

**TERMS AND CONDITIONS OF SALE – 2013 EDITION**

**1 SCOPE**

These General Terms and Conditions of Sale (hereinafter “Conditions”) apply to all contracts for the sale of goods or services by Scapa Italia S.p.A. (“Seller”). By placing an order with the Seller, the purchasing company (“Purchaser”) agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties or representations.

**2 CONTRACTS**

2.1 Each contract for the sale of goods by the Seller is subject to these Conditions. No agreement between the Seller and the Purchaser for the sale and purchase of the goods (“Contract”) exists until the Seller so agrees in writing or, in the absence of such written agreement, delivers the goods. “Goods” means those goods including any raw materials, component parts and finished products which the Seller supplies to the Purchaser in accordance with these Conditions as further specified in this or any relevant purchase order or any amendment thereto duly signed by the Purchaser and the Seller (“Order”).

2.2 No variation of or addition to these Conditions or any Contract is effective, and no Order once placed may be cancelled, deferred or varied, without the Seller’s written agreement.

2.3 These Conditions override and take the place of any other terms or conditions emanating from or referred to by the Purchaser.

2.4 The Purchaser shall provide the Seller with an Order for each delivery of Goods required. The Order shall stipulate the type and quantity of Goods required, the delivery address, details of technical requirements of the Purchaser (“Purchaser’s Specification”), if any, and any other information required by the Seller from time to time.

2.5 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Purchaser acknowledges that it does not rely on any such representations which are not so confirmed.

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Purchaser’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.8 The information in any data sheet relating to the Goods is accurate to the best of the Seller’s knowledge and is based on all currently available data. Properties quoted are typical only and do not, therefore, constitute or form part of the Specification as defined in Condition 3.1.

**3 SUPPLY OF GOODS**

3.1 The Goods are described in the Seller’s specification of technical requirements and/or description (“Specification”).

3.2 If the Seller agrees that the Goods are to be manufactured in accordance with the Purchaser’s Specification, the Seller shall use reasonable endeavours to comply with the Purchaser’s Specification, but the Seller accepts no liability for the appropriateness or fitness for purpose of the Purchaser’s Specification. The Purchaser’s Specification shall be viewed as a guide only.

3.3 The Seller reserves the right in its sole discretion to make any changes in Specification of the Goods which are required to conform with all and any applicable safety or other requirements or which do not materially affect their quality or performance.

**4 PRICE AND PAYMENT**

4.1 The price of the Goods shall be the price set out in the Contract or, if not specified, the price quoted by the Seller or, if not specified and no price has been quoted, the price listed in the Seller’s published price list current at the date of the Contract.

4.2 The Seller may increase the price of Goods without prior notice to the Purchaser in the event of any rising costs whatsoever and, in particular, any rise in manufacturing costs and/or the costs of raw materials, labour etc. The Purchaser shall pay such increased price as may be stipulated by the Seller.

4.3 The terms of payment specified in the Contract are to be strictly and punctually adhered to. Time for payment is the essence of the Contract and due compliance with such payment terms shall be a condition precedent to any complaint or remedy of the Purchaser against the Seller under the Contract. If payment terms are not specified, payment must be made within the period prescribed by law, and in particular within the terms set forth in the Italian Legislative Decree D.lgs. 231/2002 as further amended.

4.4 Unless otherwise stated in the Contract or under the terms of any quotation or in any price list of the Seller, all prices are quoted by the Seller on an ex-works basis (from the registered office of the Seller pursuant to ICC Incoterms 2010) and the Purchaser shall be liable for the cost of carriage, packaging and insurance in full together with any additional expenses, licence fees or duties paid or incurred by the Seller as a result of the delivery of the Goods. If no terms relating to the carriage charges to be charged to the Purchaser are stated in the Contract, such carriage charges will be invoiced to the Purchaser at the Seller’s prevailing rate at the time of dispatch.

4.5 The price is exclusive of any applicable value added tax, which the Purchaser shall be additionally liable to pay the Seller.

4.6 The Purchaser shall make payment at the Seller’s place of business in respect of all invoices in full and without any set-off or deduction (whether in relation to such invoice or otherwise) by such method, at such time and in such currency as referred to in the Contract.

4.7 If full payment is not received in full by the Seller from the Purchaser in accordance with Condition 4.6 then, without prejudice to its rights under these Conditions or by the law, the Seller shall be entitled:

4.7.1 to sue the Purchaser for the entire price outstanding; and/or  
4.7.2 to charge interest (both before and after any judgement) at the rate of prescribed by Italian Legislative Decree of 9 October 2002 n. 231; and/or

4.7.3 all costs, charges and expenses, included but not limited to legal fees, costs of notification, court fees, etc., incurred by the Seller in recovering any debt due by the Purchaser shall be paid by the Purchaser on a full indemnity basis; and/or

4.7.4 to suspend any further deliveries entered into under these Conditions pending payment in full; and/or

4.7.5 to terminate the Contract forthwith by notice in writing; and/or  
4.7.6 to require the immediate return, at Purchaser’s expenses, to the Seller of all Goods in which the property has not passed to the Purchaser in accordance with the provisions of art. 8 of these Conditions.

4.8 Further, the Purchaser shall reimburse the Seller, upon demand, the Seller’s costs or expenses in recovering such Goods.

**5 DELIVERY**

5.1 Delivery shall be ex-works (at the registered office of the Seller pursuant to ICC Incoterms 2010) unless stated otherwise on the order acknowledgement and/or invoice.

5.2 The Purchaser and Seller acknowledge and agree, however, that the place of physical handing over of the Products to the Purchaser shall be the place of business of the Seller.

5.3 The Seller shall be entitled to deliver the Goods in instalments in which case each instalment shall be treated as an entirely separate Contract and any default or breach by the Seller in respect of any such instalment shall not entitle the Purchaser to cancel any other instalment or treat the Contract as a whole as repudiated.

5.4 Delivery dates must be regarded as approximate only and, whilst all reasonable efforts will be made to avoid delay, the Seller does not accept liability for any loss, cost or expense, whether direct or indirect arising from such delay.

5.5 Time lost due to strikes, blackouts, any Act of God, war and hostilities, any act of terrorism, riot, civil commotion, revolution, blockade, embargo, industrial or trade dispute, fire, explosion, flood, adverse weather conditions, disease, accident to or breakdown of plant or machinery, shortage of any labour, material, transport, electricity or any other supply or any other event beyond the control of the Seller shall be taken into account and added to the delivery time specified in the Contract.

5.6 Failure to make one delivery shall not vitiate the Contract as to other subsequent deliveries.

5.7 The Purchaser undertakes to accept delivery as and when notified by the Seller that the Goods may be delivered and, in the event that the Purchaser directs the Seller to retain the Goods after such date, the Purchaser will pay the purchase price in full in accordance with art. 4 of these Conditions and, in addition, such charge for storage as the Seller may think appropriate and the Goods shall be stored by the Seller at the risk of the Purchaser.

- 5.8 The Purchaser shall not be entitled to reject the Goods if the Seller delivers up to and including 10% more or less than the quantity of the Goods ordered.
- 5.9 Goods delivered to the Purchaser which are in accordance with the Contract may at the Seller's sole discretion be accepted for return to the Seller if the Seller is notified, in writing, of the proposed return within 30 days of the Goods being delivered. The Purchaser shall be liable to pay 50% of the invoice price plus the applicable VAT, packaging costs, restocking charges and the costs of carriage to the Purchaser (if any). The costs of returning the Goods to the Seller shall be borne by the Purchaser.
- 6 NOTIFICATION OF LOSS OR NON-DELIVERY OF GOODS**
- 6.1 The Purchaser must advise the Seller in writing as follows:
- 6.1.1 in the event of shortfall, partial loss, damage, defect reasonably ascertainable upon inspection or non-delivery of a consignment within three (3) days from the date of that delivery; and/or
- 6.1.2 in the event of non-delivery of a total consignment within fourteen (14) days from the date of dispatch.
- 6.2 In the event that the Seller receives a notice under Condition 6.1, the Seller, in its sole discretion, reserves the right to provide the Purchaser with replacement products which match the Specification of those Goods alleged to be a partial delivery, damaged, or defective where such defect is reasonably ascertainable upon inspection.
- 6.3 In the event that the Seller does not receive notification from the Purchaser in the terms set out in Condition 6.1, the Goods are accepted by the Purchaser. Consequently, the Purchaser shall have no right to make a claim against the Seller for any shortfall, partial loss, damage, defect reasonably ascertainable upon inspection or non-delivery of any separate part of a consignment.

## **7 CANCELLATION**

- 7.1 The Seller reserves the right to cancel any Order before any of the Goods included or referred to therein are delivered to the Purchaser without assigning any reason for such cancellation.
- 7.2 Without prejudice to the generality of Condition 7.1 the Seller, in its sole discretion, reserves the right to cancel any delivery or further delivery of Goods in any case where the Purchaser is in default of any payment, breaches any of these Conditions, is subject to bankruptcy proceedings or, in the case of a limited company, has appointed a receiver, administrative receiver or an administrator or is subject to liquidation proceedings other than for the purpose of an amalgamation or internal restructuring programme.
- 8 OWNERSHIP AND RISK**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Purchaser on the earliest of delivery, the date notified to the Purchaser on which the Goods were available for collection or the date on which the Seller attempted to deliver the Goods to the Purchaser.
- 8.2 Unless stated to the contrary, insurance of such Goods shall be the responsibility of the Purchaser as from the date risk passes to the Purchaser.
- 8.3 Notwithstanding delivery and the passing of risk in the Goods to the Purchaser, or any other provisions of these Conditions, ownership and title to the Goods shall not pass to the Purchaser (and shall be retained in full by the Seller) until the Seller has received in cash or in cleared funds payment in full of the price of the Goods and all other sums which are or which become due to the Seller from the Purchaser on any account.
- 8.4 The Seller shall be at liberty, in its sole discretion, to cancel the Contract and remove the Goods if the price is not paid in full at the time and in the manner stipulated in Condition 4 and, further, to recover damages from the Purchaser in respect of the Purchaser's failure to comply with the terms of the Contract and any instalment of the purchase price which may have been paid shall be retained by the Seller to be set off against such damages.
- 8.5 Until such time as title in the Goods passes to the Purchaser:
- 8.5.1 the Purchaser shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods separate from those of the Purchaser and third parties and shall keep the Goods properly stored, protected, insured and identified as the Purchaser's property; and
- 8.5.2 the Purchaser shall be entitled to resell the Goods in the ordinary course of its business at full market value but shall account to the Seller (which remains the owner of the Goods) for the proceeds of sale or otherwise the Goods including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties.
- 8.6 The Purchaser's right to possession of the Goods shall terminate immediately if:
- 8.6.1 the Purchaser convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) or is involved in any insolvency proceeding whatsoever; and/or
- 8.6.2 the Purchaser suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or under these Conditions or any other contract between the Seller and the Purchaser, or is unable to pay its debts within the meaning of the Italian Law on insolvency (Regio Decreto 16 marzo 1946 n. 267) or the Purchaser ceases or threatens to cease to trade;
- 8.6.3 any act or event occurs which, under the law of any jurisdiction, is analogous to any of the acts or events specified in this Condition 8.6.1 and 8.6.2; and/or
- 8.6.4 the Purchaser encumbers or in any way charges any of the Goods.
- 8.7 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 8.8 The Purchaser grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.
- 8.9 Where the Seller, its agents or employees, are unable to determine whether any Goods are the Goods in respect of which the Purchaser's right to possession has terminated, the Purchaser will be deemed to have sold all goods of the kind sold by the Seller to the Purchaser in the order in which they were invoiced to the Purchaser.
- 8.10 On termination of the Contract howsoever caused, the Seller's (but not the Purchaser's) rights contained in this Condition 8 will remain in effect.

**9 EXCLUSION OF LIABILITY**

- 9.1 Since the Seller has no control over the uses to which the Goods provided under the Contract will be put, the Purchaser must satisfy itself that the Goods are suitable for the purposes for which they are intended and must rely exclusively upon his own tests and observations. Except as set out in Condition 9.2, the Seller gives no warranties, conditions, guarantees or representations as to the Goods, their satisfactory nature or fitness for a particular purpose and all other warranties, conditions, guarantees or representations, whether express or implied, oral or in writing, are hereby excluded.
- 9.2 The Seller warrants that the Goods will correspond with the Seller's Specification in all material respects at the time of delivery and will be free from defects in material and workmanship for a period of one hundred and eighty (180) days from the date of delivery or such other period specified by the Seller in the Contract.
  - 9.2.1 The Seller shall be under no liability in respect of any defects in the Goods arising from the Purchaser's Specification;
  - 9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Purchaser or persons using the Goods, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), or misuse or alteration or repair of the Goods without the Seller's approval;
  - 9.2.3 the Seller shall be under no liability if the total price of the Goods has not been paid by the due date for payment;
  - 9.2.4 any such defect in or failure to meet the Specification by the Goods shall be notified to the Seller in writing as soon as reasonably possible after the Purchaser discovers such defect or non-conformity; and
  - 9.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller.
- 9.3 In the event of any valid claim under Condition 9.2 being made by the Purchaser, the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge, or at the Seller's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price as appropriate) but the Seller shall have no further liability to the Purchaser for any loss or damage whatsoever. The Seller shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract or more generally with the sale of the Goods.
- 9.4 Nothing in these Conditions limits or excludes the Seller's liability for fraud or fraudulent misrepresentation, or death and personal injury to the extent that it results from the negligence of the Seller or its employees, or for any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

**10 PURCHASER'S INDEMNITY**

The Purchaser shall indemnify the Seller against claims that the manufacture or sale of the Goods in accordance with the Purchaser's Specification infringes the Intellectual Property or other rights of any third party, to the extent of all damages or other compensation awarded in connection with the claim or paid or agreed to be paid in settlement of the claim and all legal or other expenses incurred in or about the defence or settlement of the claim. The Seller shall notify the Purchaser forthwith after becoming aware of such a claim and take all action reasonably requested to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in so doing.

**11 INSTRUCTIONS, HEALTH AND SAFETY**

The Purchaser shall comply (and ensure that its employees and agents comply) strictly with all instructions, warnings, data sheets and other material (including without limitation those regarding health and safety) supplied by the Seller with, or in connection with, the Goods and shall, when supplying the Goods, ensure that they are accompanied by the same.

**12 ASSIGNMENT**

- 12.1 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 12.2 The Seller may assign the Contract or any part of it to any person, firm or company.

**13 FORCE MAJEURE**

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of ninety days, the Purchaser shall be entitled to give notice in writing to the Seller to terminate the Contract.

**14 GENERAL**

- 14.1 Each right or remedy of the Seller under the Contract and/or these Conditions is without prejudice to any other right or remedy of the Seller whether under the Contract and/or these Conditions or not.
- 14.2 If any provision of the Contract and/or these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be (wholly or partly) illegal, invalid, void, voidable, unenforceable or unreasonable it shall not affect the validity and enforceability of the other provisions of the Contract and/or of these Conditions except if the provision of the Contract and/or of these Conditions declared invalid is of such importance that the parties (or the part that receive a benefit from the provision) would not have entered into the Contract if they knew of the invalidity, voidness, voidability, unenforceability or unreasonableness of said provision.
- 14.3 Any missed or delayed request of the Seller to fulfil the Purchaser's obligations under the Contract and/or these Conditions will not be deemed a renunciation of the Seller to ask for this fulfilment in the future.
- 14.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract and/or these Conditions by the Purchaser will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract and/or these Conditions.
- 14.5 The Contract and these Conditions are construed, interpreted and executed and governed by the Italian Law with the express exclusion of the applicability of the United Nations Convention on Contracts for the International Sale of Goods, concluded at Vienna on 11 April 1980 (CISG).
- 14.6 The competent law courts of the Seller's registered office shall have exclusive jurisdiction in any action arising out of or in connection with the Contract. However, as an exception to this principle hereinabove, the Seller is in any case entitled to bring his action before the competent court of the place where the Seller has his registered office.

**15 COMMUNICATIONS**

- 15.1 All notices required to be sent by either of the parties according to the Contract and/or these Conditions must be in writing and delivered by registered letter, express courier, certified e-mail or by fax.

With reference to Article 1341 and Article 1342 of the civil code, the Purchaser declares to specifically approve the following clauses of the Conditions

- Art 2 Contracts;
- Art 3 Supply of the Goods;
- Art 4 Price and payment;
- Art 5 Delivery of Goods;
- Art 6 Loss or non-delivery of Goods;
- Art 7 Cancellation;
- Art 8 Transfer of property and passing of risk;
- Art 9 Exclusion of liability;
- Art 10 Purchaser's indemnity;
- Art 12 Assignment;
- Art 13 Force Majeure;
- Art 14 General.