

# GENERAL TERMS & CONDITIONS OF SALE FOR MAGTROL SA, SWITZERLAND

## 1. VALIDITY PROVISIONS

- 1.1 Except as otherwise agreed to in writing, these General Terms & Conditions of Sale of Magtrol SA, (here after Magtrol) together with any special conditions of sale set forth in Magtrol's proposal, to which these general terms are attached, shall be the only terms and conditions applicable to the sale of Magtrol manufactured or supplied products. Any conditions stipulated by the Customer which are in contradiction to these General Terms & Conditions of Sale shall only be valid if expressly acknowledged by Magtrol in writing.
- 1.2 A contract of sale is considered to be entered into upon Customer's receipt of the Magtrol's written acknowledgment of order. The same applies to any amendments to the contract of sale.
- 1.3 All tenders, quotations or offers of Magtrol are subject to change at any time prior to Magtrol's acceptance of a purchase order and expire at the end of the validity period stipulated in such proposals.
- 1.4 Should a provision of these General Terms & Conditions of Sale prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision. The invalidity, in whole or in part, of any provision hereof shall not affect the validity of the remainder of such provision or of any other provision hereof.
- 1.5 The assignment of a purchase order, or any rights or obligations thereunder by Customer without the prior written consent of Magtrol shall be void. Magtrol retains the right to substitute a branch office or an affiliated company of Magtrol in place of Magtrol as the contracting party and the recipient of payments pertaining to all or any portion of the purchase order. In such case, customer shall be advised thereof in writing.

## 2. TECHNICAL DOCUMENTS & INFORMATION

- 2.1 Each party to the contract retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall not reproduce nor make these documents available to any other party, either as a whole or in part, nor to use them for purposes other than those for which they were disclosed, without the prior written consent of the other party.
- 2.2 Any knowledge or information which Magtrol may disclose to customer with respect to the design, manufacture, sale or use of manufactured items thereunder, and which is identified by Magtrol as being proprietary information shall be held in confidence by customer. Such information shall not be reproduced, used or disclosed to others by customer without Magtrol's prior written consent.
- 2.3 (i) Brochures, catalogues, data sheets, etc. provided by Magtrol are for general information only and therefore not binding on Magtrol. (ii) Technical documents and data are binding, only when expressly stipulated as such.

## 3. PRICES

- 3.1 Unless otherwise agreed upon, the prices are net ex works (Incoterms 2010) plus any applicable VAT, in freely available Swiss Francs (CHF), US Dollars (USD) or Euro (EUR) currency, without any deductions whatsoever. Any special packing requests will be borne by Customer. All additional charges, such as charges for carriage/freight, insurance, fees for export, transit, import and other permits/certifications, taxes, custom duties and any other fees and charges shall be borne by Customer. In case of including in the tender or contract price or separately indicating in the tender or confirmation of order the charges for carriage/freight, insurance and other additional costs, Magtrol reserves the right to adjust the prices should the tariffs on which they are based be modified.
- 3.2 Magtrol reserves the right to adjust the prices in case the wage rates and/or the raw material prices vary between the submission of the tender and the contractually agreed performance and/or if Magtrol is charged with price increases of its subcontractors and/or the nature/scope of the agreed delivery or services has changed. In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reason stated in Clause 5.2.
- 3.3 The financing of the costs for collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment aren't included in the sales price of our products and, in this case, must be supported by final users.

## 4. TERMS OF PAYMENT

- 4.1 Payments shall be made in Swiss Francs (CHF) or US Dollars (USD) or Euro (EUR) currency to our Bank in Switzerland. Direct wire transfers are the only acceptable forms of payment. Company checks are not accepted. Terms of payment shall be as stated in the proposal or accepted purchase order and may provide for advance or partial payments with the balance payable upon delivery or readiness for delivery. Unless stated otherwise in the proposal or accepted purchase order, terms of payment shall be for the full amount without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like, net thirty (30) days after the date of Magtrol's invoice.
- 4.2 The dates of payment shall also be observed if transport, delivery, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond Magtrol's control, or if unimportant parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.
- 4.3 If payments or contractually agreed securities are not provided in accordance with the terms of the contract, Magtrol shall be entitled to adhere to or terminate the contract, and shall in both cases be entitled to claim damages. Before terminating the contract Magtrol will give written notice to the Customer.
- 4.4 If the Customer delays in the agreed terms of payment, then Customer shall be liable, without reminder, for interest with the effect from the date on which the payment was due at a rate of 1.5% per month on overdue amount. Magtrol reserves the right to claim further damages.

## 5. DELIVERY TIME

- 5.1 The delivery time shall start as soon as the contract is entered into, all official formalities have been completed, payments due with the order have been made, any agreed securities given and the main technical points are clarified and settled. The delivery time shall be deemed to be observed if by that time Magtrol has sent to the Customer a notice informing that the goods are ready for dispatch. Compliance with the delivery time is conditional upon Customer fulfilling its contractual obligation.
  - 5.2 The delivery time shall be reasonably extended:
    - (a) if the information required by Magtrol for performance of the contract is not received in time, or if the Customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
    - (b) if hindrances occur which Magtrol cannot prevent despite using the required care, regardless of whether they affect Magtrol or Customer or a third party; such hindrances include, but shall not be limited to, epidemics, mobilization, war, revolution, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important components, official actions or omissions by any state authorities or public bodies, transport difficulties, natural catastrophes, etc.;
    - (c) if the Customer or a third party is behind schedule with work it has to execute, or with performance of its contractual obligations, in particular if the Customer fails to observe the terms of payment.
  - 5.3 If a delay resulting from any of the foregoing causes exceeds six months and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including any adjustment of the price, then either party, upon thirty (30) days written notice, may terminate the performance in respect to the work delayed, whereupon Customer shall pay Magtrol termination charges, including charges for the work already performed.
  - 5.4 The Customer shall have no other rights in the event of late delivery, unless previously agreed in writing, in particular to claim damages and/or to cancel the contract of sale.
- ## 6. TRANSFER OF BENEFIT AND RISK
- 6.1 The property of the goods belongs to the vendor until full payment. The benefit and the risk of the supplies shall pass to the Customer no later than the date on which they leave Magtrol's works.
  - 6.2 If dispatch is delayed at the request of the Customer or due to reasons beyond Magtrol's control, the risk of the supplies shall pass to the Customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the Customer.

## 7. FORWARDING, TRANSPORT AND INSURANCE

- 7.1 Magtrol shall in time be notified of special requirements regarding forwarding, transport and insurance. Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the Customer to the last carrier.
- 7.2 The Customer shall be responsible for taking insurance against risks of any kind. Even if the insurance cover is arranged by Magtrol, it is at Customer's expense and risk.

## 8. INSPECTION AND ACCEPTANCE OF THE SUPPLIES AND SERVICES

- 8.1 As far as being normal practice, Magtrol shall inspect the supplies and services before dispatch. If the Customer requests further testing, this has to be agreed upon in writing and will be conducted at the Customer's expense.
- 8.2 The Customer shall examine the supplies and services within 14 days after receipt and is requested in that time to notify Magtrol in writing of any deficiencies and/or other complaints. If the Customer fails to do this, the supplies and services shall be considered to have been accepted.
- 8.3 The Customer shall have no other rights in the event of deficient delivery, in particular to claim damages and/or to cancel the contract of sale.

## 9. GUARANTEE, LIABILITY FOR DEFECTS

- 9.1 Unless otherwise agreed and confirmed in writing, the guarantee period is 18 months from the date of putting the supplies into operation but maximum 24 months from the date when the supplies leave the Magtrol works. This is valid for all Magtrol Product except for customized test benches (CMTS) for which the warranty is limited to 12 months from shipping date. If dispatch is delayed due to reasons beyond Magtrol's control, the guarantee period shall end no later than 18 months after Magtrol's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 12 months after replacement or completion of the repair.

The guarantee expires prematurely if the Customer or a third party undertakes inappropriate modifications or repairs or if the Customer, in case of defect, does not immediately take appropriate steps to mitigate the damage and give Magtrol the possibility to remedy such defect.

- 9.2 Upon written request of the Customer, Magtrol undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective due to bad material, faulty design or poor workmanship. Defective parts shall be returned to Magtrol's works free of charge and if replaced, shall become Magtrol's property.
- 9.3 Magtrol shall bear only the cost of remedying the defective parts in Magtrol's works. If such parts cannot be repaired or replaced at Magtrol's works, all additional costs arising therefrom shall be borne by the Customer.
- 9.4 Excluded from Magtrol's guarantee and liability for defects are all deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electromagnetic action, unsatisfactory building or installation work, force majeure or other reasons beyond the control of Magtrol.

For supplies and services of subcontractors used by Magtrol or requested by Customer, Magtrol assumes guarantee and liability for defects only to the extent of such subcontractor's guarantee and liability obligations.

- 9.5 The Customer shall have no other rights in the event of deficiencies in the goods delivered, in particular to claim damages and/or to cancel the contract of sale.

## 10. HARMLESS CLAUSE

The exclusion of liabilities as stated in clause 9 of these General Terms & Conditions of Sale shall extend to manufacturer's liability. Thus, Magtrol shall not assume any manufacturer's liability in relation to the Customer for the products supplied under the contract. If any client of the Customer were to claim damages from the Customer for manufacturer's liability, the Customer hereby waives any right of recourse against Magtrol. If clients of the Customer were to claim damages directly from Magtrol for manufacturer's liability, the Customer shall hold Magtrol harmless and indemnify it of any such claim.

## 11. SOFTWARE PRODUCTS

- 11.1 In case of Software Products, the Customer is granted a non exclusive, non transferable and - provided it is used in accordance with the contract - a timely unlimited license to use it on the system specified in the Magtrol's confirmation order.
- 11.2 Magtrol guarantees that upon customer receipt of the software and for a period of 12 months thereafter, (i) the software shall substantially conform to the specifications in the documentation when properly installed and configured on the computer, and (ii) the media upon which the software is furnished will be free of defects in material and workmanship under normal use. Due to the complex nature of the Software Products Magtrol does not guarantee that, (i) the software and any related updates will be completely free of minor defects, (ii) the software will satisfy all customer requirements, or (iii) the use of the software will be totally uninterrupted.

Magtrol's sole obligation under this guarantee shall be limited to exercise reasonable efforts to remedy any non-conformability of the software and/or media and to supply correct version of such software as soon as practicable after the non-conformability has been notified. Provision of corrected software and/or media does not affect in anyway the duration of the guarantee period of 12 months commencing from receipt of the original Software Products.

- 11.3 Besides and complementary to the preceding paragraph the Magtrol's General Terms & Conditions of Sale shall apply and/or any additional software agreement stipulated in writing.

## 12. FURTHER EXCLUSION OF LIABILITY

Any rights and claims of the Customer other than those expressly stipulated in these terms and conditions of sale are excluded, irrespective on what ground they are based; this in particular refers to claims for damages, reduction of price or termination of the contract of sale. In no case whatsoever shall Magtrol be responsible for damages of any kind, including incidental or consequential damages such as but not limited to loss of production, loss of use, loss of orders or loss of profit. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of Magtrol, but does apply to unlawful intent or gross negligence of persons employed or appointed by Magtrol to perform any of its obligations.

## 13. RIGHT OF RECOURSE OF MAGTROL

If, through actions or omissions of the Customer or of persons employed or appointed by Customer to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against Magtrol, then the latter shall be entitled to take recourse against the Customer.

## 14. ORDER CANCELLATION / MATERIAL RETURN / LOAN MATERIAL

In case of order cancellation, out of Magtrol responsibility, cancellation fee corresponding to a minimum 25% of order value or to the costs of work already achieved shall apply.

Returned material out of Magtrol responsibility or fault will be subjected to restocking fee of 20%, minimum CHF / Euro 250, providing the material is new and in its original packing.

Non-standard material specifically made for the order or used material will not be taken back.

Loan Material is subject to loan costs and will be charged at full value. A credit note will be established after material return. Control & restocking fee (min CHF / Euro 250), shipping costs as well as the eventual repair or recalibration fees will be deducted from the credit note.

## 15. JURISDICTION AND APPLICABLE LAW

- 15.1 The place of jurisdiction for both the Customer and Magtrol shall be Fribourg / Switzerland.
- 15.2 The contract shall be governed by the Swiss law.
- 15.3 Unless otherwise agreed and confirmed in writing, neither the Vienna Convention on Contracts for the International Sale of Goods, nor the Incoterms, except for the definition of «ex works» shall apply to the contract of sale.
- 15.4 Both parties acknowledge that their attention has been drawn on these General Terms & Conditions of Sale.

**Company registration Number:** CH-217-1000644-0 | **VAT:** CHE-105.475.279 | **DUNS:** 48-109-7959