



# **TERMS AND CONDITIONS OF SALE**

## **1. ACCEPTANCE AND CANCELLATION OF ORDERS**

Any agreement for the sale of goods made between Exoteq ApS (hereinafter referred to as "Seller") and its Purchaser (hereinafter referred to as "Purchaser") or any order placed by Purchaser with Seller, may be cancelled by Purchaser only upon the prior written consent of Seller (which Seller may withhold at its sole discretion). No order placed by the Purchaser shall be deemed to be accepted by Seller unless confirmed in writing by Seller or its representative within twenty-one (21) days after placement. As a condition to Seller's possible written consent to cancel an order, Purchaser shall pay all reasonable cancellation and restocking charges incurred by Seller due to Purchaser's cancellation of the order. Special orders for items not normally stocked by Seller are always non-cancellable and non-refundable.

## **2. DELIVERY OF GOODS**

All prices and goods quoted as well as goods shipped are "ex works" Seller's (or its sub-supplier's) place of shipment. Title to (subject to 4 below), risk of loss of, or damage to goods shall pass to Purchaser when the goods are placed by Seller (or its sub-supplier) in possession of a common carrier selected by Seller for shipment to Purchaser. Unless otherwise is expressly stated on the front of this agreement, Purchaser shall pay all freight, handling, special handling, delivery, insurance costs etc. for the shipment of goods. Seller may refuse, withhold or delay any shipment if Purchaser fails to pay any payments due to Seller in time, whether such payment is pursuant to this agreement or any other agreement between Seller and Purchaser. Seller may deliver all goods covered by this agreement at one time or in portions from time to time, as long as delivery is within the timeframe for delivery provided in the order.

## **3. RETENTION OF TITLE**

Until having received full payment Seller retains full title to all goods sold (under this agreement as well as under any future orders) as specified below.

- 3.1. Any goods delivered - also in the future - shall remain Seller's property, until Seller has received full payment of all amounts owed by Purchaser.
- 3.2. Purchaser is entitled to resell goods in the ordinary operations of Purchaser's business regardless of Seller's retention of title provided



however, that Purchaser when doing so shall automatically assign to Seller the right to receive payment from Purchaser's Purchaser for an amount corresponding to Seller's outstanding account with Purchaser, including VAT. Until Seller informs Purchaser otherwise Purchaser shall still be authorised to collect payments from its Purchaser. If and when Seller wishes to exercise the assigned rights Seller will inform Purchaser of this where after Purchaser shall cooperate loyally with Seller and provide Seller with all relevant information and documentation about the assigned rights, including all details about debtors and all necessary information and documentation in relation to or necessary for Seller's collection procedures, also including confirmation from Purchaser that the rights are assigned to Seller. The assignment of rights to Seller shall in no event relieve Purchaser of its obligations towards Seller.

- 3.3. Processing, manufacture or resale of goods comprised by Seller's retention of title shall always be done in such a way that this does not impose any obligations or liabilities on Seller. In manufacture or mixture of the goods comprised by retention of title and other goods not belonging to Seller, Seller shall acquire a joint ownership of the new goods corresponding to the proportion between the invoiced value of the goods comprised by retention of title and Purchaser's internal cost of the other goods. Purchaser shall keep the new goods in stock and insured free of charge for Seller.
- 3.4. If Purchaser fails to fulfill its obligations towards Seller in a timely and adequate manner Seller shall be entitled to take repossession of the goods comprised by retention of title. The Purchaser shall be obliged to hand over the goods in question to Seller. Repossession of goods shall not imply that the agreement is rescinded or that Purchaser shall have fulfilled its obligations under the contract. Seller shall in addition to taking repossession of the goods be entitled to invoke any other remedy it may have in contract, at law or otherwise.
- 3.5. Purchaser shall at its own expense insure the goods comprised by retention of title sufficiently against theft, destruction, fire and water damage.



## **4. TERMS OF PAYMENT**

- 4.1. Purchaser shall pay for the goods in full, without offset or deduction, within the time frame and in the manner set forth on the front of this agreement. Purchaser shall pay to Seller, on demand, a late payment charge of 1.5 % per month of any unpaid due balance or the maximum rate of interest allowed by law, whichever is less.
- 4.2. All checks are accepted subject to clearing and collection. Acceptance of any partial payment shall not constitute waiver of Seller's right to payment in full of all amounts owed by Purchaser to Seller.
- 4.3. Purchaser hereby grants to Seller a security interest in the goods shipped pursuant to this agreement including all accessions to and replacements of the goods and the proceeds thereof, to secure due and punctual payment of all amounts owed by Purchaser. Purchaser shall upon request execute and deliver to Seller any additional documents, instruments, financing statements, or amendments that Seller deems necessary or reasonable in order to maintain, continue, and perfect the security interest created.

## **5. WARRANTY**

- 5.1. Subject to Clause 5.2 below Seller warrants that the Products will correspond in all material respects with their specification at the time of manufacture and will be free from substantial defects in material and workmanship for 12 months from the date of invoice to the Purchaser.
- 5.2. Seller shall have no liability to the Purchaser for any claim under the warranty in Clause 5.1 or otherwise:



- 5.2.1. to the extent that any defects are attributable to any drawing, design or specification supplied by the Purchaser or from fair wear and tear, willful damage, misuse, negligence, abnormal working conditions; the use of the Products in combination with other or incorporated into products not supplied by Seller; failure to follow Seller's reasonable instructions (whether oral or in writing); or, alteration or repair of Products without Seller's approval;
  - 5.2.2. if the total price for the Products has not been paid by the due date for payment;
  - 5.2.3. for parts, supplies or equipment not manufactured by Seller;
  - 5.2.4. unless, prior to returning any defective Product to Seller, the Purchaser gives written notice describing the defect to Seller, and (if the defect is as a result of damage arising during transit at the risk of Seller) to the carrier, within 14 days of the time when the Purchaser discovers or ought to have discovered the defect and receives a returns number from Seller; and
  - 5.2.5. unless Seller is given a reasonable opportunity after receiving notice of any defect of examining such Products and the Purchaser (if asked to do so by Seller) returns such Products to Seller's place of business at Seller's cost for the examination to take place there.
- 5.3. The warranty in Clause 5.1 may not be assigned or transferred in any way by the Purchaser to any other party.
  - 5.4. If any of the Products delivered do not conform to the warranty in Clause 5.1, Seller shall be entitled, at its option, to repair or replace such Products or render them in conformance with the relevant Regulations free of charge or refund or credit the price of such Products (on a pro rata basis). This Clause sets out the Purchaser's sole remedy for a breach of the warranty in Clause 5.1.
  - 5.5. Save as expressly set out in this Agreement, all warranties, terms and conditions implied by statute or common law are excluded to the fullest extent permitted by law.

## **6. PRODUCT LIABILITY**

- 6.1. Seller shall only be liable for personal injury or death, if it is proven that the injury or death is caused by failure or negligence committed by Seller



or others for which Seller is liable, or by a defect in the goods and that there is causation between injury/death and the defect, and always provided that Seller shall only be liable for such liability to the extent, that the liability can not excluded or disclaimed under applicable product liability laws.

- 6.2. Seller shall only be liable for product liability for damage to property or movables on the conditions as applicable for Seller's liability for personal injury as described above in 6.1.
- 6.3. To the extent Seller incurs product liability towards a third party, Purchaser shall indemnify Seller to the same extent that the liability of Seller is limited in accordance with the above-mentioned clauses.
- 6.4. Should any third party claim damages in accordance with the conditions regarding product liability; either party should inform the other party hereof immediately. Seller and Purchaser are reciprocally obliged to be summoned to the court/arbitration examining claims for damages lodged against one of them on the basis of damage, which is claimed caused by the goods. However, contractual disputes between Seller and Purchaser are to be settled in accordance with Clause 17.
- 6.5. Subject to 6.1 and 6.2 above Seller shall not be liable for any of the following losses or damage (whether such damage or losses were foreseen, foreseeable, known or otherwise) and Purchaser shall save, hold harmless and indemnify Seller for any such claims: (a) loss of data; (b) loss of revenue or anticipated profits; (c) loss of business; (d) loss of opportunity; (e) loss of goodwill or injury to reputation; (f) losses suffered by third parties; or (g) any indirect, consequential, special or exemplary damages regardless of the form of action. Seller's product liability shall in no event exceed EUR 100,000 per damage and per year.



## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. All Intellectual Property Rights in the Products shall remain vested in Seller or its licensors at all times. Seller grants the Purchaser a non-exclusive license in relation to such Intellectual Property Rights to take effect once legal title has passed to the Purchaser for the Products, to use or re-sell the Products in its normal course of the Purchaser's business.
- 7.2. The Purchaser shall not alter, obscure, remove, interfere with or add to the Trade Mark nor any proprietary, copyright, trademark, trade names, markings or notices affixed to or contained in the Products.
- 7.3. Subject always to the Purchaser's proper observance of its obligations under this Clause 7.3 and to Clauses 7.5 and 7.6, Seller shall at its own expense, defend or, at its option settle any third party claim or suit alleging that the use by the Purchaser of the Products or any part of them infringes any Intellectual Property Rights belonging to a third party ("a Claim") and agrees to be responsible for any reasonable costs involved and to pay any damages finally awarded against the Purchaser in any such Claim by a competent court of jurisdiction provided that:
- 7.3.1. the Purchaser shall immediately notify Seller if a Claim is made against the Purchaser and agrees to grant to Seller exclusive control of all litigation and negotiations in connection with such Claim;
- 7.3.2. the Purchaser shall at the request and expense of Seller afford to Seller all reasonable assistance for the purpose of contesting any Claim;
- 7.3.3. the Purchaser shall not make any admissions (save where required by court order or governmental regulations) which may be prejudicial to the defence or settlement of any Claim without the approval of Seller (not to be unreasonably withheld or delayed).



7.4. If a Claim is made or in the reasonable opinion of Seller is likely to be made, Seller may at its own expense either:

7.4.1. modify any or all of the Products without reducing the performance and functionality of the same so as to avoid the infringement or the alleged infringement, or;

7.4.2. procure a licence to use the infringing or potentially infringing part of the Products on terms which are acceptable to the Purchaser (acting reasonably); or

7.4.3. if neither causes of action under Clauses 7.4.1 or 7.4.2 are reasonably practicable or economical terminate Orders for the Products which it has accepted and refund to the Purchaser the price already paid by the Purchaser (if any) in respect of such Orders.

7.5. If Seller has availed itself of its rights to modify the Products pursuant to Clause 7.4.1 or to procure a license under Clause 7.4.2 and has therefore avoided any Claim, then Seller shall have no further liability in respect of that Claim.

7.6. The provisions of Clauses 7.3 shall not apply insofar as any such Claim is in respect of:

7.6.1. the use by the Purchaser of the Products or any part thereof in a manner not reasonably to be anticipated by Seller when supplying the same to the Purchaser; or

7.6.2. modifications made to the Products by the Purchaser or a third party under the direction of the Purchaser without authorization by Seller;

7.6.3. the use by the Purchaser of the Products in association with any other equipment, programs or materials not supplied by Seller unless such combination is expressly authorised by Seller; or

7.6.4. designs or specifications supplied by the Purchaser.

## **8. PURCHASER'S DUTY TO EXAMINE GOODS AND PURCHASER'S RETURN OF GOODS**



8.1. Purchaser shall as fast as possible and always before incorporating goods into other products, mixing the goods/products with other products, and in any event within a maximum of 21 days and (or any shorter notice communicated in writing to Purchaser) after receipt of each shipment of goods examine, test and perform any inspection of the goods Purchaser deems necessary in order to determine if there is any damage, defect or shortage. Any claim for any damage, defect or shortages, or for any cause whatsoever (whether the claim is based in contract, negligence, strict liability, tort or otherwise) shall be deemed unconditionally and absolutely waived unless made in writing and received by Seller within 21 days after Purchaser's receipt of the goods regardless of whether the claim is discovered or whether processing, further manufacture, other use, or resale of goods have taken place.

8.2. Subject also to 8.1 Purchaser must request a Return Material Authorization ("RMA") from Seller's Purchaser Service Department in order to return any product. Seller's Purchaser Service Representative will record and review all timely requests and if approved forward to the Purchaser a return authorization label. Purchaser must return to Seller the damaged or defective goods within 7 days after obtaining the label. The return authorization label must be attached to all packaging containing goods returned to Seller. No return of any type will be accepted without the RMA authorization label attached. If Purchaser does not request from Seller a RMA, or if Purchaser requests a RMA for goods that are not damaged or defective, Seller may, at its sole discretion, issue a RMA and may make it conditional upon Purchaser's payment of a restocking fee plus shipping/freight charges. No item may be returned or exchanged after 7 days after the Purchaser's receipt of the RMA authorisation label.

## **9. PRICE AMENDMENTS**

Seller reserves the right to increase the price of the goods covered by this agreement to reflect any increase in Seller's costs for those goods caused by for example increase in the price charged by Seller's supplier, increase in taxes or duties, and Purchaser agrees to pay to Seller any such increased price.

## **10. INSTALLATION**

Purchaser is solely responsible for the installation and operation of the goods including, without limitation, obtaining all permits, licenses, or certificates required for the installation or use of the goods.



## **11. TECHNICAL ADVICE AND DATA**

Seller is not liable or responsible in any way whatsoever for the content or use of any advice rendered. Without Seller's consent, Purchaser shall not use, duplicate, or disclose any technical data delivered or disclosed by Seller to Purchaser for any purpose other than for installation, operation, or maintenance of the goods purchased by Purchaser from Seller.

## **12. PURCHASER'S DEFAULT**

In the event of default by Purchaser, Seller shall have all usual remedies provided in contract or at law which remedies shall be cumulative with one another and with any other remedies that Seller might have in equity, in tort, under any agreement of any type or otherwise. The waiver by Seller of any breach or default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with the goods ordered by Purchaser or delivered by Seller or any services rendered by Seller to Purchaser, may be made by Purchaser more than one year after the cause of action occurred. Purchaser shall pay to Seller, on demand, all costs incurred by Seller in enforcing, prosecuting, or defending any provision of this agreement. For purposes of this agreement, "costs" include the fees, costs, and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant or in connection with trial, appellate, mediation, bankruptcy, arbitration, administrative, or judgment-execution proceedings.

## **13. INTEGRATION AND ASSIGNMENT**

With the exception of what may follow from any Order Acceptance Forms issued to Purchaser, this agreement records the final, complete, and exclusive agreement between the parties with regard to the subjects addressed in it and supersedes any and all prior or contemporaneous oral or written agreements regarding the same. No course of prior dealings between the parties and no usage of the trade is relevant to supplement or explain any term used in this agreement. Nor is acquiescence in a course of performance rendered under this agreement relevant to determining the meaning of this agreement even though the accepting or acquiescing party had knowledge of the nature of performance and opportunity for objection. An amendment or modification of this agreement will be valid and effective only if it is in writing and signed by both Purchaser



and Seller. Any assignment by Purchaser of this agreement or any rights in it, without Seller's advance written consent, shall be void.

## **14. PURCHASER'S TERMS AND CONDITIONS**

Goods and services rendered by Seller to Purchaser are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on any document of Purchaser, the information and conditions in this agreement are exclusively controlling over Purchaser and Seller. Any different or additional terms or conditions contained on Purchaser's purchase order, invoice, confirmation, or any other Purchaser-generated documents are specifically objected to by Seller. Seller's performance of any duties in this agreement is expressly made conditional on Purchaser's agreement to Seller's terms and conditions contained in this agreement. Commencement of performance or delivery shall be for Purchaser's convenience only and shall not constitute acceptance by Seller of Purchaser's terms and conditions. If an agreement is not earlier formed by mutual agreement between Purchaser and Seller, acceptance of any goods or services by Purchaser shall constitute acceptance by Purchaser of the terms and conditions stated herein.

## **15. TAXES**

Seller's prices do not include sales, use, excise, or other taxes or duties. Accordingly, Purchaser shall in addition to the prices specified by Seller, pay all local, state and federal taxes and duties, including all sales, use, excise or other similar tax or duty, payable with respect to the goods or the transactions contemplated herein, or, alternatively, provide Seller with tax or duty exemption certificates acceptable to the applicable authorities and Seller.

## **16. FORCE MAJEURE**

Seller is excused from performance of any obligations and shall not be liable for delays in delivery or for failure to perform, if this failure or delay of performance is caused by events or conditions beyond Seller's reasonable control, including, without limitation, acts of God, acts of the public enemy, quarantine restrictions, industrial disturbances, blockades, insurrections, arrest and restraint of industrial people or rulers, civil disturbances, boycotts, acts or omissions of Purchaser or civil or military authorities, fire, strike, lock-outs, landslide, lightening, wash-outs, tornadoes, hurricanes, windstorms, explosions, epidemic, flood storm, earthquake, riot, ware, breakage or accident to machinery or equipment, delays in transportation, or inability to obtain necessary labour, materials, or supplies.



## **17. GOVERNING LAW AND CHOICE OF FORUM**

This agreement shall exclusively be governed by the laws of the Kingdom of Denmark (excluding Danish conflicts of laws rules), and any dispute arising out of or in connection with this agreement shall exclusively be settled by the Maritime and Commercial court of Copenhagen.

## **18. GENERAL**

All terms and conditions contained herein shall apply to and bind the assignees and successors in interest of Purchaser. If any provision of this agreement is held to be invalid, illegal, unconscionable, or unenforceable, that provision will be considered separable from the remaining provisions of this agreement, will be reformed and enforced to the extent that it is valid and lawful, and will not affect the validity, legality, or enforceability of any other provision of this agreement. The captions used herein are for the convenience of the parties only and shall not affect the constructions or interpretation of the following text. Nothing in this agreement, whether express or implied, is intended or should be construed to confer upon or grant to, any person, except Purchaser and Seller, any claim, right or remedy under it.