



## **GENERAL CONDITIONS OF SALE – 01.01.2021**

### **PREAMBLE**

The purpose of these General Terms and Conditions of Sale and Services of ITALSEAL SRL (hereinafter referred to as SELLER and/or ITALSEAL) is to define the terms and conditions applicable to all sales and service contracts entered into between ITALSEAL as a seller and its customers as buyers (hereinafter referred to as BUYER).

They also apply the service contracts entered into at the request of its customers when ITALSEAL acts as a service provider and carries out its interventions on the goods sold by it.

### **1. ACCEPTANCE OF THE ORDER BY THE SELLER**

1.1. All orders from BUYER are subject to SELLER's written acceptance including in electronic form using the ITALSEAL document named "order confirmation".

Any mention of BUYER's data in the purchase order (such as line, position, customer code, job, etc.) is used exclusively to facilitate the connection between the ordered item and the confirmed item.

1.2. The confirmation of the order issued by ITALSEAL implies de facto acceptance of these general terms and conditions of sale. If BUYER accepts the delivery of the products supplied by SELLER or the performance of the services, this acceptance by BUYER constitutes an acceptance of general conditions.

1.3. These general terms and conditions of sale apply to the exclusion of all other general terms and conditions, except where SELLER duly represented by a representative appointed for this purpose has agreed in writing to derogate from certain clauses of these general terms and conditions of sale.

1.4. Orders accepted in writing by SELLER may not be cancelled by BUYER unless a written agreement of SELLER has been obtained and on condition that SELLER is compensated for the costs resulting from such cancellation, which include, but are not limited to, the loss of profit suffered and compensation for all performance costs related to the cancellation.

1.5. Before the date of delivery or performance of the service, BUYER may modify his order, the product specifications and the quantities ordered, provided that this modification is subject to SELLER's written agreement. BUYER undertakes to pay all additional direct and indirect costs caused by the modification of the order, and SELLER reserves the right to modify and/or limit or even exclude its commitments of conformity referred to in Articles 2 and 7 hereof if the changes requested by BUYER are likely to affect the quality of the product and/or service.

### **2. SELLER'S OBLIGATIONS**

2.1. It is agreed that SELLER's obligations under this contract are obligations of reasonable efforts.

2.2. Whatever its claim might be, BUYER bears the burden of proving that SELLER failed to fulfil his obligations.

2.3. BUYER is the sole judge of the choice of the product ordered from SELLER who does not guarantee the functionality or suitability of the product for any particular application and/or purpose.

### **3. PRICE AND PAYMENT OBLIGATION**

3.1. Unless otherwise agreed in writing, prices and delivery obligations are defined in accordance with the Incoterm 2010 FCA (place of delivery: SELLER's factory). No shipping costs are included in the price. If transport costs are indicated, they are only estimates and for information purposes only. They have no binding effects towards SELLER.

3.2. Prices are exclusive of tax. Except where mandatory legal provisions apply, all taxes relating to the sale, excise duty, duties for use or other similar taxes charged by a public or governmental authority, national, federal or local, which SELLER may have to pay or collect, shall be paid by BUYER and added to the price.

3.3. All invoices are due at date of issue (invoice date). SELLER may request the payment of a down payment or the presentation of an irrevocable Letter of Credit (LOC) in advance of shipment if BUYER's credit line or financial situation is, or threatens to be, impaired or if SELLER has insufficient credit history with BUYER.

The monthly late payment interest rate is as Italian Law DECRETO LEGISLATIVO 9 novembre 2012, n. 192. It applies to any amount not paid by the due date indicated on SELLER's invoice, without the need for a formal notice and without prejudice to any other compensation due to SELLER for the damage suffered as a result of the late payment.

3.4. In the event of non-payment, it is agreed that SELLER shall suspend the performance of the contract if BUYER fails to perform his obligations.

3.5. Payment by set-off is expressly excluded.



3.6. In addition, it is reminded that, in accordance with Italian Law DECRETO LEGISLATIVO 9 novembre 2012, n. 192, BUYER shall pay a lump sum compensation for recovery costs in the event of late payment and undertakes, against presentation of proof of costs, to reimburse SELLER in full for the costs incurred and fees paid for the purpose of obtaining the recovery of unpaid debts.

#### **4. ACCEPTANCE**

4.1. It is agreed that no return of goods, for any reason whatsoever, will be allowed without the prior written consent of SELLER.

4.2. BUYER undertakes to examine the goods on delivery. If BUYER fails to report in writing, on the day of delivery, any non-conformity or defect that is apparent or deemed to be apparent, all goods sold or services performed by SELLER shall be deemed to have been accepted without reservation by BUYER on the date of their delivery for the goods, and on the date of their performance for the services provided.

4.3. In the case of defects considered not apparent to a professional, the time limit for examining the goods is 30 days from the date of delivery. If BUYER fails to deliver to the SELLER (date of receipt of the written notice) a written notice of complaint specifying the non-apparent defect within thirty (30) days of delivery, BUYER is deemed to have accepted the goods without reservation. Consequently, he loses the right to claim compensation for any non-conformity or defect at the end of that time period.

4.4. Buyer undertakes to examine the documents submitted in accordance with the contract within a maximum time period of 15 days from their delivery. Unless SELLER receives written information within the said period indicating reservations made by BUYER and duly justified by the latter, the documents shall be deemed to have been accepted without reservation by BUYER. Consequently, he loses the right to claim compensation for any non-conformity at the end of that time period.

#### **5. DELIVERY**

5.1. Unless otherwise provided for in the contract, delivery is completed when the goods have been delivered to the first carrier in accordance with the Supplier's Incoterm FCA factory (Incoterm 2010 rules) agreed hereunder.

5.2. Delivery dates are indicative and subject to changes. They are never binding and cannot be subject to penalties.

5.3. SELLER shall provide suitable packaging for normal use, in order to protect the goods during transport and to identify their contents. If BUYER requires special packaging, the corresponding costs will be charged to BUYER.

5.4. Without prejudice to the agreed Incoterm, if SELLER organizes the transport, BUYER agrees to bear the related risk and cost. If BUYER does not give any instructions as to the mode of transport, SELLER shall be the sole judge of the mode of transport to be adopted, which shall be invoiced to BUYER.

5.5. Claims for loss or damage occurring during transport must be introduced and prosecuted by BUYER. At BUYER's express request, SELLER shall assist him/her within reasonable limits, and at the BUYER's expense.

#### **6. SAMPLES**

The sending of samples is for information purposes only.

#### **7. LIABILITY**

These provisions shall apply without prejudice to the provisions laid down in Article 4 of these conditions.

7.1. Should BUYER prove in the presence of the SELLER that the product sold by SELLER is non-conforming and/or has a manufacturing or material defect during normal use, SELLER's liability is limited to the following, at SELLER's option: - either to the repair or replacement of the product free of charge, including transport costs at the lowest price. Dismantling, reinstallation costs and any other costs are specifically excluded from SELLER's liability; - or to the reimbursement of the purchase price of the product.

7.2. If the service provided by SELLER for BUYER consists in the installation or repair of equipment sold by SELLER and should BUYER prove in the presence of SELLER that the equipment in question is defective during normal use and/or nonconforming, SELLER's liability is limited, at SELLER's option: - either to the repair or replacement of the incriminated equipment free of charge, including transport costs at the lowest price. Dismantling, reinstallation costs and any other costs are specifically excluded from SELLER's liability; - or to the reimbursement of the purchase price of the equipment sold by SELLER, on which SELLER intervened.

7.3. In any event, SELLER's liability is expressly excluded in the event of corrosion, erosion, misuse, improper installation (if not by SELLER), neglect, lack of maintenance and normal wear and tear.

7.4. Except in the case of gross negligence equivalent to intentional fault or in case of intentional fault, SELLER's liability is excluded for any immaterial damage (loss of profit, loss of contracts, loss of image, etc.), consequential and/or indirect damage, special, incidental, collateral, consequential, punitive or special losses or damages. SELLER shall not be liable for any risk, damage or loss occasioned by SELLER's performance of a service with respect to machinery, apparatus, accessories, materials, or supplies provided by BUYER or not sold by SELLER.

7.5. In addition, SELLER's liability is strictly limited to the purchase price of the product sold or the service provided.



7.6. Finally, any action for liability against SELLER is deemed to be time-barred one (1) year after the date of delivery of the goods and/or the date of the performance of the service.

7.7. BUYER shall hold SELLER harmless from any action based on the said regulations that any third party might bring against the SELLER.

#### **8. FORCE MAJEURE**

The parties agree that any event beyond the control of the parties, including but not limited to fires, strikes, difficulties in the world of work, acts of the government or a military authority, embargos or economic sanctions, difficulties in the supply of raw materials and other sub-assemblies involved in the manufacture of the product, and/or delays in the transport or supply of such materials, shall constitute a force majeure event exonerating from any liability.

#### **9. RETENTION OF TITLE CLAUSE**

The delivered goods remain SELLER's property until full payment of the invoices. As long as SELLER is the owner, BUYER is prohibited from using the goods as security (pledge, mortgage, etc.). If the goods are processed, this processing does not create any obligations on SELLER's part. No method of assigning ownership will prevent the SELLER from exercising his right of ownership over the goods delivered, transformed, combined or mixed. In the event of seizure of the goods, forfeiture or other infringements by third parties of SELLER's property rights, BUYER is required to immediately notify the SELLER and indemnify SELLER accordingly.

#### **10. PASSING OF RISK**

Unless otherwise agreed in writing with SELLER, the risk regarding the delivered goods shall pass to BUYER at the place of delivery in accordance with the Incoterm rule chosen by the parties and which, unless otherwise agreed, is that referred to in the SELLER's FCA Incoterm factory (Incoterm 2020 rules).

#### **11. SPECIAL TOOLING**

The term "special tools" refers to items such as molds, dies, parts, forms, jigs, mandrels, fixtures, and any other special equipment, except machinery that is required to produce the goods. Unless specific arrangements are otherwise made in writing, all special tools necessary for the manufacture of the goods shall remain SELLER's property. In any event and as such, SELLER's commitments are limited to proper design, proper handling in manufacture and storage, and adequate insurance. BUYER is responsible for the resulting costs for: (1) requested modifications, (2) major repairs and/or tool replacement caused by normal wear and tear, (3) additional costs resulting from the introduction of new factors such as shorter lead time and/or increased rate of delivery.

#### **12. INTELLECTUAL PROPERTY**

12.1. SELLER retains all rights, title, and interests in any intellectual property rights embodied in or associated with its products and services furnished hereunder. Unless otherwise mutually agreed in writing by SELLER and BUYER, SELLER shall have all rights, title, intellectual property rights, worldwide reproduction rights, trade secrets, trade mark rights, patents, designs, industrial designs, and any other property rights, including intellectual property rights. BUYER undertakes not to dismantle, test, reverse engineer, modify, decompile, analyze the composition of SELLER's products, or create other works based on them.

12.2. If the goods supplied by SELLER are such that their design has been supplied by BUYER, or if they bear the label or mark requested by BUYER, BUYER undertakes to indemnify SELLER against any claim for damages resulting from any action, whether civil or commercial, brought against SELLER by any third party on the basis of infringement or fraudulent use of trademark or patent law.

#### **13. GENERAL PROVISIONS**

13.1. EXPORT CONTROLS. The raw materials, materials, products and information mentioned on the invoice may fall within the scope of the export control regulations of SELLER's country as well as USA' export control regulations. BUYER shall refrain from selling, exporting, transferring or disposing, directly or indirectly, and on a voluntary basis, raw materials, materials, products and information derived from this contract, to countries, places of destination or end users not authorized by the said regulations. In addition, BUYER undertakes not to accept orders placed by companies for which the sale is not legally authorized pursuant the said regulations. Any purchase orders placed by unauthorized individuals or companies established or controlled by countries subject to restrictions under the said export control regulations will only be executed after they have been authorized and approved by the appropriate government.



13.2. Modifications of contract. No modification, adaptation or rectification of this contract shall be binding unless accepted in writing by the parties.

13.3. Validity of clauses. Should SELLER by any words, acts or writing, waive or be deemed to have waived any of the provisions of this agreement, or should SELLER fail to insist upon performance by BUYER of one or more terms herein, such failure on SELLER's part will in no way be deemed to imply or otherwise constitute a waiver of any other terms contained in this agreement.

In addition, if a court or any competent authority finds that any provision of this Agreement (or any part thereof) is invalid, illegal or void, such provision in whole or in part shall be deemed invalid, without affecting the validity and enforceability of the remaining provisions of this Agreement. The parties undertake to remedy the invalidated clause by means of an alternative provision for the purpose as close as possible to the one deemed invalid.

13.4 Confidentiality. The parties undertake to respect strict confidentiality with regard to information of any kind (including samples, materials, drawings, specifications, photographs, designs, computer codes, computer programs, software, data, formulas, processes, know-how, technical or commercial information, reports, documents and correspondence or any documents disclosed by or on behalf of one Party to the other Party, to any of its employees, directors, officers, directors, advisors or any representative, in any form whatsoever, including written, oral, visual or electronic), that are marked as "confidential" or are to be considered confidential with respect to the nature of the information and/or the circumstances of its disclosure.

13.5. Choice of law and jurisdiction clause. It is hereby agreed that this contract shall be governed by and construed in accordance with Italian law.

The competent court in the event of a dispute resulting from this contract is exclusively the Tribunal of MILANO.