

Seluxit - Product Supply Terms and Conditions

1. PREAMBLE

1.1 The Product Supply Terms and Conditions (from now on "Agreement") represent the terms for the supply of Products between Seluxit (herein referred to as "Supplier") and Seluxit's customer (herein referred to as "Purchaser"). The Agreement shall be binding from the Supplier's Written confirmation of the purchase order to the Purchaser.

1.2. The Agreement shall apply to and form an integral part of: i) all quotations and offers (hereinafter both referred to as "Offer") of the Supplier to the Purchaser; ii) all acceptances, acknowledgements or confirmations by the Supplier (hereinafter all referred to as "Confirmation") of any order of the Purchaser, unless explicitly agreed otherwise in Writing between the Supplier and the Purchaser; iii) any agreement resulting from such Offer or Confirmation; iv) any agreement incorporating these Terms and Conditions by reference regarding the sale by the Supplier and purchase by the Purchaser of goods ("Products"), unless the Supplier explicitly agrees in Writing to the exclusion hereof.

The following appendix shall constitute part of this Agreement:

Appendix 1: General Product Documentation, where relevant.

2. DEFINITIONS

The following terms shall be understood as defined below:

"Agreement": refers to the present contract between the Parties with regards to the supply of the Product, inclusive of all relating appendices, any and all other additions and amendments that have been expressly agreed upon by both Parties;

"Party/Parties": the actors involved and binded by the Product Supply Agreement, particularly the Supplier (Seluxit A/S) and the Purchaser;

"Product/Products": refers to Standard or Non-standard product or products which constitute the object of the Agreement, both of which are non-refundable, non-cancelable and non-returnable;

"Written/in Writing": communicated through an established channel such as letter, electronic mail or other similar means.

3. SCOPE OF THE AGREEMENT

3.1 The Supplier hereby agrees to sell and deliver, and the Purchaser hereby agrees to purchase and take delivery of, the Product, on and subject to the terms and conditions hereof.

3.2 This Agreement represents the standard Product Supply Terms and Conditions of the Supplier and shall apply to all sales of Standard and Non-standard Products. The Parties hereby agree that none of the terms and conditions contained in any document from the Purchaser shall apply, unless such term or condition has been expressly and duly accepted in Writing by the Supplier.

3.3 Notwithstanding the above, any and all additions, amendments or alterations of or deviations from this Agreement shall be expressly agreed upon through the signatures of the Parties.

4. NON-STANDARD PRODUCT

The Purchaser acknowledges and recognizes that if the Products the Supplier is providing are Non-Standard, then they are obtained by the Supplier from the manufacturer specifically for the Purchaser. Irrespective of circumstances, the Purchaser agrees that Non-Standard Products may not be cancelled, returned or rescheduled by the Purchaser.

5. DELIVERY TERMS AND THE PASSING OF RISK

All trade terms in the Agreement shall be in compliance with the INCOTERMS in force at the date when the Parties expressly agree to it. The delivery of the Product shall be Ex Works (EXW). The Purchaser shall bear all costs, arrangements, and liability for the delivery.

All applicable VAT, PST, HST, and/or GST charges along with brokerage fees will be the responsibility of the Purchaser and due at the time of delivery.

6. TIME AND DELAY OF DELIVERY

6.1 The period of time within which the delivery shall take place, shall start to run as soon as the Agreement is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied.

6.2 The Purchaser acknowledges that delivery dates are estimates only and that the Supplier will not be liable for failure to deliver on such dates.

6.3 The Supplier shall send a Written notification to the Purchaser, whenever he expects delays over the expected time of the delivery, including details such as the reason for the delay and the new expected time of delivery, when possible.

6.4 If the reason for the delay is attributed to any of the situations described in Clause 16.1, or to actions, omissions, carelessness or other circumstances attributable to the Purchaser, the Supplier has the right to increase the time period for delivery taking into consideration all of the circumstances of the case. The current provision shall apply irrespective of when the delay has occurred in relation to the agreed time of delivery.

6.5 Delivery of a quantity that varies from the quantity specified shall not relieve the Purchaser of the obligation to accept delivery and pay for the Products delivered.

6.6 The Purchaser shall send a Written notification, to the Supplier, if he anticipates he will not be able to accept the delivery of the Product at the expected and agreed upon time of delivery. The notification shall include the reason for which the Purchaser will not be able to accept the delivery and, when possible, the time when he will be available for accepting the delivery.

Irrespective of the Purchaser's ability to accept the delivery on the agreed time, he shall pay the purchase price, as if delivery had taken place at the time for delivery. Storage of the Product shall be arranged by the Supplier at the risk and expenses of the Purchaser. At the Purchaser's Written request, the Supplier may choose to insure the Product at the Purchaser's expense.

6.7 Except for when the Purchaser is not able to accept the delivery on reasons under Clause 16.1, the Supplier may request the Purchaser to accept the delivery of the Product within a final equitable period.

If the Purchaser fails to accept delivery even after the agreed upon period, for reasons independent of the Supplier, the Supplier shall then have the right to compensation for the loss he suffers by reason of the Purchaser's failure to accept delivery, including any consequential and indirect loss. The compensation shall not be higher than the purchase price of the Product.

7. TERMS OF PAYMENT

7.1 Payment shall be made within eight (8) days after the date of invoice, in the currency billed on the invoice.

7.2 The payment shall not be considered to have materialized, before the Supplier's account has been irrevocably credited for the amount due, irrespective of the methods used for the payment.

7.3 Seluxit may apply a late fee of the overdue balance of 2% per month or the highest lawful interest rate, whichever is lower, to all amounts not paid when due.

In case of late payment or whenever the circumstances make it clear that the Purchaser is not going to or is not able to perform his obligations or in case the Purchaser fails to give an agreed security by the stipulated date, the Supplier may, after having Written a notification to the Purchaser, suspend his performance of the Agreement until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within one month from the stipulated date, the Supplier shall be entitled to, in addition to the interest and compensation for recovery costs according to this Clause 7, claim compensation for the loss he incurs, including for all of the Products ordered by the Purchaser. Such compensation shall not exceed the agreed purchase price.

7.4 If the Purchaser fails to make payment when due, the Supplier may pursue any legal or equitable remedies, in which event the Supplier will be entitled to reimbursement of costs for collection and reasonable attorneys' fees.

8. PRICE, PRICE CHANGES

8.1. The specified price does not include packaging, which will be paid for by the Purchaser. The price shall be exclusive of all duties and expenses incurred after delivery of the goods, all in accordance with the INCOTERMS 2020 clause agreed upon.

8.2. The Supplier reserves the right to change the price if, after the Supplier's final offer/acceptance but before the time of payment, documented new or increased costs are incurred by the Supplier as a result of changes in customs duty, taxes, etc., including taxes payable to transport, terminal or port authorities, etc., to the extent that any such additional costs can be attributed to the consignment in question.

8.3. Standard price regulation is done once a year, effective from the 1st of January. The regulation rate is communicated 30 days in advance.

8.4 The Supplier reserves the right to use alternative components, if any components are discontinued or unavailable for any reason, such as, but not limited to, those having an impact on cost or delivery time of the products. Any additional costs involved in such replacement will be communicated by the Supplier. If the additional costs can be documented and are lower than 5% of the unit price, the additional costs will be paid by the Purchaser. If the additional costs exceeds the 5% increase in the unit price, the Supplier and the Purchaser must make a mutual agreement in writing on the split of the additional costs.

8.5 The Supplier reserves the right to adjust the price to the purchaser, if the exchange rate USD to EUR change with 3% or more from the time of the quotation or order, on the components purchased in USD.

9. TITLE RETENTION

The Supplier shall continue to have property rights over the Product, until the purchase price has been fully paid.

The passing of risk under Clause 5 shall not be affected by the retention of title.

The Purchaser shall help the Supplier, at his request, with taking all the needed actions and measures, in order to protect the Supplier's title to the Product.

10. INTELLECTUAL PROPERTY

10.1 The Supplier hereby grants the Purchaser a nonexclusive, world-wide and perpetual license to use and distribute the software in machine-readable form, only in combination with or as part of the Product for which the software has been provided and only one copy for each such Product. No rights or licenses with respect to any software source code are granted to the Purchaser. The Supplier hereby grants the Purchaser a nonexclusive license to use and distribute non-confidential documentation with the Product for which the documentation has been provided and only one copy for each such Product.

10.2 To the extent that software and/or documentation is embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software and/or documentation, and all references to "sale" or "sold" of any software or documentation shall be deemed to mean a nonexclusive, world-wide and perpetual license.

For the exclusion of doubt, except for those rights specifically granted herein in connection with software and documentation: (i) The Supplier reserves all right, title and interest, together with all intellectual property rights thereto, in all software and documentation provided or made available to the Purchaser, and (ii) no other express or implied license, right or interest in or to any patent, patent application, copyright, trade secret, trademark, trade name, design, service mark, Product know-how or any other intellectual property right is granted hereunder.

10.3 If the Purchaser is in default of any of the terms herein, the Purchaser's license to software and documentation will automatically terminate.

10.4 With respect to Products, software, documentation, and portions thereof, the Purchaser is not authorized to and agrees that it will not: (i) reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code, ideas, technology or algorithms, except to the extent expressly authorized by statutory law; (ii) modify or create derivative works; (iii) remove or alter any proprietary markings or notices; or (iv) merge, link or incorporate software into any other software.

11. DRAWINGS AND TECHNICAL INFORMATION

11.1 The sharing, irrespective of it occurring before or after the establishment of the Agreement, with the other Party of any and all drawings and technical information in connection to the Product or to its manufacturing process, shall continue to remain the property of the sharing Party.

The Party receiving any drawings, technical information or technical documents, shall not, without the consent of the other Party, copy, reproduce, transmit, communicate or use them in any other way or for any other purpose than the one for which they were provided.

11.2 All information and drawings necessary for the installation, instruction, operation and maintenance of the Product, shall be provided by the Supplier, free of charge, in one copy of each. Manufacturing instructions and drawings for either spare parts of the Product or for the Product itself shall not be shared with the Purchaser, except for when both Parties agree to it.

11.3 Product parts are subject to change by the Supplier without prior notice. For the exclusion of doubt, the Supplier shall have the right to change a component in the Product, as long as such component has the same specifications as the one replaced.

12. LIMITATION OF LIABILITY: DEFECTS, WARRANTY

12.1 Compatible with the Clauses herein, the Supplier must remedy the defects or errors (hereafter defect/s) that arise from faulty design, materials or workmanship.

12.2 The Purchaser shall examine the Product immediately upon the delivery, in order to analyze and clarify whether the Product has any errors in construction, production or material or other defects. The Supplier has the right to reject a complaint regarding the quality, faults or defects, which should have been observed during the inspection.

The Purchaser shall send a Written notification to the Supplier, without undue delay and no later than one week after the Purchaser has accepted the delivery, which should include the identified and described defects.

In such case, the Supplier shall either take remedial actions, or make a replacement delivery at the Purchaser's expense.

12.3 The Supplier shall not be liable for defects that are in connection to or arise from the Purchaser's specified or imposed design or from materials provided by the Purchaser.

12.4 The Supplier shall be liable only for defects which emerge during the proper use and under the conditions of operation provided for in the Agreement.

12.5 The Supplier shall not be liable for defects which arise after the risk has passed to the Purchaser, that are derived from circumstances such as mishandling the Product, incorrect installation, incorrect maintenance or faulty repair or alteration by the Purchaser without the prior Written approval of the Supplier. The Supplier shall not be liable for normal wear and tear or deterioration, improper storage, accident, corrosion or other external causes.

12.6 The liability for defects of the Supplier shall be limited to a period of one (1) year from the delivery.

12.7 If the nature of the defect creates circumstances which may cause damage, the Purchaser shall make a Written notification to the Supplier, as well as take all necessary measures to minimise the damage and comply with the Supplier's instructions. If the Purchaser fails to notify the Supplier, he shall bear the risk of damage.

12.8 If the reparation, replacement and re-installation of the Product do not require particular knowledge, and the Product can be remedied by such actions, the Supplier may demand that the Purchaser sends the defective Product or part of the Product to a destination of his preference. In such situation, the Supplier's obligation in connection to the reparation of the defect is considered performed, when he delivers a properly remedied Product, or a replacement for the Product to the Purchaser.

12.9 The Purchaser shall provide access to the Product and make arrangements for equipment interventions other than the Product, at his own expense, in order to favor the reparation of the Product.

12.10 Necessary transport of the Product to and from the Supplier in connection with the remedying of defects shall be at the risk and expense of the Purchaser. The Purchaser shall also follow the Supplier's instructions regarding such transport.

12.12 Any additional costs which the Supplier incurs from remedying a defect which was caused by the Product being located at a different place than the one of the delivery, shall be covered by the Purchaser.

12.12 A defective Product, which has been replaced shall be made available to the Supplier and shall be his property.

12.13 If no defects, for which the Supplier is liable, have been found after the Purchaser has given Written notice, the Supplier shall have the right to compensation from the Purchaser, for any and all costs he incurs as a result of the notice.

12.14 Except for the situations expressly stipulated in this Agreement, the Supplier shall not be liable for any defects. This applies to any loss as a result of the defect, including but not limited to operating loss, production loss, loss of profit, loss of contracts and any other financial consequential loss and indirect loss.

12.15 The Supplier's liability shall be limited to the provisions stipulated in the current Agreement.

12.16 Except for when expressly stated otherwise, the liability of the Supplier for defective Products, or for any other claim, regardless of its nature, whether in contract or otherwise, shall be limited to the invoice value of the Product.

12.17 The Supplier agrees to transfer to the Purchaser whatever transferable warranties he receives from the manufacturer of Products sold to the Purchaser. The Supplier makes no other warranty, express or implied, with respect to the Products.

13. COUNTERFEIT PREVENTION

When the Purchaser returns a defective Product, he certifies that the defective Product was purchased from the Supplier and that there has been no replacement in whole or part of the same Product from another supplier, distributor or other such source of the Product. The return shall be made in the original packaging.

14. LIMITATION OF LIABILITY: DAMAGES

In any cases where the Product causes damages, after the delivery has been achieved and while in the Purchaser's possession, to property such as products that are fabricated or assembled by the Purchaser or products that contain the Purchaser's product as a component, the Supplier shall not be liable. In no situation shall the Supplier be liable for any special, incidental or consequential damages of any nature including, but not limited to, damages resulting from loss of profit or revenue, recall costs, claims for service interruptions or failure to supply downtime, testing, installation or removal costs, costs of substitute products, property damage, personal injury, death or legal expenses.

In cases when the Supplier incurs liability towards any third party for damage to property as described in the first paragraph, the Purchaser shall indemnify, defend and hold harmless the Supplier.

Both Parties shall, in the case of a claim for damages by a third party, as expressed in the present Clause 13, send a Written notification to the other Party, in order to inform them about the claim.

Both Parties shall allow themselves to be summoned to the court or arbitral tribunal in order to investigate the claims for damages which have been lodged against one of them on the ground of damage supposedly caused by the Product. However, liability between the Parties shall be settled according to the provisions under Clause 20.

15. PURCHASE ORDERS AND FORECAST

15.1 All purchases of the Product shall be made by Written purchase orders submitted by the Purchaser to the Supplier. A purchase order shall be binding on the Supplier only upon his submission of a Written Confirmation of the purchase order to the Purchaser.

15.2 All purchase orders for the Product shall contain the following minimum information: (i) date of purchase order; (ii) purchase order number; (iii) quantity; (v) price; (vi) delivery address; and (vii) delivery date.

16. CRITICAL APPLICATIONS

The Products are not designed for use in any application requiring fail-safe performance, such as life-support or safety devices or systems, medical devices, nuclear facilities, applications related to the deployment of airbags, or any other applications that could lead to death, personal injury or severe property or environmental damage, or for use in any applications that affect control of a vehicle or aircraft (collectively, "critical applications"). The Purchaser further agrees to assume the sole risk and liability of any use of the Products in critical applications, subject only to applicable laws and regulations governing limitations on product liability, and the Purchaser shall indemnify and hold the Supplier harmless from any claims with respect to or arising from such use.

17. FORCE MAJEURE

17.1 Both Parties have the right to suspend the Agreement, in cases where the performance of their obligations is obstructed or made unreasonably difficult by Force Majeure, which includes but is not limited to circumstances beyond the control of the Parties such as: industrial disputes, war, extensive military mobilization, explosions, fire, riots, strikes, lockouts, natural disasters, acts of state or governmental action, currency and export restrictions, epidemics, embargo, seizure, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by the aforementioned circumstances.

The right to suspend, as described in the previous paragraph, shall be allowed only when the effects of the Force Majeure circumstances on the performance of the Agreement could not be anticipated at the time of the formation of the Agreement.

17.2 When a Party claims that he was affected by a Force Majeure circumstance, he shall do so by Written notification to the other Party, as soon as possible, on the intervention and on cessation of such circumstance. Failure to notify, will result in the other Party's right to compensation for any supplementary costs, which he incurs and which could have been prevented if he would have received the notification.

If the Purchaser is kept from performing his obligations under this Agreement by reasons of Force Majeure, he shall grant the Supplier compensation for costs incurred in securing and protecting the Product.

18. CONFIDENTIALITY

18.1 A Party shall keep all information obtained from the other Party in connection with the performance of the Agreement strictly confidential and shall not disclose such information to any third party or use it for any purpose other than the performance of the Agreement without the other Party's prior Written consent.

18.2 The restrictions in paragraph 17.1 hereof shall not apply to any information generally available to the public, obtained by a Party in good faith from a third party, independently developed by a Party without use of the other Party's information or required to be disclosed by law.

19. DUTY TO DEFEND AND INDEMNIFY

19.1 To the fullest extent permitted by law, the Purchaser shall indemnify, defend and hold harmless the Supplier and its employees, management and directors, from and against any and all, associated costs, demands, damages, settlements, judgements, fees (including attorney), losses, liabilities and expenses that can emerge out of, or can be in connection to any claims from third parties related, but not limited to, the Purchaser's breach of this Agreement, the work and performances of the Purchaser or the Purchaser's employees, or its hired independent contractors.

19.2 In the aforementioned cases, the Supplier will send a Written notification to the Purchaser, informing him about the claim. Potential litigation expenses acquired before the notice has been delivered, shall also be covered by the Purchaser. If such notification fails to be delivered, the Purchaser shall not be considered to be relieved of any liability.

20. INTELLECTUAL PROPERTY INDEMNIFICATION

20.1 Because of the complexity of design and manufacturing techniques for electronic components and of the intellectual property rights pertaining thereto, the Supplier is not able to declare that its Products do not infringe the intellectual property rights of third parties.

20.2 The Supplier, at its expense, shall: (i) defend against a reasonable claim ("the Claim") in a legal proceeding brought by a third party against the Purchaser that any hardware Product as furnished by the Supplier hereunder directly infringes the claimant's EU patent or copyright; and (ii) hold the Purchaser harmless against damages and costs awarded by final judgment in such proceeding (or agreed upon in a settlement to which the Supplier consents) to the extent directly and solely attributable to infringement by the Product.

20.3 The Supplier shall have no obligation or liability to the Purchaser under this Clause 20: (1) if the Supplier is not: (i) promptly notified in Written form of the Claim, (ii) given the sole right to control the defense and settlement of such Claim, including the selection of counsel, and (iii) given full reasonable assistance and cooperation by the Purchaser in such defense and settlement; (2) if the Claim is made more than two (2) years after the date of delivery of the Product; (3) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (4) to the extent that any such Claim arises from the Purchaser's use, sale, offer for sale or importation of the Product after the Supplier's notice to the Purchaser that the Purchaser should cease any such activity because the Product is, or is reasonably likely to become, the subject of a Claim of infringement; (5) if the Purchaser has not fully and promptly paid in full for the Products subject to the Claim; (6) if the Claim arose because the Purchaser or the Purchaser's customer brought a claim, suit, or proceeding against a third party; (7) for any costs, losses, expenses or damages resulting from the Purchaser's willful acts, or any settlement or compromise incurred or made by the Purchaser without the Supplier's prior Written consent; and (8) to any Claims of infringement: (i) involving Products made, provided or modified by the Supplier in compliance with the requirements or specifications of the Purchaser or of a third party beneficiary with the consent of the Purchaser; (ii) deriving from the combination or use of a Product by the Purchaser with any other product, device, equipment, software, service, or technology, even if such Product has no substantial use other than as part of such combination or use; (iii) deriving from the programming of Products, except if made by the Supplier; (iv) deriving from the Supplier's compliance with any industry or proprietary standard or the Purchaser's use of the Product to enable the implementation of any such industry or proprietary standard; (v) based upon the Purchaser's use of the Products in a process, including a manufacturing process; (vi) based upon the Purchaser's modifications to the Products.

20.4 If any Claim of infringement is brought against the Supplier as a result of the Purchaser's actions in connection with items (2), (3), (4), (5), (6), (7), or (8) (i), (ii), (iii), (iv), (v), (vi) of the Clause 20.3, the Purchaser shall indemnify the Supplier against and hold the Supplier harmless from any damages or costs arising from or connected with such Claim of infringement and shall reimburse all costs incurred by the Supplier in defending any Claim, demand, suit or proceeding for such infringement, provided the Supplier gives the Purchaser prompt Written notice of any such suit or proceeding for infringement.

20.5 In the event that a third party makes such Claim alleging that Products, as delivered by the Supplier to the Purchaser, infringe a third party's intellectual property rights, the Supplier may, but has no obligation to: i) obtain a license that allows the Purchaser to continue the use of the Products; ii) if the Purchaser is enjoined from using the Product, replace or modify the Products so as to be non-infringing, but in a manner that does not materially affect the functionality of the Products, or iii) if neither (i) nor (ii) is available to the Supplier at a commercially reasonable expense, then the Supplier may stop shipping the Products to the Purchaser without being in breach of this Agreement.

20.6 The foregoing indemnity is personal to the Purchaser and is not assignable, transferable or subject to passthrough to any third party including the Purchaser's customers.

20.7 The Supplier's liability for damages under this Clause 20 will not exceed a reasonable royalty rate as applied solely to the Product that is the subject of the indemnified Claim.

20.8 Subject to the exclusions and limitations set forth in Clause 20 of this Agreement, the foregoing states the Supplier's entire liability and obligation to the Purchaser or its mediate or immediate customers and the Purchaser's sole and exclusive remedy with respect to any actual or alleged infringement of any intellectual property rights of any kind.

21. DISPUTES AND GOVERNING LAW

21.1 The Parties shall endeavor in good faith to reach an amicable settlement through friendly negotiations regarding any dispute arising out of or in connection with this Agreement, including, but not limited to any disputes regarding the existence, or validity thereof. If no settlement can be reached amicably, such disputes shall then be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of simplified arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The language to be used in the arbitral proceedings shall be English. The place of arbitration shall be Copenhagen.

21.2 The Agreement shall be governed by the substantive laws of Denmark. The parties hereby acknowledge and agree that the provisions of the United Nations Convention on Contracts for Sale of Goods (CISG) are expressly excluded and shall not apply to this Agreement.

22. MISCELLANEOUS

22.1 This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or Written, between the Parties.

22.2 In the event of the invalidity of any part or provision of this Agreement such invalidity must not affect the enforceability of any other part or provision of this Agreement.

22.3 The rights and obligations under the Agreement may not be transferred before a Written approval from the other Party has been given.

22.4 The Parties hereby warrant that they have the legal authority and power to accept, be bound by this Agreement, and to perform all of the obligations stipulated within the Agreement, on behalf of themselves and any party they represent.

22.5 Compliance to any of the aforementioned may be waived, only in physical Written form, containing reference to the current Agreement, date and the signatures of the Parties involved. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in Writing and signed by the Parties. No waiver of any provision of this Agreement constitute a waiver of any other provision or of the same provision on another occasion.

The failure of either Party to enforce any provisions hereof or to exercise any right in respect hereto shall not be construed as constituting a waiver of its rights thereof.