

O.M.T. OFFICINE MECCANICHE TORINO S.P.A.

General Terms & Conditions for Sale of Goods (ed. 1.0 - 2019)

1. Definitions

The following capitalized terms shall have herein the following meaning:

- 1.1. "**Buyer**": means the individual, company or other legal entity that purchase the Goods;
- 1.2. "**Seller**" or "**OMT**": means O.M.T. – Officine Meccaniche Torino S.p.A. with registered seat in Via Assarotti n. 10, Turin (Italy);
- 1.3. "**Parties**": means the Seller and the Buyer jointly;
- 1.4. "**Goods**": means the items, products, spare-parts and/or services to be supplied to the Buyer by the Seller under a Contract (as defined in point 1.6 below);
- 1.5. "**General Conditions**": means the general terms and conditions of sale and/or supply of Goods according to this document including any special further agreement executed in writing by the Parties and relating to the supply and/or sale of Goods;
- 1.6. "**Contract**": means the contract of sale and/or supply of Goods executed by the Parties and governed by and subject to these General Conditions;
- 1.7. "**Quote**": means any commercial offer or trade quote submitted in writing by the Seller to the Buyer for the sale or supply of Goods;
- 1.8. "**Order**": means a written request sent by the Buyer to OMT for the purchase of Goods under these General Conditions;
- 1.9. "**Confirmation of Order**": means the written acceptance by the Seller of an Order in compliance with these General Conditions.

2 General Conditions

- 2.1. These General Conditions govern and are applicable both to (i) all the Quotes and Confirmations of Order issued by OMT, (ii) all the Orders issued by the Buyer and (iii) to all the Contracts entered onto by the Parties.
- 2.2. Purely verbal declarations, oral arrangements and/or contract amendments relating to the Contracts shall be considered as valid only if confirmed in writing by OMT.
- 2.3. Diverging general terms and conditions or other contractual templates of the Buyer (also if mentioned or contained in an Order) shall not be considered as part of the Contract and shall be ineffective between the Parties.
- 2.4. Any invalidity of a single clause or provision of these General Conditions will have no effect on the validity of the other clauses or provisions or these General Conditions and/or of the Contract. In case of invalidity of a single clause or provision of these General Conditions for any cause whatsoever, the authorised representatives of the Buyer and of the Seller will have to replace it by a valid one that will be as close as possible to the purpose of the invalid clause or provision.
- 2.5. Any amendment or change to these General Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by the Parties.

3. Quotes – Orders – Confirmation of Orders - Contracts

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- 3.1 Information about weight, dimension, capacity, price, technical features of the Goods and other data, should they be mentioned in catalogues, tables, letters, advertising, photos and client's price lists are to be considered purely as indicative.
- 3.2 All Quotes issued by OMT and relevant cost estimations shall be non-binding and are merely a point of reference for to Buyer in order to issue Orders. All Quotes issued by OMT become in any case ineffective after 60 (sixty) calendar days from their issuance date.
- 3.3 A Buyer's Order shall not constitute a binding Contract, but a mere commercial proposal and it will be retained accepted only with the dispatch of the Seller's written Confirmation of Order. OMT is not under obligation to accept or negotiate an Order from the Buyer. Failing the dispatch of the Seller's written Confirmation of Order within 30 (thirty) calendar days from the receipt of an Order, such Order shall be considered as rejected and ineffective.
- 3.4 All Orders issued by the Buyer must mention these General Conditions (and the current edition) and specify: (i) the number and date of the Order; (ii) the exact product code and description of the Goods requested; (iii) the exact quantity of the Goods requested; (iv) the unit sale/supply price of each Good and the total amount due; (v) the payment terms of the sale/supply price; and (vi) the place of delivery of Goods. All Orders must be signed by the legal representative of the Buyer or by other individual vested by the Buyer with all the necessary powers and must be sent to the Seller by electronic email, registered mail, courier or telefax.
- 3.5 OMT Confirmation of Order shall be binding and irrevocable once received by the Buyer. In any case of discrepancy between the contents of the Confirmation of Order and the relevant Order, failing a written objection by the Buyer within 6 (six) calendar days from the receipt date of the Confirmation of Order, the latter shall prevail and be binding in all respects between the Parties.
- 3.6 OMT Confirmation of Order shall be forwarded to the Buyer within a maximum of 15 (fifteen) calendar days from the date of receipt of the Buyer's Order.
- 3.7 In any case the binding quantity, quality and description of the Goods and the sale/supply price of the Goods shall be those specified in the Confirmation of Order.
- 3.8 OMT reserves the right to make changes to design, shape and material of the Goods, provided that the Goods are thus not basically modified, and that the result of this modification will be reasonably acceptable to the Buyer.
- 3.9 OMT keeps all the rights of ownership and copyright of all drawings, reports, data, projects, manuals and other technical documentation attached to a Quote, a Confirmation of Order or to a Contract in case these are created and drafted, in full or in part, by OMT; nevertheless with respect to the drawings, projects and other technical documentation which have been autonomously and entirely created and drafted by the Client and disclosed to OMT for the supply and/or sale of Goods all the related copyright pertain to, and is owned by, the Client and OMT are vested with a

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perpetual and not-transferrable license to use for the manufacture and sale of Goods also to third parties.

4. Delivery

- 4.1. Unless otherwise agreed, delivery of Goods, and the relevant price (also when specified in a Quote or in a client's price list), is intended "EXW OMT (Rivoli - Italy)" (ICC Incoterms® 2010); OMT keeps the right to deliver the Goods in separate lots within the agreed delivery deadline.
- 4.2. OMT will try to meet the agreed delivery commitment provided that OMT receives from the Buyer, in due time, all the necessary documents and information for the delivery of the Goods and that the Buyer respects all his contractual obligations (payment in advance, letter of credit opening, etc.).
- 4.3. The time of delivery, or completion, indicated by OMT in the Contract, in the Confirmation of Order or elsewhere is indicative, unless OMT has clearly guaranteed delivery, or completion, at a specific time and by writing.
- 4.4. Should the Buyer fail to fulfil his contractual obligations in due time, or suspend the progress of the contractual work, or in the event of force majeure, the periods and deadlines – including delivery – shall change accordingly. Force majeure shall be any event which OMT may be unable to prevent, despite the utmost caution, and in the given circumstances, including, but not limited to atmospheric events, war, hostile acts, industrial disputation, interference in the normal operations of OMT, or of its suppliers business,

and non-receipt of deliveries. OMT is obliged to notify the Buyer of such circumstances without delay. If delivery is delayed for more than 6 months by such incidents, either the Buyer or OMT shall be entitled to withdraw the Contract.

- 4.5. On advise of Goods ready for delivery, in case of payment in advance, the Buyer is obliged to make the agreed payment, and to accept the delivery of the item, immediately. If the Buyer ignores these commitments, OMT may decide to act according to its legal rights. In case of delay of collection for shipment, assumed to be beyond OMT responsibility, all risks will be assumed by the Buyer, on receipt of the notice of shipment readiness. This clause shall also be applied to partial shipments. Following 15 (fifteen) calendar days after having received such a notice of readiness, the Buyer will be charged for the storage of the goods at OMT facility (Rivoli – Italy).

5. Prices - Terms of Payment

- 5.1. The Goods shall be sold or supplied at the prices agreed between the parties in the Contract or, should no prices be mentioned in a Contract, at the prices resulting from the client's price list of OMT in force when the Contract has been executed. Unless otherwise stated in writing in the Quote or in the Confirmation of Order, the prices of the Goods included in Seller's price lists or in Quotes are in Euro, net of VAT and for delivery according to the Incoterms® ICC rule (version 2010) "EXW OMT (Rivoli – Italy)". Therefore, should a different Incoterms® rule be agreed upon

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between the parties for the delivery of the Goods, 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. Insurance costs, special packing costs, customs charges, classification fees and any other unexpected charges shall be for the exclusive account of the Buyer.
- 5.3. Unless otherwise agreed, the Goods shall be delivered to Buyer packed in accordance with ordinary trade practice and in an appropriate manner. Special packing conditions must be requested by the Buyer in the Order.
- 5.4. OMT reserves the right, by giving written communication to the Buyer, at any time before delivery, to increase the price of the Goods due to any factor beyond the control of OMT. Factors beyond the control of OMT are e.g., but not limited to: foreign exchange fluctuations, currency regulations, alterations of duties, increases in the cost of labour and raw materials, petrol cost, electricity cost, etc.
- 5.5. Unless differently agreed upon by the Parties in a Contract or in a Confirmation of Order, the invoices issued by OMT for the sale or supply of Goods must be paid by the Buyer within 30 (thirty) calendar days starting from the date of issuance of the invoice. Invoices for the sale or supply of Goods shall be issued by OMT at the agreed delivery date without prejudice to the right for OMT to issue one or more invoice for down payment before delivery.

5.6. Payments shall be credited to OMT given bank account, without any deduction, in accordance with the terms of payment set forth in the Contract or in these General Conditions.

5.7. If the Buyer fails to make any payment on the due date with a delay exceeding 10 (ten) calendar days OMT shall be entitled, at his own discretion without prejudice to any other legal rights or claims, to: (a) charge penalty interests at the rate set forth by charge penalty interests at the rate set forth by D.Lgs 9th November 2012 , n. 192 and further amendments; or (b) terminate the Contract without prejudice to the indemnification of damages; or (c) suspend any further deliveries of the Goods to the Buyer also if relating to a different Contract.

5.8. In any case, the Buyer is not entitled to set-off payments due against any claim whatsoever which the Buyer considers to have against OMT, in respect of the consignment concerned, or of any other consignment.

5.9. The credits of OMT relating to invoices for the sale or supply of Goods cannot be assigned to third parties by the Buyer.

6. Warranty – Claims - Flaws

6.1. The Seller guarantees that: (i) the Goods shall meet the quantity, quality and technical requirements mentioned in the official catalogues/manuals, in the Confirmation of Order or in the Contract and (ii) the Goods shall function properly and without material manufacturing defects.

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- 6.2. Buyer is due to inspect the quality, quantity and functioning of the Goods within 30 (thirty) days from the delivery of the Goods.
- 6.3. Any complaint for deficiencies, defects, malfunctioning or non-conformity (hereinafter the “**Warranty Claim**”) must be forwarded to OMT in writing, at penalty of forfeiture, within 10 (ten) calendar days at the latest after the time when the Buyer discovers, or should have discovered, them. The Warranty Claim must contain: (i) a detailed and exhaustive description of the alleged deficiencies, defects, malfunctioning or non-conformity and, if requested by OMT, (ii) at least one sample of the Goods affected by the alleged deficiencies, defects, malfunctioning or non-conformity.
- 6.4. The warranty upon Goods hereunder expires 12 (twelve) months following the relevant delivery date or, at the latest, 16 (sixteen) months after the receipt of the relevant notice of readiness for shipment.
- 6.5. The warranty upon Goods does not operate if the deficiencies, defects, malfunctioning or non-conformity (hereinafter the “**Flaws**”) is due to one or more of the following:
- a. outside influences non depending from the OMT’s conduct such as improper handling, storage or installation by the Buyer;
 - b. inadequate protection against corrosion, physical damage, faulty assembly, chemical, electrical or other harmful effects;
 - c. if the Good is changed or modified by the Buyer or a third party also if in consequence of the incorporation or attachment of other items or parts originating from another source;
 - d. non-compliance with the operating, maintenance and inspection instructions provided by OMT;
 - e. if the deficiencies, defects, malfunctioning is depending by, or is a consequence of, the drawings, projects and other technical documentation which have been autonomously created and drafted by the Client and disclosed to OMT for the supply and/or sale of Goods;
 - f. misuse of the delivered Goods or use for purposes other than those agreed with the Contract;
 - g. excessive stress, including but not limited to, operation under unusual circumstances which were not made known to OMT, in writing, and at the time the Purchase Order was placed.
- 6.6. OMT warranty obligations are in any case conditioned on the Buyer observing his obligations under the Contract and these General Conditions.
- 6.7. Within 20 (twenty) calendar days from the receipt of the Warranty Claim shall OMT must respond in writing to the Buyer and communicate, at its own discretion, one of the alternative options: (i) declare the lack of coverage of Warranty upon the Goods conditional upon the legal and/or technical requirements of the Warranty are missing; or (ii) proceed with a rectification in order to remedy to the Flaws of the Goods; or (iii) replace the defective, malfunctioning or non-conform Goods; or (iv) refund the Buyer of the same sale price paid by the latter with respect of the defective, malfunctioning or non-conform Goods. OMT before in order to decide which is the more suitable option may request the Buyer to ship one

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sample of the Goods which are allegedly affected by a Flaw. In such a case the term of this paragraph shall elapse from the receipt date of the sample by OMT.

6.8. In the event the Seller opted for rectification of the Goods under paragraph 6.7-(ii) above, the following shall apply:

a. if rectification of the Goods at OMT premises is deemed not reasonable or convenient, at sole discretion of OMT, proper rectification can be carried out by the Buyer, or a third party, subject to the written agreement of OMT; in such a case, OMT shall reimburse the relevant costs up to the maximum amount which would have been incurred if OMT had carried out the rectification work itself;

b. if rectification of the Goods at OMT premises is deemed reasonable or convenient, at sole discretion of OMT, the Buyer shall send the defective, malfunctioning or non-conform Goods – or the entire lot if necessary – to OMT facility (Rivoli - Italy) or the other place, at its own costs. If said shipping takes place within the 12 (twelve) months following initial delivery of the Goods, OMT shall reimburse the cost of the cheapest form of shipment. The Seller shall remedy to the Flaws and will deliver the Goods at the premises of the Buyer at the latest within 90 (ninety) calendar days from the receipt of the defective, malfunctioning or non-conform Goods;

c. OMT shall pay the freight costs for the cheapest form of shipment for the rectified Goods;

d. for the parts or components installed during rectification the Buyer can submit Warranty

Claims until the initial warranty period has expired;

e. in case it results that the Flaws are not existing or not material, the Buyer shall pay all the costs for outward and inward shipment, as well as all other costs, including the costs required for inspecting parts alleged to be defective, malfunctioning or non-conform;

f. the right to any legal remedy under applicable law shall accrue to the Buyer only if OMT proves incapable of remedying the Flaws.

6.9. In the event the Seller opted for replacement of the Goods under paragraph 6.7-(iii) above, the following shall apply:

a. the Buyer shall send the defective, malfunctioning or non-conform Goods – or the entire lot if necessary – to OMT facility (Rivoli - Italy) or the other place, at its own costs. If said shipping takes place within the 12 (twelve) months following initial delivery of the Goods, OMT shall reimburse the cost of the cheapest form of shipment;

b. the Seller shall replace the Goods defective, malfunctioning or non-conform Goods by shipping new ones (in the same quantity) at the premises of the Buyer at the latest within 90 (ninety) calendar days from their receipt;

c. the replaced Goods shall be delivered to the Buyer at costs and care of the Buyer at CIF conditions and at the premises of the Buyer (ICC Incoterms® 2010);

d. in case it results that the Flaws are not existing or not material, the Buyer shall pay all the costs for outward and inward shipment, as well as all other costs, including the costs required for

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inspecting parts alleged to be defective, malfunctioning or non-conform;

e. replaced Goods or part of them shall become the property of OMT.

6.10. The rights and remedies described in this article are the sole warranty rights and legal remedies pertaining to the Buyer in relation to the supply or sale of Goods.

7. Repair - Reconditioning

7.1. For Goods which are sent to OMT for repair, reconditioning, assembling, adaptation or other processes, the forwarding to and from, and the storage at OMT facility shall be for the account and risk of the Buyer. The charge and consideration to OMT shall be previously agreed upon by the Parties in writing.

7.2. If, in the opinion of OMT, any goods are not suitable for repair, reconditioning, assembling, adaptation or other processes, they will be scrapped without charge to the Buyer. If the Buyer desires to have such unsuitable Goods returned, this must be previously informed to OMT in writing. Such Goods will then be returned for the Buyer's account and risk and the expenses and activities sustained by OMT for the examination of the Goods will be charged to the Buyer.

8. Limitations of liability of the Seller

8.1. The warranty under article 6 above incorporates and substitutes the contractual and/or extra-contractual liability by any applicable law and excludes any other liability of OMT in respect of Flaws concerning the Goods. The sole legal remedies for the Buyer with respect to defective, malfunctioning or non-conform Goods and/or any other breach of Contract shall be those mentioned in these General Conditions. Namely, save for fraud or gross negligence imputable to the Seller, the latter shall not be liable for any loss of profits, production loss, indirect loss, third parties claim, consequential damages, reputation or image damages or any other damages or loss suffered by the Buyer related to, or deriving from, the sale and/or supply of the Goods.

8.2. It is expressly excluded any individual liability of the legal representatives, managers, executives or other employees or consultants of OMT for damages caused by them.

9. Confidentiality

9.1. The Buyer undertakes: (i) to treat with the utmost confidentiality all the information/data/designs/know-how/documentation, manuals or other technical document or data transmitted by the Seller or that it may come to know in connection with the execution of any Contract, even if they is not marked or identified as secret or confidential (hereinafter the "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

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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.

9.2. 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.

9.3. The provisions above shall not apply to information which (i) are public or publicly available not due to an illegal disclosure of the Buyer or of Buyer's representatives, executives, employees or collaborators; or (ii) were already available to the Buyer 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.

10. Force Majeure

10.1. Seller shall not be liable or responsible for failure or delay in performing or fulfilling any obligations undertaken in reference to the sale or supply of Goods when such failure or delay is due to the occurrence of an event of force majeure such as wars, fires, earthquakes, floods, tsunamis, strikes, labour 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.

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

10.3. In the event any of such force majeure event continue for a period longer than 6 (six) months, the Buyer shall have the right to terminate the underlying 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.

11. Jurisdiction Clause - Applicable Law

11.1 Any dispute, controversy, or claim between the Parties arising out of, or in relation to, an Order, a Confirmation of Order, a Contract or these General Conditions, including the validity, invalidity, breach, or termination thereof, shall be subject to the exclusive jurisdiction of Italy and submitted to the Court of Turin (Italy).

11.2 The laws of Italy shall govern in all respects and apply to these General Conditions and to any Order, Confirmation of Order and Contract with exclusion of the Vienna Convention on contracts for the international sale of goods of April 11, 1980 which shall not apply.