

# EMPORIUM PARTNERS APS - TERMS AND CONDITIONS OF SALE – 13 NOVEMBER 2023

## 1. ACCEPTANCE AND CANCELLATION OF ORDERS

Any agreement for the sale of goods or provision of services (including where relevant Examinations as defined in 6 (b) below in relation to any goods, whether sold by Seller or not, and regardless of whether such Examinations are subject to separate fees or not), hereinafter collectively referred to as "goods" made between Emporium Partners ApS ("Seller") and its customer ("Purchaser") or any order placed by Purchaser with Seller, may be cancelled by Purchaser only upon the prior written consent of Seller (which Seller may withhold at its sole discretion). As a condition to Seller's possible written consent to cancel an order, Purchaser shall pay all reasonable cancellation and restocking charges incurred by Seller due to Purchaser's cancellation of the order.

## 2. QUOTES & ORDER ACKNOWLEDGEMENT

Quotes from Seller may be based on a 3rd party's quotation to the Seller. All quotes made by Seller are unbinding and the Purchaser has no right to enforce the quotation as a binding agreement to sell. Unless otherwise is specifically agreed, all Seller's Order Acknowledgements will remain subject to availability of the goods. Unless a certain minimum quantity is expressly stated in Purchaser's order and repeated by the Seller in the Order Acknowledgement, Seller has the right to make only partial delivery of the goods mentioned in the Order Acknowledgement. Lot codes on packing might be removed due to territorial distribution restrictions. In case it is required it should expressly state in Purchaser's Order and repeated by the Seller in the Order Acknowledgement.

## 3. DELIVERY OF GOODS

All prices and goods quoted as well as goods shipped are "ex works" Seller's (or its sub-supplier's) place of shipment. Title (to subject to 4 below), risk of loss of, or damage to goods shall pass to Purchaser when the goods are placed by Seller (or its sub-supplier) in possession of a common carrier selected by Seller for shipment to Purchaser.

Unless otherwise is expressly stated on the front of this agreement, Purchaser shall pay all freight, handling, special handling, delivery, insurance costs etc. for the shipment of goods. Seller may refuse, withhold or delay any shipment if Purchaser fails to pay any payments to Seller in time, whether such payment is pursuant to this agreement or any other agreement between Seller and Purchaser.

Seller may deliver the goods covered by this agreement at one time or in portions from time to time. Delivery times are indicative only and are calculated from the date of Seller's Order Acknowledgement. Seller shall not in any event be liable for delayed delivery.

## 4. RETENTION OF TITLE

Until having received full payment Seller retains full title to all goods sold as specified below, while always subject to mandatory limitations under applicable laws.

(a) Seller retains title to any goods delivered until Seller has received full payment of all amounts owed by Purchaser.

(b) Purchaser is entitled to resell goods in the ordinary operations of Purchaser's business regardless of Seller's retention of title provided however, that Purchaser when doing so shall automatically assign to Seller the right to receive payment from Purchaser's customer for an amount corresponding to Seller's outstanding account with Purchaser, including VAT. Until Seller informs Purchaser otherwise Purchaser shall still be authorized to collect payments from its customer. If and when Seller wishes to exercise the assigned rights Seller will inform Purchaser of this where after Purchaser shall cooperate loyally with Seller and provide Seller with all relevant information and documentation about the assigned rights, including all details about debtors and all necessary information and documentation in relation to or necessary for Seller's collection procedures, also including confirmation from Purchaser that the rights are assigned to Seller. The assignment of rights to Seller shall in no event relieve Purchaser of its obligations towards Seller.

(c) Seller's repossession of goods shall not imply that the agreement is rescinded or that Purchaser shall have fulfilled its obligations under the agreement. Seller shall in addition to taking repossession of the goods be entitled to invoke any other remedy it may have in contract, at law or otherwise.

(d) Purchaser shall at its own expense insure the goods comprised by retention of title sufficiently against theft, destruction, fire, and water damage.

## 5. TERMS OF PAYMENT

(a) Purchaser shall pay for the goods in full, without offset or deduction, within the time frame and in the manner set forth on the front of this agreement. Purchaser shall pay to Seller, on demand, a late payment charge of 1.5 % per month of any unpaid due balance.

## 6. PURCHASER'S DUTY TO EXAMINE GOODS AND PURCHASER'S RIGHT TO RETURN OF GOODS

(a) Purchaser shall as fast as possible and always before reselling, incorporating goods into other products, mixing the goods/products with other products, and in any event within a maximum of 30 days after receipt of each shipment of goods examine, test and perform any inspection of the goods Purchaser deems necessary in order to determine if there is any damage, defect or shortage. Visual defects or shortages shall be received by the Seller no later than 7 days after Purchaser's receipt of the goods and shall otherwise be deemed unconditionally and absolutely waived by Purchaser. Any other claim for any damage, defect or shortages, or for any other cause whatsoever (whether the claim is based in contract, negligence, strict liability, tort or otherwise) shall be deemed unconditionally and absolutely waived unless made in writing and received by Seller within 30 days after Purchaser's receipt of the goods regardless of whether the claim is discovered or whether processing, further manufacture, other use, or resale of goods have taken place.

(b) If Seller in connection with or in relation to goods or isolated from other goods provides or assists with any examination, for example x-rays, examination of content of certain metals or minerals in the goods, or other tests or examinations of any kind (collectively "Examinations"), such as provided "as is". Any defects, shortage or delay in the Examinations in relation to or part of goods shall not entitle the Purchaser to any claim or remedy in relation to the Examinations or any other part of the goods. Purchaser accepts that certain Examinations of goods may be destructive and that examined goods can thus not be used. When Purchaser requires destructive Examinations, Purchaser shall pay for the goods regardless of whether they are destructed or damaged during or in consequence of the Examinations and regardless of whether they are delivered to Purchaser.

(c) If any defect or damage is detected and notified timely to Seller in accordance with 6 (a) above Purchaser must request a Return Material Authorization ("RMA") from Seller's Customer Service Department in order to return any product or goods. Seller's Customer Service Representative will record and review all timely requests and if approved forward to the Purchaser a return authorization label. Purchaser must return to Seller the damaged or defective goods within 7 days after obtaining the label. The return authorization label must be attached to all packaging containing goods returned to Seller. No return of any type will be accepted without the RMA authorization label attached. If Purchaser does not request from Seller a RMA, or if Purchaser requests a RMA for goods that are not damaged or defective, Seller may, at its sole discretion, issue a RMA and may make it conditional upon Purchaser's payment of a restocking fee plus shipping/freight charges. No item may be returned or exchanged after 7 days after the Purchaser's receipt of the RMA authorization label.

## 7. LIMITATION OF WARRANTY AND LIMITATION OF LIABILITY

(a) Seller is acting solely as an independent distributor and not as manufacturer of the goods (except from in relation to Examinations), consequently only the manufacturer of the goods shall be responsible to Purchaser and any third parties for any defects or malfunctions, to such effect that Seller shall to the extent permitted under applicable law not be liable for any claims, damages, obligations, costs or expenses related to the goods distributed or sold by Seller except from what follows explicitly in this agreement. Purchaser agrees to look solely to the manufacturer (or other vendor) for compliance with the manufacturer's warranty and for any maintenance, support or repair of the goods. Seller assigns to Purchaser any warranty, right to maintenance, support or repair, and any other rights in relation to the goods malfunctioning or being defect to the extent that such rights are provided to Seller by a manufacturer or other vendor, however only to the extent such assignment is permitted by the terms thereof.

(b) The use of part numbers or other methods of description on the front of this document is for convenience only and does not constitute any representation by Seller with respect to the performance, specifications, or fitness of any part for any purpose.

Seller, being a reseller only, provides no warranty as to the authenticity of the goods and cannot be liable in any way should the goods prove to be counterfeit, fraudulent or other, except from what explicitly follows from item 6 above. Purchaser shall undertake its own examinations, see 7 (a) above, and make any claim in relation to the same in time, see 6 (a) above, as any other claim shall be deemed unconditionally and absolutely waived.

(c) WARRANTIES, IF ANY, ARE PROVIDED BY THE MANUFACTURER ONLY AND THE SELLER MAKES NO WARRANTIES WHATSOEVER. THE GOODS SOLD OR PROVIDED UNDER THIS AGREEMENT ARE SOLD "AS IS".

(d) PURCHASER'S EXCLUSIVE REMEDY SHALL IN ANY EVENT (AT SELLER'S SOLE DISCRETION IN EACH INDIVIDUAL CASE) BE FOR EITHER REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE BY RETURN OF THE DEFECTIVE PARTS OF THE GOODS, see 6 (c) above. In the event that the foregoing limitation of liability is not permitted under applicable law SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CLAIM WHATSOEVER (WHETHER THE CLAIM IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR ANY OTHER LEGAL THEORY) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH THE CLAIM ARISES AND IN NO EVENT EXCEED EURO 100,000.

(e) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY KIND OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS (INCLUDING, WITHOUT LIMITATION, AND REGARDLESS OF WHETHER SUCH LOSSES ARE DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL, LOSS OF PROFITS, PURCHASER'S INTERNAL

COSTS OR LOSSES OF ANY KIND, LOSS OF DATA, BUSINESS LOSSES, LOSS OF GOODWILL OR REPUTATION, DAMAGE TO PROPERTY, OR ANY LIABILITY OF PURCHASER TO ITS CUSTOMERS, PERSONNEL OR THIRD PARTIES) OR FOR ANY PUNITIVE DAMAGES, and Purchaser shall save, hold harmless and indemnify Seller for any such claims. Subject to 8 below Seller is not liable for, and Purchaser assumes full liability for, all personal injury and property damage connected with the handling, transportation, possession, processing, repacking, further manufacture, or other use or resale of the goods or any part thereof, including without limitation the Examinations, whether the goods are used alone or in combination with any other material.

## (f) HIGH RISK ACTIVITIES AND USE ONLY IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS:

Purchaser acknowledges that the goods supplied under this agreement are intended for standard commercial uses only and are not designed, manufactured or intended for use or resale in critical applications, parts, products or in any high risk or hazardous environment requiring fail-safe performance (for example in aviation, in life support applications, in nuclear facilities, in off shore installations or any off shore operation, or in connection with operation, controlling or monitoring of any of the foregoing etc.), or in any other connection in which the failure of products could lead to death, personal injury, or severe physical or environmental damage. Seller explicitly disclaims any express or implied warranty of fitness for any such uses. Further, Purchaser acknowledges that the goods supplied under this agreement are intended only for use in accordance with the manufacturer's instructions and specifications. The Purchaser hereby agrees to release, indemnify, save and hold Seller harmless from any and all liability (including product liability) and claims resulting out of or in connection with; i) any use of or implementation of the goods in any such high risk activities as are described in the above, and/or; ii) any use of or implementation of the goods in any other way, than in accordance with the manufacturer's instructions and specifications.

(g) MOISTURE SENSITIVE GOODS: Some products are moisture sensitive and moisture barrier bags or similar may have been opened in customs or elsewhere before delivery to Purchaser. It is Purchaser's sole and exclusive responsibility to ensure that the products are baked or otherwise dried out before use or resale, and Purchaser shall save, hold harmless, and indemnify Seller for any liability resulting from or associated with products which have not been properly dried out.

(h) ILLEGAL SUBSTANCES: Seller does not assume any liability for, nor warrant that, the goods sold do not contain substances that are illegal under Directive 2011/65/EU of The European Parliament and the Council of 8 June 2011 on the restriction on the use of certain hazardous substances in electrical and electronic equipment, under any amendments and supplements to said directive, including under Directive 2015/863/EU (RoHS 2 amendment) or under any local law regulations regarding the same or similar regulations. As buyer of the products Purchaser assumes any and all risk that the products may contain such substances and Purchaser agrees to hold harmless, save and indemnify Seller for any liability associated with the same. (i) Where Seller provides any Examinations to the Purchaser or other, such as provided without guarantees whether express or implied of any kind as to their accuracy, quality, completeness and fitness for any particular purpose or that they meet any requirements under any relevant rule, applicable law, contractual requirement or other purpose. Purchaser shall release, save and hold Seller harmless for any and all claims of Purchaser, its customers and any other third parties relating to or arising from Purchaser's, its customers' or other third parties' use of the Examinations and interpretation of and reliance on the same, as well for the copies of the results of the Examinations or the Examinations infringing any third parties' intellectual property rights of any kind.

## 8. PRODUCT LIABILITY

(a) Notwithstanding anything to the contrary above under 7, Seller shall have product liability towards Purchaser to the extent that such cannot be excluded or disclaimed under applicable product liability laws, while any other product liability shall be expressly excluded and disclaimed by the Seller.

(b) To the extent Seller incurs product liability towards a third-party Purchaser shall indemnify and hold Seller harmless to the same extent that the liability of Seller is limited in accordance with the above-mentioned in 8 (a). In cases where both Seller and the Purchaser are liable, the Purchaser shall bear the final liability.

## 9. PURCHASER'S DEFAULT

In the event of default by Purchaser, Seller shall have all usual remedies provided in contract or at law which remedies shall be cumulative with one another and with any other remedies that Seller might have in equity, in tort, under any agreement of any type or otherwise. The waiver by Seller of any breach or default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at any other time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with the goods ordered by Purchaser or delivered by Seller or any services rendered by Seller to Purchaser, may be made by Purchaser more than one year after the cause of action occurred. Purchaser shall pay to Seller, on demand, all costs incurred by Seller in enforcing, prosecuting, or defending any provision of this agreement. For purposes of this agreement, "costs" include the fees, costs, and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant to or in connection with trial, appellate, mediation, bankruptcy, arbitration, administrative, or judgment-execution proceedings.

## 10. INTEGRATION AND ASSIGNMENT

With the exception of what follows from Seller's Order Acknowledgement issued to Purchaser, this agreement records the final, complete, and exclusive agreement between the parties with regard to the subjects addressed in it and supersedes any and all prior or contemporaneous oral or written agreements regarding the same. No course of prior dealings between the parties and no usage of the trade is relevant to supplement or explain any term used in this agreement. Nor is acquiescence in a course of performance rendered under this agreement relevant to determining the meaning of this agreement even though the accepting or acquiescing party had knowledge of the nature of performance and opportunity for objection. An amendment or modification of this agreement will be valid and effective only if it is in writing and signed by both Purchaser and Seller. Any assignment by Purchaser of this agreement or any rights in it, without Seller's advance written consent, shall be void.

## 11. PURCHASER'S TERMS AND CONDITIONS OR AMENDMENTS

Goods and services rendered by Seller to Purchaser are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on any document of Purchaser, the information and conditions in this agreement are exclusively controlling over Purchaser and Seller. Any different or additional terms or conditions contained on Purchaser's purchase order, invoice, confirmation, or any other Purchaser-generated documents, including if Purchaser makes any amendments in any of Seller's standard documents, are specifically objected to by Seller. Seller's performance of any duties in this agreement is expressly made conditional on Purchaser's agreement to Seller's terms and conditions contained in this agreement. Commencement of performance or delivery shall be for Purchaser's convenience only and shall not constitute acceptance by Seller of Purchaser's terms and conditions. If an agreement is not earlier formed by mutual agreement between Purchaser and Seller, acceptance of any goods or services by Purchaser shall constitute acceptance by Purchaser of the terms and conditions stated herein.

## 12. TAXES

Seller's prices do not include sales, use, excise, or other taxes or duties. Accordingly, Purchaser shall in addition to the prices specified by Seller, pay all local, state and federal taxes and duties, including all sales, use, excise or other similar tax or duty, payable with respect to the goods or the transactions contemplated herein, or, alternatively, provide Seller with tax or duty exemption certificates acceptable to the applicable authorities and Seller.

## 13. INTELLECTUAL PROPERTY RIGHTS

Seller disclaims any warranty against infringement with respect to the goods sold pursuant to this agreement, and Seller is not liable with respect to any actual or alleged infringement of any foreign patent, trademark, copyright, mask work right, trade dress, trade secret, or similar proprietary rights

## 14. FORCE MAJEURE

Seller is excused from performance of any obligations under this agreement, if the failure in performance is caused by events or conditions beyond Seller's reasonable control, including, without limitation, acts of God, acts of the public enemy, quarantine restrictions, industrial disturbances, blockades, insurrections, arrest or restraint of industrial people or rulers, civil disturbances, boycotts, acts or omissions of Purchaser or civil or military authorities, fire, strike, lock-outs, landslide, lightning, wash-outs, tornadoes, hurricanes, windstorms, explosions, epidemic, flood storm, earthquake, riot, war, breakage or accident to machinery or equipment, delays in transportation, or inability to obtain necessary labour, materials, or supplies.

## 15. GOVERNING LAW AND CHOICE OF FORUM

This agreement shall exclusively be governed by the laws of the Kingdom of Denmark (excluding Danish conflicts of laws rules), and any dispute arising out of or in connection with this agreement shall exclusively be settled by the City Court of Copenhagen with the normal right of appeal to the Danish High Court.

## 16. GENERAL

All terms and conditions contained herein shall apply to and bind the assignees and successors in interest of Purchaser. If any provision of this agreement is held to be invalid, illegal, unconscionable, or unenforceable, that provision will be considered separable from the remaining provisions of this agreement, will be reformed and enforced to the extent that it is valid and lawful, and will not affect the validity, legality, or enforceability of any other provision of this agreement. The captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation of the following text. Nothing in this agreement, whether express or implied, is intended or should be construed to confer upon or grant to, any person, except Purchaser and Seller, any claim, right or remedy under it.