

## 1. General

1.1. These General Terms of Offer and Sale (hereinafter referred to as General Terms) are binding if they have been declared applicable in the offer (also called "quotation") or confirmation of order. Any other terms defined by the customer or in other documents are only valid if they have been expressly accepted by SET Corporation («SET») in writing or electronically.

**These general terms expressly limit acceptance to its terms and cancel and supersede any additional or different terms in customer's documents so as to preclude the inclusion of any different or additional terms in any resulting contract. If these general terms are construed as an acceptance or as a confirmation of an existing contract, such acceptance or confirmation is expressly conditioned on customer's assent to any additional or different terms contained herein.**

1.2. All quotations are valid for 30 days from date of quote, unless «SET» states otherwise in writing.

1.3. Only the written or electronic confirmation of order is binding. If «SET» does not give a confirmation of order the invoice shall serve as the confirmation of order.

1.4. If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

## 2. Placing of order

2.1. To be effective orders must be made in writing or electronically.

2.2. The order must contain all information relevant to «SET» such as number and date of «SET» offer, sales person etc.

**3. Scope of supply and services:** «SET» scope of supply and services referred to in the order confirmation shall form part of the contract.

Further goods and services not specified therein shall be charged extra.

## 4. Technical documentation

4.1. Sales brochures and catalogues are for general information purposes and are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed in writing.

4.2. «SET» reserves all rights to any technical documentation supplied to the customer. Without prior written consent of «SET», such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

**5. Confidentiality:** Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party to the contract and shall neither directly nor indirectly disclose the same to any third party whomsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction or replication of machines, systems, components and parts thereof.

## 6. Norms and standards in force in the country of destination

6.1 The goods are constructed in accordance with the European norms and standards (EC marking) unless otherwise provided for in writing.

6.2. At the latest when placing the order, customer shall advise «SET» in writing of all other safety and operation standards in force in the country of destination. Customer shall solely bear the cost of any alteration or addition to the goods required to comply with standards or regulations, which have not been advised and agreed to by «SET».

6.3. In case transfer of goods the customer is obliged to take precautions that the goods meet the requirements, standards and regulations to be observed at the new

location and that all manuals and product related specific documents are updated accordingly for the operation of the then current product version.

## 7. Prices

7.1. Prices are net, FCA Saint-Jeoire, France, according to INCOTERMS 2010, and exclusive of value added tax, sales tax and packing, unless expressly otherwise provided for in «SET» offer.

7.2. Payment shall be made in freely available Euros without any deductions whatsoever.

7.3. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to «SET» against adequate evidence in the event that it is proved that «SET» is eventually solely liable for them.

7.4. The prices will be adjusted appropriately if:

- The term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
- The nature or the scope of the agreed supplies or services has changed, or
- The material or the execution has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete.

## 8. Terms of payment

8.1. Payments have to be effected in accordance with the confirmation of order or invoice as the case may be. Payment will be deemed to be made when the total price agreed on has been paid to «SET» in Euros.

8.2. No interest will be reimbursed for advance payments.

8.3. Any dates agreed for payment shall remain in full effect even where through no fault of «SET» delays arise in the performance of the contract. The late delivery of minor components, the absence of which



does not restrict the use of the goods or any further work within the scope of «SET» warranty obligations do not affect the time fixed for payment.

8.4. If the term of delivery has been subsequently extended through no fault of «SET» the customer will make the scheduled delivery payment within no more than sixty (60) days from the originally scheduled delivery date.

8.5. If acceptance is delayed for any reason, the customer will make the full final payment within no more than sixty (60) days from date of delivery.

8.6. If «SET» does not receive payment by the date stipulated interest shall thereafter automatically accrue on the sum due and owing and shall be charged immediately to the customer at a rate equal to three times the French Legal interest.

8.7. Payment of allowance for collection charges, according to articles L441-6 and D441-5 of the Commercial Law.

8.8. The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by «SET» is inadmissible. The customer may only set off possible counterclaims against payments due under this contract where «SET» has expressly agreed to the same in writing.

## 9. Reservation of title

9.1. «SET» shall remain the owner of all goods until having received the full payments (including but not limited to interest for late payment) in accordance with the contract.

9.2. The customer shall cooperate in any measures necessary for the protection of «SET» title. In particular upon entering into the contract it authorizes «SET» to enter or notify the reservation of title in the required form all in accordance with relevant national laws, and to fulfil all corresponding formalities, at the customer's cost.

9.3. During the period of the reservation of title, the customer shall, at its own cost, maintain the goods and insure them for the benefit of «SET» against theft, breakdown, fire, water and other risks. It shall further take all

measures to ensure that «SET» title is in no way prejudiced.

## 10. Delivery time

10.1. The time for delivery shall start as soon as the contract is entered into, the scope of supply and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time «SET» has sent a notice to the customer informing that the goods are ready for dispatch.

10.2. «SET» compliance with the time for delivery is conditional upon customer's fulfilling all of its contractual obligations.

10.3. The time for delivery will be extended correspondingly in case of, and «SET» is not responsible for claims or damages resulting from, contingencies beyond the reasonable control of «SET». As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

10.4. Unless otherwise explicitly provided for in writing, agreed delivery dates are not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request «SET» in writing to make delivery within a reasonable period.

10.5. Blanket orders may be scheduled over a 12 months or greater period. Unless otherwise stated delivery of all goods must be taken within 12 months of order placement. An initial schedule release of 120 days is required, with a rolling 120 day firmly booked shipping schedule to follow by the first day of each calendar month. Delivery delays of more than 60 days require customer to notify «SET» in writing of reason for the delay. «SET» may bill back the difference between the unit price billed during the last 12-month period and the quoted unit price of actual quantity delivered.

**11. Termination:** «SET» reserves the absolute right to refuse cancellation of purchase orders by the customer. In the event that «SET» accepts customer's request to cancel a purchase order, «SET» is entitled to liquidated damages as follows:

- cancellation before 25% of the agreed upon lead time has elapsed: 15% of the total purchase order price plus the costs of customer specific parts
- cancellation after 25% of the agreed upon lead time has elapsed but up to 50% of such period has elapsed: 35% of the total purchase order price plus the costs of customer specific parts
- cancellation after 50% of the agreed upon lead time has elapsed but up to 75% of such period has elapsed: 60% of the total purchase order price plus the costs of customer specific parts
- cancellation after 75% of the agreed upon lead time has elapsed until the date of delivery: 80% of the total purchase order price plus the costs of customer specific parts

**12. Packing:** Packing shall be charged for separately by «SET» and shall not be returnable. However, if it is declared as «SET» property, it shall be returned by the customer, carriage paid to the place of dispatch.

## 13. Passing of benefit and risk

13.1. Benefit and risk of the goods shall pass to the customer by the date of shipment FCA Saint- Jeoire, France, according to INCOTERMS 2010 at the latest.

13.2. If delivery is delayed at the request of the customer or otherwise due to no fault of «SET», the risk shall pass to the customer at the date originally agreed for delivery FCA. From this date onwards the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

## 14. Shipping, transport and insurance

14.1. All goods will be shipped in export packing via lorries, or airfreight. «SET» must be notified for special requests in relation to forwarding, transport and insurance.

14.2. Transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the goods or of the shipping documents be immediately submitted in writing by the customer to the last carrier.

14.3. The customer shall be responsible for taking an insurance against risks of any kind.

14.4. Customer shall comply with all applicable domestic, foreign, import, export, security and controller access laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities, governmental approvals and licenses in connection with the purchase of goods.

#### 15. Inspection and acceptance of goods and services

15.1. «SET» shall check the goods before despatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.

15.2. The customer shall inspect the goods and services within a reasonable period and shall notify «SET» immediately of any defects in writing. If the customer fails to do so, the goods and services shall be deemed to have been accepted.

15.3. «SET» shall rectify the defects notified in accordance with clause 15.2. as soon as possible and the customer shall give «SET» the possibility of doing so. After rectification of such defects, a Final Acceptance Test shall be carried out at the request of «SET» or the customer, in accordance with clause 15.4.

15.4. Subject to clause 15.3., a Final Acceptance Test shall be performed by «SET» in the presence of the customer in accordance with terms to be mutually agreed upon separately. In the absence of such agreement the following shall apply:

- «SET» shall advise the customer in time of the execution of the Final Acceptance Test as to enable the customer or its representative to take part therein.
- Upon completion of Final Acceptance a Final Acceptance Certificate shall be signed by the customer and «SET». Such report shall either state that the goods have been accepted or accepted with documented reservation or two cases, the defects shall be listed individually in a separate report that shall be signed by both parties. Any defect listed in such a report shall not give rise to a right on the part of the customer to reject the goods and/or the services.
- In the case of non significant defects, in particular those which do not substantially hinder the efficient

functioning of the goods or services, the customer shall not be entitled to refuse the acceptance of the goods or services and the signature of the acceptance report. «SET» shall diligently rectify such defects.

- In case of important deviations from the contract or of serious defects the customer shall give «SET» the possibility to make such amendments or adjustments as it considers appropriate to rectify these defects. Thereafter, the acceptance test procedure outlined above shall be repeated on a second and, if necessary, a third date (such dates to be agreed between «SET» and the customer). If during the third test important deviations from the contract or serious defects appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensations from «SET», provided this has been agreed upon beforehand.

15.5. The Final Acceptance Test shall be deemed completed:

- If the Final Acceptance Test is delayed for one month from the date on which «SET» notifies the customer it is ready to conduct the Final Acceptance Test, due to reasons beyond «SET» control;
- If the customer refuses «SET» to get unlimited access to the goods as to perform all works necessary and/or appropriate until completion of Final Acceptance;
- If the customer declines to accept the goods and/or services without sufficiently documented grounds for doing so; or
- Immediately if the customer uses the goods for production purposes, including but not limited to so called trial or qualification runs if and to the extent that products produced during such production activities should be offered for sale by the customer.

15.6. In case of delay in installation or performance of the Final Acceptance Test due to customer's fault or action, customer shall be obliged to reimburse to «SET» all idle cost such as additional accommodation and travelling cost as well as a flat fee in the amount of Euro 1'500.--plus taxes per man/waiting day.

15.7. The customer has no other rights and claims in respect of any defects whatsoever in relation to goods or services than those expressly named in clause 15 and clause 16 (Warranty).

#### 16. Warranty

16.1. **Warranty period:** The period of warranty is 12 months and shall commence upon dispatch of the goods FCA or, where any acceptance test has been provided for, with acceptance of the goods and services. If dispatch or acceptance is delayed for reasons beyond «SET» control, the warranty period shall terminate not later than 18 months after «SET» has notified the customer that the goods are ready for dispatch.

For replaced or repaired parts, the warranty period shall run for another period of 6 months after replacement or completion of the repair or acceptance but not longer than a period being twice the warranty period pursuant to the preceding clause.

The warranty under this contract expires prematurely with immediate effect if the customer or third parties make inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give «SET» the possibility to make good such defect or if the goods are not used properly and/or are used for other purposes than those stated in SET technical documentation.

16.2. **Liability for express warranty and defects in material, and workmanship:** «SET» warrants the technical specifications expressly specified in the confirmation of order or the specific technical specification mutually agreed upon in writing only as well as the material and workmanship of the delivered goods and undertakes to repair or replace at free of charge to the customer any defective parts during the warranty period at its earliest convenience, subject to the provisions of clause 15 which shall be applicable mutatis mutandis. Any parts replaced shall become property of «SET».

16.3. **Exclusions from the liability:** Expressly excluded from «SET» warranties and liability for defects are damages caused by normal wear, defective maintenance and handling by the customer, failure to observe the operating instructions, electrostatic effects, excessive voltage or current, chemical or electrolytic influences, contamination or corrosion of cooling water systems of any kind, as well as any damages caused by arcing, electron beams, crucible breakage, etc., application of material, equipment and



spare parts not recommended by «SET», defective repairs which have not been carried out by «SET» or its agents, or resulting from other reasons beyond «SET» control as well as in case of modifications made by the customer or improper system integration, construction, assembly and installation work not undertaken by «SET», provided that the respective burden of proof is with the customer if a dispute regarding exclusion of warranty may arise.

**16.4. Supplies and services of subcontractors:** «SET» warrants for goods and services of subcontractors requested or provided by the customer to the extent of such subcontractor's warranty and liability obligations only.

**16.5. Exclusivity of warranty claims:** The customer shall not be entitled to any warranty, express or implied, except those specifically set forth in clause 16.1 to 16.4 and «SET» shall have no liabilities for any other claims, including but not limited to, claims arising out of injury to or interference with customer's production or any other consequential or indirect damages.

**17. Termination of the contract by «SET»**

17.1. The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the goods or services or considerably affect the activities of «SET», or if performance subsequently becomes impossible. In so far as such adaptation is not economically feasible «SET» shall be entitled to terminate the contract or the parts affected thereby.

17.2. If «SET» wishes to terminate the contract it shall - after having recognized the consequences of the event - immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract «SET» shall be entitled to the payment of those parts of the goods and services, which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

**18. Exclusion of further liability**

18.1. «SET» makes no representation or warranty of any character with respect to infringement or to the exemption of

the goods and services from third parties' protective rights.

18.2. «SET» ASSUMES NO RESPONSIBILITY FOR ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS.

18.3 Without limiting the generality of the foregoing, this exclusion from liability but is not limited to, claims, arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental, indirect or consequential loss.

**19. No liability for additional obligations:** «SET» is not liable for claims of the customer arising out of insufficient information or faulty advice and the like or out of breach of any additional obligations whatsoever except where caused by «SET» gross negligence or wilful misconduct.

**20. Assembly and installations:** If «SET» also undertakes the assembly and installation or the supervision of the installation the "General Terms for Assembly and Installation" of «SET» are applicable thereto.

**21. Applicable law and Place of Jurisdiction**

21.1. These General Terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive law provisions of France. The uniform UN law of sales (CISG) shall not be applicable.

21.2. Any dispute arising in connection with these General Terms or any related contract shall be submitted to the jurisdiction of Annecy (France) Commercial Court (Tribunal de Commerce).

21.3. In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

21.4. The parties acknowledge that the only official text of these General Terms and related documents is that written in English and that any translations into other languages, even if signed by both parties shall not be binding. In case of difference between the various texts, the English text shall prevail.