



## **General Terms and Conditions of Sales and Delivery in Lama Avtomatizacija d.o.o.**

**April 2017, Dekani, Slovenia**

### **1. Applicable Terms**

(1) These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "Terms")

contain all of the terms of the purchase and sale between Lama Avtomatizacija d.o.o. (hereinafter referred to as "the Seller") and the Buyer and supersede all prior correspondence, negotiations, discussions, representations and offers between them to the extent that they conflict or are in addition to the terms contained herein and no course of dealing or usage of trade shall be applicable unless expressly referred to herein.

(2) Acceptance by the Buyer of the offer contained in the order is expressly limited to the exact terms

and conditions contained herein. Any terms and conditions set forth in any purchase order or other document provided by the Buyer to the Seller, which differ from, conflict with or are not included in these Terms, shall not become a part of any contract between the Buyer and the Seller unless specifically accepted by the Seller in writing.

(3) The Buyer, with the issue of an order accepts, and recognises these Terms. Acceptance of the

goods or product constitute acceptance of the Terms stated herein.

### **2. Offers and Orders**

(1) Quotation is valid for 30 days, unless otherwise stated.

(2) Written orders of the Buyer are not binding on the Seller. Where the Buyer has standard terms of

purchase, these shall not take precedence over the Seller's Terms, unless specifically agreed in writing.

(3) The Seller guarantees the conditions stated in the offer and pro-forma invoice and is not bound by any other implied guarantees or conditions.

(4) The order is considered complete when it contains all data needed for the production of goods or products especially, but not only, the quantity, quality, type, design, specific characteristics, delivery address. If any data is missing, the Seller may rely on his knowledge of the Buyer and may fulfil the order to his best intention.

(5) The Seller produces or delivers goods or products on the basis of the contents of a written order in which the Buyer refers to the number of the offer or a pro-forma invoice of the Seller and to these Terms, as well as written confirmation of receipt of order (hereinafter referred to as: "Order Confirmation"). An order placed over the phone is valid only when the Seller sends an Order Confirmation in writing. For the purposes of these Terms, "writing" also includes email and fax.

(6) The Buyer may not cancel a confirmed order unless the Seller agrees to such cancellation.

(7) If the Buyer breaches these Terms then the Seller may at his discretion cancel all outstanding Offers and Orders.

(8) Failure of the Seller to complete an order does not grant the Buyer the rights to cancel other orders.

### **3. Drawings and descriptions; duty on the part of the Buyer to advise**

(1) The Seller reserves the right regarding all ownership interests, copyrights and industrial proprietary rights (including the right to register these rights) to drawings, plans, cost estimates and other documents or electronic data pertaining to the delivery item. The stated documents may only be used for the purpose in accordance with the regulations and may not be forwarded to third parties without written approval. The Seller reserve title and intellectual property rights to all contracts (Quotes) documents e.g. offers, estimates, drawings or any other offer documentation. Any right of retention by the Buyer is hereby expressly excluded. The Buyer is not authorized to make the documents provided available to any third parties.

(2) Prior to the conclusion of contract the Buyer is to advise the Seller insofar as the ordered delivery item:

- should not be solely suitable as regards ordinary use,
- is applied subject to unusual conditions or conditions that engender increased stress or which pose a particular health hazard, safety risk or danger to the environment,
- is intended to be used to process unusual materials.

### **4. Conclusion and content of contract**

(1) The details and information stated in the product catalogues and price lists shall only be deemed legally binding elements of the contract if the contract expressly refers to such details and information.

(2) The subject matter of contract shall be ultimately specified by way of the product description contained in the Seller written offer or the Seller written confirmation of order. Subsidiary agreements, oral declarations by salaried employees or representatives as well as amendments of existing orders (including amendments of delivery items) shall be subject to the Seller written confirmation in order to be deemed valid.

### **5. Alterations to the delivery item**

(1) The Seller reserves the right to make construction and material changes as regards the description of the delivery item agreed upon as per contract insofar as the normal use or the use of the delivery item presumed on the basis of the contract is not impaired in a considerable or permanent manner.

(2) Requests for alteration on the part of the Buyer shall be taken into account in accordance with an appropriate written agreement aimed at providing for the effects on the price and delivery period.

### **6. Prices, payment**

(1) In the absence of a special agreement, the price details are to be understood ex works (EXW).

(2) The price agreed is valid for the conditions agreed in the Order Confirmation. Written quotations expire automatically 30 days from the date of issue and are subject to change or termination by notice from the Seller during that period.

(3) Prices are subject to modification without notice and are exclusive of shipment packing. When cost changes occur between the conclusion of the contract and delivery (e.g. on raw material and supplies, energy, personnel and machine cost, freight, contractor cost, financing), the parties shall be entitled to price adjustment.

(4) All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not part of the original price quotation.

(5) Prices are exclusive of all excise duties, sales taxes and other taxes imposed by any state, municipal or other government authority; all such taxes shall be paid by the Buyer. The Buyer is responsible for obtaining and providing to the Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

(6) Payments are to be effected in the currency that is stated in the Seller's offer or in the Seller confirmation of order.

(7) Payments are to be effected by bank transfer free of charges to the Seller account stated in the invoice. Irrespective of the means of payment, the payment shall only be deemed effected once the full payment has been irrevocably credited to the Seller account so that the Seller can dispose of such an amount (receipt of payment). All additional costs incurred as a result of the choice of means of payment shall be borne by the Buyer.

(8) Overdue payments shall be subject to finance charges computed at a daily compounding rate of 5% above EURIBOR daily rate. Amounts owed by the Buyer with respect to which there is no dispute shall be paid without set-off for any amounts, which the Buyer may claim, are owed by the Seller and regardless of any other controversies, which may exist.

(9) The Seller reserves the right at any time to require full or partial payment in advance, or to revoke any credit previously extended, if, in the Seller's sole judgment, the Buyer's financial condition does not warrant proceeding on the terms specified.

## **7. Delivery period, creditworthiness doubts, taking possession of delivery item**

(1) The delivery period arises from the agreements between the contracting parties. The provision in good time of all the documents to be surrendered by the Buyer and the complete clarification of the

technical questions to be answered by the Buyer as well as the details to be provided by the Buyer regarding the requested design shall be deemed the preconditions as regards adherence to the delivery period.

(2) The delivery period shall be extended accordingly in the event that the Seller is not able to honour

obligation to deliver, or not honour it in good time, as a result of an obstacle outside the Seller sphere of influence which, on conclusion of contract, could not have been reasonably foreseen. The obstacles

outside the Seller sphere of influence include, in particular, self-supply on the part of the Seller suppliers which is not within the fixed period and is not carried out in due form. The Seller shall inform the Buyer as soon as possible of the start and end of the obstacle. If the obstruction lasts for longer than 3 months, or if it has been established that it shall last longer than three months, both parties may declare the contract rescinded.

## **8. Delivery, shipping and passing of risk**

(1) The place of delivery shall be specified in accordance with the delivery clauses agreed upon between the Seller and the Buyer which are to be interpreted according to Incoterms 2010. Insofar as no special delivery clause has been concluded, deliveries shall at all times be carried out EXW.

(2) Insofar as nothing to the contrary is agreed upon, the risk shall pass to the Buyer at the time at which the delivery item has been made available to the Buyer. If the delivery item is shipped to the Buyer, the risk shall pass to the Buyer at the latest at the time at which the initial carrier receives the delivery item. If the shipping of the delivery item is delayed as a result of circumstances which are not the Seller's responsibility, the risk shall pass to the Buyer upon notification of the readiness for shipment.

(3) At the Buyer's request, all consignments shall be insured on his account as from the passing of risk upon Buyer's costs. In the event of damage the Seller shall assign the claims resulting from the insurance step by step to the Buyer against provision of the Buyer's contractual services (including reimbursement of the insurance premium).

## **9. Installation**

(1) Insofar as the Seller's performance includes setting up, assembling and/or commissioning the delivery item, or similar work, the Buyer undertakes to take all action at the workplace so that the envisaged work can be carried out. The Buyer undertakes, in particular, to make available at the workplace electrical connections, connections for compressed air equipment, sufficient lighting and other necessary equipment for proper function of the delivery item. Furthermore, safe, secured, dry and lockable rooms for storing the installation's personnel's tools are to be provided.

#### **10. Acceptance test, acceptance**

(1) In the event that installation work is carried out, the parties may, in particular, agree that the degree to which the delivery item is in line with the contract be stipulated by way of an acceptance test.

(2) In the event that no acceptance test is agreed upon, the Seller shall inform the Buyer of the date of the acceptance test.

(3) The cost of the acceptance test (including the cost of trial substances and production equipment and facilities) shall be borne by the Buyer.

(4) A written record of the acceptance test shall be drawn up and signed by both parties. Possible faults pertaining to the delivery item are to be noted.

(5) The delivery item shall be deemed accepted if

- it contains no defects, or merely minor defects or
- the acceptance test cannot be carried out due to negligence on the part of the Buyer, or
- the Buyer has put the delivery item into operation for his own commercial purposes, or
- it contains no major defects and 14 days have passed from delivery.

(6) If the delivery item proves to lack conformity with the contract during the acceptance test, the Seller shall be entitled and under obligation without delay to eliminate the delivery item's lack of conformity with the contract. In other respects, the regulations of Item X are deemed applicable.

#### **11. Lack of conformity of delivery item or documents with contract, notice of defects, warranty**

(1) Insofar as no acceptance test is carried out, the Buyer is to inform the Seller in writing without delay upon taking possession of the delivery item of a recognisable lack of conformity of the delivery item and/or the documents with the contract, at the latest within one week after having taken possession of the delivery item.

The Buyer is also to precisely describe the type of lack of conformity of the delivery item with the contract. Furthermore, the Buyer is to inspect the delivery item and/or the documents without delay, at the latest within one week after having taken possession of the delivery item. This shall also apply if a acceptance test is carried out. The Buyer shall forfeit the right to make reference to a lack of conformity of the delivery item with the contract item if he does not provide the Seller with written notification within one week following the time at which he detected the lack of conformity of the delivery item with the contract, or should have detected such a lack of conformity of the delivery item with the contract, and in this respect does not precisely describe the type of lack of conformity with the contract irrespective of the reasons the Buyer puts forward for the non- adherence to these requirements. The written notice of defects on the part of the Buyer must have been sent within the one week deadline as from the taking of possession of the delivery item or from the time at which the lack of conformity of the delivery item with the contract is detected. Furthermore, it is necessary that the Seller actually receive the notice of defects that is sent within the specified time.

(2) If a lack of conformity of the delivery item with the contract cannot be established following a notice of defects, the Buyer is to reimburse the Seller with the costs associated with the inspection of the delivery item.

(3) In the event of a lack of conformity of the delivery item or the documents with the contract, the Seller shall be entitled to eliminate such a lack of conformity following the agreed delivery time too by way of a subsequent improvement or replacement delivery. Insofar as nothing to the contrary arises from the contract, or from the circumstances of the

conclusion of contract – in particular the negotiations that are held - a lack of conformity shall not be deemed given if the delivery item does not comply with the technical and other norms that are valid in the country of destination (registered office of the Buyer) or if the delivery item is not suitable for certain applications.

(4) Insofar as the lack of conformity of the delivery item or the documents with the contract is not eliminated within a reasonable period of time by way of a subsequent improvement of replacement delivery, the Buyer may demand a reduction of the purchase price in line with the reduced value of the delivery item.

(5) In the event of a lack of conformity of the delivery item or the documents with the contract, the Buyer shall not be entitled to demand that the contract be cancelled instead of reducing the purchase price unless the lack of conformity with the contract constitutes a key breach of contract. A key breach of contract shall not be deemed given if the Seller eliminate the lack of conformity with the contract within a reasonable period of time, which must be at least six weeks, that is fixed by the Buyer.

## **12. Liability, compensatory damages**

(1) The Seller is not liable for any damages or loss that the Buyer may suffer as a consequence of delays in the fulfilment of Buyer's contractual obligations, notably, but not limited, to incorrect or inexact or missing data, specifications, projects or any other information provided by the Buyer.

(2) The Seller is not liable for the damage caused indirectly, especially not for lost profit, product recall, product re-work and/or other pecuniary and non-pecuniary loss of the Buyer.

(3) The Buyer is responsible for ensuring that the product sold is fit for the Buyer's intended purpose.

(4) Where the product has been specifically designed for the Buyer, the Buyer shall specify the product, shall sign off the drawings and shall agree preproduction product comply with the specifications required by the Buyer. It is the responsibility of the Buyer to ensure the product is fit for purpose.

(5) For each product purchased from the Seller, the Seller makes the following Warranties: (i) the goods conform with the Seller's specification, (ii) the goods are free from defects in material and workmanship, (iii) at the time of delivery, the Seller has title to the goods free and clear of liens and encumbrances (hereinafter referred to as: " the Warranties").

(6) The Warranties are conditional on (i) the Buyer storing, installing, operating and maintaining the goods in accordance with due care and the Seller's instructions, (ii) no repairs, modifications or alterations being made to the goods other than by the Seller or his authorised representatives, (iii) using the goods within any conditions or in compliance with normal due care and any parameters set forth in the Seller's specifications, (iv) the Buyer providing prompt written notice of any warranty claims within the warranty period, (v) at the Seller's discretion, the Buyer either removing and shipping the goods or non-conforming part thereof to the Seller, at the Buyer's expense, or the Buyer granting to the Seller access to the goods at all reasonable times and locations to assess the warranty claims, and (vi) the Buyer not being in default of any payment obligation to the Seller under these Terms.

(7) The Buyer shall have three months from shipment, to provide the Seller with prompt, written notice of any claims of breach of the Warranties. The Buyer must evidence any breach of Warranty. Continued use or possession of the goods after expiration of the warranty period shall be conclusive evidence that the Warranties have been fulfilled to the full satisfaction of the Buyer, unless the Buyer has previously provided the Seller with a notice of a breach of the Warranties.

(8) The Buyer is considered to have tested the goods in his application and accepted that they are fit for the intended purpose. The Buyer is required to make new tests if he intends to alter the application or amend the previous specifications of his application.

(9) Compensation for losses or damages is limited to the value of the goods sold, and any Warranty is strictly limited to the Buyer.

## **13. Force Majeure**

(1) Neither party shall be liable for any delay in fulfilment or non-fulfilment of obligations relating to the contract if the delay in fulfilment or non-fulfilment is a consequence of reasons beyond his control and when caused without his fault or negligence including, but without limitation, inability of suppliers, subcontractors and forwarding agents of the Seller to fulfil their obligations in accordance with this contract, under the condition that the Seller submits an immediate written notification to the Buyer including all details of the appearance and the reasons.

(2) Shortage of metal or other materials in the world market shall be considered a force majeure event. The terms of fulfilment shall be prolonged for the period lost due to the appearance of such reasons, if the parties still have interest in the Contract.

#### **14. Retention of Title**

(1) Until the payment of all monies due under the business relationship, the Seller retains title to the goods, products delivered by him, which may only be sold on in the course of the Buyer's normal business dealings.

(2) Shall the Buyer act contrary to the Order Confirmation or the Contract, especially in case of delay in payment; the Seller is entitled to recover the goods.

(3) The Buyer shall grant the Seller access to his premises as required to uplift the Seller's goods as required.

#### **15. Intellectual Property**

(1) Parties hereby agree to keep all information designated as confidential or recognisable as trade or business secrets made accessible to them in connection with the contract or for other reasons confidential for an unlimited period of time and to neither record nor otherwise utilise such information unless required for the purposes of the contract.

#### **16. Applicable Law and Jurisdiction**

(1) These Terms shall be governed and construed in accordance with the laws of the Republic of Slovenia. The invalidity of individual provision shall not affect the validity of the remaining provisions.

(2) The legal relationship of the Parties arising from, or related to, these Terms shall be subject to the laws of the Republic of Slovenia. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

(3) The place of jurisdiction for legal disputes shall be Koper, Republic of Slovenia.

#### **17. Final provisions**

(1) The invalidity or impracticability of an individual provision of these Terms or an agreement of the contracts entered into on the basis of these Terms shall not affect the validity of the other provisions or agreements.

(2) The contracting parties are mutually under obligation to take all acceptable action necessary to achieve the purpose pursued by way of the contract, and to refrain from all actions which adversely affect efforts to achieve and maintain the contract.