

General Terms and Conditions of Sale and Delivery

1. General Provisions

- 1.1 These General Terms and Conditions of Sales and Delivery ("GTC") shall apply to all future sales and delivery transactions related to the products of **Saphirwerk Ltd.**, Erlenstrasse 36, 2555 Brügg bei Biel, Switzerland (the "Seller") which are purchased by the customer (the "Buyer"; Seller and Buyer hereinafter together referred to as the "Parties"). In cases where the Parties have entered into a Master Agreement on the Terms and Conditions of Sale and Delivery ("MA") the GTC valid at the time and the Swiss Code of Obligations, shall apply subsidiary. Buyer's terms of purchase shall not be binding. If Buyer fails to object to the GTC immediately upon receipt, the GTC shall be deemed accepted. At any rate, the GTC shall be deemed accepted no later than upon receiving of the Products.

2. Object of Sale

- 2.1 Seller sells to Buyer the object of sale to be described in an order confirmation of this GTC in each case (the "Product").

3. Order, Offer

- 3.1 An order or a change to an order of Buyer is only binding if it is confirmed by a written order confirmation from Seller (the "Order Confirmation") or by presentation of an invoice in the case of immediate delivery. For the purposes of this section 3.1, the term "written" also includes a statement sent via e-mail. In order to be valid, agreements made orally or by telephone must be confirmed in writing by Seller.
- 3.2 The price, quantity, time of delivery, and type of delivery indicated in Sellers' offers shall remain valid for one month from the date of issue.
- 3.3 Drawings and samples attached to offers are and shall remain the property of the Party that originally created them and shall not be made available to third parties without the consent of the other Party.

4. Price, Delivery, Terms of Payment

- 4.1 The purchase prices of the Products are specified in the respective Order Confirmation and stated in Swiss francs, unless otherwise agreed. Prices are ex works (EXW per Incoterms 2010), exclusive of packaging costs, taxes, customs duties, and fees. The return of packaging shall require a separate agreement. Prices stated in a currency other than Swiss francs are based on the official buying exchange rate prevailing in Zurich on the day on which the Order Confirmation is sent. Prices are based on the costs applicable on the day on which the Order Confirmation is sent. Should Seller's costs increase significantly between the date of the Order Confirmation and the date of fulfilment of these GTC, Seller reserves the right to adjust the price.
- 4.2 Buyer shall cover in full any costs accrued or incurred in case of cancellation of an order and any additional costs incurred in case of changes.
- 4.3 At the time of invoicing, Seller must indicate the order number stated on the Order. Breaches of this provision may result in delays in payment; Buyer shall not be held responsible for the consequences thereof.
- 4.4 Seller has the right to require a prepayment. Insofar as the purchase is made on account, all invoices are payable in full within the period specified on the invoice. If the payment period is exceeded, default interest may be charged at the legal rate. The place of payment is Seller's domicile.
- 4.5 Transfer charges, in particular for international transfers, shall be borne by Buyer.
- 4.6 If Buyer fails to comply with the stated payment terms or becomes insolvent, all claims against Buyer shall become due and payable immediately. In case of default in payment on the part of Buyer despite a reminder, Seller may discontinue any further delivery to Buyer, subject to other claims.
- 4.7 Partial deliveries are permitted unless otherwise mutually agreed in writing by the Parties.
- 4.8 Cheques and bills of exchange shall not be accepted.
- 4.9 Buyer is not entitled to withhold or offset payments, even on account of complaints.

5. Delivery, Transfer of the Risk, Delay in Delivery

- 5.1 Delivery shall be deemed to have been performed as soon as the Products have been handed over to the carrier or the forwarding agent, as the case may be (FCA per Incoterms 2010). All shipments are made at Buyer's expense and risk. The weights determined by Seller shall be controlling for purposes of calculating the shipping expenses.
- 5.2 The agreed delivery time periods shall not begin until the written Order Confirmation has been sent. The delivery time periods are controlling for purposes of determining the time of delivery ex works but are only approximate. Where the Parties agree on a sale for a specific time period but do not establish specific quantities, the right to require an agreement as to the quantity and delivery time for every call is reserved.
- 5.3 Insurance against transport risks shall be obtained only at the express request of Buyer and the cost thereof shall be billed to Buyer by Seller. Shipments that arrive in defective condition must be returned by Buyer prior to acceptance by the respective transport company for purposes of determining the loss.
- 5.4 In the event of late delivery, Buyer shall be entitled to the claims specified by law.
- 5.5 Seller shall indicate the correct order number and item number on all shipping documents and delivery notes. Any breach of this provision may result in delays in order processing; Seller shall be responsible for the consequences thereof.

6. Warranty, Contractual Liability, Product Liability

- 6.1 Buyer shall undertake to store, handle, or process the Products in accordance with the specified recommendations of Seller. Seller shall not assume any liability for the properties of the Product after its storage, treatment, and/or processing by Buyer or third parties, unless Seller expressly warranted these properties in writing.
- 6.2 If Seller has delivered non-conforming Products, Seller's liability is limited to replacing the objectionable and/or defective Products free of charge. Buyer shall have no other claims, such as claims for rescission, reduction of price, damages, lost profits, or direct or indirect damages or consequential damages. This limitation of liability does not apply to damages caused by wrongful intent or gross negligence, damages based on the absence of guaranteed characteristics, or personal injuries.
- 6.3 Buyer must inspect the delivery immediately upon takeover of the Products and notify Seller in writing of any objections to the same within seven (7) days of receipt of the delivery. If latent defects are not detected until later, Buyer must notify

Seller within the same period after detecting the same, but no later than prior to the expiry of Seller's statutory warranty obligation.

- 6.4 It is incumbent on Buyer to clarify whether a Product described and/or ordered by Buyer is likely to result in the infringement of patent, design, or other intellectual property rights either because of its properties or any particular processing or use. Buyer exclusively shall be liable in such cases; neither the offer nor the delivery of the Product shall create any liability on the part of Seller.
- 6.5 Buyer shall not infer from general information provided in brochures or other documents any assurances with respect to characteristics of the Products that go beyond the statutory warranty; nor shall Buyer assert any liability of Seller based on such information. This provision shall apply in like manner to general information provided by Seller's personnel unless a specific characteristic is expressly assured or warranted in writing for use in an individual case.
- 6.6 With respect to the Products delivered in accordance with these GTC, Buyer undertakes to refrain from providing any assurances to third parties that go beyond those made by Seller and shall restrict any assurances and liability vis-à-vis third parties at least to the same extent as Seller's assurances and liability are restricted in these GTC.
- 6.7 Unless expressly agreed in writing, Seller makes no warranty for the Products' fitness for any particular purpose. The same applies to Products or goods of Seller's subcontractors.
- 6.8 Insofar as a customer or other third party holds Buyer or Seller liable for any Product-related loss, the statutory provisions of the Product Liability Act (PLA) shall apply.
- 6.9 Seller undertakes to maintain suitable product liability insurance. The foregoing shall be without prejudice to any other claims for damages on the part of Buyer.
- 6.10 Buyer undertakes to maintain a suitable level of product liability insurance cover for the products manufactured by Buyer using Products supplied in whole or in part by Seller. The insurance cover must extend to the United States.

8. Force Majeure, Insolvency, Inability to Pay

- 8.1 Events of force majeure that cannot be averted, whether they occur at Seller's plant or in that of one of its subcontractors, release Seller from its duty to deliver the Products. In these cases, Buyer waives the right to assert any claims against Seller. Unforeseeable, extraordinary circumstances that cannot be avoided despite exercising due care also release Seller from its duty of delivery. Force majeure events include but are not limited to the following: war, sabotage, strikes, lockouts, revolution, official orders, floods, storms, fires, and other natural events, as well as all other unforeseeable interruptions in the operation of Seller's plant or that of its subcontractors.
- 8.2 If Buyer discontinues making payments or bankruptcy proceedings are initiated with respect to either of the Parties, then the other Party has the right to withdraw from the unperformed part of these GTC.

9. Proprietary Rights of Third Parties

- 9.1 Buyer is exclusively responsible for examining the status of proprietary rights in the destination country. In this respect, Buyer is liable not only to the claimant but also to Seller for any and all claims for damages. If the application of a safety mark (CE, etc.) is requested, Buyer warrants that Buyer has the right to use this mark. Seller accepts no liability with respect to the Products' freedom from third-party rights or claims that are based on industrial or other intellectual property.

10. Tools

- 10.1 Tools, models, and other equipment shall remain the property of Seller even if Buyer has paid the costs of the same, whether in whole or in part.
However, Seller shall refrain from using these tools, etc. for other customers without first obtaining the right-holder's consent. If tools are not used for more than five (5) years, Seller shall have the right to freely dispose of the same.

11. Applicable Law, Jurisdiction, Place of Performance

- 11.1 These GTC is subject to the laws of Switzerland, excluding conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 Any and all disputes arising and relating to these GTC or to orders resulting from the same shall be settled by the courts at Seller's domicile.
- 11.3 The place of performance for payments is the place of payment specified in 4.4.

12. Assignment, Partial Invalidity, Writing Requirement, Apportionment of Costs

- 12.1 The Buyer's contractual rights and duties shall not be assigned without prior consent of the Seller.
- 12.2 These GTC govern the entire contractual relationship between the Parties and supersedes all previous and present written or oral agreements between the Parties covering the same subject-matter as these GTC, except where a valid MA has been entered into which shall supersede the GTC in any way.
- 12.3 If any individual provision of these GTC is found to be invalid, this shall not affect the remaining provisions of the same.
- 12.4 Amendments, additions, and other collateral agreements to these GTC (including to this clause 13.4) must be made in writing.
- 12.5 In the event of an inconsistency between the provisions of these present GTC and the MA, the provisions of the present MA shall take precedence.
- 12.6 In case of discrepancies between a translated version of these GTC and the German text, the German version shall take precedence over the translated versions.