

## GENERAL CONDITIONS OF SALE AND DELIVERY BY OSERTECH

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### Article 1. Definitions and Interpretation

1.1 For the purpose of these General Conditions and all related documents, terms as defined below shall have the following meanings whereby these terms may be used in the singular or the plural form and vice versa, as the context so requires:

« **Affiliated Company** »: any company, firm, partnership or other legal entity which

(a) controls either directly or indirectly a Party, or

(b) is controlled directly or indirectly by a Party, or

(c) is directly or indirectly controlled by a company or entity which directly or indirectly controls a Party.

« **Control** » meaning the ownership of 50% (fifty percent) or more of the share capital or the right to exercise 50% (fifty percent) or more of the voting rights in the appointment of the directors of such company, firm, partnership or other legal entity, but any such legal entity shall be deemed to be an Affiliated Company only as long as such liaison exists.

« **Contract Price** »: the total amount of the consideration as specified in the Contract which is payable by the Customer to Osertech for the sale and / or delivery of Equipment. Also referred to as Agreed price.

« **Contract** »: the Contract concerning the sale and delivery of Equipment concluded in writing between Osertech and the Customer of which these General Conditions form an integral part, including all appendices, subsequent amendments hereof as may be agreed upon in writing between Osertech and the Customer.

« **Customer** »: the firm or company named as such in the Contract.

« **Documentation** »: such as, but not limited to, manuals, handbooks, certificates, instructions available for maintenance and other Documentation available accompanying the Equipment, as defined in the Contract.

« **Equipment** » or « **machine** »: the used Equipment as specified in the Contract.

« **Equipment Specifications** »: the specifications, descriptions and drawings available of Equipment agreed upon between the Parties and specified and defined as such in the Contract.

« **Force Majeure** »: includes, but is not limited to, Act of God, directive of Government or of persons purporting to act therefore, legislation, war, civil disturbance, fire, drought, failure of power supply, explosion, riot, disturbances or standstill of essential production equipment, flood, earthquake, lock-out, transportation issues, shortage of essential raw materials, strike or other action taken by employees in contemplation of or furtherance of a trade dispute or owing to any liability to procure materials or force majeure of any other nature, including non- or late delivery due to non- or late fulfillment of obligations of subcontractors of Osertech or transportation companies engaged by Osertech and/or solvency and/or liquidity issues and/or bankruptcy of third parties engaged by Osertech, in so far as any of these circumstances prevent the Osertech's performance of the Contract.

« **General Conditions** »: these general conditions of sale and delivery for Equipment by Osertech.

« **Osertech** »: Osertech SARL, a company organized and existing under the laws of the French government, with its registered seat in Janville, France, lodged at the Registry of the Chartres Chamber of Commerce with number 394 914 998, and its office address at : 5 Rue PIERRE ET MARIE CURIE, 28310, JANVILLE-EN-BEAUCE.

« **Party** »: each of Osertech and the Customer separately.

« **Parties** »: Osertech and the Customer together.

« **Purchase Order** »: a written purchase order issued by the Customer for the purchase of Equipment by virtue of which Osertech shall deliver Equipment to the Customer, including any annex, addition or modification thereto.

« **Quotation** » or « **Pro forma** »: each offer concerning the sale and / or delivery of Equipment, and if applicable supporting services, issued by Osertech to the Customer in writing. Also referred to as Pro forma invoice.

1.2 In these General Conditions the term 'in writing' includes by post, fax, e-mail and any other electronic communication device customary in the market.

## **Article 2. Scope of application**

2.1 These terms and conditions are applicable to and form an integral part of all Quotations and offers made by Osertech and all Contracts entered into by and with Osertech. Any order for products implies the buyer's unreserved acceptance and full compliance with these terms and conditions.

2.2 Deviations from these terms and conditions shall only be valid if agreed in writing and shall then apply exclusively to the Contract for which they were agreed.

2.3 The general terms and conditions of the Customer are explicitly rejected.

## **Article 3. Quotations, Pro forma, Contracts and Notifications**

3.1 All Quotations from Osertech are non-binding and, unless otherwise declared by Osertech in writing, valid for a period of 14 (fourteen) days after the date thereof. Osertech reserves the right to withdraw or change its Quotations without compensation, even if they have been accepted by the Customer, as long as Osertech did not receive a Purchase Order from the Customer.

3.2 No Purchase Order shall be binding on Osertech unless it has been confirmed by an authorized representative of Osertech in writing. Such Purchase Order confirmation shall constitute a Contract.

3.3 In the event that Osertech does not respond to the Customer's Purchase Order within 30 (thirty) days after receipt thereof the Purchase Order shall be deemed rejected by Osertech.

3.4 If a Purchase Order is placed by the Customer without a prior Quotation and/or the Customer takes delivery of Equipment, this shall in any case constitute as Contract under these General Conditions and as a confirmation of the Purchase Order. Additional arrangements shall require the written approval of Osertech.

3.5 The Customer cannot derive any rights from oral commitments of Osertech, unless and to the extent those are confirmed in writing by Osertech.

3.6 All notifications, such as but not limited to notices of default, demands for compliance, setting delivery terms, relating to the Contract shall be made in writing. Only written notifications that have demonstrably been received by Osertech shall be binding to Osertech.

3.7 Osertech cannot be held liable for errors in and deviations from: illustrations, drawings and statements of measurements and weights, dimensions, capacities, prices and images or other specifications in Quotations, price lists or other advertising and online materials.

## **Article 4. Price**

4.1 All prices operated by Osertech are ex-works and based on known price-determining factors at the time at which the Quotation was made. Osertech is authorized at all times to adjust the prices with immediate effect if necessitated by a price-determining factor determined by law.

4.2 Unless explicitly stated otherwise, the Contract Price is always stated exclusive Value Added Tax (VAT) and other government levies, as well as of other expenses possibly to be made within the scope of the Contract, including costs of packaging, shipment, assembly costs, costs of putting Equipment into operation, administration costs and insurance charges which shall be added to the Contract Price and detailed separately on the invoice.

## **Article 5. Suspension and Dissolution**

5.1 Osertech shall at all times be entitled to suspend the fulfillment of its obligations under the Contract or to dissolve the Contract, in the event that:

(i) the Customer does not timely and fully fulfill its obligations under the Contract;

(ii) Osertech learns of circumstances giving good ground to fear that the Customer will not timely and fully fulfill its obligations under the Contract. In such event suspension of the Contract by Osertech shall only be allowed in so far the shortcoming justifies such action;

(iii) the Customer has been requested to furnish adequate security to guarantee the fulfillment of its obligations under the Agreement pursuant to **article 6** hereof and this security is not provided or provided insufficiently to Osertech.

5.2 Osertech shall furthermore be entitled to dissolve the Contract if circumstances arise of such nature that fulfillment of Osertech's obligations becomes impossible or can no longer be expected in accordance with the requirements of reasonableness and fairness.

5.3 If the Contract is dissolved pursuant to **article 5.1** above, Osertech's claims against the Customer shall be forthwith due and payable. If Osertech suspends fulfillment of its obligations, it shall retain its rights under the applicable law and the Contract.

5.4 Notwithstanding the foregoing sub article of this **article 5**, Osertech shall always retain the right to claim damages in case of suspension or dissolution.

## **Article 6. Payment**

6.1 The Customer shall pay the Contract Price within 30 (thirty) days as from the invoice date, but in any event before the date of shipment of the Equipment, unless otherwise agreed in writing. Unless otherwise agreed in writing, payment shall be remitted cash on invoice delivery without the application of any discount, by means of depositing or transferring the payable amount to a bank designated by Osertech.

6.2 Osertech shall be entitled, if it deems such necessary, to require payment in advance or to stipulate sufficient security to guarantee the Customer's compliance with his obligations to pay.

6.3 The Customer undertakes, also in the event of complaints being submitted, to promptly pay the invoices of Osertech without applying any deductions or claiming any set-off, discounts or any right to suspension unless otherwise agreed in writing.

6.4 All payments remitted by the Customer extend first to payment of any interest and any collection costs incurred by Osertech, and then to payment of the oldest outstanding invoice.

6.5 In the event that:

- a) the Customer's company is wound up;
- b) the owner of the Customer dies (in case of a sole proprietorship);
- c) the owner of the Customer is placed under conservatorship (in case of a sole proprietorship);
- d) the Customer's company is attached;
- e) the Customer's company is declared bankrupt; and/or
- f) a suspension of payment is granted to the company of the Customer;

Osertech's payment claims against the Customer shall forthwith become due on Osertech's demand.

## **Article 7. Interest and costs**

7.1 If payment has not been received within the period stipulated in the previous article, the Customer shall be held legally in default and shall be required to pay a mensual interest of 1,7% over the outstanding amount as from the due date. All legal and extrajudicial costs incurred shall be for the Customer's account. The extrajudicial collection costs shall amount to at least 15% of the amount owed by the Customer, including the interest referred to above.

## **Article 8. Deliveries**

8.1 The Equipment shall be delivered ex-works, unless otherwise agreed in writing, and shall be transported at the expense and risk of the Customer. If Osertech provides the transport, Osertech shall be entitled to take out transport insurance under the customary conditions for the Customer's account. From the moment of delivery onwards, the Customer shall bear the risk and liability for the goods, without prejudice to Osertech's retention of title.

8.2 If the Contract relates to several goods, the delivery can be made as a whole or in batches. In the case of delivery in batches, unless otherwise agreed in writing, the Customer shall be obliged to remit payment for the related invoice or the related part of an invoice as if it related to an individual delivery.

8.3 Agreed times of delivery are indicative only. In the event of any period being exceeded, the Customer shall not be entitled to compensation for damages. Neither shall the Customer be entitled to dissolve or terminate the Contract unless the period has been exceeded in such a way that the Customer cannot reasonably be expected to allow it to remain in force. In that case the Customer shall be entitled, after giving notice of default stipulating a reasonable period for compliance with the Contract, to dissolve or terminate the Contract by registered letter to the extent that this is strictly necessary.

8.4 In the event of the Customer failing to provide the required details, objects or items required for the implementation of the Contract to Osertech or failing to do so in good time, agreed delivery times shall be nullified, regardless of whether they were terms to be observed on penalty of forfeiture of rights, and the parties will be required to agree new delivery times. The Contract shall otherwise remain in force and Osertech shall be entitled to claim compensation for any damages suffered.

8.5 The delivery of Equipment may be subject to laws, customs and export control regulations of the European Union. Each Party shall comply with such laws, customs and regulations and shall not export Equipment without first obtaining all required governmental authorisations or licenses. Notwithstanding anything to the contrary in these General Conditions or any Contract, Osertech shall in no event be obliged to deliver any Equipment or perform any of its obligations under these General Conditions or any Contract until the required approvals relating to the export regulations above mentioned have been obtained. Each Party agrees to provide the other Party with such information and assistance as may reasonably be required by the other in connection with securing such authorisations or licenses, and to take timely action to obtain all required support documents. Osertech shall be entitled to terminate the Contract or part thereof if the respective necessary approval(s) according to the applicable export regulations cannot be obtained within a reasonable time period.

## **Article 9. Retention of title**

9.1 Osertech retains ownership of the delivered Equipment, including designs, sketches, drawings, films, software, (electronic) files, and so forth, until the date on which the Customer has completely fulfilled all of its obligations under all Contracts. The equipment remains Osertech's property, until full payment of the invoice (law 80-335 of 12/05/80).

9.2 As long as Equipment are subject to retention of title, the Customer shall not alter, modify or otherwise amend the labelling on the packaging and Equipment and in general shall not modify the means of identification thereof.

9.3 The Customer shall not be authorized to pledge or encumber Equipment subject to retention of title.

9.4 If third parties seize Equipment subject to retention of title or wish to establish or assert a right to such Equipment, the Customer shall forthwith inform Osertech thereof.

9.5 In the event that Osertech wishes to exercise its ownership rights under this **article 9**, the Customer shall give Osertech or third parties appointed by Osertech, now for then, unconditional and irrevocable permission to access all of the Customer's sites and locations where Osertech's Equipment is located in order for Osertech to take them back.

9.6 If the Customer defaults in the punctual payment of any sum owing to Osertech, Osertech shall – without any prior notice or need to initiate legal action – be entitled to the immediate return at the Customer's risk and expense of all Equipment sold by Osertech to the Customer (or the documents of title thereto) in which the title has not passed to the Customer, and the Customer hereby authorizes Osertech to recover Equipment or documents and to enter any premises of the Customer for that purpose. Demand for, or recovery of, Equipment or documents of title by Osertech shall not of itself discharge the Customer's liability to pay the whole of the Contract Price and take delivery of Equipment or Osertech's right to sue for the whole of the Contract Price. Osertech shall however in such case be entitled to dispose of said Equipment or to terminate the Contract without any liability towards the Customer.

9.7 The Customer shall inform Osertech without delay regarding any obligation to register a retention of title in an official register or any other formal obligation necessary for the retention of title to be valid in the country where Equipment shall be delivered. The Customer shall at its own costs fully cooperate, assist and give all consents to the Osertech regarding any formal obligation necessary to achieve a valid retention of title.

9.8 If the laws of the country in which the Equipment is located after delivery do not permit Osertech to retain the title to said Equipment but allow the retention of similar rights to the delivered Equipment, the Customer shall provide Osertech with such other equivalent right and shall assist Osertech in the fulfilment of any form requirements necessary for such purpose.

## **Article 10. Disclaimer of Liability and Warranties**

10.1 The Equipment inclusive any accompanying Documentation is purchased by the Customer "as is" and if applicable, "as seen", "as where as" (meaning: Osertech is selling, and the Customer is buying, the Equipment in whatever condition it presently exists, and that the Customer is accepting the Equipment "with all faults". Furthermore, the Documentation is provided insofar as available to Osertech). Osertech expressly makes no representation or warranty, express, or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or any other matter with respect to Equipment.

10.2 The Customer is given the opportunity to conduct an on-site acceptance test with the Equipment purchased to assert himself that the Equipment is in conformity with the Equipment Specifications. Osertech shall not be responsible for the consequences of Customer's failure to conduct an on-site acceptance test or for any inaccuracies, insufficiencies, or omissions in the Equipment Specifications.

10.3 The customer is aware that the equipment acquired has previously been used by other persons. It is the customer's responsibility to check the compliance of the purchased equipment upon receipt. The installation of the equipment by the customer in its working environment, with any adaptations made, must comply with the regulations applicable to it. At all times, it is the customer's responsibility to make any modifications and/or adaptations to the equipment provided to obligatorily trained users, in order to keep it in compliance.

10.4 Unless agreed otherwise in writing, any affirmation of fact or promises made by Osertech shall not be deemed to create an express warranty that Equipment shall conform to such affirmation or promise. Any descriptions, samples and Equipment Specifications offered for sale are not warranted by Osertech to be accurate or complete. If a model or sample was shown to the Customer, such model or sample was used merely to illustrate the general type and quality of Equipment sold by Osertech and not to represent that Equipment would necessarily conform to such model or sample. Any description is for the sole purpose of identifying Equipment and no affirmation, promise, description, sample or model shall be deemed part of the basis of the sale.

10.5 The Customer understands that the Equipment described herein has been used by persons other than Osertech. The Customer is warned and acknowledges that such Equipment may bear or contain hazardous chemicals or other hazardous materials which may be or may become, by chemical reaction or otherwise, directly or indirectly hazardous to life, to health, or to property (by reason of toxicity, flammability, explosiveness or for other similar or different reasons during use, handling, cleaning, reconditioning, disposal or at any other time after the Equipment leaves the possession and control of Osertech).

10.6 Unless these General Conditions provide otherwise, Osertech's liability for direct damages shall at all times be limited to:

(i) the amount the Customer was obliged to pay for the delivery of the Equipment which caused the direct damage (exclusive VAT); or

(ii) if the damage is covered by Osertech's commercial liability insurance, the amount actually paid out by the insurer.

10.7 Osertech shall not be liable for:

- (i) indirect damage, including but not limited to, consequential damage, loss of profit, lost savings and damage due to business stagnation; and
- (ii) any death or physical injury of employees of the Customer howsoever caused and no matter whether the death or physical injury results wholly or partly from any act or omission on the part of Osertech and/or its Affiliated Companies, their employees or any other third party. The Customer shall indemnify Osertech against all liability, cost or expense, which may be sustained by Osertech on account of any such damage, death or injury.

10.8 If the Customer acts on behalf of one or more third parties then, notwithstanding the liability of those other parties, the Customer is liable to Osertech as though it were acting on its own behalf.

## **Article 11. Complaints**

11.1 Osertech is not obliged to entertain complaints relating to the sale of the Equipment and cannot be held liable for them.

11.2 If a defect is detected, Osertech must be notified of complaints by registered letter within 10 (ten) days after delivery.

11.3 The submission of complaints does not in any event release the Customer from compliance with his obligations, including payment of the Contract Price. This applies both to this Contract and to previous or future Contracts.

## **Article 12. Guarantee**

12.1 Equipment is not covered by guarantee.

12.2 Assembly costs related to repair or replacement of Equipment shall be for the Customer's account.

## **Article 13. Intellectual property**

13.1 The Customer acknowledges that Osertech retains ownership of any intellectual property rights in any plans, Equipment Specifications, images, schedules, designs, sketches, drawings, films, software and other material or (electronic) files (the "Information") made available in relation to the Contract and that the Customer shall have no rights of exploitation thereof,

irrespective of the fact whether they have been handed over to the Customer or via the Customer to third parties and irrespective of whether the Customer charged Osertech for the production of such materials.

13.2 Unless the nature of the Information provided by Osertech to the Customer dictates otherwise, the Information shall be destined to be used by the Customer exclusively and shall not be copied or otherwise reproduced, publicly disclosed or disclosed to third parties by the Customer without Osertech's prior written consent. Further, the Customer may not use any part of the techniques illustrated in such Information to improve its own Equipment. The Customer shall return the Information at Osertech's first request.

13.3 The Customer will not attempt to seek or claim any interest in Osertech's intellectual property rights or assist any Customer to assert any interest in Osertech's intellectual property rights. The Customer acknowledges that any improvement or enhancement of Osertech's intellectual property rights which may result from work performed by the Customer shall remain the exclusive property of Osertech and the Customer irrevocably assigns to Osertech all right, title and interest the Customer may have in any improvements or enhancements, to Osertech's intellectual property rights. The Customer will not hinder Osertech in any application or other measure taken by Osertech to protect or exploit improvements to Osertech's intellectual property rights.

#### **Article 14. Non-employment of Osertech's personnel**

14.1 Throughout the term of the Contract and for a period of 1 (one) year following the termination thereof, the Customer shall not in any way hire or employ in any other way, be it directly or indirectly, staff of Osertech, Osertech's Affiliated Companies or of enterprises whom Osertech has engaged to execute the Contract and who are/were involved in the execution thereof, without prior proper businesslike consultation of Osertech on this matter, which consultation has to be recorded in writing, all in accordance with the requirements of reasonableness and fairness.

#### **Article 15. Force majeure**

15.1 Osertech shall not be liable for any failure to fulfill any terms of the Contract to the extent that such fulfillment has been delayed, hindered, interfered with or prevented by any circumstance whatsoever which is not within its reasonable control and which amounts to an act of Force Majeure.

15.2 Osertech shall forthwith, but ultimately within 5 (five) days, inform the Customer of all the circumstances and particulars which prevent the Osertech from performing its obligations under the Contract. Osertech shall consult the Customer about the measures to be taken in order to limit the consequences of the situation of Force Majeure to a minimum and to safeguard the execution of the Contract.

15.3 Osertech shall exert its reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so and may at its option suspend performance of the obligation affected by the Force Majeure during the period such Force Majeure continues, without incurring any liability on account hereof.

15.4 If the Force Majeure continues for a period of more than 3 (three) consecutive months, then either Party shall be entitled to terminate the Contract by written notice to the other Party.

#### **Article 16. Indemnity**

16.1 Customer shall indemnify, hold harmless, and if so requested by Osertech, defend Osertech against all claims directly or indirectly arising out of or in connection with Equipment, its use or the Contract. The aforementioned claims refer to all losses, liabilities, damages, penalties, expenses (including legal fees and costs), claims, actions, and suits, whether in Contract or in tort, whether caused by Osertech's negligence or otherwise, and whether based on a theory of strict liability of Osertech or otherwise, and includes, but is not limited to, matters regarding:

(i) the selection, manufacture, purchase, acceptance, rejection, ownership, delivery, possession, maintenance, use, condition, return or operation of Equipment;

(ii) any latent defects or other defects in any Equipment or software, whether or not discoverable by Osertech or by Customer;

(iii) any patent, trademark or copyright infringement; and

(iv) the condition of any Equipment arising or existing during Customer's use.

#### **Article 17. Lapse of rights**

17.1 Legal claims pursuant to the Contract or unlawful acts must be instituted by the Customer within 1 (one) year of the right to the claim coming into force, in the absence of which the legal claim shall lapse.

## **Article 18. Applicable law and disputes**

18.1 These General Conditions are construed in accordance with and governed exclusively by the laws of the France. The applicability of the 1980 Vienna Sales Convention ("CISG") is hereby excluded, as well as any other present or future terms of any international convention governing the purchase of moveable property, insofar as such terms can be excluded.

18.2 In case of any disputes arising out of or relating to these General Conditions, the Parties shall endeavor to settle such disputes amicably. If the Parties are unable to, the dispute shall be exclusively submitted to the jurisdiction of the competent courts of Paris, France.