

## **CEDESA GENERAL TERMS AND CONDITIONS OF SALE**

These Terms and Conditions can be found on the Internet under <http://www.cedesa.co.uk/>

### **1. GENERAL**

#### **1.1 Definitions**

**"BUYER"** means an individual or entity which signs the CONTRACT documents as counterpart to CEDESA.

**"CONTRACT"** means the PURCHASE ORDER plus all documents referred to therein.

**"DELIVERY TERM"** shall have the meaning as established in the version of the INCOTERMS in place as of the effective date of the CONTRACT.

**"EFFECTIVE DATE"** means the date of the ORDER CONFIRMATION. If BUYER expresses its objection to the ORDER CONFIRMATION within three (3) working days after receipt of the ORDER CONFIRMATION, EFFECTIVE DATE shall be the date on which BUYER and CEDESA reach common agreement on the CONTRACT.

**"END USER"** shall have the same meaning as BUYER. However, if the BUYER and END USER are not the same individual or entity, then the term "END USER" shall mean the individual or entity for which the BUYER is obtaining the SCOPE OF SUPPLY.

**"EX WORKS"** means an Ex Works delivery as defined in the version of the INCOTERMS in place as of the EFFECTIVE DATE.

**"FINAL ACCEPTANCE"** means the document issued by the BUYER or the END USER at the beginning of the warranty period or, if no FINAL ACCEPTANCE document is issued, then the document evidencing shipment of or completion of the SCOPE OF SUPPLY. For consignment goods, FINAL ACCEPTANCE will take place at the date of removal of goods from stock, usually at the point of consumption.

**"GENERAL TERMS"** means these General Terms and Conditions of Sale of CEDESA.

**"ORDER CONFIRMATION"** means the document provided by CEDESA to BUYER as a response to the PURCHASE ORDER either by e-mail, facsimile or as a hardcopy.

**"PURCHASE ORDER"** means the purchase order documents issued by BUYER in the version confirmed by CEDESA in the ORDER CONFIRMATION. In case of non-substantial deviations between said PURCHASE ORDER documents and the ORDER CONFIRMATION, the version of the ORDER CONFIRMATION shall become the binding PURCHASE ORDER unless BUYER expresses its dissent within three (3) working days after receipt of the ORDER CONFIRMATION.

**"SCOPE OF SUPPLY"** means the goods and/or services to be delivered as specified in the CONTRACT and the pertaining documentation, to the extent explicitly specified in the PURCHASE ORDER and agreed upon by both parties.

**"CEDESA"** means the company within the CEDESA Division which issued the ORDER CONFIRMATION.

1.2 These GENERAL TERMS apply to all work provided by CEDESA.

BUYER is hereby given notice that any deviations from these GENERAL TERMS are expressly rejected unless such deviations are otherwise agreed upon in a mutually signed document.

The validity of any offer made by CEDESA is for a period of thirty (30) days commencing with the date of the offer, unless otherwise specified in writing by CEDESA..

1.3 The delivery encompasses the SCOPE OF SUPPLY

1.4 In case of contradiction between CONTRACT documents, the following order of precedence shall apply:

- a) PURCHASE ORDER in the version accepted in the ORDER CONFIRMATION or other negotiated, agreed and mutually signed document, including all documents made a part thereof
- b) CEDESA'S offer
- c) These GENERAL TERMS
- d) BUYER'S request for an offer
- e) BUYER'S Purchase Terms and Conditions

1.5 All documents forming part of the CONTRACT can be changed only by a written, duly signed document.

1.6 CEDESA shall be entitled to engage sub-suppliers and sub-contractors for the performance of the CONTRACT.

### **2. DELIVERY**

2.1 CEDESA shall deliver the SCOPE OF SUPPLY on the dates specified in the CONTRACT contingent upon BUYER fulfilling all contractual obligations, including but not limited to timely release of all input specifications, drawing approvals etc.

- 2.2 BUYER acknowledges and agrees that the delivery of the SCOPE OF SUPPLY may be delayed and re-scheduled in order to accommodate delays caused by:
- a) Events of Force Majeure as defined in this CONTRACT;
  - b) Failure of BUYER or BUYER'S representative to make any required advance payments;
  - c) Failure of BUYER or BUYER'S representative to provide in a timely manner;
    - I. revised or additional specifications;
    - II. approval drawings; or
    - III. other items, documentation or materials necessary to complete the SCOPE OF SUPPLY.
  - d) Any other reasons beyond CEDESA'S control
- 2.3 CEDESA reserves the right to suspend production of the SCOPE OF SUPPLY or terminate this CONTRACT in the event that BUYER fails to provide any required advance payments and/or to issue Letter(s) of Credit as agreed in the PURCHASE ORDER within fourteen (14) days of the due date of the advanced payment or Letter(s) of Credit.
- In such event, CEDESA reserves the right to charge BUYER for all losses and damages suffered by CEDESA by reason of such default.
- 2.4 Unless otherwise expressly agreed in writing in a document signed by CEDESA, CEDESA shall not be subject to any claim for liquidated damages or penalties related to the late delivery of the SCOPE OF SUPPLY.
- In case the BUYER fails to fulfil any of its contractual obligations in a timely manner including failure to make payments on time or failure to take delivery when called upon to do so by CEDESA or failure to provide necessary infrastructure and facilities to commence the perform of the CONTRACT, CEDESA is entitled to terminate the CONTRACT. In this case BUYER shall pay to CEDESA the costs and expenses incurred by CEDESA connected with work or services performed prior to the date of termination, including a reasonable margin as well as other costs and expenses, including cancellation charges under subcontracts, as CEDESA may incur in connection with such cancellation.
- 2.5 Transfer of risk of loss of or damage to the SCOPE OF SUPPLY shall be in accordance with the applicable Incoterms. If dispatch is delayed at the request of the BUYER or due to other reasons beyond CEDESA'S control, the risk of loss of the SCOPE OF SUPPLY shall pass to the BUYER at the original time the SCOPE OF SUPPLY was scheduled to leave CEDESA manufacturing facility. From this moment on, the SCOPE OF SUPPLY shall be stored and insured on the account and at the risk of the BUYER. Title and ownership shall be transferred to BUYER upon receipt of payment in full by CEDESA.
- 3. PRICE AND PAYMENT**
- 3.1 The prices for the SCOPE OF SUPPLY are those stated in the CONTRACT and are fixed and firm until fulfillment of CONTRACT. For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the CONTRACT. If no agreement on hourly rates has been made, the hourly rate applied by CEDESA for other customers and comparable work shall apply. All prices are exclusive of excise duties, VAT, sales or similar taxes and duties.
- 3.2 Unless otherwise agreed in writing, full payment for the SCOPE OF SUPPLY shall be due within thirty (30) days of issue of an invoice by CEDESA.
- 3.3 If BUYER disputes any item or charge listed in the invoice, BUYER shall state the item or amount of the charge in dispute and the reasons for such dispute in writing within such thirty (30) day time period. However, all undisputed amounts shall remain due as specified above.
- 3.4 At CEDESA discretion, an interest charge of six percent (6%) per annum will be charged against any outstanding balance effective as of the due date of the balance.
- 3.5 Unless otherwise agreed in writing, all uncontested payments shall be made according to the agreed terms of payment without any deductions for discounts, set-offs or otherwise.
- 3.6 In case of late payment, CEDESA may, after having notified the BUYER in writing, suspend its performance of the SCOPE OF SUPPLY until the overdue invoices have been paid.
- 3.7 If BUYER and CEDESA agreed on issuing a Letter of Credit by BUYER in favor of CEDESA, such Letter of Credit shall be irrevocable, unconditional, and issued by a first class worldwide active bank. The Letter of Credit shall remain valid until the delivery of the entire of SCOPE OF SUPPLY plus ninety (90) days. CEDESA reserves the right to approve the issuing bank. Withdrawal of the money shall be against the documents that are mutually agreed upon in writing.
- 4. INTELLECTUAL PROPERTY**
- 4.1 BUYER shall provide the technical documentation (e.g. up-to-date drawings, descriptions, charts, instructions, etc.) that is necessary for the delivery of the SCOPE OF SUPPLY and is specified in the CONTRACT. BUYER confirms that BUYER is fully authorized to use (or have used) the technical documentation provided to CEDESA for the performance of the SCOPE OF SUPPLY by CEDESA or its sub-suppliers, respectively. In any case where BUYER is not authorized to order said performance from CEDESA without violation of intellectual property rights of third parties, or if such right should be challenged, BUYER shall inform CEDESA without any delay. In this case, CEDESA shall stop the work until the approvals needed for the performance have been obtained.

- 4.2 Each party to the CONTRACT retains all rights to any technical documents provided to the other party. The party receiving such documents recognizes these rights and shall, without previous written consent of the other party, not make these documents available to any third party, either in whole or in part, nor use them for any purpose other than to fulfill the CONTRACT.
- 4.3 To the best knowledge of CEDESA the SCOPE OF SUPPLY and any part thereof, in the particular form sold by CEDESA, shall not infringe any intellectual property rights of third parties. In the event of any infringement relating to the SCOPE OF SUPPLY, CEDESA may, in its sole discretion, procure the right to use the SCOPE OF SUPPLY without impairing its suitability, or modify or replace it so that it is rendered non-infringing. The obligations of CEDESA set forth herein are contingent upon (i) CEDESA receiving prompt written notice from BUYER of such infringement; (ii) CEDESA receiving assistance from BUYER in the defence of any claim; and (iii) the right of CEDESA to settle or defend any claim.
- 4.4 The obligation under 4.3 above of CEDESA shall not apply to (i) the SCOPE OF SUPPLY or part thereof which has been manufactured according to BUYER'S design, (ii) services performed by using BUYER'S documentation, (iii) the use of the SCOPE OF SUPPLY or any part thereof in conjunction with any other product in a combination not furnished by CEDESA as part of the SCOPE OF SUPPLY, (iv) to products fabricated by using the SCOPE OF SUPPLY. As to any such equipment, service, product, part or use in such combination, CEDESA assumes no liability whatsoever for infringement of intellectual property rights of third parties, and BUYER shall indemnify and hold harmless CEDESA against any infringement claims. CEDESA shall co-operate with BUYER in the same manner as required by CEDESA.

## 5. Warranty

### 5.1 Performance Guarantee

Unless explicitly agreed upon in writing in the CONTRACT, CEDESA shall not provide performance guarantees.

### 5.2 Exclusion from CEDESA'S Warranty

Excluded from CEDESA'S warranty and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design (if applicable), or poor workmanship.

### 5.3 No Additional Warranties or Representations

**CEDESA MAKES NO WARRANTY OR REPRESENTATION TO THE SCOPE OF SUPPLY OTHER THAN AS SPECIFIED IN THIS SECTION. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**

## 6 Hazard Warning Responsibility

BUYER and CEDESA acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning SCOPE OF SUPPLY. BUYER is familiar with the SCOPE OF SUPPLY and acknowledges its separate and independent knowledge of such risks, which are known in BUYER'S industry. BUYER shall maintain compliance with all safety and health related governmental requirements concerning SCOPE OF SUPPLY and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, agents, contractors, and customers with all hazards associated therewith, including handling, shipment, storage, use, and disposal. BUYER assumes as to its own employees, its independent contractors, and subsequent purchasers of the SCOPE OF SUPPLY sold hereunder, all responsibility for any and all necessary warnings or other precautionary measures. BUYER shall defend at its own expense, indemnify fully and hold harmless CEDESA and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, lawyer's fees and related costs) arising out of or in any manner related to BUYER'S failure to provide necessary warnings or other precautionary measures in connection with the SCOPE OF SUPPLY sold hereunder.

## 7. OVERALL LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, INCLUDING ALL DOCUMENTS FORMING A PART OF THE CONTRACT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL CEDESA BE LIABLE TO THE BUYER OR ITS CUSTOMER FOR ANY LOSS OF PROFIT, LOSS OF CONTRACTS OR EARNINGS, INTERRUPTION OR LOSS OF PRODUCTION OR LOSS OF USE OR LOSS OF OPPORTUNITY, DELAY IN DELIVERY OR CLAIMS BY THE BUYER'S CUSTOMER FOR SUCH DAMAGES OR BUSINESS, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH LIABILITY IS BASED ON CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER BASIS OF LEGAL LIABILITY. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND CEDESA'S LIABILITY WITH RESPECT TO ANY CONTRACT OR SALE OR ANYTHING DONE IN CONNECTION THEREWITH, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL IN TOTAL NOT EXCEED 100% OF THE CONTRACT PRICE TO BE PAID TO CEDESA, UNLESS CLAIMS ARISE DIRECTLY FROM GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF CEDESA.

## **8. EXPORT AND OTHER GOVERNMENTAL DOCUMENTS**

8.1 CEDESA undertakes to provide the documents required by the authorities at CEDESA place for the manufacturing and transportation EX WORKS of the SCOPE OF SUPPLY.

8.2 BUYER undertakes to provide all other documents required, e.g. documents required by an authority at BUYER'S or BUYER'S customer's place, or the place where the SCOPE OF SUPPLY will be used.

8.3 CEDESA, BUYER and END USER shall support and assist each other without undue delay with obtaining any necessary information or documentation required by any authority in connection with the CONTRACT. CEDESA acceptance of the CONTRACT shall be subject to the receipt of all necessary export authorizations required from any governmental authority which has jurisdiction over this CONTRACT.

8.4 The BUYER hereby represents and warrants that it is, and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include, but are not limited to obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity, software or technology. Without limiting the generality of the foregoing, the BUYER hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. The BUYER agrees to indemnify and hold harmless CEDESA from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

## **9. FORCE MAJEURE**

9.1 CEDESA shall not be liable for any non-performance, loss, damage, or delay due to acts of God such as but not limited to severe weather conditions, fire, flood or war, riots, strikes or labor difficulty, governmental acts such as but not limited to trade restrictions including embargoes, acts of the BUYER or END USER, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of CEDESA. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than six (6) months, either CEDESA or BUYER may terminate the CONTRACT upon seven (7) days' written notice to the other party.

9.2 CEDESA shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. BUYER shall be entitled to receive the work for which it has paid.

## **10. FREE ISSUE MATERIALS**

Materials supplied by BUYER to CEDESA (e.g. samples to be processed or tested, product for usage in performance tests, materials to be used for implementation in the SCOPE OF SUPPLY, etc.) ("FREE ISSUE MATERIALS") shall at all times remain the property of BUYER and shall be sufficiently covered under BUYER'S property insurance policy. Subject to Article 6 and 7 hereinabove, CEDESA shall be solely liable for damages caused by gross negligence or willful misconduct to FREE ISSUE MATERIALS.

## **11. MISCELLANEOUS**

### **11.1 Applicable Laws and Jurisdiction**

- a) The CONTRACT shall be construed and shall be interpreted in accordance with the laws of England and Wales excluding and without application of any conflict of law rules.
- b) Nothing contained in this CONTRACT shall limit the rights of CEDESA available under the applicable law.
- c) In case of a dispute, the parties shall use their best efforts to resolve such dispute amicably. If an amicable resolution should not be possible, the competent court at CEDESA'S location shall have exclusive jurisdiction. However, CEDESA reserves the right to initiate a claim against BUYER at BUYER'S location.

### **11.2 Assignment**

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void. CEDESA affiliated companies shall not be considered third parties for this purpose.

### **11.3 Waiver of Rights**

CEDESA'S or BUYER'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

#### **11.4 Severability**

If a provision of the CONTRACT is determined to be void or unenforceable, this finding shall not render other provisions void or unenforceable, and CEDESA and BUYER shall use their best endeavours to replace such provision by a valid one covering the original commercial intention as far as legally possible.

#### **11.5 BUYER LIABILITY TO OWN BRAND MATERIALS**

Raw materials purchased exclusively for use with the BUYER'S own brand products will be held in stock at CEDESA on the understanding that should the contract to supply (or implied contract to supply) be cancelled, the product(s) are withdrawn from sale, or there be no further orders from the BUYER to CEDESA for a period of time greater than 9 months, then the BUYER shall be liable to pay CEDESA for the value of those raw materials upon receipt of an invoice for them.