of Buyer, all as specified in the Purchase Order. Any invoice failing to meet any of the above conditions shall remain unpaid without bearing any cost thereof shall be returned by registered mail to Seller for correction and without formal prior notice Buyer may deduct one hundred (100) EUR from the invoiced amount for administration costs incurred by Buyer.

9.5 Seller will be liable for all taxes and/or duties levied until the delivery of the Goods and Services to Buyer in accordance with the agreed Incoterm.

10. WARRANTY

- 10.1 Seller hereby warrants that (i) the Goods and Services shall conform to the specifications, drawings and provisions of the technical documentation, reference sample and models attached to or referred to in the Purchase Order and (ii) that the Goods and Services, all components and any part thereof shall be free from defects in design, material and workmanship and (iii) that the operation of the Goods and Services shall be uninterrupted and/or error-free and (iv) that the Goods and Services shall conform in all respects to the applicable laws and regulations (the "Warranties").
- 10.2 If the Goods and Services, or any part thereof, fail to meet any or all of the Warranties at any time during the Warranty Period, as defined hereinafter, then, upon Buyer's request, Seller shall, at its sole expense, within such a time and in such a manner as to minimize production interruption and/or losses, either (a) repair, correct or replace said Goods and Services, component or part to cause it to meet the foregoing Warranties; or (b) deliver and install new Goods and Services or a new component(s) or part(s) conforming to the Warranties and the provisions of the Purchase Order. As used herein the "Warranty Period" shall mean twenty four (24) months starting from the date of the acceptance of the Goods and Services as referred to in article 8. The Warranties shall apply to every repaired, corrected or replaced Goods and Services, component and part thereof for the remainder of the Warranty Period plus the period required by Seller to repair, correct or replace the defective Goods and Services, component and any part thereof and to put it back into operation or a period of maximum six (6) months, whichever is longer.
- 10.3 In the event the Goods and Services fail to meet the Warranties and Seller, after Buyer's request, fails to promptly perform appropriate remedial action as provided in article 10.2 above, or if the defective Goods and Services require urgent remedial action, Buyer may, after notifying Seller of its intent to do so, perform or cause to be performed at Seller's risk and expense, any remedial action Buyer sees fit. Seller shall pay within thirty (30) days after receipt of Buyer's invoice all reasonable costs whatsoever incurred by Buyer as a result of or in connection with any such remedial action.
- 10.4 All spare parts that are obsolete as a result of a breach of the Warranties shall be replaced with conforming spare parts at Seller's cost. In addition, Seller, at its sole cost and at Buyer's option, shall either take back all spare parts that are obsolete as a result of a breach of the Warranties or refund to Buyer the cost of disposal of such obsolete spare parts and any costs and expenses incurred by Buyer in connection therewith.
- 10.5 In the event in any calendar quarter arising during the period of supply under the Purchase Order, the quantity of non-conforming Goods equals or exceeds two (2) percent of the total quantity of Goods delivered in such quarter, Buyer may charge to Seller and Seller shall pay to Buyer an amount per unit not exceeding ten (10) percent of the value of the Good in question, however with a minimum of one hundred (100) EUR per unit.
- 11. LIABILITY**
Seller shall be liable for and hold harmless and indemnify Buyer, its directors, employees, agents, and any third party (the "Indemnitees") against any and all claims, actions, suit or proceedings, liabilities, damages, losses, costs and expenses (including without limitation reasonable attorney fees) of every character whatsoever, asserted against or incurred by the Indemnitees as a result of or in any way connected with a breach of contract or breach of warranty by Seller or Seller's negligence or Seller's failure to comply with laws and regulations.
- 12. HS&E COMPLIANCE**
Seller shall at all times comply with product safety laws and regulations including without limitation the legislation related to the restrictions on the marketing and use of certain dangerous substances and preparations. Seller shall provide to Buyer up to date information about the health, safety and environmental hazards of the Goods and Services and the safe use, handling and disposal of the Goods and Services, components or any part thereof. Prior to the first delivery of the Goods and Services, this information and, subsequently, any update thereof shall be supplied to each specific "ship-to" Buyer location.
- 13. FORCE MAJEURE**
Neither party shall be liable to the other for default or delay of its obligations under the Purchase Order due to any unforeseeable event beyond its reasonable control. In the event the delivery of the Goods and/or Services is delayed due to a force majeure event, the agreed upon delivery time shall be extended by the period of such delay, provided Seller shall have given written notice to Buyer of the commencement of the force majeure event within five (5) working days after its occurrence. No extra payment shall be made by Buyer to Seller for any expenses over and above those provided in the Purchase Order incurred by Seller by reason of any such delay. In the event the force majeure event lasts for a period exceeding three (3) consecutive weeks, Buyer shall have the right to cancel the Purchase Order without incurring any liability.
- 14. SECRECY**
Except as otherwise agreed to in writing by Buyer, Seller shall keep confidential and use any and all information, know-how and data, whether technical or non-technical, which is in any way heretofore or hereafter disclosed to Seller by or on behalf of Buyer or otherwise obtained by Seller in the course of, as a result of, or in connection with the Purchase Order, whether or not specifically marked confidential, only for the purpose of performing its obligations under the Purchase Order. Seller shall prevent unauthorized disclosure to and unauthorized use by others of same information, except to Seller's employees and subcontractors on a need to know basis to properly execute the Purchase Order and who are first obligated in writing at least to the same extent as Seller is obligated hereunder. Except as otherwise agreed to in writing by Buyer, Buyer shall not be obligated to keep any information of Seller confidential or be restricted in the use thereof.
- 15. PATENTS, TRADEMARKS AND COPYRIGHTS**
Seller shall hold harmless and indemnify Buyer from and against any and all damages, losses and expenses arising from infringement or alleged infringement of any patent, trademark or copyright of such third party by the Goods and Services, a component or any part thereof and/or arising from the use by Buyer or Buyer's customer of the Goods and Services and shall defend and settle at its sole expense any claim, action, suit or proceeding brought against Buyer, provided that Seller is notified promptly in writing of the commencement of such suit or proceeding and provided further that Buyer shall not settle or compromise any such suit or proceeding without the prior written consent of Seller. The provisions of this paragraph, however, shall not apply to infringement caused by specifications furnished by Buyer.
- 16. TERMINATION FOR CONVENIENCE**
Buyer, at its sole discretion, may at any time terminate the Purchase Order in whole or in part by giving written notice to Seller and Buyer and Seller shall negotiate an equitable amount to be paid by Buyer to Seller to compensate Seller for the demonstrable and reasonable actual cost incurred by Seller as a result of Buyer's termination under this provision.
- 17. TERMINATION FOR DEFAULT**
- 17.1 In the event that (i) a petition in bankruptcy is filed by or against Seller, or (ii) Seller is declared bankrupt, or (iii) Seller becomes insolvent or his credit becomes impaired in the reasonable opinion of Buyer, or (iv) proceedings are initiated by or against Seller seeking appointment of a receiver, reorganization, liquidation, dissolution, debt rearrangement or any other similar relief, Seller shall promptly after the occurrence of any such event notify Buyer thereof and Buyer, at its discretion, may either request the performance of the Purchase Order or cancel the Purchase Order. In the latter case, the Purchase Order shall automatically and without summons or notice period be cancelled with immediate effect as a result of Buyer having expressed his will to do so by simple registered letter.
- 17.2 Subject to a force majeure event, if Seller fails to perform or fulfill at the time and/or in the manner provided in the Purchase Order, any obligation or condition required to be performed or fulfilled by Seller under the Purchase Order and if Seller fails to remedy any such failure within fifteen (15) days after written notice thereof from Buyer, Buyer may cancel the Purchase Order in question or any part thereof by giving written notice of cancellation to Seller at any time within ninety (90) days after fifteen (15)-day period.
- 17.3 Upon termination of the Purchase Order in accordance with the above provisions and notwithstanding any dispute between Buyer and Seller with regard to Seller's default, Seller shall at no cost to Buyer:
- immediately discontinue all work relating to the Purchase Order or to the part thereof cancelled, and shall at Buyer's option either cancel or assign to Buyer all outstanding orders for materials and/or work; and
 - promptly deliver to Buyer all specifications, drawings, technical documentation, models, moulds, dies, tooling and the licenses and permits, certificates, attestations and other documents related to the Goods and Services; and
 - disclose and make available to Buyer all improvements to all of Seller's improvements to the Goods and Services and the specifications, drawings, technical documentation, models, moulds, dies, tooling related thereto (the "Improvements");
 - promptly deliver to Buyer any equipment, material, specifications, drawings, technical documentation, models, moulds, dies, tooling, which were supplied or paid for by Buyer and are in Seller's or its subcontractors' possession; and
 - promptly deliver to Buyer the inventories of finished and work-in-process Goods located at Seller's or its subcontractor's premises; and
 - grant Buyer the unlimited, worldwide, royalty-free and non-exclusive right to use and practice Seller's specifications, drawings, technical documentation, models, moulds, dies, tooling and the licenses and permits, certificates, attestations and other documents related to the Goods and Services and the Improvements to complete the work-in-process Goods and to produce Buyer's requirements of the Goods; and
 - refund to Buyer any and all advance payments made by Buyer provided they are not covered by supplies of Goods and Services prior to termination.
- 17.4 Upon the termination or expiration of a Purchase Order in accordance with the terms thereof, Seller shall not be entitled to any indemnification, compensation or other payment solely by reason of or in connection with such expiration or termination and Seller expressly waives all rights and remedies in such respect either in law or in equity. Seller shall furthermore indemnify Buyer against all claims, liabilities, losses, damages and expenses of every character whatsoever incurred by Buyer as a result of Seller's default.
- 18. GENERAL PROVISIONS**
Any assignment of a Purchase Order by Seller without the prior written consent of Buyer shall be void. The Purchase Order sets forth the entire agreement between the parties. Any amendment to the Purchase Order and/or waiver of any right or remedy herein provided, shall be effective for any purposes only when made in writing and signed by duly authorized representatives of both parties. The Purchase Order supersedes any prior agreement for delivery of the Goods and Services to Buyer.
- 19. REMEDIES**
The rights and remedies of Buyer (including indemnifications payable by Seller) specified herein and/or in the Purchase Order are in addition to and shall not be exclusive of or prejudicial to any other rights or remedies of Buyer at law or in equity.
- 20. GOVERNING LAW – DISPUTE RESOLUTION**
The Purchase Order shall be governed by and construed in accordance with the laws of Belgium without recourse to its conflict of law principles. All disputes arising out of or in connection with the Purchase Order shall be settled by the competent court of the place where Buyer has his registered office without prejudice to the enforcement of any judgment or order thereof in any other jurisdiction. The provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods - known as the "Vienna Convention" - shall not apply.