

General Terms and Conditions of Sale, Delivery and Payment

I. General

1. The following terms and conditions are valid for all offers, sales, deliveries and services of TAVAPAN S.A (Vendor) and become an integral part of the contract. Even if they have been agreed in advance, amendments or additions are valid only if they are confirmed in writing by the vendor.

2. Conflicting, different or supplementary terms and conditions, even if they have been notified by the purchaser as his existing terms and conditions of business, are not binding upon the vendor. The fact that he makes no comment on such terms and conditions does not amount to recognition of, or consent to, them. If the vendor's terms and conditions were not received by the purchaser with the offer or if they were not handed to him on a different occasion, they shall nevertheless apply if the purchaser knew or must have known them from his earlier business relationship with the vendor.

3. Save where specifically agreed otherwise in writing, the laws of Switzerland (save for the provisions on conflicts between different bodies of national law) shall apply without restriction, foreign law being excluded. The provisions of the United Nations Convention of 11.04.1980 on contracts for the international purchase of goods (UN purchasing law) shall apply only to the extent that their application is prescribed as binding therein (Art. 12 of UN purchasing law).

4. Insofar as the receipt by the purchaser of a declaration made by the vendor is necessary for the enforcement of claims of the vendor based upon the law or upon this contract, it is sufficient for the vendor to prove that he has duly sent such a declaration addressed to the purchaser by post.

II. Offers, orders

5. All offers of the vendor are made without obligation in terms of price, quantity, delivery lead-time and possibility of delivery and must be confirmed in writing by the vendor, even if they have been arranged with representatives or personnel of the field service.

6. Orders and instructions of the purchaser are not binding upon the vendor until they have been confirmed in writing (including by means of an invoice or delivery note).

7. The information or details given by the vendor on the Internet and/or in the offer documents, correspondence, emails etc. only constitute assurances if they are specifically designated as such.

III. Creditworthiness

8. Acceptance of orders is conditional upon the creditworthiness of the purchaser.

9. If that condition is not satisfied when the contract is concluded or is no longer met thereafter, the vendor may withdraw from the contract with immediate effect, i.e. without allowing a period of grace, or require immediate payment even if bills of exchange have been provided.

10. Creditworthiness is assumed to be insufficient, for example if the purchaser is late in making payment for an earlier delivery. Creditworthiness shall likewise be deemed to be inadequate if an application has been made for the opening of a bankruptcy/insolvency or equivalent procedure.

11. If insurance cover, which existed initially with the vendor's credit insurer for the purchaser, is cancelled after acceptance of the order or signing of the contract, the vendor may decline to provide the service incumbent upon him until the equivalent consideration has been provided by the purchaser or a corresponding surety put up. This naturally likewise applies if the purchaser is the object of proceedings in civil law, public law, enforcement law or criminal law such as legal actions, suits in civil law, debt collection and pledge utilisation applications, applications for bankruptcy/insolvency or claims in the succession.

IV. Prices

12. Prices are quoted strictly net without packaging ex-supplier's works. Value added tax and any customs duty costs are not included in the prices.

V. Delivery lead-time

13. Unless a firm delivery date stipulating a calendar day has been specifically assured by the Vendor and confirmed in writing, delivery lead-times are to be regarded as non-binding.

14. Where non-binding delivery lead-times are quoted, a delivery made within one week of the indicated delivery date shall be considered timely in every case.

15. The delivery lead-time shall be suitably extended in the event of instances of force majeure, transport and works interruptions, strikes,

lockouts, unpredictable shortages of labour, energy, raw materials or auxiliary materials and so forth. If the delivery lead-time is exceeded by more than ten weeks because of the problem concerned, both parties are entitled to withdraw from the contract.

16. In the event of possible late delivery, save where it is caused by deliberate intent or gross negligence, claims for compensation of all kinds are excluded.

VI. Packaging

17. Packaging materials are invoiced separately. A credit note will be issued for reusable pallets once they have been returned in good condition.

VII. Dispatch

18. Goods are dispatched for the account of the purchaser. The risk is transferred to him once the goods have been loaded, even if carriage-paid delivery has been agreed and/or consignment is effected by the vendor's own vehicles. The vendor is not required to take out transport insurance. Part-deliveries are permitted and will be invoiced individually.

VIII Payment, payment date

19. Save where otherwise agreed in writing, invoices are payable without any deduction whatsoever within 30 days of the invoice date. The payment has to be a wire transfer.

20. If the purchaser is late in making a payment (failure to pay although payment has fallen due and a warning has been issued), all his payment obligations arising out of the business relationship with the vendor - including those for which bills of exchange have been issued - fall due for immediate settlement. The vendor is further entitled to withdraw from contracts which he has not yet himself performed after setting a period of grace of seven days to enable the overdue payment obligations to be met, accompanied by a threat of withdrawal from the contract. If the time limit for payment after the invoice date is exceeded, interest may be charged in an amount equivalent to the vendor's credit costs, subject to a minimum of 5% above the discount rate of the Swiss National Bank. Further claims arising out of late payment remain unaffected.

21. Payments with bills of exchange or cheque-bill are not accepted.

22. The purchaser only has a right of offset in relation to the vendor in respect of uncontested or legally enforceable claims.

23. Under no circumstances is the customer entitled to make payment retentions for defects asserted by him or for asserted claims to compensation.

IX. Reservation of ownership

24. If the goods are delivered to Germany, the provisions of this section shall be governed by German law and the following provisions of Sections 2 to 11, with the exclusion of Section 3, shall apply.

25. If the goods are not delivered to Germany, the provisions of this section shall be governed by Swiss law and the provisions of the following Sections 2 to 11 shall apply, with the exclusion of Sections 7, 8 and 11.

26. The delivered goods shall not become the property of the purchaser until he has performed all his obligations arising out of the business relationship with the vendor, including ancillary claims, claims to compensation and the cashing of cheques and bills.

27. In the case of the cheque-bill of exchange procedure, the reservation of ownership in all its forms listed here shall not expire when the cheque is paid but only upon collection of the bill.

28. The vendor may arrange for the reservation of ownership to be entered in the appropriate reservation of ownership register without the participation of the purchaser; by appending his signature to finalize the contract the purchaser gives his consent within the meaning of Art. 4 of the Ordinance of the Supreme Court concerning the entry of reservations of ownership.

29. The purchaser must look after the reserved goods carefully for the vendor, keep them in good condition at his own expense and insure them with due business-like diligence at his own expense against loss, damage and destruction. The purchaser assigns his claims under the insurance contracts to the vendor and gives his consent to payment of any claim sums to the vendor. At the request of the vendor, the purchaser shall release the insurance policies to the vendor to enforce insurance claims.

30. As long as the purchaser duly meets his liabilities to the vendor, he is entitled to dispose of the reserved goods in the normal course of business. However, this does not apply if and to the extent that a prohibition of assignment has been agreed between the purchaser and his customers in respect of the purchase price claim. The purchaser is not authorised to pledge the reserved objects, transfer them by way of surety, effect any assignments and take any other charges in the reserved object. Upon onward sale, the purchaser must make the transfer of ownership conditional upon payment in full for the goods by his customers.

31. The vendor is entitled to require the reserved goods to be released by the purchaser without setting a period of grace and without withdrawing from the contract if the purchaser is late in the performance of his obligation to the vendor arising out of one of the signed contracts. If the reserved goods are taken back, this does not constitute withdrawal from the contract unless the vendor has specifically declared that to be the case in writing. The purchaser must bear the costs of taking back the goods. The vendor is entitled to sell the reserved goods which have been taken back by auction or by private contract and to offset the proceeds against his claims. He may likewise withdraw from the contract either in whole or in part without setting a period of grace in which case the purchaser is liable for costs and for any loss of value of the goods which has occurred.

32. The rights arising from Art. 48 of the Insolvency Ordinance are not affected by the provisions of Section 6.

33. If the reserved goods are processed, the purchaser is acting for the vendor without, however, acquiring any claims against the vendor by reason of such processing. The vendor's reservation of ownership therefore likewise extends to the products created by processing. If the reserved goods are processed together with other goods which are in the possession of third parties or if the reserved goods are mixed with or joined to goods that are in the possession of third parties, the vendor acquires joint ownership of the resulting products in an amount proportional to the invoiced value of the reserved goods against the invoiced value of the goods which are in the possession of third parties. If the mixing or joining takes place with a main object of the purchaser, the purchaser hereby already assigns his rights of ownership in that new object to the vendor.

34. The purchaser hereby assigns in advance to the vendor all his rights arising out of the onward sale of the reserved goods, together with all the ancillary rights and rights of lien, including bill and cheque claims and balance claims, so as to secure all the rights accruing to the vendor against the purchaser out of the business relationship.

35. If reserved goods are sold together with other objects at an overall price, the assignment shall be limited to the proportionate sum of the vendor's invoice for the reserved goods which are sold jointly. If goods in which the vendor has proportionate joint ownership pursuant to the above section are sold, the assignment shall be confined to that part of the claim which corresponds to the vendor's co-ownership share.

36. If the purchaser uses the reserved goods for processing, in consideration for payment, of objects which are in the possession of a third party, he hereby assigns in advance to the vendor, for the above surety purpose, his claims for compensation against the third party.

37. As long as the purchaser meets his payment obligations on time, he is entitled to collect for himself claims arising out of onward sale or processing.

38. He is not authorised to pledge and otherwise assign goods.

39. If the vendor believes that the performance of his claims is at risk, the purchaser shall upon request notify the assignments to his clients and give the vendor all the necessary information and documents. The purchaser must inform the vendor without delay of any access by third parties to the reserved goods and assigned claims. The purchaser shall bear the costs of an injunction concerning third party access to the reserved goods for which the purchaser is responsible.

40. If the value of the sureties accruing to the vendor exceeds the claims of the vendor to be secured against the purchaser by more than 20%, the vendor shall be required to release sureties to that extent at the request of the purchaser. The choice of the securities to be released shall be made by the vendor.

X. Guarantee

41. Any defects must be reported without delay upon the arrival of the goods at the place of destination and before they are either worked or processed. The obligation of the purchaser to examine the goods extends to the entire delivery. The goods must be accepted and stored appropriately despite any potential defects.

42. Concealed defects must be reported as soon as they come to light. The purchaser must prove that the defect is indeed a concealed defect.

43. Any complaint must be sent by registered mail, stating the particular defects that are held to exist.

44. The vendor must be given an opportunity to inspect the goods to which the complaint refers. If a defect is proven, the vendor will, at his own discretion, either repair the goods or deliver goods free from defects against the return of the goods to which the complaint refers. If the repair or replacement delivery proves unsuccessful, the purchaser is entitled to reduce the purchase price or, with the exception of building services, to require a refund of the purchase price progressively against return of the goods.

XI. Liability

45. All liability of the vendor and of his performance assistants (substitutes, servants etc.) for indirect damage and loss of profit as well as secondary damage and all liability for minor and average negligence is expressly waived.

46. The above exclusion of liability likewise applies to any consultancy services of the vendor before, during or upon conclusion of the contract.

47. All claims are time-barred at the latest at the time when the corresponding service is itself time-barred.

XII. Place of performance

48. The place of performance for payments is Tavannes and for deliveries the place of consignment.

XIII. Data processing

49. The purchaser agrees that the vendor may store data received in connection with the business relationship and, as appropriate, process such data in connection with the conclusion of contracts or the handling of the business relationship.

50. The purchaser has the right to demand, at no charge, information about his personal data stored by the vendor and/or to request a correction, blocking or deletion. Exceptions: These are the required data storage for business transactions or the data are subject to the statutory retention requirement. For this purpose, the following responsible person can be contacted by the vendor: Mrs. Sabine Blondel (sabine.blondel@tavapan.ch / Tel. 032 482 64 36).

XIV. Applicable law, place of jurisdiction

51. In respect of the applicable law, reference is made to Section I No. 3 and Section IX No. 24 and 25.

52. The parties agree that the registered office of the vendor at 2710 Tavannes, is the sole place of jurisdiction, but the vendor is likewise granted the right to enforce his claims at the domicile of the purchaser or in any other appropriate official entity.

XV. Disclaimer

53. Should individual clauses of these terms and conditions of sale, delivery and payment prove invalid either in whole or in part, that fact shall not affect the validity of the other clauses or the other parts of such clauses. The parties shall replace an invalid provision by a provision which approximates as closely as possible to the economic purpose of the invalid provision and is duly enforceable.

XVI. Language versions

54. Should the different language versions of these general terms and conditions of business contain conflicting provisions, the German version shall prevail.

Tavannes, October 2018
TAVAPAN S.A.