1. DEFINITIONS

The following terms shall have the meaning hereby assigned to them:

1.1. “Company” shall mean: The company of the AMIBLU GROUP which issued a quotation or confirmed an order further to the terms outlined below.

1.2. “Buyer” shall mean: Any person, company or any other entity that places an order or a supply contract for Supplies with the Company.

1.3. “Parties” shall mean: The Company and the Buyer.

1.4. “Supplies” shall mean: The Products and/or the Services as/and when the context allows.

1.5. “Product” means: The items, articles, commodity, goods, merchandise and ware sold by the Company.

1.6. “Services” shall mean: Any service which may include engineering documentation, training, installation, testing and any other service which is not defined as Products but is inclusive within Company’s offer...

1.7. “General Terms” shall mean: These General Terms and Conditions of Sale.

1.8. “Full Settlement” shall mean: Funds paid by the Buyer for the Supplies when, and only when credited to the Company’s Bank Account.

1.9. “Order Confirmation” A document issued by the Company and confirmed the terms of supply between the Buyer.

1.10. “Personal Data” shall mean any information relating to an identified or identifiable natural person.


2. GENERAL PROVISIONS

2.1. These General Terms shall apply worldwide to the provision of Supplies by the Company to the Buyer. Any different statement in any document or correspondence shall be irrelevant if not expressly agreed in writing.

2.2. By placing an order, the Buyer is deemed to have accepted these General Terms without variance.

2.3. These General Terms, as amended from time to time by the Company, and accordingly, subject to the terms and conditions then existing, shall apply to all transactions between the Company and the Buyer concerning the Supply of Supplies by the Company.

2.4. Any form of general terms and conditions of the Buyer are expressly rejected in their entirety unless otherwise agreed in writing.

3. OFFER AND ACCEPTANCE

3.1. Acceptance of a quotation issued by the Company shall be binding on the Company only if made by the Buyer in writing within the validity date specified therein (automatically becoming the Order Confirmation with the date of acceptance by the Buyer). Unless otherwise agreed, any offer or quotation issued by the Company shall expire after thirty (30) working days.

3.2. Orders placed without prior quotations from the Company shall not be binding unless accepted by the Company and notified to the Buyer in writing. The Company is entitled to revoke any quotation, at any time, before issuance of such an Order Confirmation.

3.3. Orders confirmed and accepted by the Company for delivery to the Buyer and delivered to the Company not later than five (5) working days from the date of the order (or delivery date). Failure to provide such confirmation will release the Company from being liable for any errors concerning the orally delivered information.

3.4. In the event of errors, omissions or illegibility communicated to the Company by the Buyer, upon formal request by the Company, the Buyer shall accept the said confirmation within five (5) working days. The Company will not proceed with any actions on the items requiring clarification until advised by the Buyer. Furthermore, the Company will not be held responsible for any damages caused by such clarifications.

4. VARIATIONS OF ORDERS

4.1. The Company will consider Buyer’s requests for variations of its orders for the Supplies, provided the Company may accept or reject any variation at its own discretion and no variation of a variation shall be binding unless stated in writing by the Company. If the variation is not accepted by the Company, the original purchase order remains binding.

4.2. Oral variations must be confirmed in writing by the Buyer and delivered to the Company not later than five (5) working days from the date of the oral order. Failure to provide such confirmation, the Company shall not be liable for any errors concerning the orally delivered information.

4.3. If the variation is accepted and would change the quantities ordered, the Company will maintain the agreed unit prices only if the variation does not exceed plus or minus ten percent (+/–10%) of the Products total ordered quantity.

4.4. The Company reserves the right to require the Buyer to confirm the order as varied, including all terms related thereto, prior to commencement of manufacturing.

4.5. If the Company accepts a variation request of the Buyer, the delivery times are adjusted accordingly.

5. PRICES AND TERMS OF PAYMENT

5.1. Unless otherwise agreed, the prices are ex-works (Incoterms 2010), in EURO, exclusive of VAT and any other taxes and duties (esp. exclusive of packaging, freight, postage, insurance and other shipping costs).

5.2. Should the Buyer bear any costs which are for the Buyer’s account, such sums shall forthwith be reimbursed by the Buyer without need of any specific request from the Company.

5.3. Unforeseeable increases in the costs of raw materials, energy, insurance, shipping and wages may occur in government taxes after the Order Confirmation. Any such increase shall entitle the Company to adjust its prices as appropriate. Further, in the event that local or governmental legislation is changed, force majeure or for whatever reason, the Company shall be fully compensated for any expenses relating to such charge.

5.4. In case the Parties have agreed advance payment the agreed amount must be received by the Company at least twenty (20) working days before the agreed date for delivery or the earliest date within the agreed delivery period.

5.5. The payment of all amounts due from the Buyer over and above any deposit paid to the Company shall be paid in full on or before thirty (30) calendar days after the agreed delivery date or in other terms that places an order or a supply contract for Supplies with the Company.

5.6. In the event that the Buyer fails to pay, in part or whole, when due any amount which he is obliged to pay, Buyer’s default with respect to payment. If a Buyer’s payment default shall occur, then the Company will, amongst others, be entitled to suspend the fulfilment of any order or to perform the obligations under the contract or cease manufacturing, and thus cannot be selectively br

6. PLANS AND DRAWINGS, INDUSTRIAL PROPERTY RIGHTS

6.1. All software, drawings, technical information, calculations etc. furnished by the Company to the Buyer shall remain the property of the Company. The Company is in no way liable to the Customer for any loss or damage caused by such information from the Buyer regarding the establishment of credit, to require payment of a cash deposit prior to commencement of manufacturing, to require the Buyer to provide an irrevocable and confirmed Letter of Credit issued by a major bank or other arrangements acceptable to the Company in sole discretion and to require partial payments.

6.2. The Company remains the owner of any intellectual or property rights relating to the Products and Buyer does not obtain any title or property right of any kind in respect of the aforementioned intellectual or property rights.

6.3. Software, drawings, technical documents or other technical information provided by the Company shall not, without the prior written authorization of the Company, be used for any other purpose than installation, commissioning, operation or maintenance of the Products and shall not - without the prior written authorization of the Company - be otherwise used, copied, reproduced, transmitted or communicated to a third party.

6.4. The Buyer shall indemnify and hold the Company fully harmless in case of any violation of this Section 6 or the Company’s protected intellectual or property rights.

7. DELIVERY AND ACCEPTANCE OF THE PRODUCTS

7.1. Unless otherwise agreed, delivery is ex-works (Incoterms 2010). The Buyer shall pick up the Products within the delivery period as stipulated in the Order Confirmation. In case no delivery period has been agreed, the delivery period shall be twenty (20) working days for off-the-shelf Products that shall commence on the date of the Order Confirmation. For any other Products the delivery period has to be specified by the Company individually.

7.2. In the case a delivery by the Company has been agreed, Company’s obligation to deliver and the delivery period will start when the Buyer has fulfilled all his obligations duly in good time. This includes that the Buyer has provided the Company with the delivery date(s) and all necessary shipping details and, if applicable, approved all plans or drawings no later than twenty (20) working days in advance of the delivery period. The defense of an unfulfilled contract is reserved.

7.3. The Buyer is obliged to accept the delivered Products at the agreed time and place of delivery.

7.4. If the Company has manufactured the Products and the Buyer has not picked them up at the agreed date and the Buyer has not agreed to the delivery, the Company will be entitled to:

a) to charge storage costs after a period of 20 (twenty) working days, and/or
b) to cancel the order for remaining quantities to be picked-up and/or manufactured upon written notification to the Buyer or give a new possible pick-up date for the delivery, and/or
c) Invoice the Buyer and to deliver the Products to a nominated forwarding agent against cargo receipt at the Buyer’s expense, and/or
d) Invoice the Buyer to and to arrange for destruction of the Products at the Buyer’s expense after a period of sixty (60) working days, and/or

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e) to charge the Buyer a lump sum of 50% of the net purchase price of the remaining quantities not yet produced.

7.5. Partial deliveries are allowed, provided that they are reasonable for the Buyer. Any additional delivery costs such as partial truckloads etc. will be charged to the Buyer.

7.6. The Company shall not be responsible for a delay in availability of the Supplies and/or delivery if the delay is attributable to the Company not being supplied directly by the Company's supplier and the Company can prove that they have exercised the care of a prudent business to ensure that the Company would be able to supply properly and on time. This shall also apply with regard to the manufacture of required technical appliances.

8. TRANSFER OF RISK

8.1. The risk concerning the Products shall pass over to the Buyer with the shipment of the Products from the Company's works (in terms 2010). This shall also apply if the transport is being carried out or organized by the Company. The risk concerning the Products will also pass over to the Buyer at the time of the agreed delivery date(s) for whatever reason not directly attributable to the Company, the risk concerning the Products shall pass to the Buyer at the time of the agreed delivery date(s).

8.4. The place of performance is the location where the Products are being rendered.

9. RESERVATION OF TITLE

9.1. The Company reserves title to the Products until Full Settlement of all unsettled payments and claims. The Buyer agrees to keep the Products separate from goods of other suppliers so that it is possible at all times to attribute title to the Company. Furthermore, the Buyer agrees to handle the Products with care and to insure them adequately at his own cost against fire, theft, war and other risks.

9.2. The Company shall be entitled to verify the proper storage of the Products and require return if there is improper storage. In this case the Buyer is liable for all damages, costs and lost profits of the Company.

9.3. The Buyer is entitled to resell the Products in the course of normal business. However, the Buyer shall not be authorized to pledge the Products or assign them as security. Furthermore, the Buyer hereby assigns to the Company all claims to which he is entitled from the resale or later insurance (insurance) with regard to the reserved Products (including all current account balances from the business relationship with the Company).

9.4. The Company reserves the title in case of processing of the Products. The Company shall acquire co-ownership of the new object in case of processing of objects that do not belong to the Company.

10. WARRANTY

10.1. The warranty period shall be twelve (12) months. The warranty period shall begin to run from the point in time when the risk associated to the Goods passes over to the Buyer in accordance with Section 48 ("Transfer of Risk").

10.2. Buyer's warranty rights are conditional upon the Buyer having fulfilled his obligations to inspect the Products and notify complaints properly. Notification of defects must be submitted in writing without delay, at the latest two (2) weeks after receipt of the Products.

10.3. A defect affecting part of a delivery shall not entitle the Buyer to lodge a complaint about the entire delivery.

10.4. A complaint about transit damage is to be notified directly to the freight forwarding in writing. The facts and circumstances are to be recorded by the Buyer in a factually accurate and non-misleading manner. The Buyer shall obtain a signed receipt from the freight forwarding agent or otherwise acceptable evidence that the damage was communicated.

10.5. After receiving Buyer's written notice of a claim hereunder, the Company shall investigate the claim and, within a maximum of ten (10) working days, make a written acknowledgment. Any delay or refusal by the Company to act upon the Buyer's claim shall be notified to the Company in writing. The Company shall also notify the Buyer in writing whether the defect or damage is covered under warranty and, if not, the Buyer shall have the option to have the defect or damage repaired or replaced to the Buyer's satisfaction at Buyer's expense.

10.6. Any replacement, repair or other action needed to correct a defect shall be performed by the Buyer or by the Company, at the option of the Buyer.

10.7. The warranty is in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, which are hereby expressly disclaimed. To the full extent allowed by law, the Company disclaims any warranty to any persons or entities other than the Buyer.

11. LIMITATION OF LIABILITY

11.1. Notwithstanding anything to the contrary contained in an order or any correspondence, in no event shall the Company be liable to the Buyer for loss of production, loss of profit, loss of use, loss of business or market share, costs of making good, loss of data, revenue or any other economic loss, whether direct or indirect, or for any special, indirect, incidental or consequential damages. In the event of such damages could have been reasonably foreseen and whether as a result of breach of contract, warranty or tort.

11.2. The Company is not liable for damages if its intent or gross negligence can be documented in accordance with the statutory provisions and in such case the Company shall be liable up to the amount of the respective purchase order giving raise to the claim.

11.3. No action, regardless of form, arising out of any alleged breach of contract or obligations may be brought by either party more than one (1) year after the cause of action has occurred.

11.4. A party suffering loss or damages shall take all reasonable measures to limit such loss or damages.

12. BUYER'S DEFAULT

12.1. The following shall constitute events of default by the Buyer:
   a) Failure to make payment(s) to the Company as and when due;
   b) If the Buyer becomes insolvent or bankrupt, or being a company, has a receiver appointed by the court in which case the Company can prove that they have exercised the care of a prudent business to ensure that the Company would be able to supply properly and on time. This shall also apply with regard to the manufacture of required technical appliances.

12.2. In the event of a default that the Buyer does not remedy within ten (10) working days of the date the Company communicates the notice of the default, the Company may, at its own option, suspend or cancel further deliveries;

12.3. In case of any default or breach of contract, the Company's right to enforce or exercise it later. Any waiver to this effect must be in writing.

15. CONFIDENTIALITY AND DATA PROTECTION

15.1. The exchange of confidential information shall require the prior written approval of the respective other Party for being disclosed to a third party.

15.2. The Parties and their servants are obliged to maintain secrecy regarding all technical, personnel, business and other matters of each other that is essential for a Party and not known by the public. This obligation shall continue to exist even after the end of the cooperation.

15.3. Upon the basis of the General Data Protection Regulation (including its implementation in national law), the Parties and their servants shall only process data, disclose, make accessible or otherwise communicate Data in the course of the rendering of the Services for the agreed-upon purpose, in line with this General Terms. In accordance with this section, Personal data requiring a high level of protection in terms of privacy and data protection, such as Data to be immediately made to the other Party regarding defects or breaches to the data protection and data security.

15.4. The Personal Data will be processed by the Parties as long as it is required for the execution of the Services and General Terms and will be subsequently retained only for the duration of potential liabilities which may arise as a consequence of the execution of the Services and General Terms for the limitation periods provided in the applicable legislation.

16. SERVERABILITY

16.1. If a provision of these General Terms is or becomes legally invalid or if there is any gap that needs to be filled, the validity of the remainder of the General Terms shall not be affected thereby.

16.2. Invalid provisions shall be replaced by common consent with such provisions which come as close as possible to the intended result of the invalid provision. In the event of gaps such provision shall come into force by common consent which comes as close as possible to the intended result of the General Terms, should the matter have been considered in advance.

16.3. Any changes of or amendments to this General Terms - including this provision - must be in writing to become effective.

17. JURISDICTION AND APPLICABLE LAW

17.1. The court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship arising from the Supplies and this General Terms shall exclusively be Vienna (Austria).

17.2. Any agreement between the Company and the Buyer, including the maximum General Terms, is subject exclusively to Austrian law. No references to any other legal systems nor the UN Agreement on the International Sale of Goods shall apply.

17.3. Buyer's claims, rights and obligations against the Company cannot be assigned without prior approval of the Company.