



strengthening solutions

General Terms and Conditions of Sale

(Version July 2015)

1. Scope of applicability

The overall current and future legal relationship between re-fer AG (re-fer) and the Buyer concerning the purchase of movable property (Delivery Items) are to be governed exclusively by the following General Terms and Conditions of Sale and Delivery. With the placing of an order by the Buyer, but no later than with the receipt of the Delivery Items ordered, the Buyer acknowledges the exclusive binding force of these General Terms and Conditions of Sale and Delivery. Should the Buyer use contrary, divergent or supplementary terms and conditions, the applicability thereof toward re-fer is excluded, even if re-fer does not explicitly oppose them.

2. Offer and conclusion of a contract

2.1 re-fer's offers are subject to change without notice. By means of the respective purchase order, the Buyer submits an offer to which it is bound for three (3) weeks from the date of receipt at re-fer. A contract will materialize only by means of the written acknowledgement of order from re-fer and will be in accordance with the content of the acknowledgement of order and/or with these Terms and Conditions. Verbal agreements or consents require written confirmation by re-fer to be valid.

2.2 re-fer reserves all rights to its own sales documents (in particular illustrations, weight and measurement information) and samples. They must not be made available to third parties and are to be returned to re-fer immediately upon request.

2.3 Acknowledgements of orders from re-fer are confidential and may be open to inspection only by persons who actually process these acknowledgements of orders on the part of the Buyer.

2.4 To the extent that the Delivery Items ordered are to possess particular qualities not resulting from the standard product description or product identification, or that require special processing by re-fer or third parties, the Buyer must attach to the respective purchase order the corresponding description of the qualities, plans, sketches, current drawings, etc. (hereinafter: Quality Specifications).

3. Delivery times and deadlines

3.1 Delivery times and deadlines are binding only if they have been confirmed in writing by re-fer and the Buyer has made available to re-fer in a timely manner all information, Quality Specifications, released plans, documents, approvals and releases required for the delivery, and has paid any agreed upon deposits in accordance with the contract. Agreed upon delivery times start to run at the date of the acknowledgement of order or confirmation of receipt. For supplementary or extended orders placed at a later date, the delivery times will be extended accordingly.

3.2 Delivery times are deemed to have been observed once the goods have been handed over for shipment.

3.3 Events that are unforeseeable, unavoidable and beyond the control of re-fer and for which re-fer is not responsible, such as force majeure, war, natural disasters, strikes, lockouts, governmental measures or similar occurrences release re-fer for their duration from the obligation of timely delivery or performance. Agreed upon periods will be extended by the duration of the disturbance; the Buyer is to be suitably informed of the occur-

rence of the disturbance. Should the end of the disturbance not be foreseeable or should it last longer than two (2) months, each Party is entitled to withdraw from the contract.

3.4 For Delivery Items which re-fer does not itself manufacture, but rather purchases from sub-suppliers, delivery thereof is subject to proper and timely supply to re-fer by its sub-suppliers.

3.5 Should re-fer's deliveries be delayed, the Buyer is entitled to withdraw only if re-fer is responsible for the delay and a reasonable grace period set by the Buyer for delivery has passed unsuccessfully.

3.6 Should the Buyer be in default of acceptance, or should it violate other duties of cooperation, re-fer is entitled, notwithstanding its other rights, to appropriately store the Delivery Items at the risk and expense of the Buyer or to withdraw from the contract.

3.7 re-fer may effect partial deliveries when justified by the circumstances, if these are reasonable for the Buyer.

4. Shipment, transfer of risk, insurance

4.1 The following sub-clauses 4.1 to 4.3 apply only if and to the extent the Parties have not effectively agreed upon the INCOTERMS 2010 or such INCOTERMS 2010 do not provide for corresponding and effective clauses.

4.2 Unless specified by the Buyer, shipment is to be effected by reasonable shipment method in the customary packaging.

4.3 The risk is transferred to the Buyer with the handing over of the Delivery Items to the carrier or the Buyer itself. Should the transfer or shipment be delayed for reasons that are the responsibility of the Buyer, the risk is transferred on the day the Buyer is notified of the shipment's readiness.

4.4 Costs for packaging and shipment are to be borne by the Buyer and will be shown by re-fer separately on the invoice.

4.5 Cargo insurance will be arranged exclusively at the Buyer's request and at its expense.

5. Prices, payment terms

5.1 The prices agreed upon between re-fer and the Buyer are (subject to sub-clause 5.3) fixed prices, unless the Parties have agreed otherwise.

5.2 Invoicing of semi-finished goods ordered from re-fer will be according to the weight of such goods as weighed by re-fer unless some other invoicing basis has been agreed upon (e.g. per piece or theoretical weight).

5.3 In the event that after the signing of the contract unforeseeable increases in materials and labor costs to re-fer have arisen, re-fer is entitled, in its reasonable discretion, to a corresponding increase in the agreed upon price.

5.4 All re-fer prices are in Swiss francs, if not otherwise specified in order acknowledgement, ex distribution warehouse or ex works, but exclusive of the packaging and shipping costs (incl. duties), which can be charged separately. Applicable statutory value added tax is charged separately.

5.5 re-fer is entitled to submit partial invoices for partial shipments within the meaning of sub-clause 3.7.

5.6 Each invoice from re-fer will be due for payment within thirty (30) days of receipt of the invoice without deduc-

tion. Upon unsuccessful expiry of this time period, default has occurred automatically and without request to Buyer to make payment.

- 5.7 Payments by the Buyer are deemed to have been effected only when re-fer has access to the sum without any deductions.
- 5.8 In the event the Buyer is in default of payment, re-fer is entitled to demand default interest in the statutory amount and to refuse further shipments until all outstanding amounts, including default interest, are paid. The assertion of additional default damages remains unaffected.
- 5.9 The Buyer is entitled to offset sums only if its counterclaim is undisputed or has been awarded by a final and legally binding judgment. The Buyer is permitted to assert a right of retention only if its counterclaim stems from the same contract and is either undisputed or has been awarded by a final and legally binding judgment.
- 5.10 If after the signing of the contract re-fer becomes aware of the risk of insufficient ability to pay on the part of the Buyer, re-fer is entitled to make outstanding deliveries only against prepayment or the provision of security. Should the prepayments or provision of security not have been made by the expiration of a reasonable grace period, re-fer may withdraw from all affected contracts in each case either partially or wholly. re-fer reserves the assertion of additional rights.

6. Reservation of title

- 6.1 The Delivery Items remain the property of re-fer until full payment of all receivables due to re-fer arising out of the business relationship with the Buyer. For current accounts, the reserved title will serve to secure re-fer's claim to the outstanding balance.
- 6.2 The Buyer is permitted to sell the Delivery Items that are under reservation of title (Reserved Products) only in the course of regular business transactions. The Buyer herewith agrees in advance to assign all claims from the resale to re-fer with re-fer now accepting such assignment in advance. The Buyer is authorized, subject to revocation, to collect the claims assigned to re-fer as a trustee for re-fer in its own name. re-fer may revoke this authority, as well as the right to resale, if the Buyer is in default with essential contractual obligations, such as, for example, its payment to re-fer. In the event of a revocation, re-fer is entitled to collect the claims itself. The Buyer is not entitled to pledge the Reserved Products, to transfer the title thereof as security or to make other dispositions that may endanger the property of re-fer. Should the Buyer sell the Reserved Products after processing or conversion or after combination or commingling with other goods or otherwise together with other goods, then the assignment of claims is valid only up to the amount of the portion representing the price agreed upon between re-fer and the Buyer, plus a security margin of 10% of this price.
- 6.3 Processing or conversion of the Reserved Products by the Buyer is always to be carried out on behalf of re-fer.
- 6.4 If the Reserved Products are processed with other items, re-fer acquires coownership in the new items in proportion to the value of the Reserved Products to the other processed items at the time of the processing. In all other respects, the new products produced through the processing are subject to the same conditions as the Delivery Items delivered under the reservation of title.
- 6.5 Should the Reserved Products be combined or commingled with other items, re-fer acquires co-ownership in the new items in proportion to the value of the Reserved Products to the other items at the time of the combination or commingling. Should the combination or commingling occur in such a way that the Buyer's item appears to be the main item, it is deemed to have been agreed that the Buyer is transferring co-ownership to re-fer pro-

portionately. The co-ownership thus produced is to be held in custody by the Buyer for re-fer.

- 6.6 The Buyer will provide to re-fer at any time all requested information on the Reserved Products or on claims that have been assigned to re-fer hereunder.
 - 6.7 Access or claims by third parties to Reserved Products must be reported by the Buyer immediately to re-fer, along with sending of the necessary documentation. At the same time, the Buyer will instruct the third party of re-fer's reservation of title. The costs of a defense against such access and claims are to be borne by the Buyer.
 - 6.8 The Buyer is obligated to treat the Reserved Products with care for the duration of the reservation of title.
 - 6.9 Should the realizable value from the security exceed the total of re-fer's claims to be secured by more than 10 %, the Buyer is entitled to demand release to such extent.
 - 6.10 Should the Buyer be in default with essential contractual obligations such as, for example, payment to re-fer, then re-fer, notwithstanding other rights, may take back the Reserved Products and, after withdrawing from the contract, may use them for other purposes to satisfy its claims against the Buyer which are due and payable. In the event of a request for the surrender of possession, the Buyer will immediately grant re-fer or re-fer's agent access to the Reserved Products and surrender these. Should re-fer demand the surrender based on this provision, this alone shall not be construed as withdrawal from the contract.
 - 6.11 The Buyer will give all necessary declarations and signatures that are necessary and expedient for the legal effectiveness of the aforementioned reservation of title. In particular, the Buyer now declares in advance its consent to the entry of the reservation of title in the Register of reservations of title, and agrees to provide any additional declarations that are necessary or expedient at re-fer's first request.
 - 6.12 Upon re-fer's request, the Buyer has to take out adequate insurance for the Reserved Products, to provide re-fer with the proof of such insurance coverage, and to assign claims from the insurance policy to re-fer.
- ## **7. Quality, Buyer's rights in the event of defects, duty to examine**
- 7.1 Upon transfer of risk, the Delivery Item must exhibit the agreed upon quality. Such qualities are exclusively governed by the specific written agreements between the Parties regarding properties, features and performance characteristics of the Delivery Item. Any warranty for the value or suitability for its implied purpose is expressly excluded.
 - 7.2 In the event of processing according to the warranted characteristics drawn up and released by the Buyer, the quality is measured exclusively according to these released and warranted characteristics and any additional specific written agreements drawn up between the Parties regarding properties, features and performance characteristics of the Delivery Item (Quality Agreement). For defects in the Delivery Item that are based on Quality Specifications released by the Buyer, the Buyer has no warranty claims against re-fer. In particular, the Buyer is responsible for the accuracy and usability of all Quality Specifications and supplements thereto prepared by the Buyer and given and released to re-fer.
 - 7.3 Information in catalogs, price lists and other informational material given to the Buyer by re-fer, as well as product description information are in no way to be understood as warranties of a particular quality of the Delivery Item; such quality warranties must be agreed upon explicitly in writing.
 - 7.4 The usual deviations in quantity and weight of up to 10% of the ordered quantity are permissible.

- 7.5 Deviations in quality /condition are also permissible if they are a function of the Delivery Item.
- 7.6 The Buyer's rights in the event of defects in the Delivery Item presuppose that it has examined the Delivery Item upon delivery and has sent a written report of defects to re-fer without delay, but no later than two (2) weeks from delivery, stating the invoice number; in any event, obvious transport damage is to be reported in writing to re-fer without delay. Hidden defects must be reported in writing to re-fer immediately upon their discovery.
- 7.7 For any notice of defects, re-fer has the right to examine and test the Delivery Item that is the subject of the complaint. The Buyer will provide re-fer the necessary time and opportunity for this purpose. re-fer may also demand from the Buyer to send back the Delivery Item that is the subject of the complaint to re-fer at re-fer's expense.
- 7.8 Defects are to be remedied by re-fer, at its own discretion, either by repair of the defect free of charge to the Buyer, or substitute delivery of an item free from defects (jointly Subsequent Performance). re-fer may, however, refuse Subsequent Performance if this would cause disproportionate effort and/or costs.
- 7.9 re-fer will assume all forwarding charges, infrastructure, labor and materials costs incurred within the scope of Subsequent Performance. If the complaint regarding a defect proves to be unjustified by reason of intent or gross negligence and if this was recognizable to the Buyer before the complaint was lodged, Buyer must compensate re-fer for all expenses incurred by it in connection therewith (for example travel or shipping costs).
- 7.10 If the Subsequent Performance does not succeed, if the acceptance thereof may not be reasonably expected from Buyer, or if re-fer has refused it pursuant to sub-clause 7.8, the Buyer may withdraw from the contract. In such case, the Buyer will be reimbursed for the purchase price.
- 7.11 The statutory period of limitation for the Buyer's rights in the event of defects is twelve (12) months from the delivery of the Delivery Item to the Buyer.

8. Liability and damages

- 8.1 re-fer's liability for defects is limited to Subsequent Performance pursuant to sub-clause 7.8. Any further liability for defects or other contractual violations (e.g. reduction of purchase price, damages for indirect and consequential damage, for delayed delivery, etc.) is explicitly excluded in the scope permitted by law.
- 8.2 The Buyer is obligated to take reasonable measures to prevent and mitigate damage.

9. Product liability

- 9.1 Should the Buyer sell the Delivery Item, it must release re-fer within their relations inter se from product liability claims by third parties to the extent that it is responsible for the faults that trigger the liability.

10. General provisions

- 10.1 The Buyer may not assign its claims against re-fer to third parties without re-fer's written consent.
- 10.2 Amendments and supplements to the contract and/or these General Terms and Conditions of Sale and any side agreements require written form. This applies as well to any modification of this requirement for written form.
- 10.3 Should any provision of this contract and/or these Terms and Conditions of Sale and Delivery be wholly or partially invalid, the validity of the remaining provisions will remain unaffected thereby. The Parties agree in such case, to replace the invalid provision with a valid one that most closely corresponds to the economic purpose of the invalid provision.
- 10.4 Place of performance for all mutual claims is 6430 Schwyz (Switzerland).

10.5 The exclusive place of jurisdiction for all disputes arising out of the contractual relationship is 6430 Schwyz (Switzerland). re-fer is nevertheless entitled to file an action against the Buyer before any competent court in any other jurisdiction.

10.6 Exclusively Swiss substantive Law applies to contracts signed with re-fer, to the exclusion of international private law, including, but not limited to the United Nations Convention on Contracts for the International Sale of Goods (CISG).