

## GENERAL CONDITIONS OF SUPPLY



Dated 8/2004

**All of our deliveries and services to individuals and private companies are governed exclusively by the following terms and conditions:**

### **I. Offer and Acceptance/Written Form**

1. We shall submit to purchaser a supply offer which, once accepted by purchaser, shall be converted into a delivery contract. The delivery contract shall necessarily contain the definition of the supply conditions required in order to allow us to start the development and manufacturing of the products, amongst which: specifications of the products, prices per unit of product, term of the delivery contract, minimum quantities of products under the delivery contract, payment conditions, term for product's development and place for delivery of products. Together with the delivery agreement, purchaser shall present a chart indicating the quantities and delivery dates of the products.
2. The General Conditions of Supply hereinafter, as well as any delivery contract and respective changes, ancillary agreements and other agreements become valid and binding only if and when executed by both parties. The delivery contract as well as any changes, ancillary agreements, declarations regarding its termination or other declarations and notifications require text form.
3. We are not bound by general terms and conditions of the purchaser that differ from these General Conditions of Supply. Such deviating terms and conditions do not become part of the contract, either by acceptance of the order or implicitly by another act. In order for such deviating terms and conditions proposed by the purchaser become valid and binding, the General Conditions of Supply hereinafter, as well as any delivery contract must be amended accordingly and executed by both parties, according to Art. 221 of Brazilian Civil Code.



**II. Prices/Processing Fees**

1. The applicable prices consist of prices and discounts applicable on the date of execution by the parties of the delivery contract plus the relevant statutory value added tax.
2. *The applicable prices and discounts to a given supply may be reviewed or readjusted by us whenever we verify an economical-financial unbalance between the reciprocal obligations of the parties, revealed by the variation of the economic level as from the execution of the delivery contract, as regards commodities or other material or parts quoted in foreign currency used by us in the manufacturing of its products. We will inform purchaser of the occurrence of such economical-financial unbalance by means of written communication and the parties shall, within 30 days counted from the receipt of the communication, reach an agreement as to the applicable review or readjustment of the applicable prices and discounts. In case the parties fail to reach such agreement, we will be entitled to terminate the supply at our discretion and, in such an event, we will keep the supply for 90 days counted as from the receipt by purchaser of the above mentioned written communication, as to allow purchaser to find alternative suppliers during such term.*
3. We shall have the right to review or readjust the prices indicated in the delivery contract whenever purchaser demands a modification in product's project and/or specifications or in the supply conditions, thus resulting in an increase in the manufacturing costs. In this event, the parties shall mutually reach an agreement as to the new price of the products to be supplied under the new conditions. In case the parties fail to reach such an agreement, we shall be entitled to: (i) suspend the development, manufacturing and/or supply of products under the new intended conditions and (ii) obtain a monetary compensation for the losses incurred by us in manufacturing and/or supplying products under the new intended conditions.
4. We have the right to obtain a monetary compensation from purchaser if quantities of ordered products do not reach the minimum quantities and/or minimum order value as contained in our relevant offers or otherwise agreed to. In such an event, the monetary compensation shall reflect the



losses resulted to us with the production in lower scale as well as our ceased profits.

### III. Delivery times/Default/Schedule Transactions

1. Delivery periods begin to run as from the confirmation of the order by both parties. We undertake to perform the supply of products and/or services according to the terms provided in the delivery request or in the chart indicating the quantities and delivery dates of the products attached thereto.
2. In case of unforeseen and unavoidable events in the production or other obstacles such as acts of god, labor disputes or other disruptions in our own business or in the business of our suppliers as well as delayed delivery by our suppliers we are entitled to extend the delivery period by a period of time equal to the duration of such *force majeure* event. We will inform the purchaser of the start and end of such circumstances as soon as possible. Such extension of the delivery period shall not be considered as a default for purposes of Section 3, hereinafter.
3. To the extent we are in default and the purchaser incurs damages as a result thereof, the purchaser may demand a default compensation. Such default compensation will be for each full week one-half percent (0.5 %) of the value of the part of the total delivery that could not be used as anticipated by the contract as a result of the delay, but in no event more than five percent (5%) of such value. Such compensation excludes any further indemnification whatsoever, even in case the losses incurred by purchaser exceed the amount of such compensation, as per Article 416, sole paragraph of Brazilian Civil Code.
4. To the extent that we have agreed with a purchaser that a particular delivery volume will be delivered within a specified time period and according to the chart attached to the delivery contract, in case purchaser wishes to modify the quantity of products or the delivery dates the purchaser must notify us of the desired quantity of products and/or delivery date not less than twelve (12) weeks prior to such date. After such period has expired, in the event quantities of products and delivery dates are not defined by purchaser in a timely manner to allow the supply



by us, we may charge a monetary compensation as provided in Section 4 of Article II.

5. Partial deliveries are permissible to the extent such partial deliveries are not unreasonably burdensome for the purchaser.

#### **IV. Packaging/Shipping/Transfer of Risk**

1. Delivery is EXW (most recent Incoterms) from a location designated by us, and the method of packaging and the packaging material will be determined by us in our sole discretion. The method of packaging and the packaging material may be modified by the parties in the delivery contract. In such an event, we may be entitled to invoice against purchaser the corresponding costs.
2. Palettes, containers, and other reusable packaging owned by us remain our property and must be returned by the purchaser to our delivery center in identical conditions of maintenance and cleaning as when they were received by purchaser, without undue delay and at no costs to us. We will invoice disposable packaging at cost in case reusable packaging is returned to us by purchaser with any damages and will not take back such packaging.
3. The purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.

#### **V. Payment**

1. Payment must be made without deductions to one of our accounts in accordance with the agreed payment terms. The purchaser is in payment default as soon as the agreed upon payment date has passed. In case of payment default, purchaser shall incur in interest in arrears to be calculated over the outstanding amount according to the interest rate applicable to debts before the Brazilian Federal Treasury, as well as in penalty fee corresponding to ten percent (10%) over the outstanding amount.



2. It is not permissible to hold back payments by reason of counter claims or counter rights or to set off with counter claims or counter rights unless such counter claims or counter rights are undisputed, have been finally judicially determined, or are ripe for decision.

#### **VI. Intellectual Property and Retention of Title**

1. Unless expressly provided otherwise, the supply of products by us does not imply transfer of our intellectual property rights, which remain of our ownership.

#### **VII. Warranties / Limitation of Liability**

1. To the extent supplied goods are unusable in whole or in part due to defects we will, in our reasonable discretion, choose to cure the defects at no cost to the purchaser or deliver, at no cost to the purchaser, goods without defects (collectively, "Supplementary Specific Performance"). In addition we will bear the purchaser's direct costs of disassembly and assembly. Such an obligation to bear the direct disassembly and assembly costs does not exist if the costs are incurred outside of Brazil. The obligation also does not exist if there is no reasonable relationship between such costs and the delivery price of the defective delivered goods. All other costs are borne by the purchaser. We are not responsible for damages due to natural wear and tear during the time of use.
2. The purchaser must grant to us a reasonable period of time and reasonable opportunity to permit Supplementary Specific Performance, which Supplementary Specific Performance will be performed by us in our reasonable discretion. The purchaser has the right to perform Supplementary Specific Performance itself or to cause a third party to perform such Supplementary Specific Performance and, in each case, demand reimbursement of the costs associated therewith, only (i) in case of emergency relating to operational security, (ii) to avoid unreasonably high damages or (iii) when we are in default with respect to the Supplementary Specific Performance. The purchaser must notify us immediately of an occurrence of any of the events described in the



previous sentence.

3. Our liability shall be restricted to the following events:
  - (1) Willful or grossly negligent breach of duties;
  - (2) Any fraudulent act and/or;
  - (3) Products' liability, according to the provisions of the Brazilian Code for Consumer Protection.
4. Defects must be notified to us after discovery without undue delay. The delivered goods with respect to which defects have been notified must be made and kept available to us. We will bear the costs for shipment back to us only if such shipment takes place at our request.
5. The purchaser bears the burden of proof that all requirements are met for the claims alleging our breach of duty to be valid as asserted by the purchaser. This burden of proof applies also to our willful misconduct or negligence.

#### **VIII. Guaranty / Procurement Risk**

Guaranties and procurement risks require, in order to be validly assumed by us, (i) a specific assumption of risk expressly designated as such and (ii) written form. The purchaser agrees with us that statements in our catalogues, printed material, brochures and other general information in no event and at no time constitute a guaranty or the assumption of the procurement risk.

#### **IX. Use of Software**

1. To the extent the scope of delivery includes software, we hereby grant to the purchaser a non-exclusive, non-transferable license that is limited to a definite time period pursuant to the provisions of the particular delivery, to use the software and its accompanying documentation in connection with the relevant delivered item. The software may not be used in connection



with more than one delivered item. The granting of sub-licenses is not permitted.

2. The purchaser may reproduce, revise, translate or modify from object code to source code the software only within the statutorily permitted scope. The purchaser may not remove manufacturer information -- in particular copyright labels or notices -- or make any other modifications without our prior written express consent.
3. We reserve all other rights to the software and the accompanying documentation, including copies.

**X. Confidentiality**

1. The purchaser and ourselves will keep confidential all information received from the other party. This confidentiality provisions continue to apply after termination of the delivery contract. The confidentiality obligation does not apply to information that (i) the receiving party had already obtained legitimately at the time of disclosure, provided such information was not subject to a confidentiality obligation or (ii) that the receiving party later obtains independently and legitimately without being obligated to keep such information confidential, or (iii) that is or becomes generally known without any breach of contract by one of the parties.
2. Each party retains title and all rights to all documents or other media made available to the other party. Such documents or other media may be reproduced, replicated or transferred to third parties only with the consent of the party making them available.

**XI. Miscellaneous**

1. The place of performance of the Agreement for purposes of performance of supply and payments shall be the domicile of our relevant supplying company.
2. The parties elect the Courts of São Paulo to rule any disputes and/or



controversies arising from the General Conditions of Supply or from any delivery contract, no matter how privileged other courts may be.

3. The contractual relationship between us and purchaser is governed by the laws of the Federative Republic of Brazil.
4. The failure to assert, in whole or in part, any rights from this delivery contract or to assert such right belatedly shall not be construed as a waiver of this or any other right.
5. If a specific provision of these General Conditions of Sale and Delivery is or becomes invalid, the remaining provisions shall remain valid.
6. Please note that we store and process personal data in the course of business transactions. All legal regulations concerning data privacy are observed.