

TERMS AND CONDITIONS OF EXPORT SALE 2023

1 - GENERAL PROVISIONS

These terms and conditions of sale ("Conditions") define the rights and obligations of TMP CONVERT ("Seller") and its Customers ("Buyer"). They constitute the entire agreement between the parties. The Conditions are applicable to the sale of all products designed and manufactured by TMP CONVERT, unless specifically agreed in writing by both parties prior to the order being placed.

These terms and conditions of sales are provided to any Buyer who so requests, in order to enable it to place an order with the Seller, as well as to any distributor prior to the conclusion of a single commercial agreement referred to in article L. 441-3 of the French commercial code, within the legal time frame.

If the Seller refrains at a particular time from enforcing any of these Conditions this should not be interpreted as a waiver of its right to enforce any of these conditions in the future.

2 - OFFERS AND ORDERS

Any order implies unconditional acceptance by the Buyer of these terms and conditions of sale, unless specific conditions have been agreed in writing by the Seller to the Buyer.

The offers contained in the catalogue or any other commercial document are for reference only and apply for a limited period.

Orders are only definitive when they have been confirmed in writing by the Seller, even in the case of an order being taken by a representative. Acceptance can also result from the shipment of the products.

The Seller reserves the right to make any modifications that it deems appropriate to its products at any time, without being obliged to modify the products previously delivered or in the process of being ordered, without however the main technical characteristics of the said products being affected.

The Seller can also modify without notice the models featured in its brochures or catalogues.

No modification or cancellation of an order can be taken into consideration if it has not been made before shipment and if the parties have not come to prior agreement on their principle and the resulting consequences, i.e. the retention by the Seller of any advance payments, by way of damages and if necessary the determination of additional damages by private agreement or court order.

3 - PACKAGING

Unless agreed otherwise, the products are packed in standard packaging as defined in the catalogues or price lists. Packaging bearing the Seller's brand name may not be used for other brands' products.

4 - DELIVERY

Transport and risks

All goods, even if shipped carriage paid, travel at the risk and peril of the recipient who undertakes to check the quality and quantity upon delivery and inform the carrier of any reservations by registered letter with acknowledgement of receipt within three days of receipt of the goods, in accordance with article L. 133-3 of the French Code of Commerce.

The reciprocal obligations of the Seller and the Buyer regarding transport, insurance, transfer of risks, customs formalities, are clearly defined in the Incoterms.

If the Buyer wishes to take out specific insurance for the transport, it will bear the cost.

Unless otherwise provided by contract, shipping and packaging is free for orders over a minimum unit order amount indicated in the price lists. Below this amount shipping must be prepaid.

Delivery shall be deemed to have been made when the products have been delivered or made available to the Buyer or its carrier in the Seller's warehouses. If necessary, the actual place of delivery is indicated by the Buyer in the order.

Delivery is subject to the existence of sufficient stock when the order is received.

If an order can only be partially delivered, for reasons for which the Seller is responsible, the additional costs required for the delivery of the remaining goods are borne by the Seller.

Delivery times

Delivery times are given for information purposes only and are non-binding, unless otherwise agreed. They are dependent on stocks, supply, production and transport possibilities. The Seller shall strive to respect the delivery times indicated.

The Seller's indication of a delivery time does not constitute on its part a firm commitment to deliver on a specific date.

Delivery delays cannot give rise to any penalty or compensation, nor justify the cancellation of the order.

In the event of a delay in excess of 30 days and if this delay is not attributable to a force majeure event nor to a mistake on the part of the Buyer, the cancellation of the sale may be requested by the Buyer which shall then recover any down payment that it has paid to the Seller.

If the Buyer places orders for quantities of products which exceed the Sellers' manufacturing and logistical capacities, no penalty can be requested by the Buyer, neither can the Buyer request the cancellation of the order in the event of a late delivery or partial deliveries, even if the parties have agreed differently in the contract.

A delivery deadline may be extended without prior agreement as a result of a force majeure event (defined below). In all cases, the Seller must notify the Buyer of the problems caused and seek equitable solutions together with the Buyer.

If the Buyer does not take delivery of the goods on the agreed date, after formal notice has remained unheeded for 8 days, the sale will be cancelled ipso jure if the Seller sees fit, the consequences of this cancellation being at the expense of the Buyer.

Delivery shall only take place if the Buyer is up to date with its obligations of all kinds to the Seller.

5 - RECEPTION

Notwithstanding the measures to be taken by the Buyer with regard to the carrier as described above, the Buyer is required to disclose in writing, any visible non-compliances (visible defects or shortfall) within eight days of reception.

It is the Buyer's responsibility to provide all the evidence regarding the defects or shortfall noted. The Buyer must notably indicate the order reference, the references and quantities of the goods concerned as well as the nature of the alleged defect. This notification must be sent to the Seller by registered letter with acknowledgement of receipt, or if the urgency of the matter so requires, by e-mail or fax. Furthermore, the Buyer undertakes to provide upon the Seller's first request the elements to prove the date of reception of the goods at its premises.

Returns are only accepted if the Seller has given its prior written authorisation. In this case, the products must be returned to the Seller in their original condition, without having been used.

When, after an inspection a visible defect or delivery shortfall is effectively noted by the Seller or its representative, the Buyer may only request from the Seller a replacement of the non-compliant products and/or the delivery of the items to cover the shortfall at the expense of the Seller, without the Buyer being able to claim any compensation or cancel the order.

6 - PRICES

The applicable prices are those featured on the order acknowledgement when the order is placed. Prices are in Euros exclusive of VAT, taxes and any other charges and ex-works, unless otherwise indicated.

The price depends on the Incoterm.

The price may allow for increases depending on the services provided by the Seller or reductions depending on the services paid for by the Buyer.

The current price can be revised at any time or on an annual basis, after the Buyer has been informed.

Any change to the price will be automatically applicable on the date indicated on the new price list.

The terms and conditions of discounts, reductions, rebates are provided upon request in accordance with current legislation.

7 - PAYMENT

Unless otherwise provided, payments are made, by bank transfer, within 30 days from the date of issue of the invoice, in full to the Seller's head office.

Any amount unpaid on the due date will give rise to the payment by the Buyer of penalties fixed at three times the legal interest rate, payable ipso jure.

Any late payment will give rise, ipso jure, in addition to the late payment penalties referred to above, the payment by the Buyer of a fixed sum of €40 as compensation for recovery costs.

An additional fee may be claimed, upon presentation of supporting documents, when the recovery costs exceed the lump-sum compensation.

Bills of exchange and cheques are only payment methods, payment only being effective once they have been cleared, having taken into account the time taken to send and process these payment methods. Any deferment of payment must be negotiated and guaranteed.

The Seller remains the owner of the products sold until payment has been received in full and can exercise its right of retention over all the goods belonging to the Buyer held by the Seller on any grounds whatsoever. It may also undertake action provided for by the retention of title clause in the event of late payment or failure to pay.

In addition to the right to retention of title provided for in article 11, the failure to return bills of exchange with acceptance and bank identification details within 7 days of their being sent, the failure to respect any payment deadline whatsoever, a serious breach of the credit of the Buyer, in particular the revelation of any protest or pledge whatsoever, leads ipso jure without prior notice and at the Seller's discretion, to:

- either acceleration of the repayment of amounts owed and consequently the immediate demand for payment of all sums outstanding in any way whatsoever and/or the suspension of all shipments,
- or the termination of all the contracts in effect with the retention of downpayments made and all goods as set out above.

However, the Seller can accept payment guarantees.

The Buyer may not postpone a contractual payment date without the Seller's agreement if the delivery is delayed due to a force majeure event. The same applies to the payment of the difference between the total amount of the invoice and the price of products that could give rise to replacements or credits upon complaints by the Buyer.

Further, the legal set-off presumes two uncontested, liquid and payable debts and that consequently, no "automatic credit" is accepted. Therefore, the Buyer is not authorised to deduct from payments due to the Seller debit notes or penalties; it must send these debit elements to the Seller who will issue credits if it deems them admissible.

8 - FORCE MAJEURE

The Seller may not be held liable for its delay in fulfilling or failure to fulfil one of its obligations under the contract if this delay or this failure are the direct or indirect effect of a force majeure event such as industrial action by all or part of its staff or its usual carriers, fire, flooding, war, attacks, production stoppages due to fortuitous breakdowns, the impossibility of obtaining supplies of raw materials required for the production of the products, epidemics, weight restrictions during a thaw, road closures, industrial action or supply shortage by energy suppliers, supply shortage or difficulty for a reason not attributable to the Seller, as well as any other cause of supply shortage attributable to its suppliers.

The Seller will inform the Buyer, without delay, of the occurrence of a force majeure event of which it is aware and which is liable to affect the performance of the contract.

If the duration of the impediment exceeds 60 working days, the parties must consult each other within 5 working days following the expiry of the period of 60 working days in order to examine in good faith if the contract must continue or be terminated.

9 - WARRANTY AND LIABILITY

The products are guaranteed against all manufacturing defects in the conditions set out in the Seller's commercial documents. Our products are guaranteed for 10 years in compliance with our installation recommendations and these Conditions. All claims or reservations relating to the characteristics, quantity and quality must be expressed in the conditions set out in article 5 "RECEPTION".

For other non-compliances, claims must be expressed within 8 days of the discovery of the defect and include the number of the package inspection sheet and/or the product identification codes.

The Buyer must justify the alleged complaints.

The Seller will be given the possibility to inspect the products on the premises or to request their return. In no case can the return be decided unilaterally by the Buyer.

After agreement has been reached as regards the reality of the defects, the parties will agree to one of the following:

- the replacement of the products if they are still being manufactured,
- the provision of similar products,
- the repair or the bringing into compliance of the products, possibly at the Buyer's premises,
- a credit note.

No other request in any form whatsoever will be accepted.

The Seller shall not be held liable for the incorrect assembly or the modification of the product by the Buyer nor improper maintenance or use, the consequence of dilapidation or normal wear and tear.

The warranty is also excluded in the event of negligence on the part of the Buyer, as well as in the event of force majeure. Neither does it apply in the event of deterioration or an accident arising from an impact, fall, improper supervision, or in the event of the transformation of the product.

No claim will be possible if the Buyer or a third party has attempted to remedy a possible non-compliance of the product without the consent of the Seller.

The costs and risks of the return of the product deemed defective are borne by the Buyer unless a prior agreement has been made to the contrary.

The warranty forms an indivisible whole with the product sold by the Seller.

This warranty is limited to the replacement, to the refund or to the repair of the products affected by a defect.

The replacement of defective products or parts will not result in the extension of the duration of the warranty set out above.

10 - CONFIDENTIALITY - INTELLECTUAL/INDUSTRIAL PROPERTY

The studies, designs, models and documents belonging to the Seller and given to the Buyer may not be given by the latter to third parties and they must be returned to the Seller after they have been examined.

The sale of products does not transfer to the Buyer any property rights over the manufacturing studies, technical methods and processes having contributed to their production.

11 - RETENTION OF TITLE

The products are sold with retention of title, which means that the Buyer will only become the owner of the products after they have been paid in full.

However, once delivered, the Buyer must assume all risks and assure they are properly stored; it may not modify them, incorporate them or resell them without the Seller's consent.

If the legislation of the Buyer's country does not recognise the validity of the retention of title clauses in particular in the event of administration or compulsory liquidation proceedings or if the Buyer wants to resell the products before having paid for them, it must grant the Seller sound payment guarantees such as certified cheques, drafts on customers, payment subrogation, avalised drafts, etc.

The product identification codes must be kept by the Buyer.

12 - TERMINATION

In the event of a delivery delay of more than 30 days referred to in article 4, or of the non-payment on the due date of the products ordered by the Buyer, referred to in article 7 of these Conditions or of a force majeure event referred to in article 8, the order or the contract may be terminated at the discretion of the party concerned.

It is expressly agreed that this termination will take place ipso jure 10 days after the sending of formal notice which remains, wholly or partly, unheeded. The formal notice can be given by registered letter with acknowledgement of receipt or by any extrajudicial document.

This formal notice must mention the intention to apply this clause.

13 - UNFORESEEN CIRCUMSTANCES

In the event of a change of circumstances which were unforeseeable at the time of concluding the contract or a new order, in accordance with the provisions of article 1195 of the French Civil Code, the party which did not agree to assume a risk of the performance of the contract being excessively onerous can ask the other party to the contract for a renegotiation of the contract.

In the event of a successful renegotiation, the parties will draw up without delay a new order formalising the result of this renegotiation for the supply of the products concerned.

Moreover, in the event of the failure of the renegotiation, the parties can, in accordance with the provisions of article 1195 of the French Civil Code, request the court, by mutual agreement, to terminate or adapt the contract.

14 - PERSONAL DATA

The Seller undertakes to respect all the rules regarding the declaration and use of the personal data provided and which it may need to process in order to fulfil the orders and, generally to comply with the regulations relating to data protection.

The Seller guarantees that it has taken steps to adopt confidentiality and security measures to protect the security of the data and, notably, to prevent them from being deformed, damaged and to prevent unauthorised third parties being able to access them.

In accordance with the amended French data protection law of 6 January 1978, the Buyer has the right to access, query, modify and rectify information concerning it.

The Buyer also has the right to object to the processing of its personal data for legitimate reasons, as well as the right to object to these data being used for marketing purposes.

To exercise its rights, the Buyer must send a letter with a photocopy of an identity document bearing his/her signature, to the following address: TMP CONVERT 546 route de Bourg 01250 Simandre sur Suran

15 - DISPUTES-LEGISLATION

The contracts and orders are governed by French law.

The parties undertake to try and reach an amicable settlement of their disputes before referring them to the appropriate court.

In the event where the parties are unable to resolve their dispute amicably, the case will be referred to the Courts of Bourg-en-Bresse, even in the case of an appeal and multiple defendants.

If these courts declare that they do not have the necessary jurisdiction, all the disputes relating to these Conditions, the contracts and agreements deriving from them may, as regards their validity, their interpretation, their execution, their resolution and their consequences, be definitively settled in accordance with the International Chamber of Commerce Rules of Arbitration, by one or several arbitrators in accordance with these Rules.

The Seller reserves the right if it is the plaintiff, to submit the matter to the Courts situated in the locality of the Buyer's registered office and to avail itself of the legislation thereof.