

## TERMS AND CONDITIONS APPLICABLE TO THE SALE

The present terms and conditions shall govern the sale of products and/or services (hereinafter the "Material") by Jacobi Carbons France SASU (hereinafter "the Seller") as provided more specifically in the corresponding Sales Order (being these Terms and Conditions and the Sale Order hereinafter collectively referred as the "Agreement").

These Terms and Conditions shall take precedence over any Buyer's additional or different terms and conditions whenever the same are provided to the Seller and to which notice of objection is hereby expressly given. Neither the Seller's commencement of performance nor delivery shall be deemed or constituted as acceptance of Buyer's additional or different terms and conditions. Nothing shall be deemed or constituted as the Seller's acceptance of the Buyer's additional or different terms and conditions other than a written document signed by the Seller.

The scope of supply, price, freight, delivery terms and payment terms shall be as specified in the Sales Order and subject to the provisions of these Terms and Conditions.

The provisions of the Agreement are intended to be mutually complimentary. Unless otherwise specified in the Sale Order, any discrepancies or inconsistencies arising among the provisions of such Agreement shall be solved by giving precedence to the provisions inserted first in such Sale Order and then to these Terms and Conditions.

### 1. Orders

Any Buyer's order submitted to the Seller must be signed and in writing. Any Buyer's order must include required delivery dates, quantities and complete description of Material to be purchased.

The Agreement shall be binding upon the Buyer when the Seller's Offer is received and accepted irrevocably and unconditionally (i.e. without reservations or comments) in writing. This Buyer's acceptance shall be given within a period of fifteen (15) days of the receipt of such Seller's Offer. Such acceptance shall be deemed to have been given by the Buyer if no written notification to the Seller has been effected within the aforesaid mentioned period explaining the eventual reservations or comments in respect thereof. The acceptance made by the Buyer shall be deemed to be its unconditional acceptance of these Terms and Conditions and shall constitute its express waiver to any other general or special terms of sale.

The Seller reserves the right to revoke its offer to meet the Buyer's order at any time before acceptance by the Buyer of the Seller's Offer as provided hereinabove. Upon acceptance of the Seller's Offer by the Buyer, the Parties shall sign the Sales Order which shall reproduce any and all terms and conditions applicable to the sale.

No modification, amendment of the terms and conditions of the Seller's Offer in the acknowledgment and acceptance thereof will be binding upon the Seller unless it is accepted in writing by an authorised representative of the Seller. The Buyer shall not be entitled in any case to cancel its written offer after having accepted the Seller's Offer as hereinafter provided and in consequence the Buyer shall pay the corresponding amounts in accordance with the payment terms specified in the Sale Order. If exceptionally the Buyer's order is cancelled after such acceptance and if there have been one or more down payments, the amounts paid will be kept by the Seller to compensate him of the costs and expenses incurred for the sale until that moment: these amounts may reach 20 % of the total price of the Seller's Offer.

The Buyer shall not assign the Agreement without the prior written consent of the Seller which may be withheld at the Seller's discretion.

### 2. Specifications

(a) All information relating to the Buyer's required specifications provided prior to the Seller's offer shall not be binding upon the Seller.

The Seller shall be bound only by specifications expressly given contractual value in writing and accepted as such by the Seller in its offer.

(b) The Seller shall provide the Buyer with all technical information pertaining to Material sold under the Agreement.

Information provided by the Seller shall be in French or in English. If the Buyer requests information to be provided in any other language the cost of translation shall be added to the price of the Material sold.

(c) The Seller shall at all times retain title to all specifications intended for use in connection with the Material sold under this Agreement.

### 3. Delivery

(a) Delivery schedule are given for information purposes only and shall commence after the Sale Order has been signed by both Parties. Delivery delays shall in any event constitute grounds for cancellation by the Buyer of the sale nor constitute a reason for payment by the Seller to the Buyer of any kind of penalties whatsoever.

(b) In case of partial delivery or incomplete delivery for any reason, the Buyer shall keep the Material delivered according to the sale and comply with the terms of payment foreseen. Material undelivered will be provided as soon as possible in accordance with the stocks available. The Seller will not be obliged to provide the Material if the payment conditions are not or have not been satisfied by the Buyer or if the Buyer has not provided the necessary information in order for the Seller to comply with the Sale's Order.

(d) Terms and conditions of transport shall be determined according to the INCOTERM chosen to be applicable to the sale.

(e) If delivery is stated to be EX WORKS the Seller shall notify the Buyer the date on which the Material shall be placed at the disposal of the Buyer at least three days before such date.

(f) If delivery is stated to be FOB the Seller shall chose port of shipment unless port of shipment has been stated in the Sales Order.

(g) The Buyer shall notify carrier in writing within 3 days of delivery of any claims for any damage to Material and of parts of shipment listed on packing list missing at the time of delivery. The Buyer's failure to make any such claim within said period of time shall constitute acknowledgement of compliance of delivery with the terms of the Agreement.

### 4. Transfer of title and transfer of risks

Legal title to Material purchased under the Agreement shall not be vested in the Buyer prior to payment of the entire price of such Material.

Risk of loss or damage to the Material will pass to the Buyer according to the INCOTERM chosen to be applicable to the sale.

### 5. Delayed acceptance

If the Buyer fails to furnish shipping instructions or to accept delivery of Material purchased under the Agreement on the delivery date specified in this Agreement, the Seller may charge the Buyer interest at the rate of EURIBOR plus 5 points on the value of such Material from the tenth day of the month following the specified delivery month until the day of shipment or acceptance of delivery.

The Buyer's failure to accept delivery or to make payment for any portion of the specified quantity of Material purchased under the Agreement shall at the Seller's option, exercised by written notice to the Buyer, release the Seller from making any further deliveries.

### 6. Price

(a) Price of Material is specified in the Seller's Offer.

Except as may be otherwise provided in the Sales Order, the price does not include any sales consumer use and other similar taxes excise and custom duties required by law either in France or in the country of delivery of the Material. The Buyer shall bear sole responsibility of the payment of any such tax or duty.

(b) Payment shall be due thirty (30) days after the date of each invoice unless otherwise specified in the Sale Order. The Seller may invoice each shipment separately and each shipment shall be separately invoiced.

All late payments shall be charged interest computed on a daily basis from the due date until paid in full at the rate of EURIBOR plus 5 points on the amount of the unpaid invoice.

### 7. The Buyer's representative

The Buyer shall within five business days of acceptance of the Seller's Offer appoint in writing a representative.

The Buyer's representative shall represent the Buyer and all communication given to the Buyer's representative shall be deemed to be given to the Buyer and shall be binding upon the Buyer.

### 8. Modifications to Specifications

The Seller shall be entitled to modify at any time the specifications relating to Material, provided that such modifications do not affect the Buyer's interests.

The Seller shall not be bound to accept any request that specifications relating to design and specifications of Material, delivery dates or test schedules be modified.

No modifications shall be carried out unless the Buyer has expressly accepted in writing the new price and/or delivery date.

### 9. Warranty

(a) The Seller warrants that Material sold by the Seller shall be in conformity with the Specifications of the Material so agreed between the Parties

(b) The foregoing warranty applies in respect of claims as a result of non conformity in the Material which may become apparent within 7 days of acceptance by the Buyer of the Material.

(c) The extent of the Seller's liability under this warranty as to defect is limited to the replacement with a similar item free from the defect in question.

The Buyer shall within the time period of time specified in the Sale's Order return the defective Material at its expense to the Seller's facility. Return to the Buyer of the replaced Material shall also be at the Buyer's expense.

(d) The Seller shall, as to each defect, be relieved of all obligations and liability under this warranty if:

- Material shall have been used with any accessory, equipment or part not specifically approved by the Seller unless the Buyer furnishes reasonable evidence that such use was not a cause of the defect;

- Material shall not have been used under normal industry use;

- Material shall have been altered or modified without the Seller's approval.

- The Buyer does not submit reasonable proof to the Seller that the defect of the Material is embraced within the Seller's warranty hereunder

(e) THE WARRANTY PROVIDED IN THIS ARTICLE AND THE OBLIGATIONS OF THE SELLER THEREUNDER ARE IN LIEU OF AND THE BUYER HEREBY WAIVES ALL OTHER WARRANTIES, GUARANTIES, CONDITIONS OR LIABILITIES, EXPRESS OR IMPLIED ARISING BY LAW OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY OBLIGATION OF THE SELLER WITH RESPECT TO CONSEQUENTIAL DAMAGES) AND WHETHER OR NOT OCCASIONED BY THE SELLER'S NEGLIGENCE AND SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY THE SELLER AND THE BUYER: PROVIDED, THAT IN THE EVENT THE PROVISION RELIEVING THE SELLER FROM LIABILITY FOR ITS NEGLIGENCE SHOULD FOR ANY REASON BE HELD INEFFECTIVE THE REMAINDER OF THIS PARAGRAPH E SHALL REMAIN IN FULL FORCE AND EFFECT

### 10. Force Majeure

The Seller shall not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by accidental damage to its equipment or machinery; Act of God or public enemy; blockade; bomb or explosion; delay by any carrier; earthquake or other natural disaster; illness or epidemic; fire or flood; war, strike, embargo, government requirement riot or other civil unrest or violence; weather conditions; inability to act due to government action or inaction; disruption in obtaining supply of goods; or labour strike or lockout act or omission of carriers or other similar causes beyond its control.

If any such condition occurs, and the Seller is delayed or unable to perform it shall give immediate notice to the Buyer, and shall be excused from performance under this Agreement for the duration of such condition.

Should the duration of such condition exceed thirty days the Seller shall have the right to terminate the Agreement without having to pay any indemnity thereof to the Buyer by giving only a prior written notice of such event.

### 11. Termination

(a) The Seller shall have the right to terminate this Agreement upon the occurrence of any of the following:

- if the Buyer fails to make any payment required by this or any other Agreement between the Seller and the Buyer, including interest or other sums due on account of Material shipped to the Seller, on the due date,

- if the Buyer fails to give shipping instructions and/or to accept any delivery of the Material hereunder

- if the Buyer becomes insolvent or is adjudged a bankrupt

- if the Buyer fails to comply with any of its obligations under the Agreement

(b) In the event of termination by reason of default by the Buyer under the terms of this Agreement, the Seller may at its option declare the entire sum remaining unpaid under this Agreement to immediately become due and payable, and in that event may elect either to sue for the purchase price remaining unpaid, thereby vesting legal title in the Buyer, or may retake all or any part of the Material without complying with or being bound by any of the provisions of this Agreement and for that purpose may enter into or upon the premises where all or any part of the Material may be and retake the same and may thereafter pursue such remedies as are permitted by the applicable law.

The Seller in addition to all other remedies afforded by law may sell all or any part of the undelivered Material without notice at public or private sale holding the Buyer responsible for any deficiency.

(c) If the Buyer cancels its order after the offer is accepted, the Buyer shall be bound to pay an amount of 20 % of the price of the total order to cover the expenses incurred by the Seller as a consequence of cancellation.

### 12. Entire Agreement

This Agreement shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be modified or rescinded, except in writing signed by the Seller. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement

### 13. Arbitration

All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris by one or more Arbitrators appointed in accordance with the said Rules. The language of the proceedings shall be English.

### 14. Governing Law

This Agreement shall be governed and construed in accordance with the substantive law of France without giving effect to the principles of conflicts of law thereof.

The Parties expressly agree the exclusion of the application of any provision of the United Nations Convention for the International Sale of Goods.

### 15. Language

Transactions under this Agreement, notices and other communications required or appropriate hereunder, may be given in either English or French.