

## GENERAL TERMS OF SALE

As revised November 2012

### **ARTICLE 1 - Application and opposability of general terms of sale**

The placing of an order implies full and unreserved acceptance of these Terms by the exclusion of all other documents such as brochures, catalogs, issued by the seller and have an indicative value. No special condition may, unless express written seller acceptance prevail against the GTS

The potential conditions of purchase by the buyer, if they are accepted by the seller, will not have a subsidiary in relation to these Terms.

### **ARTICLE 2 - Modification of general conditions of sale**

In case the seller would have to agree with other purchasers of the conditions as a whole: price, payment terms, warranty ..., are more favourable than those provided for in these general terms of sale for amounts, quantities and a similar quality, which are not justified by real counterparts, and that would create the benefit of the buyers an advantage in the competition, it will benefit the buyer from the date of their application to other buyers.

To this end, the seller will provide the purchaser the content more favourable conditions it would have granted (*this clause is imposed only in relations between professionals*).

### **ARTICLE 3 - Time of the order**

Orders are not final until they have been confirmed in writing (*and after payment of a fixed deposit in the quote*).

The seller is not bound by orders made by its representatives or employees subject to a written and signed confirmation. Acceptance may also result from the shipment.

No order shall be deemed accepted until final acknowledgement of receipt has been given.

Except as otherwise agreed to in writing by the parties, only the present general terms, along with CEPHI's proposal (offer, estimate or work order) shall have binding effect to the exclusion of all other documents which shall not have been consented to by CEPHI in advance and in writing. In particular, CEPHI's return to Customer of an order confirming its receipt, on the back of which Customer's general terms of purchase are printed, shall not constitute acceptance by CEPHI of such general terms of purchase.

### **ARTICLE 4 - Modification of the order**

The terms of additional Supplies shall be the subject of special discussions between CEPHI and Customer. Such terms may under no circumstances be detrimental to the terms of the main Contract.

Any modification of this Contract requested by Customer after acceptance of the order must be expressly agreed to by CEPHI and may not be entertained unless it occurs before a start is made on the manufacture of the Supply or the Supply is made available.

Any modification of this Contract accepted by CEPHI must be the subject of an agreement in writing between the parties. Such agreement shall set forth the new terms of the Contract, especially the price and delivery term. If CEPHI refuses the modification or if Customer disagrees over the changes connected to that modification, CEPHI will invoke the terms of the original Contract and provide the Supply called for therein.

Customer may terminate, suspend or cancel the Contract only with CEPHI's written consent and subject to the latter being indemnified for all losses.

**UNLESS OTHERWISE AGREED BETWEEN THE PARTIES, THE CUSTOMER SHALL BE LIABLE FOR THE PAYMENT OF AN AMOUNT EQUAL TO THE COSTS INCURRED** (investigations, materials purchased, sub-contracting, transport, time spent) BY CEPHI AT THE DATE OF THE CANCELLATION, INCREASED BY THE SUM OF 15% OF THE TOTAL OF THE ORDER EXCL. VAT.

If the seller doesn't accept the amendment or resolution, advance payments shall be refunded and value - goods (or will not be returned).

### **ARTICLE 5 - Delivery - Modalities**

Whatever the destination of the equipment, delivery is deemed to take place in the workshops or offices of CEPHI, or those of its sub-contractors in those instances where the equipment does not pass through CEPHI's premises, even when assembly or start-up is performed by CEPHI on Customer's premises.

Delivery shall take place by handing over the equipment directly to Customer, or by mere notification that the equipment is made available, or by delivery to a shipper or carrier's premises (or warehouses) Seller.

### **ARTICLE 6 - Delivery - Time**

Delivery times are listed as accurately as possible but are a function of supply and transportation vendor opportunities.

Overruns delivery time may give rise to damages - interest, withholding or cancellation of outstanding orders. The cases of force majeure releasing the seller from its obligation to deliver are: war, uprising, fire, strikes, accidents, shortages or difficulties in purchasing raw materials.

The seller will inform the buyer in a timely manner, cases and events listed above.

In any event, delivery on time can only occur if the buyer has met its obligations to the seller, regardless of the cause.

**Transport - Risks:** The products are delivered carriage or postage due at the agreed location. In all cases they travel at the risk of the recipient. Pursuant to Article L. 133-1 and following of the Commercial Code, the carrier is liable for loss and damage of the thing.

In case of damage or failure, it is up to the recipient to make any necessary findings and confirming any act reserves extra - judicial or with acknowledgment to the carrier **within 3 days** of receipt of goods letter.

**Reception:** Without prejudice to the arrangements with respect to the carrier, claims on defects or non-compliance of the product delivered to the ordered product or packing slip must be made in writing within eight days arrived of the products.

It's up to the buyer to provide any justification as to the reality of defects or anomalies. He will leave the seller every opportunity to make the observation of these defects and remedy. He shall refrain from intervening himself or give a third to the end.

#### **- General Provisions Regarding Acceptance**

If nothing is stated about acceptance of the equipment in the special terms of the Contract, the equipment shall be deemed to have been accepted the day following the delivery.

If delivery cannot take place as scheduled for reasons not attributable to CEPHI, then acceptance will be deemed to have taken place not later than three months after the date scheduled for such delivery.

#### **- Acceptance in CEPHI's or the Sub-Contractors' Workshops**

Where the special terms provide for acceptance in the workshops of CEPHI, whether this is the only or a preliminary acceptance, Customer or its agent must be present at the acceptance session, of which Customer shall be given prior notification.

The purpose of the acceptance session is to verify that the equipment produced conforms to the Contract requirements established for such acceptance. Such acceptance shall be recorded in a record of acceptance. If

Customer fails to be present at the acceptance session or to sign the record for reasons other than good cause shown, the record shall be deemed to have been drawn up in the presence of both parties upon the mere forwarding thereof to Customer.

#### **- Acceptance at Customer's Premises**

Where so provided in the special terms, acceptance shall occur at Customer's factory following assembly and start up on site. The purpose thereof is to verify that the equipment conforms to contract requirements for such acceptance as set forth in the special terms. Such acceptance may not call into question the conformity check as validated by the record of prior acceptance.

CEPHI will give Customer prior notice of the date of the acceptance session. In the absence of the customer upon receipt or refusal to sign the record, it will be sent. The record shall be deemed inconsistent with the absence of any written protest of the Customer within 3 days of receipt.

Where the objections raised at acceptance do not prevent Customer from using the Supply, any payment(s) linked to acceptance shall become immediately due and payable.

### **ARTICLE 7 - Penalties**

Delays shall not in principle compel CEPHI to pay any indemnity or penalty, unless precisely stated otherwise in the special terms.

In all events, penalties will have a discharging effect. They may be imposed only upon expiration of three whole weeks of delay and shall not exceed 0.5% (one-half percent) per additional whole week of delay and shall be limited to a cumulative maximum of 5% (five percent) of the pre-tax value in the workshop or store of the equipment not yet made up and/or undelivered.

A penalty may be imposed only if the delay is caused exclusively by CEPHI and only in the presence of a financial loss proved Customer directly related to the delay.

### **ARTICLE 8 - Return - Modalities**

All product returns must be subject to prior formal agreement between the seller and the buyer. Any product returned without this agreement shall be kept at the disposal of the buyer and doesn't lead to the establishment of a credit. The costs and risks of return are always the responsibility of the purchaser.

Any return accepted by the seller will result in a credit in favour of the purchaser, after qualitative and quantitative verification of returned products (*or cause loss to the buyer of the payments that will be paid*).

In case of defect or non-conformity of goods sold, duly noted by the seller, the buyer can get free replacement or refund of the product chosen by the seller to the exclusion of any compensation or damages - interests.

### **ARTICLE 9 - Warranty - Scope - Exclusion**

Duration: 12 months after delivery unless specifications.

The products are guaranteed against defects in materials or workmanship under warranty certificate enclosed with products. Interventions under the guarantee can't have the effect of extending the duration of it.

Under this warranty, the sole obligation of the seller will be the free replacement or repair of the product or the defective component recognized by its services. Any product that will benefit from the guarantee must indeed be previously submitted to after-sales dealer whose agreement is required for any replacement. Any shipping costs are the responsibility of the buyer.

Defects or damage caused by natural wear or an external accident (*incorrect installation, faulty maintenance, improper use ...*) or by changing the unplanned product or specified by the seller, are excluded from the guarantee.

No warranty will for obvious defects which the purchaser must rely upon receipt of the product. Similarly, with respect to professional buyers, no legal guarantee shall be payable beyond the contractual period of guarantee. Responsibility CEPHI is strictly limited to the obligations defined and it is expressly agreed that CEPHI not be bound to any other compensation in any way and for any reason whatsoever.

**CEPHI not indemnify any indirect economic loss and as such, loss of income, loss of earnings, loss of business, financial cost, loss of control, any disturbance to business, etc., Giving both the customer's name on behalf of its insurers to any recourse against CEPHI and its insurers. Global and cumulative CEPHI of responsibility, shall not exceed, and in all cases, 100% of the total amount of the contract or order.**

No liability would we lie about accidents or direct or indirect risks arising from a failure of our products. The warranty doesn't cover the consequences of breakdown and excludes any compensation. In any event, our liability shall not be incurred beyond the limits of liability under our insurance policy.

### **ARTICLE 10 - Price**

The products are supplied at the prevailing price at the time of placing the order. An increase of more than 10% of the market price and delivery to the customer's request not under estimate will be a proportional increase in prices.

Prices are net, ex-work, including packaging, except for special packages taxed extra.

All taxes, duties, fees or other benefit payable under French regulations or those of an importing country or countries of transit are the responsibility of the purchaser

### **ARTICLE 11 - Invoicing**

Each delivery will match an invoice. The date-warehouse product is both the issue date of the invoice and the starting point of the due date for payment term. This invoice will include all the particulars provided for in Article 31 of the Ordinance of 1 December 1986.

### **ARTICLE 12 - Payment - Modalities**

Invoices are payable at CEPHI's head office in SAINT CHEF.

Payment will be made 45 days following the end of month net and without discount, preferably by bank but also by check or bill of exchange. Part payments are always payable cash.

Invoices less than 300 € exclusive of taxes, must be paid cash. For any ordering of an amount higher than 10,000 € a down payment with the ordering of 30% of the amount of the command is required.

**NO DISCOUNT CAN BE GIVEN IN RESPECT OF ANY PAYMENT MADE IN ADVANCE OF THE SETTLEMENT DATE. CEPHI DOES NOT ACCEPT ANY OFFSETTING OF SUMS DUE BY THE CUSTOMER TO CEPHI AND ANY SUMS THAT MAY BE DUE BY CEPHI TO THE CUSTOMER UNLESS AGREED IN WRITING.**

Payment may not be delayed without express consent.

CEPHI reserves the right to require:

- Payment in cash prior to delivery if Customer's financial condition so warrants or if there is a previous history of late payment with Customer,
- Payment guarantees.

### **ARTICLE 13 - Delay or default of payment**

In case of late payment, the Seller may suspend all orders, without prejudice to any other action. Under the law, any amount not paid by the due date will be automatically and without prior notice to the penalty imposed by Article L.441-6 of the Commercial Code.

Failure to pay any amount when due shall, automatically and without prior demand, cause:

- Any other future payments and any invoiced amounts not yet due to become immediately due for payment, even if they have given rise to a draft;
- Suspension of all work then in progress or deliveries, or, if CEPHI prefers, early payment of any order then in the process of being carried out.

If payment is overdue, then penalties for late payment shall be calculated from the date due until the date payment is actually made, at the rate of one-and-a-half times the rate equal to three times the legal rate of interest as provided by the LME Law of 4 August 2008.

In the event Customer sells, assigns, pledges or fully or partly contributes to a company its business or equipment, outstanding sums shall become immediately due for payment, irrespective of the terms of payment previously agreed upon.

In case of default, 48 hours after an unsuccessful formal demand, the interest on arrears at legal interest rate plus 3% will apply. In addition, the sale will be automatically cancelled by the seller, without prejudice to any damages.

The buyer will pay all expenses incurred by the legal recovery of sums due, including fees judicial officers.

In any case, the payments may be suspended or subject to any compensation whatsoever without the prior written agreement of the vendor. Any partial payment shall first be deducted from the unsecured portion of the debt, then the amount the payment of which is the oldest.

### **ARTICLE 14 - Collateral requirement or regulation**

*The seller reserves the right, at any time, depending on the risks involved, to set a ceiling on each buyer and found to require some payment delays or certain guarantees. This is particularly the case if a change in the officers or person in the form of the company or a sale, lease, pledge or setting contribution of its trade has an adverse effect on the buyer's credit.*

### **ARTICLE 15 - Transfer of risk**

Risk transfer point occurs upon shipment warehouses seller. One result is that the goods travel at the risk of the buyer that it is up to against the carrier.

### **ARTICLE 16 - PROPERTY RESERVE**

**IN ACCORDANCE WITH THE PROVISIONS OF L.624-16 OF THE COMMERCIAL CODE, CEPHI retains ownership of the equipment until full payment of the price, including both the principal amount and additional sums. In this connection, the mere tender of drafts or other instruments creating an obligation to pay shall not constitute payment.**

**Customer is required to immediately notify CEPHI in the event that the equipment is seized, levied upon or impounded for the benefit of a third party, and to take all protective measures to make known CEPHI's right of ownership in the event of creditor action.**

**As long as CEPHI retains title in the equipment, the same may not be sold, pledged, leased or otherwise made available, merged into other goods or transformed without the prior written consent of CEPHI, which shall be entitled to make its consent subject to the giving of payment guarantees or to require early payment in full.**

**In the event of non-payment of the price, including both the principal and additional sums, on the scheduled date, CEPHI shall be entitled by simple written notice sent by registered letter, return receipt requested, and without any other formality or prior notice, automatically to cancel the sale while reserving its right to claim damages. In such event, Customer here and now authorizes CEPHI and its shipping agent to enter the premises during business hours where the equipment is kept and remove it. The buyer will allow the identification and individualization of the property. Otherwise, compensation of 5 000 € will be due as a penalty clause.**

**It is recalled that, pursuant to law, any conditions of purchase the buyer can have no effect on this clause.**

### **ARTICLE 17 - Intellectual Property Rights**

Estimates, proposals, studies, computer programs, drawings, diagrams, and generally all documents handed over or sent by CEPHI shall always remain its sole property even where Customer has been asked to contribute to the costs relating thereto.

**Under no circumstances shall these elements be disclosed to third parties or reproduced, or be used directly or indirectly for other creations without the prior written consent of CEPHI, acceptance of an order giving Customer solely a right of use for operating the Supplies.**

**No provisions in the Contract shall be construed as transferring to Customer any intellectual property rights whatsoever (trademark, patent, know-how, copyright, etc.).**

**ANY PROCESS DEVELOPED BY CEPHI IN THE CONTEXT OF THE FULFILLMENT OF AN ORDER AND WHOSE INTELLECTUAL PROPERTY IS CAPABLE OF BEING PROTECTED SHALL REMAIN THE PROPERTY OF CEPHI.**

### **ARTICLE 18 - Control of ultimate destination**

Customer shall take it upon itself to secure, if need be, any authorizations required by law concerning products or technologies which by reason of their nature or destination are subject to controls on their ultimate destination. CEPHI shall not be held liable in this regard and Customer shall ensure it is kept harmless.

### **ARTICLE 19 - Assignment**

This benefit of the Contract is personal to Customer and may not be transferred without CEPHI's prior written consent.

### **ARTICLE 20 - Amicable settlement of disputes**

The parties shall seek before any legal action on the merits, an amicable agreement. A double registered mail shall first formulate the purpose and basis of any dispute. It will be left to the contracting party involved a period of one month to respond and request a meeting. At the end of this period legal proceedings on the merits may be considered by each party.

### **ARTICLE 21 - LEGAL JURISDICTION**

French law shall apply.

**Only the courts of Vienne (FRANCE) will be competent in disputes of any kind or dispute relating to the formation or execution of the order, including for export.**

**This applies even in summary proceedings, demand or multiple defendants, regardless of the method and terms of payment.**