

## **GENERAL CONDITIONS OF SALE**

### **1 - SCOPE**

As specified in article L.441-6 of the French Code of Commerce, these general conditions of sale (GCS) for the basis of any commercial negotiations. They apply to all sales of products, components and services provided by SOMEX from 1st January 2013.

Any order issued implies the customer's unreserved acceptance of these General Conditions of Sale that take precedence over any other document of the customer and especially over all general conditions of purchase, unless otherwise explicitly concluded and agreed in writing by SOMEX, in advance.

The Customer may not require SOMEX to abandon any of the GCS or impose any commercial conditions that depart from these.

If SOMEX chooses at any time not to take advantage of any of the clauses in these general conditions of sale does not mean giving up the possibility of invoking them later on, and they may only be modified or extended by written agreement.

### **2 - ESTIMATE, ORDERS**

Unless otherwise explicitly specified, catalogues, prospectuses, commercial documents and price lists from SOMEX are provided only for information and guidance, and are non-contractual. SOMEX reserves the right to modify them at any time.

Our bids, estimates and commercial proposals are valid for a period of 1 month from their date of issue. SOMEX advises its customer within the limits of the latter's technical competence and the information it provides on the planned use of the equipment. The customer must ensure that the characteristics of the products noted in the product offer meet its needs. SOMEX may not be held responsible for any problems or errors that could arise from inaccurate, vague or incomplete data supplied by the customer.

The customer is bound by the order it sends to SOMEX whether by post, e-mail or fax. Each order placed is fixed and irrevocable.

SOMEX will send a confirmation of the order to the customer by fax or electronic mail. The customer must carefully check the terms, and report any error or omission by the next working day after receipt. After this period, the contract is considered to be agreed according to the terms and conditions of the order confirmation.

Any requests to change the order made by the customer will only be binding on SOMEX after the latter's explicit, written approval. They will cancel the initial prices and delivery dates, which will be redefined by mutual agreement.

Cancellation of any order, even in part, will give our company the right to compensation of:

- 20% of the cancelled order, if the cancellation followed the confirmation of the order by SOMEX;

- 70 % of the amount of the cancelled order following its confirmation if cancelled **no later than 15 days before the date of delivery** specified on the order confirmation;

90 % of the amount of the cancelled order following its confirmation if cancelled **within the 15 days before the date of delivery** specified on the order confirmation.

### **3 - QUALIFICATION TESTS**

Equipment manufactured by SOMEX is checked and tested before leaving the factory. Customers may also attend these tests; they simply need to specify this on the order.

Tests and/or specific trials, along with the acceptance procedures required by the Customer, carried out at the latter's premises, in SOMEX factories, on site or by inspection bodies must be noted on the order, and are always at the customer's expense.

Studies of prototypes specially developed or adapted for a customer must be validated by the latter at the time of the order to ensure the equipment is compatible with its final use.

### **4 - PRICE**

Rates are shown ex tax, and are liable to change at any time. Any change to prices will be applied automatically, two months after being published. Prices are fixed for the period specified on the estimate. SOMEX is only bound by its representatives subject to its written confirmation.

Prices are given as at Ensisheim factory gate, unless otherwise specially arranged, and confirmed in writing by SOMEX.

Packaging and delivery charges are added to the invoice. Packaging always becomes the Customer's property, and is not recovered by SOMEX.

### **5 - DELIVERY, TRANSPORT**

Sales are governed by INCOTERMS published by the International Chamber of Commerce (I.C.C. INCOTERMS), latest issue in force.

The equipment is shipped according to the terms of the order and the order confirmation issued by SOMEX.

The equipment travels at the Customer's own risk, even for free shipment and/or shipment by a carrier chosen and authorised by SOMEX.

In the event of any loss, breakdowns or missing items, the Customer is responsible for reporting all necessary reservations with the carrier on the delivery note, or within two working days of delivery of the goods by registered mail, a copy of which is sent to SOMEX at the same time. Any late notification will invalidate any later claim by the Customer.

If the Customer refuses or rejects delivery of the goods, for a reason that is not the fault of SOMEX or a third party, it must pay the agreed price due and will be solely liable for any consequent further costs, such as storage charges.

### **6 - DELIVERY PERIODS**

The delivery date is shown on the order confirmation. **It is for guidance only**, with a reasonable delay being possible. If the delivery date given is missed, this does not justify cancellation of the order, withholding of some or all of the price, and does not give the Client the right to any damages and interest payment and/or penalties. SOMEX reserves the right to make partial deliveries as long as it warns the customer before delivery.

A case of chance or force majeure leads to suspension of the order by right, and delay in delivery without compensation owing to the Customer. Apart from cases recognized by French law, force majeure situations include strikes, problems with channels of communication, fire, snow, flooding and supply problems. If the event concerned lasts longer than sixty (60) days from the date it arose, the contract may be cancelled by the first party to act, without payment of damages or interest either side.

#### **7 - CONDITIONS OF PAYMENT**

All sales are considered completed and payable at the Seller's company offices, without any dispensation, whatever the mode of payment. Unless otherwise indicated, confirmed in writing by SOMEX, payments are made with instalment of 30% of the order. This instalment is due within three weeks of confirmation of the order. Any delay in payment of the instalment would defer the order in the plant by the same period, and thus the delivery date shown on the order confirmation, a delay of which the Customer cannot take advantage. The balance is payable 30 (thirty) days from the date of invoice. A delay in payment automatically leads to application of penalties, at a rate three times that of the legal interest rate. A fixed charge of FORTY EUROS for the costs of recovery will also be payable by right without prior notice by SOMEX if payment is delayed. SOMEX reserves the right to ask for further compensation if recovery costs (especially bailiff charges and lawyer's fees) actually incurred exceed this sum, as shown by presentation of receipts.

If payment is reserved, SOMEX reserves the right to suspend or cancellation by right all orders in progress without any compensation payable to the Customer, notwithstanding any other course of action.

A delay in payment will lead to all other remaining sums being liable for immediate payment, without prior notice.

The Customer is formally forbidden from applying compensation between invoices issued by SOMEX and the receivables of which it may benefit with respect to SOMEX unless these receivables are certain and payable.

Even after an order has been partially completed, if SOMEX is notified of an event that could imply the Customer is unable to meet its commitments, especially a change to its legal position, registration of secured claims on its funds or reduction of its score with its credit-insurers, SOMEX reserves the right to require payment of an advance, payment bonds or to suspend the order.

#### **8 - TRANSFER OF RISK / RETENTION OF OWNERSHIP**

Risks are transferred when the goods are handed over to the carrier or made available in SOMEX's premises. The equipment travels at the Customer's own risk, even for free shipment and/or shipment by a carrier chosen and authorised by SOMEX.

**NOTWITHSTANDING TRANSFER OF RISK UNDER THE ABOVE CONDITIONS, SOMEX RETAINS OWNERSHIP IN THE GOODS DELIVERED UNTIL PAYMENT FOR THEM HAS BEEN MADE IN FULL, BOTH THE PRINCIPAL AND ANY ADDITIONAL SUMS.**

**BY EXPLICIT AGREEMENT, FOR INTERCHANGEABLE OR REPLACEABLE GOODS SOMEX MAY TRANSFER ITS RIGHTS UNDER THE TERMS OF THIS CLAUSE FOR ANY OF ITS DEBTS, ON ALL ITS PRODUCTS IN THE CUSTOMER'S POSSESSION, PAYMENT FOR THESE BEING ASSUMED STILL OUTSTANDING.**

**SOMEX MAY RECOVER GOODS FOR WHICH PAYMENT IS OUTSTANDING, OR CLAIM THEM AS COMPENSATION FOR ALL UNPAID INVOICES, NOTWITHSTANDING ITS RIGHT TO CANCEL SALES IN PROGRESS.**

**THE CUSTOMER MUST NOTIFY SOMEX AT ONCE IN THE EVENT OF SEIZURE OR OTHER ACTION BY A THIRD PARTY, AND NOTIFY THE THIRD PARTY CONCERNED ON SOMEX'S RIGHTS OVER ITS GOODS NOT YET PAID FOR.**

**IF UNPAID GOODS ARE RESOLD, SOMEX RESERVES THE RIGHT TO CLAIM THE RETAIL PRICE. THE CUSTOMER UNDERTAKES TO NOTIFY SOMEX, IMMEDIATELY AND ON REQUEST, OF ANY INFORMATION RELATING TO THE PURCHASING THIRD PARTY AS WELL AS THE AMOUNT REMAINING SO THAT SOMEX MAY EXERCISE ITS RIGHT TO CLAIM ON THE PRICE WITH REGARD TO THE PURCHASING THIRD PARTY.**

**IF ANY INVOICE DUE IS NOT PAID, SOMEX MAY UNILATERALLY PRODUCE OR CAUSE TO BE PRODUCED AN INVENTORY OF ITS GOODS IN THE CUSTOMER'S POSSESSION, GIVING THE LATTER 24 HOURS' NOTICE TO PROVIDE FREE ACCESS TO ITS PREMISES FOR THE PURPOSE. A CUSTOMER NOT INVOLVED IN ANY NEGOTIATION UNDERTAKES TO RESTORE GOODS NOT PAID FOR WITHIN THREE DAYS OF SOMEX'S FIRST REQUEST, AND MEET THE COSTS OF THEIR RETURN. FAILING THIS, IT MAY BE FORCED TO DO SO BY A JUDGE IN CHAMBERS OR BY A BAILIFF AUTHORISED TO MAKE A SEIZURE CLAIM.**

**THE CUSTOMER WILL MEET THE COST OF THESE VARIOUS PROCEEDINGS.**

#### **9 - INTELLECTUAL PROPERTY, CONFIDENTIALITY**

The Customer is required to respect intellectual property rights held by SOMEX especially patents, designs, models and registered trademarks. It undertakes not to copy, reproduce or disclose them to third parties without SOMEX giving its explicit, prior written agreement. Any research work and documents given to customers remains the exclusive property of SOMEX as the Seller, and must be returned at once on request, even when the Customer has contributed to the costs of the study concerned.

These documents, and any technical, commercial or financial information to which the Customer has had access, or which SOMEX has disclosed remains confidential.

It may not be passed to third parties or be used without SOMEX giving its explicit, prior, written agreement. Any copy or counterfeit, even a partial one, will be prosecuted.

**10 - WARRANTY, LIABILITY**

Unless otherwise agreed, or unless unlawful, goods delivered are guaranteed for six (6) months from delivery against any hidden defect prior to the sale severe enough to prevent its normal use as specified by the Customer.

In order to benefit from its rights, the customer must notify any defect by registered mail within fifteen days from its discovery, under penalty of loss of the rights under guarantee. The claim made by the customer does not suspend payment periods. The Customer must demonstrate the existence of the fault and SOMEX's responsibility for it.

SOMEX notifies the customer of its position, and if applicable requests return of the goods affected by the fault. SOMEX gives the Customer a return address. No goods may be returned to SOMEX without its prior, written agreement. SOMEX's acceptance of the product's return does not acknowledge responsibility or the presence of the fault.

The warranty is restricted to fault parts that will be replaced or repaired in SOMEX's workshops or those of any other company of its choice. SOMEX will in no case be required to carry out repairs at the customer's site. Repairs or replacements made during the warranty period will not extend this warranty period.

The cost of dismantling and refitting the faulty goods, labour costs and return transport costs are met by the customer. SOMEX is not responsible for compensating the Customer or a third party for any reason, particularly loss of earnings, drop in production, operational problems or losses, penalties.

The warranty does not apply:

- to disturbances resulting from a deficient or inadequate specification from the Customer, or from a design method it has imposed,
- if goods have been altered by the Customer or by a third party, without the prior written agreement of SOMEX.
- damage and wear resulting from abnormal or inappropriate use, usage contrary to specifications, regulations, professional standards or product manuals, a maintenance fault, special assembly, modification or addition unless these are supervised by SOMEX, an accident, natural wear and tear, force majeure, improper usage methods or environmental conditions.

No responsibility for faulty products applies in the event of damage to property.

In any case, SOMEX may not be forced to compensate the Customer for an amount exceeding the retail price of the faulty products.

If the customer resells the products, it is required to comply with foreign legislation with regard to export. If the Customer modifies the resold products it must meet any consequent claims for damages against SOMEX, its customers or third parties.

**11 - DISPUTES, RELEVANT LEGISLATION, CONTRACT LANGUAGE**

These general conditions of sale and any contract binding on SOMEX are subject only to French law, excluding any other, in particular the Vienna Convention on international sale of goods.

**ANY DISPUTES RELATING TO CREATION, VALIDITY, EXECUTION, INTERPRETATION OF BREAKING OF CONTRACTS BINDING ON SOMEX ARE EXCLUSIVELY GOVERNED BY THE COMMERCIAL DIVISION OF THE COURT OF FIRST INSTANCE OF COLMAR, ALSO IN THE EVENT OF AN INTERIM HEARING, AN INCIDENTAL CLAIM, WARRANTY CLAIM OR FOR CASES INVOLVING SEVERAL DEFENDANTS.**

These general conditions of sale are originally written in French. If translated into one or more other languages, the French version only will apply in the event of any dispute.

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