

1. DEFINITIONS

CLIENT shall mean the entity having entered into a contract with PURCHASER and for which the supply of the GOODS is intended.

DELIVERY DATE shall mean the date specified in the PURCHASE ORDER for delivery of the GOODS according to the Incoterm agreed in the PURCHASE ORDER (Incoterms version 2000).

FORCE MAJEURE may include, but not limited to, unforeseeable and unavoidable events such as acts of God, acts of Government, war, terrorism, riots and national strikes.

GOODS shall mean materials, services and/or documents described in the PURCHASE ORDER to be supplied to the PURCHASER by the VENDOR.

INFORMATION shall mean any information, knowledge, or data received by VENDOR from PURCHASER in furtherance of or pursuant to the PURCHASE ORDER, which is identified as the propriety of PURCHASER.

PARTY shall mean the PURCHASER or the VENDOR and PARTIES means collectively both of them.

PURCHASE ORDER DOCUMENTS include the PURCHASE ORDER and/or amendment(s), these General Terms and Conditions of Purchase, the Special Terms and Conditions of Purchase if any, the technical specifications and any other document indicated in the PURCHASE ORDER or applicable to the PURCHASE ORDER.

PURCHASE ORDER PRICE shall mean the total amount stated in the PURCHASE ORDER for the manufacture and delivery of the GOODS, including no tax.

PURCHASER shall mean Sundyne International S.A.

PURCHASE ORDER shall mean all documents, included but not limited to, purchase order, technical specifications, bank guarantees, issued by the PURCHASER to the VENDOR, referring to these Terms and Conditions of Purchase and ordering the supply.

REACH shall mean the Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the registration, evaluation and authorization of hazardous products.

VENDOR shall mean the firm, company or other corporate entity contracted by the PURCHASE ORDER to supply the GOODS to the PURCHASER.

2. ACCEPTANCE

The PURCHASE ORDER is subject to the following Terms and Conditions and, by accepting the PURCHASE ORDER, VENDOR agrees to supply the GOODS in compliance with them.

Any provisions different from or additional to the provisions of the Terms and Conditions of Purchase which may be contained in VENDOR's acknowledgement or VENDOR's other documents are expressly rejected by PURCHASER unless accepted in writing by PURCHASER.

If any provision of the Terms and Conditions of Purchase shall be determined to be invalid under any applicable law, by any competent court or arbitration tribunal, the remaining provisions shall continue to be valid. The provision declared invalid shall be deemed to be restated by the PARTIES to reflect as nearly as possible the meaning and essence of such provision.

3. ORDER OF PRECEDENCE

If there are any inconsistencies or conflicts in the provisions applicable to the PURCHASE ORDER, VENDOR shall notify it to PURCHASER who will inform VENDOR of the order of precedence given between the PURCHASE ORDER DOCUMENTS.

4. DELIVERY

4.1. DELIVERY DATE

The DELIVERY DATE is indicated in the PURCHASE ORDER.

Time is of the essence for PURCHASER. If VENDOR fails to deliver the GOODS in accordance with the DELIVERY DATE, VENDOR shall pay PURCHASER penalties for late delivery as stated in clause 5. **"PENALTIES FOR LATE DELIVERY"**.

Early or partial delivery shall be expressly approved by writing by PURCHASER. If PURCHASER refuses, VENDOR shall at his sole cost and charge, safely store the GOODS until the contracted DELIVERY DATE is reached.

PURCHASER may return any GOODS delivered in excess of the quantity specified in the PURCHASE ORDER at VENDOR's expense;

Acceptance by PURCHASER of late delivery shall not constitute a waiver of any claim for damages which PURCHASER may have arising from and out of such late delivery.

4.2. DELIVERY TERMS

GOODS shall be delivered in accordance with the Incoterm 2000 as specified in the PURCHASE ORDER. Except otherwise specified in the PURCHASE ORDER the delivery terms for GOODS shall be DDU Longvic (Incoterms version 2000).

5. PENALTIES FOR LATE DELIVERY

Should VENDOR fail to deliver the GOODS in accordance with the DELIVERY DATE as stipulated in the PURCHASE ORDER, VENDOR shall pay penalties for late delivery to PURCHASER as follow:

- For documents:

After one calendar week grace period, 0.5% of the PURCHASE ORDER PRICE per each calendar week of delay with a maximum of 2% of the PURCHASE ORDER PRICE.

- For materials/services:

1% of the PURCHASE ORDER PRICE per each calendar day of delay for materials and/or services with a maximum of 8% of the PURCHASE ORDER PRICE.

6. TITLE AND RISK

Unless otherwise agreed in the PURCHASE ORDER, transfer of title and risk of the GOODS shall pass to PURCHASER at the Incoterm specified in the PURCHASE ORDER.

7. SPARE PARTS

VENDOR shall provide and store a stock of spare parts corresponding to the GOODS during a period of ten (10) years after shipment.

VENDOR warrants that the spare parts are new, original, free from defects and interchangeable with the parts originally supplied.

8. CHANGES

PURCHASER shall have the right at any time prior to the DELIVERY DATE to make changes including, but not limited to, specifications, quantity or delivery of the GOODS. If any such changes cause an increase or decrease in the PURCHASE ORDER PRICE, or affect the DELIVERY DATE or any other obligations of VENDOR under the PURCHASE ORDER, an equitable adjustment shall be made by the PARTIES and the PURCHASE ORDER shall be modified in writing accordingly.

Within fifteen (15) calendar days of the issue of PURCHASER's changes request, VENDOR must give PURCHASER written notice of the PURCHASE ORDER provisions are affected by the changes. In the absence of such notification VENDOR has waived his right to request such modification and no equitable adjustment will be done.

If VENDOR considers that changes are necessary to supply GOODS in accordance with the PURCHASE ORDER, VENDOR shall request acceptance of the PURCHASER before implement such changes. Such changes will be done at VENDOR charge.

9. PRICE, TERMS OF PAYMENT

VENDOR agrees that the PURCHASE ORDER PRICE stated in the PURCHASE ORDER is fixed and will not be subject to adjustment and/or

increase, unless otherwise agreed in writing especially in the case of clause **8. "CHANGES"**.

Unless otherwise stated in the PURCHASE ORDER, payment terms will be forty-five (45) calendar days end of month following invoice issue according to clause **10. "INVOICES AND TAXES"**.

In case VENDOR request an advance payment(s), VENDOR shall provide an advance payment bond according to clause **11.1 "ADVANCE PAYMENT BOND"** and in the form attached.

Acceptance by PURCHASER of payment of invoice by PURCHASER shall not constitute a waiver of any claim for damages regarding supply of the GOODS.

10. INVOICES AND TAXES

All invoices must contain the following information: identification and address of VENDOR and PURCHASER, date and number of the PURCHASE ORDER, description of GOODS, quantities, unit prices, taxes, delivery place payment terms and total payments due. Incomplete invoice should not release any payment.

Payment(s) of invoice(s) shall not constitute acceptance of GOODS by PURCHASER.

11. BANK GUARANTEES

11.1. ADVANCE PAYMENT BOND

If the advance payment exceed 10 000 Euros, VENDOR shall provide to PURCHASER an advance payment bond of the corresponding amount of the advance payment requesting.

The advance payment bond shall be opened according to the form supplied by PURCHASER.

11.2. WARRANTY BOND

If require by PURCHASER in the PURCHASE ORDER, VENDOR shall provide a warranty bond of performance of its obligations of 10% of the PURCHASE ORDER PRICE covering the warranty period plus one (1) month.

The warranty bond shall be opened according to the form supplied by PURCHASER.

12. WARRANTIES

Except otherwise stated in the PURCHASE ORDER, VENDOR warrants that the GOODS shall be free from defect in workmanship, material and/or design, shall conform to any specifications referenced in the PURCHASE ORDER and shall be fit for the purpose intended for a period of eighteen (18) months from delivery or twelve (12) months from commissioning, whichever is earlier. During this warranty period PURCHASER may require VENDOR to promptly repair or replace all or any part of the GOODS which fail to meet the warranty set out above, at its own cost.

Warranty for repaired and replaced parts will terminate twelve (12) months from the repairing or replacement or at the end of the original warranty period, whichever is the longer.

If after having been notified of any defect in the GOODS VENDOR fails to remedy it within the time specified in the notification, PURCHASER shall have the right either to repair or replace the defective GOODS itself or by a third party, at VENDOR's own cost and without relieve VENDOR from its obligations under the PURCHASE ORDER.

These Warranties shall not apply to the extent that the defects are due to:

- Faulty designs or specifications supply by PURCHASER;
- Normal wear and tear;
- Abnormal usage.

The VENDOR guarantees that all materials that the GOODS contain have been pre-registered, registered and approved in accordance with the requirements of the REACH regulations. Furthermore, the VENDOR shall ensure that all duties applicable to suppliers (in terms of Article 3 No. 32 REACH) must be fulfilled as specified in REACH in regard to the delivery of goods.

No test, inspection or approval given or made by PURCHASER or third party in his behalf, shall prejudice any of such warranties and/or any remedy of PURCHASER in case of defective GOODS.

13. SUSPENSION OF SUPPLY

PURCHASER shall have the right, at any time, to suspend manufacture and supply of the GOODS by giving a written notice to VENDOR which shall specify the part of the PURCHASE ORDER to be suspended and the duration of suspension. VENDOR shall immediately cease all work on the suspended parts and shall ensure protect and safeguard it.

PURCHASER may, at any time, authorise resumption of all or any part of the suspended parts by giving written notice to VENDOR specifying the effective part of the PURCHASE ORDER to be resume and the effective date of resumption.

PURCHASER shall reimburse VENDOR for all direct proven costs due to the suspension.

If the duration of the suspension exceed more than one hundred and twenty (120) calendar days, the VENDOR may request the resumption of the supply to PURCHASER. If PURCHASER refuses, the suspended parts shall be deemed to have been cancelled according to clause **15. "TERMINATION FOR CONVENIENCE"** in absence of VENDOR default and in case of VENDOR default according to clause **16. "TERMINATION FOR CAUSE"**.

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14. FORCE MAJEURE

Any event which is unforeseeable and unavoidable and which renders the performance of the PURCHASE ORDER totally or partially impossible shall constitute FORCE MAJEURE and shall temporarily excuse the PARTIES from performing the obligations affected by such event. The PARTY relying upon such FORCE MAJEURE event shall give the other PARTY prompt written notice thereof with full particulars including the estimated duration of the event and the steps taken, or intended to be taken, to resume to performance of the PURCHASE ORDER.

In any case any delay in the supply of the GOODS by VENDOR's sub-supplier(s) shall be recognized by PURCHASER as an excuse for a late delivery.

Should a FORCE MAJEURE event result in a continuous period of not less than one hundred and twenty (120) calendar days, both PARTIES may exercise their rights to cancel the PURCHASE ORDER.

15. TERMINATION FOR CONVENIENCE

PURCHASER may terminate, for its convenience, all or any part of the PURCHASE ORDER by giving VENDOR not less than ten (10) calendar days written notice. The notice shall state the extent and effective date of such termination and upon receipt thereof, VENDOR will in compliance with the notice, stop work under the PURCHASE ORDER.

PURCHASER shall pay VENDOR in accordance with the PURCHASE ORDER for GOODS properly completed and/or delivered as at the date of the termination and shall reimburse VENDOR for the direct and reasonable costs due to the termination.

16. TERMINATION FOR CAUSE

Without prejudice to its other rights PURCHASER may have under the PURCHASE ORDER, PURCHASER is entitled to terminate the PURCHASE ORDER in the following cases:

- VENDOR is in default, or fails to meet the performance of its obligations under the PURCHASE ORDER and, having been given written notice by PURCHASER to remedy the default or failure, does not correct the matter within thirty (30) calendar days;
- VENDOR becomes insolvent, commences, or has commenced against it, proceedings for insolvency, receivership or winding-up; or
- VENDOR is the subject of a merger, take-over, acquisition or transfer of business that would in the sole discretion and opinion of PURCHASER have a detrimental effect upon its ability to perform its obligations under the PURCHASE ORDER.
- VENDOR assigns the PURCHASE ORDER to a third party or subcontracts the supply of the main component of the GOODS, without the PURCHASER's prior written consent;
- VENDOR makes variation(s) to the scope of the PURCHASE ORDER DOCUMENTS, without PURCHASER's written approval;
- VENDOR fails to meet the provisions of the clause **23. "HEALTH SAFETY ENVIRONMENTAL REQUIREMENTS - QUALITY ASSURANCE/QUALITY CONTROL"** during the supply of the GOODS;
- VENDOR fails to take corrective action within the period of time specified in the notification of default according to clause **12. "WARRANTIES"**.

The written notice of termination shall state the extent and effective date of the termination. VENDOR shall be liable to PURCHASER for any cost and damages due to such termination.

17. LIABILITIES AND INDEMNITIES

VENDOR shall indemnify and save PURCHASER harmless from all suits, claims, judgements, losses, damages, costs or expenses (including attorney's fees) arising out of, or caused by VENDOR's (and/or sub-contractor(s)) performance, act or omission, or any defects of the GOODS. VENDOR's indemnification obligation hereunder covers, without limitation, injuries, sickness, diseases, death of VENDOR (and/or sub-contractor(s)) employee, and loss or damage to property of PURCHASER.

18. ASSIGNMENT AND SUB-CONTRACTING

18.1. ASSIGNMENT

PURCHASER is entitled to assign at any time the PURCHASE ORDER or any benefits to any third party with the VENDOR's consent which shall not be unreasonably withheld. VENDOR shall not assign the PURCHASE ORDER or any benefits without the prior written approval of PURCHASER.

18.2. SUB-CONTRACTING

VENDOR shall not subcontract the main component of the PURCHASE ORDER without the prior written approval of PURCHASER. VENDOR shall not be relieved of any liability or obligation under the PURCHASE ORDER and shall be fully responsible for the works, acts, omissions, defaults and neglect of his sub-contractor(s). No sub-contract shall create any contractual relationship between the sub-contractor(s) of VENDOR and PURCHASER. VENDOR shall ensure that the terms of any sub-contract shall fully conform to the rights of PURCHASER according to these Terms and Conditions and to the requirements of the PURCHASE ORDER.

19. CONFIDENTIALITY

Unless otherwise agreed between the PARTIES in a Proprietary Information Agreement, all INFORMATION (included but not limited to technical publication, drawings, maintenance manual) obtained by VENDOR from PURCHASER in connection with the PURCHASE ORDER, which is identified by PURCHASER as its proprietary, is confidential and shall remain the property of PURCHASER, and shall be used and disclosed by VENDOR only to the extent of the PURCHASE ORDER, except if VENDOR can demonstrate that such INFORMATION:

- Were in the possession of VENDOR prior to PURCHASER's disclosure and were not acquired from PURCHASER, or
- Are acquired by VENDOR from others who have no confidential agreement with PURCHASER, or
- Are, at the time of disclosure, or become without the fault or participation of VENDOR a part of the public domain by publication or otherwise.

VENDOR may disclose the INFORMATION only, including but not limited to, to employees, agents, affiliates or subcontractors of VENDOR who have to know if it for the purpose of the PURCHASE ORDER, and shall ensure that they implement this clause.

Upon expiration or termination of the PURCHASE ORDER, any INFORMATION disclosed, and any copies, summaries, and/or compilations of it, shall be returned or, at the option of PURCHASER, destroyed.

VENDOR shall not make or authorize any release, advertisement, or other disclosure which shall deny or confirm the existence of the PURCHASE ORDER or which shall make use of PURCHASER's and/or its CLIENT names without his prior written consent.

20. INTELLECTUAL PROPERTY RIGHTS

VENDOR warrants to possess or to be granted all license, patent or other trade secret which is necessary for the performance of his obligations under the PURCHASE ORDER.

VENDOR warrants that any and all royalties for the production, supply and use of the GOODS by PURCHASER are included in the PURCHASE ORDER PRICE.

Any Intellectual Property Right including but not limited to copyrights, design right, know-how, patents which arises in furtherance of the PURCHASE ORDER shall belong to PURCHASER.

VENDOR shall defend PURCHASER, at its own expense, in any suit or claim that may be instituted against PURCHASER (or any CLIENT) for actual or alleged infringement of patents, copyrights or other intellectual property matters relating to the GOODS, except for any such infringement resulting from compliance with detailed designs provided by PURCHASER, and indemnify, protect, hold PURCHASER (its successors, assigns, users of such GOODS and its CLIENTS) harmless in connection with all suits, claims, liability, loss, damages, costs or expenses arising out of such alleged infringements.

VENDOR has to use the GOODS (including but not limited to material, service, document and technical specification) only for the realization of the purpose.

21. COMPLIANCE WITH LAW

VENDOR shall comply with all applicable laws, directives, and regulations relating to the execution of the PURCHASE ORDER.

VENDOR shall indemnify and hold PURCHASER harmless against any claim, penalty, damages or liability directly connected with VENDOR's failure to comply with such laws, directives, and regulations.

22. SURVIVING OBLIGATIONS

All obligations under any provisions, which by their nature extend beyond the expiration or termination of these Terms and Conditions of Purchase, including but not limited to warranties, indemnifications, intellectual property, confidentiality, shall survive the expiration or other termination.

23. HEALTH SAFETY ENVIRONMENTAL REQUIREMENTS - QUALITY ASSURANCE/QUALITY CONTROL

VENDOR shall protect the health, safety of its personnel and the environment, manage HSE through a continuous improvement approach and mitigate HSE risks arising from its activity.

VENDOR shall comply with all applicable legislation, with HSE requirements and specifications as referred in the PURCHASE ORDER DOCUMENTS.

The VENDOR should package, label and send hazardous products according to the pertinent national and international regulations. A safety data sheet is to be handed over to PURCHASER in accordance with Art. 31 of the REACH regulations.

If VENDOR is certified ISO 9001:2008 and/or 14001:2004 VENDOR undertakes to apply his quality system to the GOODS.

24. CODE OF ETHICS

VENDOR is fully informed and has agreed to entirely comply with PURCHASER's Code of Ethics available upon request.

25. GOVERNING LAW

The Terms and Conditions of Purchase and the PURCHASE ORDER shall be governed by and construed in accordance with the provisions of the Laws of France.

Unless otherwise agreed to by VENDOR and PURCHASER in writing, there is excluded from this release the application of United Nations Convention on Contracts for the International Sales of Goods.

26. SETTLEMENT OF DISPUTES

All disputes arising out of or in connection with the present contract shall be first of all submitted to negotiation between the PARTIES during sixty (60) calendar days. In case of failure, dispute will be submitted directly to arbitration.

The arbitration shall be finally and binding, settled under the Rules of Arbitration of the International Chamber of Commerce (ICC rules) by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be Paris, France.