

# General Terms and Conditions for Sale of Products

(version April 21<sup>th</sup>, 2008)

**GENERAL:** Sale of any Products (as defined in Section 14.6 below) identified herein is expressly conditioned on the Buyer's assent to the terms and conditions contained or referred to herein (hereinafter "Terms and Conditions"). Any additional or different terms or conditions proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work or any assent to Seller's performance of work shall constitute assent to these Terms and Conditions (including those made over the internet). Unless otherwise specified in writing by Seller, any quotation by Seller shall expire 30 days from its date and may be modified or withdrawn by Seller prior to receipt of Buyer's acceptance.

## 1. Payment

**1.1** The prices to be paid by Buyer for the Products shall be those agreed with Seller .

**1.2** If Buyer fails to fulfill any condition of its payment obligations, Seller may suspend performance and delivery. Any cost incurred by Seller in accordance with such suspension (including storage costs) shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's non-fulfillment of any portion of the payment terms of the Agreement, whether or not Seller suspends performance, and such additional time as may be reasonably necessary in the circumstances. If Buyer does not correct such failure in the manner and time satisfactory to Seller, then Seller may, at its option, terminate the transaction in respect to the portion of the Products not delivered and work not yet performed. Buyer shall pay

Seller its reasonable and proper termination charges in the event of such termination.

**1.3** If Buyer becomes bankrupt or insolvent, or if any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, Seller shall be entitled to terminate this Agreement. Buyer shall pay Seller its reasonable and proper termination charges in the event of such termination.

**1.4** In the event of any special price authorization being issued by the Seller to the Buyer, the Buyer must ensure that the quotation code/ project code is quoted on all orders to which such authorization applies (including internet orders) to ensure that the correct prices are allocated to such orders.

**1.5** Any query or dispute by the Buyer relating to an invoice or products delivered must be initiated in writing within 30 working days from the delivery date. If such query or dispute is not initiated within that period of time the Buyer expressly agrees to waive its right to such query or dispute.

1.6 Without prejudice to the foregoing, the Seller shall be entitled to charge interest on a day to day basis on any amount overdue for payment at the rate of 2.5% per annum above the base rate for the time being of the Seller's bankers until payment is received.

1.7 The Seller reserves the right to deduct from any monies due or becoming due to the Seller from the Buyer monies owed by the Seller to the Buyer in respect of Products supplied or services rendered by the Buyer to the Seller and any other sums owed by the Seller to the Buyer. For the purposes of this condition, the Seller shall be deemed to include any affiliate of the Seller.

1.8 Unless otherwise previously agreed upon and as a standard, payment terms must be made within 30 days of issuance of invoice.

## 2. Taxes and Duties

Taxes, customs duties, state fees, income taxes and all other expenses, which shall be paid for in the Seller's country, shall be borne by the Seller, whereas all taxes, customs duties, state fees, income taxes and other expenses related to the present CONTRACT and its execution in the Buyer's country, shall be borne by the Buyer.

## 3. Delivery, Title transfer, Risk of Loss, Storage

3.1 (i) For Shipments within the European Economic Area, other European countries and GOS: Seller shall deliver the Products to Buyer EXW consistent with Incoterms 2000, excluding VAT;

(ii) For All Other Export Shipments, Seller shall deliver the Products to Buyer OB Dutch airport specified by Seller (Incoterms 2000), unless specified in writing;

(iii) Buyer shall pay all delivery costs and charges. Except for those obligations, which are consistent with Incoterms 2000 specifically stated above, Seller shall be without liability on any claim asserted by Buyer with respect to such delivery. Partial deliveries will be permitted.

3.2 The Products shall, unless otherwise agreed, remain the property of the Seller until all amounts that Buyer owes to the Seller for the relevant Products have been paid in full.

(i) Until title to the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's bailee and

shall store or mark them so that they can at all times be identified as the Seller's property. Without prejudice to the Buyer's strict obligations under this Condition, if the Products are not so stored and marked the Seller shall acquire title in such property with which the Products have been mixed as would represent the value of the Products.

(ii) The Seller shall be entitled at any time before property passes to the Buyer to enter the Buyer's premises to repossess and move any of the Products and in so doing shall be entitled to dismantle any Products from equipment or products to which they have been attached without being liable for any damage caused thereby whereupon the Buyer's right to use or deal in the Products shall terminate.

(iii) Until property in the Products passes to the Buyer, any proceeds of the sale of the Products by the Buyer shall be held for the benefit of and in trust for the Seller.

(iv) The Seller shall be entitled to maintain an action for the price of any Products notwithstanding that property in them has not passed to the Buyer.

3.3 If any Products cannot be shipped to Buyer when ready due to any cause not attributable to Seller, upon notice to Buyer, Seller may ship such Products to storage. If such Products are placed in storage, including storage at the facility where manufactured, the following conditions shall apply:

(i) all risk of loss or damage shall thereupon pass to Buyer if it had not already passed;

(ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices and certification as to cause for storage;

(iii) all expenses incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of the Products to the originally agreed point of delivery.

## 4. Force majeure

4.1 Seller shall not have any liability or be considered to be in breach or default of its obligations under the Agreement, to the extent that performance of such

obligations is delayed or prevented, directly or indirectly, due to:

- (i) causes beyond its reasonable control; or
  - (ii) acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, delays in transportation, or car shortages; or
  - (iii) acts (or omissions) of Buyer including failure to promptly:
    - (a) provide Seller with information and approvals necessary to permit Seller to proceed with work immediately and without interruption, or
    - (b) comply with the terms of payment, or
    - (c) provide Seller with such evidence as Seller may request that any export or import license or permit has been issued (if such is the responsibility of Buyer), or
    - (iv) shipment to storage under Article 3, or
    - (v) inability, due to causes beyond the reasonable control of Seller, to obtain necessary materials, necessary components or services. Seller shall notify Buyer in the event of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. Seller shall notify Buyer, as soon as practicable, of the revised delivery date.
- If Seller is delayed by acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment.

**4.2** If delay excused by this Article extends for more than one hundred twenty (120) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller), upon thirty (30) days written notice, may terminate the order with respect to the unexecuted portion of the work, whereupon Buyer shall promptly pay Seller its termination charges determined in accordance with Seller's standard accounting practices upon submission of Seller's invoices therefore.

## 5. Licences

Notwithstanding any other provisions herein, Buyer shall be responsible for timely obtaining any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even though any such authorization may be applied for by Seller. Buyer and Seller shall provide each other reasonable assistance in obtaining required authorizations. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations to pay Seller for the Products.

## 6. Warranty

**6.1** Seller warrants to Buyer that at the time of delivery the Products shall be free from defects in material, workmanship and title.

**6.2** If any failure to meet the foregoing warranty appears within the Warranty Period (as defined in Section 6.3), Buyer shall promptly notify Seller and make the Products available promptly for correction. Seller shall thereupon correct any defect by, at its option,

- (i) repairing the defective Products or
- (ii) making available necessary replacement Products under the same shipment terms that was used in the case of the original shipment; or
- (iii) refund the price of the Products in question.

**6.3** The foregoing warranties (except as to title) for each Product shall apply to defects which appear within 12 months from delivery of the Product (the "Warranty Period").

**6.4** The supply of repaired or replacement Products by Seller pursuant to Section 6.2 shall not extend the duration of the Warranty Period. Seller shall not be responsible for removal or replacement of systems, structures or other portions of Buyer's facility.

**6.5** Seller does not warrant the Products or any repaired or replacement Products

- (i) against normal wear and tear including that due to environment or operation, including excessive operation at peak capability, frequent starting, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids or
- (ii) which have been involved in an accident. The

warranties and remedies set forth herein are further conditioned upon

(i) the proper storage, installation, operation, and maintenance of the Products and conformance with the operation instruction manuals (including revisions thereto) provided by Seller and/or its subcontractors, as applicable and

(ii) repair or modification pursuant to Seller's instructions or approval. Seller does not warrant any equipment or services of others designated by Buyer where such equipment or services are not normally supplied by Seller.

**6.6** The preceding Sections of this Article 6 set forth the exclusive remedies for all claims based on failure of or defect in the Products and incidental services provided under the Agreement, whether the failure or defect arises before or during the Warranty Period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory.

NO EXPRESS OR IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

## 7. Patent Indemnification

**7.1** With respect to any Products furnished under the Agreement which are not manufactured by Seller, only the patent indemnity of the manufacturer, if any, shall apply.

## 8. Limitation of Liability

**8.1** The total liability of Seller, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of or related to these Terms and Conditions or the Agreement or its performance or breach, or from use of any Products shall not exceed the annual value of sales from Seller to Buyer. All liability of Seller on all claims of any kind shall terminate upon expiration of the Warranty Period, provided that Buyer may enforce a claim of such liability accruing during the Warranty Period by an action timely commenced in accordance with the applicable statute of limitations and/or statute of repose, but in no

event greater than one year after the expiration of the Warranty Period.

**8.2** In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, shall Seller or its subcontractors or suppliers be liable for loss of profit or revenues, loss of use of the Products or any associated equipment, facilities or vessels, cost of capital, cost of substitute Products or any associated equipment, facilities, services or replacement power, downtime costs, damage to associated equipment or facilities, claims for damages or costs related to the clean-up, removal, release or threatened release, remediation or disposal of or any response to any hazardous or nuclear materials, or any special, consequential, incidental, indirect, speculative, punitive or exemplary damages, or claims of Buyer's customers for any of the foregoing damages, and Buyer shall indemnify Seller against all such claims of Buyer's customers.

**8.3** Buyer waives rights (subject to 8.1) of recovery against Seller, whether Buyer's claim is brought under breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, for loss or damage to the property of Buyer.

**8.4** Nothing in these Conditions shall limit the Seller's liability for death or personal injury.

**8.5** For the purposes of this Article 8, Article 9 (Prohibition on Nuclear Use), the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.

**8.6** The Buyer must not alter or adapt the Products in any way without the Seller's prior written consent. The Seller accepts no liability for any Products which have been altered or adapted in breach of this condition and in particular the warranty set out in this Condition 14 shall not apply to such Products.

## 9. Prohibition on nuclear use

The Products (except to light sources and lighting fixtures) sold hereunder are not intended for application, and shall not be used, in connection with any nuclear facility or activity, and Buyer represents and warrants that it shall not use the Products for any such purpose, or permit others to use the Products for any such purpose. If, in breach of the foregoing, any such use occurs, Seller shall have no liability for any nuclear or

other damage, injury or contamination, and, in addition to any other legal or equitable rights of Seller, Buyer shall indemnify Seller against any such liability, whether arising as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise. In the event of any sale, lease or transfer of the Products, the provisions of Section 8.5 shall apply.

## 10. Dispute Resolution, Governing law

**10.1** Any dispute arising out of or in connection with these Terms and Conditions or the Agreement, including any question regarding its existence, validity or termination, that cannot be settled by negotiation of the parties shall be referred to and finally exclusively resolved by arbitration under the regulation of the Dutch Arbitration Institute. The number of arbitrators shall be one unless the amount in dispute exceeds 625.000 Euros, in which event it shall be three. When three arbitrators are involved, each party shall have the right to nominate an arbitrator, and the Chairman shall be appointed by the Dutch Arbitration Institute. The seat, or legal place, of arbitration shall be the Seller's seat. The arbitration shall be conducted in the Dutch or English language. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in these Terms and Conditions and the Agreement, and if a solution is not found herein, shall apply the law as described in Section 10.2 Combining one arbitral tribunal with another arbitral tribunal as described in article 1046 of the Civil Procedure Code is prohibited. The decision of the arbitrators shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authorities to appeal for revisions of such decision. Disputes below the value specified in this clause shall be referred to competent court of Seller's country, located in the Seller's country.

**10.2** The validity, performance and all matters relating to the interpretation and effect of these Terms and Conditions shall be construed and interpreted in accordance with the laws of the Netherlands, excluding its law on the conflict or choice of laws, provided that any provision of such law invalidating any provision of these Terms and Conditions or modifying the intent of the parties as expressed in these Terms and Conditions shall not apply.

## 11. Changes

**11.1** Engineering Changes requested by Seller Seller reserves the right, in its sole discretion and without incurring any liability to Buyer, to:

- (a) alter the specifications or design of any Products or model;
- (b) discontinue or limit the manufacture of any Product or model (with a 6 month advance notice);
- (c) cancel or limit the deliveries of any such Product or model;
- (d) discontinue or limit the development of any new product or model, whether or not such new product or model has been announced publicly;
- (e) manufacture new product(s) or model having feature(s) which make any Product wholly or partially obsolete;
- (f) substitute such altered products for the prior Products in filling orders, or
- (g) change its method of distributing any product or line of product covered by this Agreement, change the division, department, or operation of the Seller through which the Seller is acting with respect to this Agreement.

Seller shall use its best effort to provide Buyer with prompt notice of such decisions. Seller and Buyer shall then agree on the conditions pursuant to which any order(s) accepted by Seller before such notice shall be filled. Seller shall have no obligation to deliver any Product deleted or modified pursuant to the above paragraphs, which is ordered by Buyer after the issuance of the aforementioned notice. In the event that the Buyer has open tenders with customers, the Buyer will inform the Seller of such and the Seller will use all its reasonable efforts to supply the withdrawn, altered or superseded Products.

**11.2** Buyer Changes: Buyer may, by written change order, make mutually agreed to changes in the Products order and the scheduled shipment date. If any such change results in an increase or decrease in the cost or time required for the performance of the work under the Agreement, there shall be an equitable adjustment in the Agreement price and the schedule shipment date. Seller shall not be obligated to proceed with the changed or extra work until the price of such change and its effect on the scheduled shipment date have been agreed upon in a written change order.

**11.3** Changes required by law: Buyer shall immediately advise Seller of the existence and content of any law, regulation, order or by-law, which may affect the Products or the services provided hereunder. The price for the Product(s) or services affected by such law, regulation, order or by-laws will be adjusted by the Seller to reflect the added cost and expense incurred by Seller as a result thereof. Any other provisions of this Terms and Conditions or the Agreement or the order affected by such change, including but not limited to the scheduled delivery date, will be modified accordingly.

**11.4** The price will be equitably adjusted to reflect additional costs incurred by Seller resulting from 11.2 and 11.3. Reasonable adjustments will be made to the delivery date, performance evaluation criteria and performance dates as may be appropriate to comply with the foregoing.

## 12. Confidentiality

**12.1** In connection with this transaction, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with "Confidential Information." Buyer shall not provide any Confidential Information to Seller without Seller's prior written consent to receive it. "Confidential Information" as used in these Terms and Conditions shall mean all Products pricing, all terms of the Agreement, and all information related to the business or products of the Disclosing Party that is not generally known to the public, provided that the obligations of this Article shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is necessarily disclosed in connection with permitted uses of the Products.

**12.2** The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information

only in connection with this transaction and permitted uses of the Products, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees to the extent necessary to facilitate this transaction and permitted uses of the Products.

**12.3** If either party or any of their respective affiliates or representatives is requested or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Article 12, or both.

## 13. General clauses

**13.1** Buyer may terminate the Agreement only upon paying Seller its termination charges determined in accordance with Seller's standard accounting practices upon submission of Seller's invoices therefore. Termination of the Agreement shall not relieve either party of any obligation arising out of work performed prior to termination.

**13.2** Seller may assign or novate its rights and obligations regarding the Products and the receivables generated by the sale of the Products, in part or in whole, to one or more of its subsidiaries or affiliates without the consent of Buyer. Buyer agrees to execute such documents as may be necessary to effect the assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under these Terms and Conditions or the Agreement without Seller's prior written consent shall be void. Buyer shall notify Seller immediately upon any change in its ownership or control. If Buyer fails to so notify Seller or if Seller objects to the change in ownership or control, Seller shall have the unilateral right to terminate the Agreement.

**13.3** Except as provided in Section 8.6, these provisions are for the benefit of the parties hereto and not for any other third party.

**13.4** These Terms and Conditions and the Agreement represent the entire agreement between the parties, and no modification, amendment, rescission, waiver or other change shall be binding on either party unless assented to in writing by the parties' authorized representatives.

Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced in the Agreement shall not be binding on either party. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in these Terms and Conditions or the Agreement.

**13.5** The invalidity, in whole or in part, of any of these Terms and Conditions or any provision of the Agreement shall not affect the validity of the remainder of these Terms and Conditions or any provision of the Agreement.

**13.6** As used in these Terms and Conditions, "Product(s)" means all equipment, parts, materials, supplies, components, and other Products which Seller has contracted to supply to Buyer under the Agreement and "Seller" means the entity selling the Products and its successors and permitted assigns. To the extent any software is included with any Products, Buyer must sign a separate software agreement with Seller and is not authorized to use any such software until such software agreement is signed.

**13.7** All descriptions and illustrations and particulars of weights and dimensions issued by the Seller in catalogues, price lists, advertising matter, over the internet and forwarding specifications are by way of general descriptions and approximate only and shall not form part of any contract or give rise to any liability on the part of the Seller. It is the policy of the Seller to endeavor to develop and improve its products and accordingly the Seller reserves the right to change all specifications without prior notification or public announcement pursuant to such policy. Nothing in this Condition shall oblige the Buyer to accept Products, which do not reasonably comply with its order.

**13.8** Any performance figures given by the Seller are based on its experience and are such as the Seller expects to obtain on test in its works. The Seller shall have no liability for failure to attain such figures unless the Seller has specifically guaranteed them in writing subject to the recognized tolerances applicable to such figures.

**13.9** All drawings, descriptions and other information submitted by the Seller (including those contained on the Seller's internet site) shall remain the absolute exclusive property of the Seller together with the copyright therein and promptly upon request by the Seller, the Buyer shall return the same to the Seller.

**13.10** Where it is necessary to dispatch Products in crates, cases, pallets, spillages or skips or other such packing, a charge will be made for this which unless otherwise specified by the Seller will be credited in full on their return in good condition carriage paid provided such return is made within 30 days of delivery. No charge is made for any other standard form of packaging and no credit will be allowed for its return.

**13.11** Where delivery is made to the Buyer's premises, it shall be deemed that all Products have been delivered in full in undamaged and good condition unless within 5 working days of delivery the Buyer gives the Seller written notification of any damage or shortage setting out full details thereof including price of Products. If any damage or shortage notified as aforesaid is the responsibility of the Seller, it shall at its option repair or replace damaged Products or supply Products to make up the shortage.

**13.12.1** All non-warranty Returns of Product must be previously authorized and require a Return Order Confirmation (ROC) to be filled in and sent by Seller to Buyer. Buyer shall reply to the ROC within 14 days of receipt thereof if return is being generated from within the European Economic Area; otherwise ROC must be replied to within 30 days from receipt thereof by Buyer. Returns concerning which the ROC was not replied within the mentioned deadline will not be accepted.

**13.12.2** All return shipments shall strictly comply with the instructions provided and referenced in the corresponding ROC. Products returned by the Buyer received without ROC will be returned to Buyer. ROC number must be visible on the outside of the box used for the return.

**13.12.3** Any non-warranty Returns of Product that is due to Buyer's mistake might be charged at Seller's discretion up to 10% of the value originally invoiced for Products being returned.

**13.13** Orders below the Minimum Order Value applicable will be subject to a fixed charge plus an additional handling surcharge, which will be invoiced to Buyer together with the invoice of the Products delivered. The value of the minimum order values, the fixed charge and surcharge are available per request from Seller's Customer Service.

**13.14.1** Shipments will be organized as scheduled to certain dates, unless Buyer pays for express delivery.

**13.14.2** Order confirmations delivery dates and other deadlines are estimates only and Seller refuses any liability for missing those.

**13.15** Seller shall be allowed to process and store Buyer's business data as well as the Buyer's contact persons' personal data and share such data with the affiliated companies of Buyer and or General Electric Company and other company that may be hired by the Buyer for debt collection purposes.

**13.16** The following Articles and Sections shall survive termination or cancellation of, and completion of work under, any Agreement between Buyer and Seller regarding the Products: Article 2 (Taxes and Duties); Article 6 (Warranty), Article 7 (Patent Indemnification), Article 8 (Limitation of Liability), Article 9 (Prohibition on Nuclear Use), Article 10 (Dispute Resolution, Governing Law), Article 12 (Confidentiality), and Article 13 (General Clauses).