



Janoušek S.p.A. with Sole Shareholder - Terms and Conditions of Purchase

1 INTERPRETATION

In these Conditions the following terms shall have the following meanings:

- (a) **“Buyer”** means Janoušek S.p.A., with registered office in Muggia, post code 34015, Strada per i Laghetti, 3 (Italy);
- (b) **“Conditions”** means the terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller;
- (c) **“Contract”** means any contractual arrangement relating to the supply of Goods to the Buyer by the Seller incorporating the Conditions and any Specification;
- (d) **“Debit Note”** means any debit note issued by the Buyer to the Seller;
- (e) **“Expiry Date”** means the date recommended by the Seller beyond which the Goods cannot be warranted as being of satisfactory quality or fit for the purpose for which they were supplied;
- (f) **“Goods”** means the goods (including any instalment of the goods or any part of them) described in an Order;
- (g) **“Law”** means the laws of the Italian Republic;
- (h) **“Order”** means the Buyer’s order for a specific quantity of the Goods;
- (i) **“Price”** means the price of the Goods;
- (j) **“Revised Price”** means the price of the Goods less the debited amount as stated in the Debit Note;
- (k) **“Seller or Supplier”** means the subject so described in the Order who sells or provide the Goods;
- (l) **“Shelf-life”** means the period of time between the date of manufacture of the Goods and the Expiry Date.
- (m) **“Specification”** means all technical specifications and descriptions of any Goods supplied by the Seller to the Buyer whether contained in the Contract or an Order or otherwise specified by the Buyer from time to time.

2 GENERAL CONDITIONS

- 2.1 These Conditions, excepting possible derogations specifically agreed on in writing, shall regulate all present and future purchasing Contracts of the Goods between the parties. Possible general conditions of sale by the Supplier shall not be applied to the agreements between the parties unless expressly accepted in writing; in such a case, however, excepting a written derogation, they shall not exclude the efficacy of the present conditions with which they must be coordinated.
- 2.2 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.3 The Buyer is free to establish and periodically update its purchasing conditions, both general conditions and specific. Where possible, such changes shall be communicated to the Supplier in good time by the Buyer.
- 2.4 The acceptance of an order on the part of the Supplier, however it is carried out, means that the Supplier automatically accepts and adheres to the present Conditions (see <http://www.janousek.com/>) which is



automatically confirmed in any case, when the Buyer receives the Goods, except in the case of a specific written exception issued by the Buyer.

- 2.5 Every single purchasing Order sent to a Supplier by the Buyer for the purchase of specified goods refers normally to a written offer sent by the Supplier to the Buyer. In the absence of a different written agreement, it is agreed and understood that the purchasing conditions are those indicated in the present conditions. The Supplier obliges himself to maintain the validity of the offer for the time specified by himself. After written confirmation by the Buyer under the specified conditions and terms, the Supplier shall be obliged to accept the Order.
- 2.6 All references to possible commercial delivery deadlines (FCA, Ex-works, Ex-factory, FOB, CIF etc.) will be understood as relating to the Incoterms of the International Chamber of Commerce of Paris, according to the text in force at the time of the drawing up of the contract.
- 2.7 The Order number quoted on the Order and the stock code reference number must appear on all invoices, advice notes, packing lists and correspondence between the Buyer and the Seller.

3 SPECIFICATION

- 3.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.
- 3.2 The Seller shall comply with all applicable Laws concerning the manufacture, packaging, labelling and delivery of the Goods including any applicable Laws relating to product safety or the requirements of any relevant product licence, together with any relevant product declarations.
- 3.3 The Goods shall be marked in accordance with the Buyer's instructions and any applicable Laws relating to the labelling, packaging and marking of the Goods or any applicable product licence, and shall be marked with the relevant Expiry Date and shall be properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.4 Any technical document provided by the Supplier may be used, copied, reproduced, reworked, transmitted or communicated to third parties by the Buyer.

4 PRICE OF THE GOODS

- 4.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:
- (a) exclusive of any applicable Value Added Tax and any other sales duties and taxes; and
 - (b) inclusive of:
 - (i) all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address stated in the Order; and
 - (ii) any customs duties where applicable.
- 4.2 Unless the parties agree otherwise, the Seller may not increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of the Buyer.



5 TERMS OF PAYMENT

- 5.1 Unless otherwise stated in the Order, the Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods, and each invoice shall quote the number of the Order and any applicable stock code reference number in respect of the Goods.
- 5.2 Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods within sixty (60) days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods in question by the Buyer.
- 5.3 The Buyer shall be entitled to set off against the Price any bona fide sums owed to the Buyer by the Seller under a Contract or any other contract with the Seller.

6 DELIVERY

- 6.1 Unless otherwise stipulated in writing, the sale shall be understood to be carried out by CIP delivery terms (Transport and Insurance paid until destination) even when it has been stipulated that the delivery (or part of it) should be supervised by the Buyer; in such cases the Buyer shall act only as an agent for the Supplier, it being understood that transport shall be at the expense and risk of the Supplier.
- 6.2 The Goods shall be delivered at the delivery address and on the delivery date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- 6.3 Unless otherwise agreed the time of delivery of the Goods is of the essence of the Contract under Article 1457 of the Italian Civil Code.
- 6.4 The Buyer shall be entitled to reject any Goods delivered, which are not in accordance with the Contract or do not comply with any Specification or sample or are not of satisfactory quality or are not fit for the purpose for which they are intended or are in breach of any of the warranties given by the Seller, and the Buyer shall not be deemed to have accepted any Goods until the Buyer has had at least fourteen (14) working days to inspect them following delivery or, if later, within a reasonable time (in the opinion of the Buyer) after any latent defect in the Goods has become apparent.
- 6.5 In the event that the Buyer rejects any Goods pursuant to clause 6.4 above the Buyer shall issue a Debit Note to the Seller stating the debit amount and reason for the debit. In the event that the Seller does not respond within 28 days of the date of the Debit Note then the Seller shall be deemed to have accepted the Revised Price.
- 6.6 The Seller shall supply to the Buyer at the time of delivery any instructions or other information required to enable the Buyer to accept delivery of the Goods including any relevant certificates of analysis in respect of the Goods. The Seller shall also provide with each delivery a delivery note confirming the quantity of the Goods delivered, any applicable stock code, a full description of all the Goods within the delivery, a batch number for each individual batch of Goods within the delivery, a product declaration confirming any specific standards with which the Goods must comply and a certificate of conformity.
- 6.7 In respect of all Orders and Contracts under which Goods are supplied for delivery in Italy from a territory outside Italy the Seller must obtain any necessary licences and consents for the exportation, transportation and importation into Italy of the Goods, and shall ensure that these licences are delivered to the Buyer.



7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer on delivery without limiting any right of rejection which the Buyer has under these Conditions.

8 WARRANTIES AND LIABILITY

- 8.1 The Seller warrants to the Buyer that the Goods:
- (a) will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
 - (b) will be free from defects in design, material and workmanship;
 - (c) will correspond in every respect with any relevant Specification or sample;
 - (d) will comply with all statutory requirements and regulations relating to the sale of the Goods;
 - (e) will not infringe the rights of any third party established under trade marks, trade names, copyright, patents or any other protection whatsoever and whether comprised in the Specification or otherwise; and
 - (f) unless otherwise agreed in writing by the Buyer will have at the time of delivery not less than seventy-five per cent (75%) of their Shelf-life remaining (as evidenced by the Expiry Date which will be marked on each unit of the Goods).
- 8.2 The Seller warrants to the Buyer that at the time of delivery the Seller will have carried out such final quality control procedures in respect of the Goods as may be appropriate for the same and that the Goods have properly satisfied such quality control procedures. As soon as practicable following a request from the Buyer, the Seller shall provide the results of such final quality control procedures to the Buyer.
- 8.3 Without prejudice to any other remedy the Buyer may have, if any Goods are not supplied in accordance with the Contract then the Buyer shall be entitled:
- (a) to require the Seller to remove the Goods or any of them and either at the Buyer's discretion to supply replacement Goods in accordance with the Contract within seven (7) days or to refund to the Buyer the Price paid by the Buyer together with all expenses directly or indirectly incurred by the Buyer in consequence of such rejection or removal; or
 - (b) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to supply any replacement Goods, to treat the contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.4 The Seller shall indemnify the Buyer in full against all liability, loss, damages (whether for loss of profit or otherwise), costs and expenses or other claims of consequential compensation whatsoever (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- (a) breach of any warranty given by the Seller in relation to the Goods;
 - (b) breach of any of these Conditions;



- (c) any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer; and
- (d) any act or omission of the Seller or its employees, agents or sub-contractors in supplying or delivering the Goods.

8.5 The Buyer or its authorised representatives shall, subject to giving the Seller reasonable notice, have the right during normal business hours to inspect the Seller's premises or such other places where Goods are manufactured or stored from time to time.

8.6 The Seller shall undertake to obtain and maintain for as long as it is a party to a Contract adequate product liability or other insurance in respect of all its potential liabilities under any Contract in an amount of not less than Euro 10,000,000.00 (ten million/00) and the Buyer shall be entitled to see such evidence as it may reasonably require to show that such insurance is in place at any time and shall be supplied on demand with the current premium receipt.

8.7 If the Buyer informs the Seller (or if the Seller and the Buyer agree) that it is necessary or desirable to arrange for the recall from any customers of the Goods on the grounds of public safety or for any other reason, the Seller agrees that, without in any way limiting the Buyer's rights and remedies, the Seller will effect such recall and reimburse the Buyer with:

- (a) all costs and expenses reasonably incurred by the Buyer in repossessing the Goods, arranging for them to be stored for such period as may be reasonably required, returning them, or disposing of them (or any one or more of the foregoing);
- (b) amounts reimbursed by the Buyer to its customers who have purchased recalled Goods;
- (c) all promotional and marketing expenditure in relation to the Goods concerned which the Buyer may have incurred due to the recall;
- (d) all amounts incurred by the Buyer in publicising the recall;
- (e) all costs and expenses incurred by the Buyer in the event of prosecution by any Authority on account of the sale or availability for sale of the Goods which are the subject of the recall.

9 CANCELLATION OF ORDERS

Unless otherwise agreed, the Buyer shall be entitled to cancel an Order in respect of all or part only of the Goods by giving notice to the Seller at any time prior to delivery in which event the Buyer's sole liability shall be to pay the Seller the Price for the Goods in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of costs arising from cancellation.

10 FORCE MAJEURE AND EXCESSIVELY ONEROUS CONTRACTS

The Buyer shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the contract due to causes beyond the control of the Buyer or beyond the control of the Buyer's suppliers including, but not limited to, war, (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts of the Seller or a third party, failure or delay in transportation, acts of any Government or any agency or sub-division thereof, Government regulations, Judicial actions, labour disputes, strikes, embargoes, illness, accident, fire explosion, flood, tempest or other acts of God, delay in delivery to the Buyer or the Buyer's suppliers or shortage of labour, fuel, raw materials or machinery or technical failure.



11 FINAL DISPOSITIONS

- 11.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract for the Goods.
- 11.2 No waiver by the Buyer of any breach of the Contract for the Goods by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 The construction, validity and performance of this Contract shall be governed by the laws of Italy and in the case of international sales, by the Vienna Convention 1980 on international sales of goods. Eventual derogations or appeals from the parties concerning specific articles of the Italian law will not imply a partial or total exclusion of the application of the above named regulations as far as they are compatible with contractual regulations.
- 11.4 The parties hereby submit to the exclusive jurisdiction of the Court of Trieste (Italy). However, the Buyer may bring proceedings in any court of competent jurisdiction including without limitation the courts in the country in which the Seller is based.

Date: _____

For the acceptance

The Seller

Pursuant to and for the purposes of Articles 1341 and 1342 of the Italian Civil Code, the following clauses are specifically approved in writing:

- Clause 6. Delivery;
- Clause 7. Risk and property;
- Clause 8. Warranties and Liability;
- Clause 9. Cancellation of orders;
- Clause 10. Force majeure and excessively onerous contracts;
- Clause 11. Final dispositions.

The Seller
