



# AMR Trading Germany GmbH

## Terms and Conditions for Sale of Products

### 1. Applicability

Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer.

### 2. Definitions

"**Buyer**" means the entity to which Seller is providing Products or Services under the Contract.

"**Contract**" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"**Contract Price**" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"**Products**" means the equipment, parts, materials, supplies and other goods Seller has agreed to supply to Buyer under the Contract.

"**Seller**" means AMR Trading Germany GMBH selling products and performing Services under the Contract.

"**Services**" means the services Seller has agreed to perform for Buyer under the Contract.

"**Site**" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"**Terms and Conditions**" means these "Terms and Conditions for Sale of Products", together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

### 3. Payment

Buyer shall pay Seller for the Products and Services by paying all invoiced amounts without set-off for any payment from Seller not due under this Contract, within the contractually agreed payment terms.

As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial

condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

#### **4. Deliveries and Taxes**

Delivery dates noted on the Approval of Order are subject to reasonable adjustment.

Seller shall deliver Products to Buyer in according to the contractually agreed delivery terms as per "Incoterms 2010".

Each delivery of Products shall be considered a separate contract and the failure of any delivery shall not vitiate any contract as to deliveries of other Products and Payment therefor.

#### **5. Retention of Title**

Title shall pass to Buyer only upon full payment by Buyer for the Products and following payment of any other outstanding debt by Buyer to Seller. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the Products, and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the Products. Buyer acknowledges that so long as title has not been transferred in the Products, it holds the Products as bailee and fiduciary agent for the Seller and shall safely and securely store and keep the Products separate and in good condition, clearly showing the Seller's ownership of the Products and shall respectively record the Seller's ownership of the Products in its books. Notwithstanding the above, Buyer may use Products for its own use, or sell Products, as fiduciary agent for the Seller, to a third party in the normal course of business by bona fide sale at market value, whereby proceeds of such storage, usage or sale of Products, as the case may be, shall, to the extent of the amount being owed by Buyer to Seller at the time of receipt of such proceeds, be held by Buyer on trust for Seller and specifically ascertained, until payment in full for all payable debts by Buyer to Seller.

#### **6. Warranty**

Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

The warranty for Products shall expire one (1) year from delivery.

If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or

replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

This Article 6 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 6 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory.

#### **7. Default**

Upon failure of Buyer to pay any payment due to Seller, or in the event of any breach or anticipated breach by Buyer of any Contract with Seller, or if Buyer shall either (i) become insolvent, (ii) call a meeting of its creditors, or (iii) make any assignment for the benefit of creditors, or if (iv) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Buyer, then, in each such occasion, Seller may, at its sole discretion, opt to (1) cancel this and any other Contract with Buyer (without waiving any of Seller's rights to pursue any remedy against Buyer); (2) claim return of any Products in the possession of Buyer, the title of which has not passed to Buyer, and enter Buyer's premises (or the premises of any associated company or agent where such Products are located), without liability for trespass or any alleged damage, to retake possession of such Products; (3) defer any shipment hereunder; (4) declare forthwith due and payable all outstanding bills of Buyer under this or any Contract; and/or (5) sell all or part of the undelivered Products, without notice at public and/or on private sale, while Buyer shall be responsible for all costs and expenses of such sale and be liable to Seller for any shortfall in the discharge of the amounts due to Seller.

## **8. Indemnity**

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

## **9. Force Majeure**

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, governmental actions, tariffs, and other trade barriers, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

## **10. Changes**

Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

## **11. Limitations of Liability**

The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the Contract Price.

Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased

operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 11.

## **12. Restricted Countries and Purposes**

No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any seller's material may be made to any country referred to in this section. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, Venezuela, Sudan and Myanmar. This policy also applies to countries where an export would not otherwise be in furtherance of world peace and security. The buyer shall confirm that products shall not be used for the purpose of making any nuclear explosive devices or for offensive military purposes.

## **13. Governing Law and Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of Switzerland (the "Governing Law"). Excluding conflict laws of Switzerland as well as the United Nations Convention on Contracts for the International Sale of Products.

Each of the Parties to this Agreement irrevocably agrees that the regular courts of Zug / Switzerland shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement or its formation or validity and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of Zug / Switzerland.

## **14. General Clauses**

Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent

(which consent shall not be unreasonably withheld) shall be void.

If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.