

## **General Terms and Conditions of Sale**

### **1) Scope of Application**

1.1 These General Terms and Conditions of Sale (“General Conditions”) shall apply to any and all supply of our products (“Products”) that will be executed to any client (“CLIENT”) from our Company (“SELLER”), even if these General Conditions are not expressly referred to, mentioned or expressly accepted by the CLIENT from time to time.

1.2 No provisions deviating from these General Conditions shall be binding on SELLER unless (i) included in the “Sale Contract”, as defined under paragraph 3.2 below, (ii) included in documents following the Sale Contract and the content of the same has been accepted in writing by SELLER. In any case, even if deviating provisions are agreed upon, these General Conditions shall apply for the parts not expressly disregarded.

1.3 In no case shall any general conditions of contract of CLIENT be binding on SELLER, even if mentioned or included in orders or in any other documents transmitted by CLIENT to SELLER. No conduct of SELLER shall be interpreted or used in order to express tacit acceptance of SELLER to the general conditions of contract of CLIENT.

1.4 In no case SELLER shall be bound by acts and/or conducts of its agents, being the latter in lack of any power to bind SELLER.

1.5 In case CLIENT is a consumer, the provisions of these General Conditions shall not prejudice the rights of CLIENT provided for by the law applicable to sales executed toward consumers.

### **2) Products – Modifications**

2.1 Any representation and/or image relating to the Products included in websites, brochures, catalogues, price lists or other similar documents of SELLER is approximate and purely illustrative. As a consequence, such representations and/or images do not represent the final aesthetic result of the Products. Technical and physical characteristics of the Products as well as qualities of the same are described in the technical manuals of SELLER only. Any other document including technical and physical characteristics and qualities of the Products are purely indicative and shall not bind SELLER.

2.2 SELLER declares that the Products are compliant with the applicable Italian and European industry standards. Any Products shall be used and applied in accordance with the instructions of use of SELLER included in catalogues and/or technical manuals of SELLER with reference to the Products in question or with the instructions in other way communicated and/or made available by SELLER to CLIENT and, in any case, in accordance with the diligence required by the nature of the Products. Failing to do so, CLIENT will result in the lapse of the warranty and in the in unenforceability of the warranty rights under article 7 below or of any other legal or agreed warranty.

2.3 It is the responsibility of CLIENT, before executing of the Sale Contract, to make sure that the Products are suitable for their specific purpose and/or intended use and, in addition, that they also comply with the laws and regulations applicable in the place where CLIENT will import, distribute, sell or use them in any way.

2.4 SELLER may make any changes to the Products which, without altering their essential features, it deems necessary or convenient, even after execution of the Sale Contract. In case SELLER executes substantial modification to Products (e.g. modifications that will alter: the way of installation, characteristic of interchangeability of the Products, etc.) which are the object of an executed Sale Contract (as defined in paragraph 3.2 below), SELLER shall communicate in writing such modification to CLIENT.

2.5 CLIENT shall inform the purchasers of the Products and third parties of the characteristics of the Products and of the instructions of use and of application of the same in accordance with the indication provided by SELLER. Without prejudice to the above, CLIENT shall be the sole responsible and liable for the declarations it will make toward third parties with reference to the Products, their characteristics and their use or application and shall indemnify and hold SELLER harmless and from any damage possibly suffered by SELLER with reference to or in connection to such declarations of CLIENT, in case they result false, incomplete or inaccurate.

### **3) Quotations – Execution of Sale Contract – Tolerances**

3.1 The sale contract (“Sale Contract”) is executed as follows:

- a) an offer is sent by SELLER to CLIENT and CLIENT then sends its written acceptance of such offer to SELLER, without any modification to the offer itself; or
- b) a purchase order is sent by CLIENT and SELLER then sends its written acceptance of such order to CLIENT.

3.2 For the purposes of paragraph 3.1 letter a) above, the following facts or actions shall constitute the written acceptance of an offer of SELLER by CLIENT:

- a) the receipt by SELLER of all or part of the relevant purchase price;
- b) the receipt by SELLER of a purchase order of CLIENT. Should this be the case, any order of CLIENT that differs from the provisions of the offer of SELLER shall be binding on SELLER only if and to the extent that SELLER had expressly accepted it in writing.

3.3 In addition, for the purposes of paragraph 3.1 letter b) above, in case the acceptance of SELLER includes terms and condition different from those of the order of CLIENT, the Sale Contract shall be deemed to be concluded at the conditions included in the acceptance of SELLER, unless CLIENT notifies SELLER, in writing, not to accept the terms and conditions of the acceptance of SELLER within 1 (one) working day from the receipt of such acceptance.

3.4 All supplies of Products will only include what is expressly indicated in Sale Contract.

3.5 CLIENT recognizes to SELLER quantity and quality tolerances as resulting from the Sale Contract or from the usage and practices of the sector of the Products.

#### **4) Packing – Delivery term – Delivery time**

4.1 The Products will be packaged and readied to ship in compliance with the standard protection methods generally adopted by SELLER for the Products in question, in consideration of the agreed mode of transport.

CLIENT shall expressly request to SELLER any special packaging or supplementary protection it deems necessary, and in such event CLIENT will bear all related costs thereof.

4.2 Unless otherwise provided for in the Sale Contract, the Products shall be delivered to CLIENT in accordance with the Incoterms® ICC rule, latest version, Ex-Works (EXW) or FCA – premises of SELLER indicated in the Sale Contract.

CLIENT authorizes SELLER to undersign, in the name and on behalf of CLIENT, any and all transport documents which shall be signed at the time of collection of the Products at the premises of SELLER, such as the CMR.

In the event that the ICC Incoterms® rule agreed between the parties provides that CLIENT shall take care of the transportation of the Products outside the territory of Italy:

a) in case of an Intra-EU supply, within 45 (forty-five) days from the receipt of the Products at its premises, CLIENT shall send SELLER an original or a copy of the international transportation document CMR or of another transportation document, undersigned at destination by CLIENT or, in the absence of the international transportation document CMR, a declaration of receipt of the Products issued on the basis of the form as Annex -1- available for download at [www.sirresistors.it](http://www.sirresistors.it);

b) in case of an Extra-EU supply, CLIENT shall:

i) submit the custom export declaration (SAD-EX + EAD) and execute the validation of the MRN (Movement Reference Number) at the customs of the UE territory of exit of the Products, within 90 (ninety) days from the date of delivery of the same in Italy;

ii) send SELLER, within 90 (ninety) days from the date of delivery, documents proving the exportation of the Products (custom export declaration SAD-EX + EAD + certification of exit);

iii) notify SELLER, in writing, as soon as such submission is accomplished and provide SELLER with any other document proving the execution of such formalities as well as the exit of the Products from the UE Territory.

In case CLIENT is in breach of its obligations under this paragraph 4.2, SELLER shall be entitled to immediately charge CLIENT the amount of the Value Added Tax applicable to the supply and connected to the lack of proof of the transportation of the Products in another Member State of the EU or to the lack of execution of custom clearance formalities. In any case, CLIENT shall indemnify and hold SELLER harmless with reference to any payment due to tax offices for fines, interests or on any other basis, in connection with the supply and with the lack of the proof of the transportation of the Products in a another Member State of the EU or with the lack of execution of custom clearance formalities.

In this respect, SELLER shall be entitled to: (i) offset any amount due by CLIENT on the basis of this paragraph 4.2 against any amount due, for whatever reason, from SELLER to CLIENT; or (ii) definitively withhold any amount received in regard to Sale Contracts, offsetting the CLIENT's debt under this paragraph 4.2 against any and all sums already paid by CLIENT.

4.3 SELLER shall deliver the Products within the delivery date provided for in the Sale Contract, in a single delivery or in partial deliveries. The delivery date shall always be considered neither of the essence nor peremptory.

Except in case of wilful wrongdoing or gross negligence, SELLER will not reimburse possible damages, either direct or indirect, suffered by CLIENT as a result of delay in the delivery of the Products.

In no case of delay in the delivery of the Products shall CLIENT be entitled to terminate the Sale Contract.

4.4 Upon receipt of the Products, CLIENT must report possible damages occurred to the packaging and/or shortages or anomalies of the Products occurred during the transport, by notifying details of such events on the transportation document, and must also:

a) have such notification countersigned by the carrier; and

b) immediately inform SELLER thereof, in writing, and send SELLER a copy of the countersigned document by and no later than 8 (eight) day(s) from the date of receipt of the Products.

Should this not be the case, SELLER shall not be responsible for possible damages losses or theft of the Products occurred during the transport, even if transport risks were, in whole or in part, upon SELLER.

#### **5) Prices – Payment – Late Payment**

5.1 The Products shall be supplied at the prices agreed between the parties in the Sale Contract or, should no prices be mentioned in the Sale Contract, at the prices resulting from the price list of SELLER in force when the Sale Contract has been executed. Unless otherwise stated in writing, the prices of the Products included in SELLER's price lists, quotations and/or offers are in Euro, net of VAT and for delivery according to the Incoterms® ICC rule, latest version, Ex-Works (EXW) or FCA – premises of SELLER indicated in the Sale Contract. Therefore, should a different Incoterms® rule be agreed upon between the parties for the delivery of the Products, the invoiced amount shall be modified accordingly, including in the sale invoice transportation expenses and any other costs connected with the Incoterms® rule agreed between for delivery.

5.2 CLIENT shall pay for the Products in accordance with the payments methods and terms provided for in the Sale Contract or otherwise agreed upon in writing between the parties. No payment shall be considered as being made by CLIENT until the relative amount has been credited to the bank account of SELLER.

Payment shall be executed by CLIENT in Euro or in the currency indicated by SELLER in the related sale invoice.

5.3 If CLIENT is delinquent in its payment obligation, SELLER may:

a) obtain payment of late payment interest in accordance with the applicable law; and

b) withhold ongoing and future deliveries, upon written notice to CLIENT, until all delinquent amounts and late payment interest are fully paid.

5.4 If delinquent amounts and late payment interest remain unpaid 30 (thirty) days after the agreed deadline for payment, then SELLER may also, at its option, alternatively or cumulatively, and in addition to any other right or remedy available at law or pursuant to these General Conditions:

- a) request accelerated payment of any and all remaining payments and declare due the total outstanding balance, even if payment by instalment or deferred payment has been agreed upon and/or bills of exchange, promissory notes, cheques or other payment documents have been issued and are falling due;
- b) terminate the Sale Contract in question and definitively withhold any amount received in regard to such Sale Contract or to other Sale Contracts, offsetting the CLIENT's outstanding debt against any and all sums already paid by CLIENT;
- c) carry out future deliveries of Products on a pre-payment basis only, also with reference to supplies still to be executed;
- d) cancel discounts and bonuses that may have been agreed between the parties also with reference to Sale Contracts already regularly executed.

5.5 SELLER shall be entitled to exercise the rights mentioned in paragraphs 5.3 and 5.4 above also in case:

- a) CLIENT is undergoing winding-up, bankruptcy, debt restructuring or enforcement proceedings;
- b) CLIENT is undergoing financial difficulties able to hinder the regular execution of its payment obligations resulting from, by way of example only, missed payment of bills of exchange, promissory notes, cheques or other payment documents, reduction of granted guarantees and/or missed granting of promised guarantees, as well as from any amount resulting unpaid, even though such circumstances have occurred with other suppliers of CLIENT.

5.6 CLIENT cannot claim any breach of contract by SELLER, nor can CLIENT start any lawsuit or action against SELLER, until any amount resulting due to SELLER under paragraphs 5.3 and 5.4 above has been paid in full by CLIENT.

- c) CLIENT is undergoing financial difficulties able to hinder the regular execution of its payment obligations resulting from, by way of example only, missed payment of bills of exchange, promissory notes, cheques or other payment documents, reduction of granted guarantees and/or missed granting of promised guarantees, as well as from any amount resulting unpaid, even though such circumstances have occurred with other suppliers of CLIENT. 5.6 CLIENT cannot claim any breach of contract by SELLER, nor can CLIENT start any lawsuit or action against SELLER, until any amount resulting due to SELLER under paragraphs 5.3 and 5.4 above has been paid in full by CLIENT.

## **6) Retention of Title**

6.1 SELLER will maintain exclusive ownership over the Products sold until their price has been entirely paid by CLIENT. Without prejudice to the above the risks of loss of the Products shall be regulated by the Incoterms® rule agreed between the parties for the delivery of the Products.

6.2 In case of non-fulfilment or late fulfilment of the obligation to pay the price of the Products, without prejudice to the rights under paragraphs 5.4, 5.5 and 5.6, SELLER shall be entitled to enter the premises where the Products are held, repossess the Products and withhold, as liquidated damages, any amount already paid by CLIENT with reference to such Products.

## **7) Warranty**

7.1 Without prejudice to the provisions of paragraphs 2.1, 2.2, 2.4 and 3.6 with reference to the modifications to the Products and tolerances, SELLER warrants that the Products will conform to the Sale Contract, to the classification indicated in the technical manuals, catalogues and/or price lists of SELLER and that they will be free from manufacturing defects.

The warranty period is 12 (twelve) months from the date of collection of the Products from the premises of SELLER, regardless of the agreed Incoterms® rule for delivery.

7.2 The following are expressly excluded from warranty:

- a) chromatic alterations and tone differences of the Products;
- b) the Products applied and/or set up not in compliance with the industry standards applicable to the same;
- d) the Products used or installed in environments different from those indicated by SELLER;
- e) the Products used not in compliance to the standard diligence and/or to the technics required by the nature of the Products;

7.3 Without prejudice to the provisions of paragraph 4.4 above, CLIENT shall inspect the Products as soon as possible and shall notify SELLER in writing of possible non-conformities or defects, by fax or email, within and no later than the following terms; failing to do so will result in the lapse of the warranty and the unenforceability of the warranty rights:

- a) differences in type or quantity with respect to type or quantity agreed as well as other patent non-conformities or defects of the Products: 8 (eight) days from the delivery of the Products at the premises of CLIENT and, in any case, before application of the Products;
- b) hidden non-conformities or defects of the Products: 8 (eight) days from the discovery of the same and, for avoidance of doubt, within the warranty period.

7.4 SELLER will have the right to examine the Products, or samples of the Products, which CLIENT claims to be non-conforming or defective, in order to verify the instructions relating to the set up and/or application of the Products and/or the use of the Products in accordance with the provisions of these General Conditions. In this respect, CLIENT shall be

entitled to return to SELLER the Products that CLIENT considers to be non-conforming or defective only upon SELLER's written authorization and only on the condition that CLIENT bears all costs and risks for the shipment of the Products. The authorization to return the Products or samples of the purportedly non-conforming or defective Products shall never be interpreted as an acknowledgment of the claimed non-conformities or defects on the part of SELLER.

7.5 In case the Products are ascertained by SELLER as actually non-conforming or defective, CLIENT will be entitled only to obtain, at the SELLER's option:

- a) replacement of the non-conforming or defective Products; or
- b) partial or full exemption from payment of their price, depending on the seriousness of the non-conformities or of the defects.

7.6 For the purpose of paragraph 7.5 letter (a), the Products to be delivered in replacement of non-conforming or defective Products shall be delivered to CLIENT in accordance with the Incoterms® 2010 ICC rule DAP— premises of CLIENT. The Products that have been replaced shall be, at SELLER's discretion, destroyed or disposed of by CLIENT, at its own costs, or returned to SELLER, at costs of SELLER. In case the Products are to be destroyed or disposed of by CLIENT, CLIENT undertakes to send to SELLER the proof of destruction or of disposal of the Products, along with the documents proving the costs borne by CLIENT for the destruction or the disposal of the same.

7.7 The rights and remedies described in paragraphs 7.5 and 7.6 above are the sole warranty rights and remedies granted to CLIENT. To the maximum extent permitted by the applicable law, any other liability and obligation of SELLER, which may in any way arise from or in relation to the supply of non-conforming or defective Products – including, but not limited to, compensation for direct or indirect or consequential damages, loss of profits, etc. connected to such liability – is expressly excluded.

7.8 The present warranty is in substitution for, and excludes, any other warranty, express or implied, set forth by the law or otherwise.

## **8) Force Majeure**

8.1 SELLER shall not be liable or responsible for failure or delay in performing or fulfilling any obligations undertaken in reference to the supply of Products when such failure or delay is due to the occurrence of an event of force majeure such as wars, fires, earthquakes, floods, tsunamis, strikes, labor or employment difficulties, shortage or procurement difficulties of raw materials, restriction on the use of power, suspension or difficulties in the transports, breakdown of the plants, acts of public authorities or any other event or cause whatsoever, similar or dissimilar, which cannot reasonably be forecast or provided against and which cannot be overcome by SELLER with reasonable diligence.

8.2 In such event, the time for fulfilment of the obligation shall be extended for the period of continuance of such force majeure event.

In the event any of such force majeure event continue for a period longer than 6 (six) months, CLIENT shall have the right to terminate the underlying Sale Contract, by giving written notice to SELLER by registered letter with return receipt or courier, and SELLER shall not incur any responsibility or liability whatsoever.

## **9) Severability**

The invalidity or unenforceability of any provision, or portion thereof, of this General Conditions shall not affect the validity or enforceability of any other provision.

## **10) Confidentiality**

10.1 CLIENT undertakes: (i) to treat with the utmost confidentiality all the information/data/designs/know-how/documentation transmitted by SELLER or that it may come to know in connection with the execution of any Sale Contract, even if they is not marked or identified as secret or confidential ("Confidential Information"); (ii) not to, wholly or partially, disclose to or inform third parties of the Confidential Information, without the SELLER's prior written consent; (iii) to limit the use of the Confidential Information and the access to the same for purposes relating to the execution of the sale Contracts; (iv) to adopt any and all measures required in order for its employees and collaborators do not disclose the Confidential Information to third parties or use it in an inappropriate way.

The Confidential Information shall not be copied or reproduced in any way, unless with the prior written consent of SELLER, and all the copies of the Confidential Information shall be immediately returned to SELLER upon simple written request of the same.

10.2 The provisions above shall not apply to information which (i) are public or publicly available not due to a disclosure of CLIENT or of CLIENT's employees or collaborators; or (ii) were already available to CLIENT before it had received them by SELLER; or (iii) are disclosed from third parties that have no obligation of confidentiality or restrictions of use on the same; (iv) can be disclosed according to a written authorization of SELLER.

## **11) Applicable Law – Dispute Resolution**

11.1 These General Conditions and all the Sale Contracts that will occur on the basis on the same will be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980) and, with respect to matters not covered by such Convention, by Italian laws.

11.2 Any dispute arising out of or in connection with these General Conditions or in connection with a Sale Contract occurred on the basis on the same shall be shall be subjected to the jurisdiction of the Italian courts and shall be exclusively referred for its resolution to the Court of Milano (Italy).

**12) Language of these General Conditions**

12.1 The text of these General Conditions is executed in both in Italian and in English language. In case of any discrepancy, the text in Italian shall prevail over the text in English language.

Castellanza, 14.10.2019