

1 ACCEPTANCE OF ORDER

Unless otherwise accepted in writing by EXELSIUS, orders shall be subject to these general terms and conditions of purchase and form part of said orders. The Seller acknowledges having read these terms and conditions and that it has accepted them before accepting the order. The Seller agrees that these terms and conditions shall take precedence over its own terms and conditions.

Orders shall be deemed accepted by the Seller unless refused by it in writing within 8 days of receipt thereof and said notice of refusal is accepted by EXELSIUS.

By reason only of accepting an order, the Seller acknowledges having received from EXELSIUS all the information needed for its fulfillment.

Any amendments to the terms of the order must, in order to be enforceable against EXELSIUS, receive EXELSIUS' written approval.

2 DELIVERY - PACKING

2.1 Delivery shall mean that of equipment, supplies and merchandise provided with the documentation needed for operation and maintenance purposes.

The contractual date of delivery shall be written on the order; it is the date by which the Seller has agreed to deliver the quality and quantity of merchandise to the Buyer at the address given on the order.

The effective date of delivery is the date on the delivery document signed upon receipt of the merchandise by the duly authorised EXELSIUS representative.

No partial or early deliveries may be made without the prior written consent of EXELSIUS. The delivery date shall be confirmed in writing at the latest 5 days before delivery. EXELSIUS may, 72 hours before said delivery date, request that by the end of said period, the Seller shall make the delivery on the initially schedule date. Together with each delivery, the seller will provide the packing list stating the references and date of the order, the number of parcels, their net unit weight, their dimensions, their customs nomenclature code, the appropriate Incoterm and a detailed description of the merchandise shipped, with certificates of conformity and inspection reports.

In the case of merchandise purchased from a foreign company, said merchandise shall be 'delivered duty paid' (DDP, Incoterms 2010).

2.2 Merchandise ordered must be delivered with the packaging necessary for its storage and protection. Unless a clause to the contrary is agreed upon, a deposit shall not be charged for packing. Should a deposit be charged, the packing in question shall be returned at the Seller's expense.

3 PRICES - PAYMENT CONDITIONS - BILLING

3.1 Prices stated on each order are firm, all-inclusive, final, not subject to modification, and, where applicable, shall be broken down to show the cost of shipment.

3.2 The payment conditions are set out in the specific conditions of each order.

3.3 Invoices shall be issued in two copies and contain all the necessary legal information, EXELSIUS' order number, the exact description of the merchandise ordered, the date and the delivery address.

Invoices must be sent to the address given on the order. Any invoices lacking this information or not fully meeting the terms of the order shall be returned to the Seller and shall not be payable until they are received by EXELSIUS as described hereinabove.

Provided the merchandise is delivered as required by the order and the corresponding invoice contains all the aforementioned information, EXELSIUS shall pay the amount due by bank transfer 45 days end of month after the effective date of delivery as set out in Article 2 herein.

4 COMPENSATION

EXELSIUS may set off claims and debts between the Seller and EXELSIUS and arising from orders fulfilled by the Seller for EXELSIUS.

In the event of multiple orders of any nature, and in order to allow EXELSIUS and the Seller to assess the entirety of their business relations at any time, it is expressly agreed that all claims and debts arising from orders made between them, including those existing before the signature of these terms and conditions, shall be deposited in a single, joint current account as each order is fulfilled. Holdbacks released and late delivery penalties (Article 6 herein) shall also be deposited into this account. This current account shall be balanced periodically; the balance alone shall be due.

However, should the Seller default for reasons of dissolution, legal receivership or voluntary liquidation, the account shall not be balanced until after the last order is definitively closed and its warranty period has expired. The balance of this current account shall not be due until the end of this period.

5 DELIVERY TIMES

The contractual delivery dates stated on the order are imperative and form one of its essential conditions.

6 PENALTIES

In the event of late delivery not attributable to a case of force majeure as set down in Article 7 herein or a fault on EXELSIUS' part, late delivery penalties shall be imposed, without the need for notification of default, and shall be subtracted from the amounts owed to the Seller by EXELSIUS.

Said penalties shall be assessed at a rate of 1% of the total amount owed for the order for every full week late, up to a maximum of 10% of this amount.

Payment of these penalties does not release the Seller or relieve it of its contractual obligations.

In the event of late delivery, EXELSIUS reserves the right to:

- demand compensation from the Seller for the loss incurred, or, at the Seller's expense and risk, replace the Seller with a third party in accordance with the provisions in Article 16 herein.
- or terminate the order at any time, in whole or in part, at the fault of the Seller, and demand compensation for the loss incurred.

7 FORCE MAJEURE

Force majeure shall mean any unforeseeable and unavoidable external circumstances that delay or prevent the performance of the Seller's obligations.

In the event of force majeure the Seller must, within 48 hours of its occurrence, inform EXELSIUS by registered letter with acknowledgement of receipt. If the consequences of force majeure, as defined hereinabove, render it impossible for the Seller to fulfil the order in whole or in part, or if the force majeure lasts for more than four weeks following notification, EXELSIUS shall be entitled to cancel the order.

8 MONITORING - INCOMING INSPECTION

EXELSIUS and/or anybody appointed by it shall, during normal business hours, be allowed to visit the premises where the order is being filled in order to check its progress.

These checks shall not limit in any way the Seller's responsibility in terms of its own checks and its obligation to deliver the merchandise in accordance with its contractual obligations and best current practices.

9 REFUSAL - SCRAPPING - UPGRADING

9.1 EXELSIUS may notify the Seller of its refusal to accept any merchandise found not to meet the order specifications. Any refused merchandise shall be regarded as not having been delivered and must be taken back by the Seller at its own expense within the period of time agreed with EXELSIUS, save in the case set out in Article 9.2 al.1 herein. Failing this, the said merchandise shall be returned to the Seller at its own expense and risk.

9.2 Furthermore, EXELSIUS shall be entitled to:

- request that the defects found be eliminated within 48 business hours following delivery,
- or scrap the merchandise and demand its replacement within 48 business hours, or replace the Seller, at the Seller's expense and risk, with a third party in accordance with the provisions of Article 16 herein.
- or scrap the merchandise and cancel the order by virtue of Article 16 herein.

9.3 The scrapping of any merchandise shall immediately result in, at EXELSIUS' choice, the issuance of a credit note or the reimbursement of the amounts paid.

9.4 If defects are eliminated following agreement by the Seller and EXELSIUS, the merchandise in question shall be reinspected and retested as set out in the order.

9.5 All costs arising from replacement or upgrading of the merchandise, replacement of the Seller with a third party, work on the Customer's site or cancellation of the order are for the account of the Seller without prejudice to contractual penalties and compensation for any damages.

10 WARRANTY**10.1 Performance warranty**

In addition to legal warranties, the Seller warrants to EXELSIUS that the merchandise will be free from all defects in design, materials, workmanship and operation for a minimum of 24 months from the date of delivery.

Should EXELSIUS or its Customer find the merchandise to be defective or faulty, the Seller agrees, at its own expense (any travel expenses and assembly/disassembly costs included), to rectify, repair or replace the merchandise where it is located so that it meets all the requirements in the order specifications and is fully suitable for its intended use.

Should the Seller not honour its warranty within the period of time agreed with EXELSIUS, EXELSIUS reserves the right to make the necessary corrections itself, or call on a third party to do so, at the expense and risk of the Seller.

All services provided and/or components replaced/rectified/repared under this warranty shall in turn be warranted for a period of no less than 24 months pursuant to the terms hereinabove. Only components/services with a normal service life of less than 24 consecutive months of use are not covered by this performance warranty.

10.2 Supply and spare parts

The Seller agrees, for a period of 10 years following delivery of the merchandise, to deliver all spare parts at the price in effect when said parts are requested by EXELSIUS.

11 INTELLECTUAL AND INDUSTRIAL PROPERTY

All studies, study results and study materials such as drawings, diagrams, models and prototypes created by or for the Seller for the purposes of fulfilling the order shall be the exclusive property of EXELSIUS.

The Seller shall therefore refrain from using or exploiting, either directly or indirectly, said results and study materials for purposes other than to fulfil the order.

If specific software is provided for the purposes of the order, acceptance of said software means, ipso facto, that the Seller grants to EXELSIUS exclusive rights to use, operate and sell said software. Moreover, the Seller agrees to file the source software used to develop and operate said software and the associated documents with a French solicitor and provide EXELSIUS with both when first so requested by EXELSIUS.

The Seller shall fully indemnify and hold harmless EXELSIUS from all third-party suits or complaints based on claims of intellectual property rights in connection with the merchandise ordered and delivered. In the case of such legal action, and without regard to any other sanctions, all court costs (lawyers' fees included) and damages EXELSIUS may be ordered to pay shall be borne in full by the Seller.

12 OWNERSHIP OF MATERIALS AND EQUIPMENT

Materials and equipment provided to the Seller by EXELSIUS for the purposes of the order remain the exclusive property of EXELSIUS.

The Seller agrees to take all necessary steps to ensure EXELSIUS' ownership, in particular by specifically labelling all EXELSIUS materials and equipment. The Seller shall be responsible for damages of any nature whatsoever to these materials and equipment from the date they are received until when they are returned to EXELSIUS. The Seller shall bear all costs to repair or replace materials and equipment damaged for any reason whatsoever.

13 TRANSFER OF OWNERSHIP AND RISKS

Transfer of ownership of the merchandise to EXELSIUS shall commence upon receipt of a payment on account and continue based on the amount of each payment received.

No reservation of title clauses may be enforced against EXELSIUS unless they have been signed by a representative authorised by EXELSIUS.

Transfer of risk shall take place upon delivery as set down in Article 2 herein.

14 CONFIDENTIALITY - ADVERTISING

All information of any nature (technical or commercial) or the medium provided to the Seller, or which it may have access to, including any test results, for the purposes of fulfilling the order, must be considered by the Seller to be strictly confidential and reserved solely for the fulfilment of the order, exclusive of any other use.

Moreover, and unless specifically agreed beforehand by EXELSIUS, the Seller agrees not to inform any third parties about its business dealings with EXELSIUS or to display all or part of the merchandise created using EXELSIUS proprietary documents or technical specifications.

15 INSURANCE

The Seller remains responsible for all incidental damages, consequential damages, pecuniary damages, non-pecuniary damages and bodily injury caused by its merchandise as well as by its agents, subcontractors, suppliers and contractors.

The Seller shall prove that it has taken out:

- civil liability insurance covering the financial consequences of bodily injury, pecuniary damages and non-pecuniary damages (consecutive or otherwise) caused to third parties and including product insurance,
- insurance to cover damages and operating losses.

In the event of a loss, the Seller agrees to pay the deductibles for which it is responsible under the terms of the insurance contract.

The Seller agrees to provide EXELSIUS with a copy of the insurance policies when first so requested by EXELSIUS.

16 REPLACEMENT

In the event, for any reason whatsoever, the Seller fails to deliver the merchandise on time (Article 6 herein) and/or the merchandise does not meet the order specifications (Article 9 herein), EXELSIUS reserves the right to replace the Seller by a third party, without prejudice to penalties and compensation which may be claimed for any losses incurred, and to request the Seller to transfer the merchandise being manufactured for the purposes of the order to a location specified by EXELSIUS so that it may finish the order or have it finished by a third party.

More generally, the Seller agrees to provide EXELSIUS with all the necessary materials and equipment to satisfactorily fulfil the order.

17 TERMINATION - EFFECTS**17.1** EXELSIUS may terminate the Agreement in the following cases:

- Two weeks after sending a letter of formal notice, and no remedy being provided, should the Seller default in the performance of any of the obligations set out in the order.
- With immediate effect in the event of:
 - o dissolution or court-ordered or voluntary liquidation,
 - o force majeure lasting for more than 4 weeks,
 - o failure to meet contractual delivery dates for such a length of time that the maximum penalty is reached.

17.2 Effects of termination:

- Without prejudice to compensation that may be claimed to cover losses incurred by EXELSIUS, a final balance of the current account shall be made pursuant to Article 4 herein.
- The Seller agrees to return to EXELSIUS, without delay and on the date of termination, all tools, equipment and documents in its possession.
- The Seller agrees to provide EXELSIUS, as quickly as possible as of the date of termination, with a status report on its work-in-process and its stock in order to proceed with a final audit of the accounts. Except by special agreement between the Parties, the stock shall be, at EXELSIUS's choice, paid as part of the cancelled order or destroyed at the Seller's expense.
- The Seller agrees to immediately halt any manufacturing, work, studies or services under way upon receipt of notification.

18 DISPUTES - GOVERNING LAW

The order binding EXELSIUS to the Seller is governed by French law, exclusive of the provisions of the Vienna Convention of 11 April 1980 on the international sale of goods.

Any disputes that cannot be settled out of court shall be brought before a court having jurisdiction in Cannes, France, only, including in the case of an interim injunction, multiple defendants or an action in warranty.