

**GENERAL CONDITIONS OF SALE (WELDING EQUIPMENT)**

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**1 – GENERAL PROVISIONS**

These general conditions organise the trade customary practices for the profession that are in force with regard to the sale of welding equipment. These general conditions apply to the contractual relations between the Supplier company and the client company, hereinafter referred to as the "Customer".

In accordance with Article L441-1 of the French Commercial Code, general conditions of sale form the sole basis for commercial negotiation. The Supplier cannot waive said conditions in advance. All derogations to the general conditions must be evidenced by the written acceptance of the parties. Unless there is an express agreement to the contrary, a derogation to the general conditions is only valid for the contract for which said derogation was requested and accepted. The Supplier reserves the right to amend the general conditions, provided that the Customer is notified one month prior to the effective application of the amended conditions. Within the meaning of these general conditions, "written" shall be understood to mean all documents drawn up on paper or electronic media or sent by facsimile transmission. The fact that the Supplier does not at a given time assert its rights under any one of the clauses whatsoever of the general conditions cannot be construed as a waiver by the Supplier of its entitlement to assert said rights at a later date. In the same way, the invalidity of any one of the clauses whatsoever of these conditions shall not affect the validity of the other clauses.

**2 – OFFERS**

Unless agreed otherwise, offers are valid for two months as from their date of issue. The prices and information contained in the catalogues, brochures and tariffs are only indicative and the Supplier reserves the right to make all changes to the layout, form, dimensions or substance of its apparatus, machines and machine parts for which the diagrams and descriptions are shown on its printed material for the purposes of advertising.

**3 – ORDERS**

The contract is formed by the express acceptance of the order by the Supplier. The Customer is also deemed to be validly bound by the actions of members of its personnel. A given supply includes precisely and solely the equipment specified in the order that was expressly accepted by the Supplier.

The order represents the acceptance of the offer by the Customer and, in accordance with the general rules of French law, acceptance is unfringeable. The Customer cannot withdraw or cancel its acceptance, regardless of the reason therefor, unless the Customer obtains the express agreement of the Supplier on the principle of the termination of the contract and on the amount resulting of the expenses incurred. All payments made when placing an order are deemed non-refundable down payments, the benefit of which shall definitively inure to the Supplier.

Order amendments and additions, in particular concerning delivery times, quantities or equipment, shall be subject to the express agreement of the Supplier, which shall inform the Customer of the attendant conditions and consequences for the commercial conditions.

The conditions for additional supplies cannot adversely affect the conditions for the main order under any circumstances.

**4 – STUDIES AND DRAFTS**

The drafts, studies and documents of all types, and in any form whatsoever, that are remitted or sent by the Supplier shall always remain the exclusive property of the Supplier and must be returned to the Supplier at its request. Said drafts, studies and documents shall be supplied free of charge if they are followed by the order for which they form the purpose; if such an order does not follow, the Supplier shall be owed reimbursement for its study and travelling expenses. The Supplier shall fully retain the intellectual property and the know-how that are included in said studies, drafts and documents and in the equipment sold. All transfers of intellectual property rights must be the subject of a separate contract between the Supplier and the Customer. In general, the Customer acknowledges that all said information, regardless of the nature thereof, that concerns the Supplier (studies, drafts and documents such as commercial offers, technical specifications etc.) is confidential in nature and is solely disclosed to the Customer within the scope of the agreement and for the sole purposes of enabling the Customer to make its decision. However, the confidentiality obligation does not extend to information that is within the public domain when the contract is concluded or that is already lawfully known to the Customer.

**5 – PRICE**

The price, which is in principle that shown in the Supplier's tariff or offer, shall be determined in light of the economic conditions, in particular the prices of materials, which exist when the offer or tariff is drawn up, and may therefore change in light of modifications that affect said economic conditions. Prices are stipulated exclusive of tax, exclusive of carriage costs and at the tariff in force on the date on which the order is placed or on the date of delivery, if delivery is requested for a date that is subsequent to the change in tariff. Changes to the tariff shall be notified to the Customer one month prior to the changes being implemented. Unless there is a prior agreement for a set price, all deliveries of catalogued equipment shall be invoiced at the price mentioned on the order receipt confirmation. A minimum invoice amount or the invoicing of a flat rate below a certain order threshold may be provided for in addition to this document.

**6 – DELIVERY****6.1 Delivery conditions**

Except as otherwise provided for, delivery shall be deemed to have been made as from the time the delivered items are made available in the Supplier's plants or stores, with all carriage, insurance, customs, handling and on-site delivery operations being under the responsibility and at the cost, risk and jeopardy of the Customer. Delivery shall take the form of direct remittance to the client or a mere notice of availability, or by transfer at the Supplier's plants or stores to a carrier or transporter designated by the Customer or, in the absence of such designation, chosen by the Supplier. The principle of delivery taking place in the Supplier's plants and stores cannot undergo derogation due to statements such as: remittance free at station, free alongside ship, free to domicile or total or partial reimbursement of carriage costs. If the dispatch is delayed for any reason whatsoever that is beyond the control of the Supplier, and if the Supplier so agrees, the equipment shall be stored and handled, where applicable, at the Customer's risks and jeopardy; the Supplier declines all resulting liability in this regard.

These provisions in no way modify the obligations to pay for the supplies and do not constitute any form of novation.

**6.2 Checks**

It is up to the Customer to check the dispatches upon arrival and, where applicable, to exercise its remedies against the carriers, even if the dispatch was free [of carriage costs]. In accordance with Article L133-3 of the French Commercial Code, it is up to the Customer to issue its reservations to the carrier within 3 days of receipt of the goods, by registered letter with return receipt.

In order to be accepted, claims concerning the composition and/or quantity of the equipment delivered, its non-compliance with the delivery note or the condition of the equipment, must be stated as reservations on the delivery note at the time of arrival of the goods, counter-signed by the driver and simultaneously notified to the Supplier, without prejudice to the provisions of Article L133-3 of the French Commercial Code. All Customers must imperatively inform their own clients of these provisions. The statement "sous réserve de déballage" ["subject to inspection of the contents"] has no value vis-à-vis the carrier and is not admissible as a reservation.

In the event that the Customer has arranged carriage and pays the cost thereof, the Customer shall pay for all the pecuniary consequences of direct action by the carrier against the Supplier.

All returns of equipment shall only be admissible if the Supplier's prior agreement has been obtained. Returns must be made within eight days of receipt, free of all duties; a decrease may be applied for the inspection, repackaging, storage and administration costs, etc.

**6.3 Delivery times**

The delivery times shall start to run as from the latest of the following dates: the date of the order confirmation receipt, the date on which the information, the down payment or the supplies that the Customer undertook to remit to the Supplier reach the Supplier.

As the delivery times are indicative, delays cannot justify the cancellation of an order under any circumstances.

The Supplier shall, by right, be released from all undertakings concerning the delivery times if the Customer does not comply with the payment conditions or in the presence of an instance of *force majeure* or events that are beyond the Supplier's control. The Supplier shall ensure that the Customer is apprised, as soon as possible, of instances or events of this type. In the event that equipment is made up of more than one unit, the Supplier is not obliged to deliver all the units at the same time.

**7 – RECEIPT**

The equipment may be the subject of a receipt procedure, if there is an express agreement on this point. If a single receipt is agreed on, such receipt shall be deemed definitive. In the event that it is agreed to conduct tests upon receipt, on the premises of the Supplier or of its sub-contractor, the Supplier shall inform the Customer of the date as from which the equipment is ready, and shall alone proceed with the tests in the event that within ten days, the Customer has not made known its intention to be present at such tests. Where it is agreed that the Supplier shall be responsible for assembly and/or starting-up on the Customer's premises, the Customer shall make available to the Supplier the requisite material resources: handling, fluid and energy connections, etc, and the requisite human resources. Said services shall be charged at a specific price and the related costs shall be reimbursed. Starting-up shall be deemed to have performed once operating under normal conditions is achieved, independently of any specific performance levels. If the conditions of a receipt procedure (provisional or definitive) are met, in particular in the event that the equipment is used, but the Customer has not taken the necessary steps to evidence such receipt, the Supplier shall alone draw up the formal record of receipt, which shall be deemed to have been completed.

**8 – PAYMENT CONDITIONS**

In accordance with Article L441-10 of the French Commercial Code, the payment date agreed between the parties to pay the outstanding amounts cannot exceed 60 days following the date of issue of the invoice. In the case of periodic invoicing within the meaning of Article 289 (1)(3) of the French General Tax Code, the payment date agreed between the parties cannot exceed 45 days following the date on which the invoice is issued.

Down payments are paid on the spot.

All late payments shall trigger the application of default interest that is equal to the European Central Bank's most recent refinancing rate, increased by 10 points. Any clause or request tending to set or obtain a payment term which exceeds this maximum period shall be considered as an infringement of the article L441-16 of the French Commercial Code and will be punishable by a civil fine of up to two million Euros.

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In accordance with Article L.441-9 of the French Commercial Code, payment is only made as from the time the funds have effectively been made available. Remittance of an instrument of payment does not constitute payment. It is agreed that all bills of exchange must arrive, having been accepted by the Customer, within seven days of their remittance for acceptance or, failing this, within eight days of invoicing. Any costs that are incurred by the refusal of a means of payment shall be deemed to be the responsibility of the Customer. Unless the parties agree otherwise in writing, the agreed payment dates may not be pushed back for any reason, even in case of dispute.

Any delayed payment makes automatically applicable, from the first day after the payment date mentioned on the invoice :1/ Late payment penalties. The late payment penalties shall be determined by application of the refinancing rate of the European Central Bank, increased by ten points.2/ A fixed compensation of 40 Euros for the recovery costs. This amount is determined by the Article D441-5 of the French Commercial Code. When the recovery costs incurred exceed this fixed compensation, the Supplier is also entitled to obtain a justified additional compensation. Unless there is an express agreement between the parties, the agreed payment dates cannot be postponed for any reason whatsoever, including in the event of a dispute.

## 9 – RETENTION OF TITLE

The Supplier shall retain title to the goods sold until the effective payment of the entirety of the price (principal and ancillary costs). Failure to pay any instalment whatsoever may lead to said goods being reclaimed.

The Customer shall nonetheless assume, as from the time of delivery, as defined by the Article 6.1 above, the risks pertaining to the loss or deterioration of said goods as well as the liability for the damage said goods may cause.

## 10 - Unforeseen circumstances and force majeure

### 10.1 – Unforeseen circumstances.

Should an event beyond the control of the parties take place that compromises the balance of the contract to the point of rendering the performance of its obligations prejudicial to one of the parties, the parties agree to negotiate in good faith the modification of the contract. In particular, the following events are concerned: changes in the price of raw materials, changes in customs duties, changes in the exchange rate, changes in legislation. If the parties fail to reach an agreement, they shall follow a conciliation procedure wherein the presiding judge of the competent commercial court shall act as arbitrator.

### 10.2 - Force majeure.

None of the parties to this contract can be held liable for its delay or failure to perform any of its obligations under the contract if such delay or failure is the direct or indirect effect of an event of force majeure such as:

- occurrence of a natural disaster,
- earthquake, storm, fire, flood, etc.
- armed conflict, war, attacks,
- labour dispute, total or partial strike at the Supplier or the Client,
- labour dispute, total or partial strike at the suppliers, service providers, carriers, posts, utilities, etc.,
- imperative injunction of the public authorities (import ban, embargo),
- operating accidents, machine breakdown, explosion,
- supplier deficiency.

Each party shall inform the other party, without delay, of the occurrence of an event of force majeure of which it becomes aware and that, in its opinion, is liable to affect the performance of the contract. If the duration of the impediment exceeds one month, the parties must get together as soon as possible to examine in good faith the future of the contract.

## 11 – WARRANTIES

### 11.1 – Types of defect that trigger warranty entitlement

The Supplier undertakes to rectify all operating defects that originate from a fault in the design, equipment or performance of its services (including assembly if this service is entrusted to it) within the limit of the following provisions. The warranty shall cease by right and the declaration of compliance shall lapse by right when the Customer uses non-OEM parts or carries out repair or modification work itself or via the intermediary of a third party, without the written approval of the Supplier. Unless there is an express agreement to the contrary, repair work shall not give rise to any warranty other than the proper performance of said work.

The warranty shall not apply:

- In the event of malfunctions that result from a lack of upkeep and surveillance and, in general, from all manoeuvres that do not comply with the Supplier's written instructions (for which the guidelines for normal use are provided in the instruction manual).
- For the defects that result wholly or partially from normal wear and tear on a part, deteriorations or accidents that are attributable to the Customer or a third party.
- In the event of a defect that originates from parts provided by the Customer and that were included as from the time of manufacture at its request.
- In the event of use by the Customer of non-OEM or counterfeit parts or equipment or parts or equipment that are not approved by the Supplier.
- In the event of force majeure.

### 11.2-Term and starting point for the warranty

This undertaking, except as specifically provided for, only applies to defects that manifest themselves during a period of one year (the "warranty period"). In all cases, if the equipment is used by several teams, said period shall obligatorily be reduced by half. The warranty period shall start to run from the date of the delivery, as defined by Article 6. In any event, the warranty shall end upon expiration of the first of the following two terms: a period of one year, or the number of hours of use.

### 11.3 Customer's obligations

In order to be able to benefit from these provisions, the Customer must inform the Supplier, without delay and in writing, of the defects it attributes to the equipment and provide all justifications as to the reality of said defects. The Customer must give the Supplier every opportunity to record and rectify said defects; the Customer must moreover refrain from carrying out the repair itself or from having a third party carry out the repair, unless it obtains the Supplier's express agreement.

### 11.4 Terms and conditions for triggering the warranty

It is the responsibility of the Supplier, once accordingly informed, to rectify the defect at its expense and with all due care and attention; the Supplier reserves the right, where applicable, to modify the equipment systems in order to comply with its obligations. The work that results from the warranty obligation shall, in principle, be performed in the workshops of the Supplier once the Customer has returned the defective equipment or parts to the Supplier for the purposes of repair or replacement.

Nevertheless, in the event that, given the nature of the equipment, the repairs must be carried out at the site where the equipment is installed, the Supplier shall pay the manpower costs that correspond to such repair, but not the time spent on preliminary work or disassembly and reassembly operations that are made necessary by the conditions of use or installation of said equipment and that concern items that are not included in the supply in question. The cost of carriage of the defective equipment or parts, as well as that of the return of the repaired or replaced equipment or parts shall be paid by the Customer. In the same way, in the event of an on-site repair, the travelling and subsistence expenses for the Supplier's agents shall be paid by the Customer. Parts replaced free of charge shall be made available to the Supplier and shall once again become the Supplier's property.

## 12 – END OF THE EQUIPMENT'S LIFE

Insofar as the equipment that is the subject matter of these General Conditions is professional waste electrical and electronic equipment (WEEE) referred to by Decree no. 2014-928 dated 19 August 2014 codified in Articles R 543-172 et seq. of the French Environmental Code, the Supplier undertakes to comply with its obligations under Articles R 543-195 and sub-sections of the French Environmental Code and make WEEE management solutions available to its clients (individually or via membership in an authorised environmental organisation). The Customer undertakes to make use of the means implemented by the Supplier when it wishes to dispose of its equipment, or to transmit this information to all successive buyers of the said equipment where applicable.

## 13- LIABILITY

The Supplier's liability is strictly limited to its warranty obligation, as defined above and is limited, on all grounds combined, with the exception of bodily injury and wilful misconduct, to direct damage to property and, in any event, to the amount of monies received pursuant to the contract.

The Supplier shall not be obligated to pay any indemnification, including for non-physical harm or consequential loss, such as, in particular, shortfall in earnings, operating loss, loss of productivity, loss of revenues or third party claims, etc.

The equipment delivered shall comply with the technical regulations that apply thereto and with the technical standards with which the Supplier expressly represents that said equipment complies. The Client shall be liable for the operation of the equipment under normal foreseeable conditions of use, in accordance with the legislation on safety and the environment that is in force at the place of use, and in accordance with the rules of the art for its profession and the recommendations of the Supplier. In particular, it is the responsibility of the Client to choose equipment that corresponds to its technical requirements and, if necessary, to seek assurance from the Supplier as to the suitability of the equipment for the intended use.

## 14 – CONTESTATIONS

In the absence of an amicable agreement pursuant to Articles 56 and 58 of the French Code of Civil Procedure, it is expressly agreed that all disputes concerning the contract shall fall under the exclusive jurisdiction of the court within the authority of which the Supplier's domicile is located, even in the event of third-party notice or multiple defendants.

Solely French law shall apply to the contract. It is drawn up in French. In the event that it is translated into one or more languages, only the French version shall be legally binding in the case of a dispute.

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