

1. General

1.1. These General Terms of Offer and Sale (hereinafter referred to as “General Terms”) are binding if they have been declared applicable in the offer (also called “quotation”) or confirmation of order. Any other terms defined by the customer or in other documents are only valid if they have been expressly accepted by SET USA INC. (“SET”) in writing. THESE GENERAL TERMS, ALONG WITH ANY EXHIBITS, APPENDICES, ADDENDUMS, SCHEDULES, AND AMENDMENTS HERETO, ENCOMPASS THE ENTIRE AGREEMENT OF THE PARTIES, AND SUPERSEDE ALL PREVIOUS UNDERSTANDINGS AND AGREEMENTS BETWEEN THE PARTIES, WHETHER ORAL OR WRITTEN. IN ADDITIONAL, THESE GENERAL TERMS SHALL NOT BE SUPERCEDED BY ANY FUTURE AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES UNLESS SUCH FUTURE AGREEMENT OR UNDERSTANDING EXPRESSLY STATES THAT THESE GENERAL TERMS SHALL BE SUPERCEDED AND SUCH AGREEMENT OR UNDERSTANDING IS SIGNED AND DATED BY BOTH PARTIES.

1.2. All quotations are valid for 30 days from date of quotation, unless SET states otherwise in writing.

1.3. Only the written or electronic confirmation of order is binding. If SET does not give a confirmation of order the invoice shall serve as the confirmation of order.

1.4. If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

2. Placing of order

2.1. To be effective orders must be made in writing or electronically and must expressly incorporate these General Terms by reference.

2.2. The order must contain all information relevant to SET such as number and date of SET offer, salesperson etc.

3. Scope of supplies and services

SET’s scope of supplies and services referred to in the confirmation of order shall form part of the contract. Further goods and services not specified therein shall be charged extra.

4. Technical documentation

4.1. Sales brochures and catalogues are for general information purposes and are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed in writing.

4.2. SET reserves all rights to any technical documentation supplied to the customer. Without prior written consent of SET, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular, the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

5. Confidentiality/Trade Secrets

Each party shall keep confidential the manufacturing and business secrets as well as any other proprietary information received from the other party to the contract and shall neither directly nor indirectly disclose the same to any third party whomsoever nor publish them in any manner whatsoever nor use them for any other purpose, in particular but without limitation for the reproduction or replication of machines, systems, components and parts thereof. Notwithstanding the foregoing, in the event that a party is required by a legally constituted tribunal to disclose any proprietary information, such party shall do so only under a Court order protecting the confidentiality of the information.

6. Norms and standards

6.1 The goods are constructed in accordance with Underwriters Laboratories, Inc (“UL”) (i.e., USA Standards/Markings) unless otherwise provided for in writing.

6.2. No later than the time of placing any order, customer shall advise SET in writing of all other safety and operation standards. Customer shall solely bear the cost of any alteration or addition to the goods required to comply with applicable standards or regulations, which have not been advised and agreed to by SET.

6.3. In the event that goods are transported or otherwise moved, the customer is obliged to take precautions that the goods meet the requirements, standards and regulations to be observed at the new location and that all manuals and product related specific documents are updated accordingly for the operation of the then current product version.

7. Prices

7.1. The goods shall be delivered EXW SET SAINT JOEIRE FRANCE , unless agreed otherwise and in writing by the parties or as otherwise set forth in writing by SET in its estimate or quote; all charges from the EXW point forward shall be borne exclusively by the customer.

7.2. Payment shall be made in freely available U.S. Dollars without any deductions whatsoever.

7.3. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like, which are levied out of or in connection with the contract, or shall refund them to SET against adequate evidence in the event that it is proved that SET is eventually solely liable for them.

7.4. The prices will be adjusted appropriately if:
- The term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
- The nature or the scope of the agreed supplies or services has changed, or
- The material or the execution has undergone changes because the information and/or documents provided by the customer were not in conformity with the actual conditions or were incomplete.

8. Terms of payment

8.1. Payments have to be effected in accordance with the confirmation of order or invoice as the case may be. Payment will be deemed to be made when the total price agreed on has been paid in full to SET in US Dollars.

8.2. No interest will be reimbursed for advance payments.

8.3. Any dates agreed for payment shall remain in full effect even where through no fault of SET delays arise in the performance of the contract. The late delivery of minor components, the absence of which does not restrict the use of the goods or any further work within the scope of SET warranty obligations do not affect the time fixed for payment.

8.4. If the term of delivery has been subsequently extended through no fault of SET the customer will make the scheduled delivery payment within no more than thirty (30) days from the originally scheduled delivery date.

8.5. If acceptance is delayed for any reason and with no fault of SET, the customer will make the full final payment within no more than thirty (30) days from date of delivery.

8.6. Any amount owing by the Customer to SET hereunder which is not paid by the Customer on its due date, then at SET’s option, without notice, shall bear an additional point zero five percent (0.05%) simple non- compounded daily interest, from the time the payment was due until the time paid.

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8.7. The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by SET is not permissible. The customer may only set off possible counterclaims against payments due under this contract where SET has expressly agreed to the same in writing.

9. Reservation of title

9.1. SET shall remain the owner of all goods until having received the full payments (including but not limited to interest for late payment) in accordance with the contract.

9.2. The customer shall cooperate in any measures necessary for the protection of SET's title. In particular upon entering into the contract it authorizes SET to enter or notify the reservation of title in the required form, including UCC1, all in accordance with relevant state and national laws, and to fulfil all corresponding formalities, at the customer's cost.

9.3. During the period of the reservation of title, the customer shall, at its own cost, maintain the goods and insure them for the benefit of SET against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that SET's title is in no way prejudiced. Customer shall purchase insurance in sufficient amount to reimburse SET fully for any and all losses resulting from any theft, breakdown, fire, water and other risks and shall name SET as an additional insured party in such policy.

10. Delivery time

10.1. The time for delivery shall start as soon as the contract is entered into, the scope of supply and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time SET has sent a notice to the customer informing the customer that the goods are ready for dispatch.

10.2. SET's compliance with the time for delivery is conditional upon customer fulfilling all of its contractual obligations.

10.3. The time for delivery will be extended correspondingly in case of, and SET is not responsible for claims or damages resulting from, contingencies beyond the reasonable control of SET. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

10.4. Unless otherwise explicitly provided for in writing, agreed delivery dates are not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request SET in writing to make delivery within a reasonable period.

11. Termination

SET reserves the absolute right to refuse cancellation of purchase orders by the customer. However in the event that SET accepts customer's request to cancel a purchase order, SET is entitled to liquidated damages as follows:

- Cancellation before 25% of the agreed upon lead time has elapsed: 15% of the total purchase order price plus the costs of customer specific parts
- Cancellation after 25% of the agreed upon lead time has elapsed but up to 50% of such period has elapsed: 35% of the total purchase order price plus the costs of customer specific parts
- Cancellation after 50% of the agreed upon lead time has elapsed but up to 75% of such period has elapsed: 60% of the total purchase order price plus the costs of customer specific parts
- Cancellation after 75% of the agreed upon lead time has elapsed until the date of delivery: 80% of the total purchase order price plus the costs of customer specific parts.

12. Passing of benefit and risk

12.1. Benefit and risk of the goods shall pass to the customer by the date of shipment EXW SET SAINT JEORE FRANCE, unless the parties have agreed to a different location in writing or SET has instead specified EXW SET's address, Chandler, AZ USA in writing in SET's estimate or quote.

12.2. If delivery is delayed at the request of the customer or otherwise due to no fault of SET, the risk shall pass to the customer at the date originally agreed for delivery EXW. From this date onwards the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

13. Shipping, transport and insurance

13.1. All goods will be shipped in export packing via truck, railway or airfreight. SET must be notified for special requests in relation to forwarding, transport and insurance.

13.2. Transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the goods or of the shipping documents be immediately submitted in writing by the customer to the last carrier.

13.3. The customer shall be responsible for obtaining insurance against risks of any and all kinds.

13.4. Customer shall comply with all applicable domestic, foreign, import, export, security and controller access laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities, governmental approvals and licenses in connection with the purchase of goods.

14. Inspection and acceptance of goods and services

14.1. SET shall check the goods before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.

14.2. The customer shall inspect the goods and services within a reasonable period and shall notify SET immediately of any defects in writing. If the customer fails to do so, the goods and services shall be deemed to have been accepted.

14.3. To the extent reasonable, SET shall correct actual defects of which it is notified, in accordance with clause 14.2, as soon as possible and the customer shall give SET the possibility of doing so. After rectification of such defects, a Final Acceptance Test shall be carried out at the request of SET or the customer, in accordance with clause 14.4.

14.4. Subject to clause 14.3., a Final Acceptance Test shall be performed by SET in the presence of the customer in accordance with terms to be mutually agreed upon separately. In the absence of such agreement the following shall apply:

- SET shall advise the customer in time of the execution of the Final Acceptance Test as to enable the customer or its representative to take part therein.
- Upon completion of Final Acceptance a Final Acceptance Certificate shall be signed by the customer and SET. Such report shall either state that the goods have been accepted or accepted with documented reservation or that the customer has refused the acceptance. In the last two cases, the defects shall be listed individually in a separate report that shall be signed by both parties. Any defect listed in such a report shall not give rise to a right on the part of the customer to reject the goods and/or the services.
- In the case of non significant defects, in particular those which do not substantially hinder the efficient functioning of the goods or services, the customer shall not be entitled to refuse the acceptance of the goods or services and the signature of the acceptance report. SET shall diligently rectify such defects.
- In case of important deviations from the contract or of serious defects the customer shall give SET the possibility to make such amendments or adjustments as it considers appropriate to rectify these defects. Thereafter, the acceptance test procedure outlined above shall be repeated on a second and, if necessary, a third date (such dates to be agreed between SET and the customer).
If during the third test important deviations from the contract or serious defects appear again, the customer shall be entitled to claim either a price reduction or

an indemnity or other compensations from SET, provided this has been agreed upon beforehand.

14.5. The Final Acceptance Test shall be deemed completed:

- If the Final Acceptance Test is delayed for one month from the date on which SET notifies the customer it is ready to conduct the Final Acceptance Test, due to reasons beyond SET control;
- If the customer refuses to allow SET to have unlimited access to the goods in order to perform all works necessary and/or appropriate until completion of Final Acceptance;
- If the customer declines to accept the goods and/or services without sufficiently documented grounds for doing so; or
- Immediately if the customer uses the goods for production purposes, including but not limited to so called trial or qualification runs if and to the extent that products produced during such production activities should be offered for sale by the customer.

14.6. In case of delay in installation or performance of the Final Acceptance Test due to customer's fault or action, customer shall be obliged to reimburse to SET all idle cost such as additional accommodation and traveling cost as well as a flat fee in the amount of 2,000 U.S. Dollars., plus taxes per man/waiting day.

14.7. The customer has no other rights and claims in respect of any defects whatsoever in relation to goods or services than those expressly named in clause 14 and clause 15 (Warranty).

15. Warranty

15.1. Warranty period

The period of warranty is 12 months unless otherwise specified in the binding quotation and shall commence upon the availability of the goods at the time of delivery EXW or, where any acceptance test has been provided for, with acceptance of the goods and services. If dispatch or acceptance is delayed for reasons beyond SET's control, the warranty period shall terminate not later than 18 months after SET has notified the customer that the goods are ready for dispatch.

For replaced or repaired parts, the warranty period shall run for another period of 6 months after replacement or completion of the repair or acceptance but not longer than a period being twice the warranty period pursuant to the preceding clause.

The warranty under this contract shall terminate with immediate effect if the customer or third parties make inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give SET the possibility to repair the defective goods or if the goods are not used properly and/or are used for other purposes than those stated in SET technical documentation.

15.2. Liability for express warranty and defects in material, and workmanship

SET warrants the technical specifications expressly specified in the confirmation of order or the specific technical specification mutually agreed upon in writing only as well as the material and workmanship of the delivered goods and undertakes to repair or replace at its option free of charge to the customer any defective parts during the warranty period at its earliest convenience. Any parts replaced shall become property of SET. The warranties under Section 15.2 shall be subject to, and are conditional upon compliance with, the requirements, limitations, exclusions, inspections and acceptances as set forth in Section 14 above, as if the terms and conditions of Section 14 were set forth in this Section 15.2.

15.3. Exclusions from the liability

Expressly excluded from SET warranties and liability from defects in any goods are any damages caused by normal wear, defective maintenance and handling by the customer, failure to observe the operating instructions, electrostatic effects, excessive voltage or current, excessive use, chemical or electrolytic influences, contamination or corrosion of cooling water systems of any kind, as well as any damages caused by arcing, electron beams, crucible breakage, etc., application of material, equipment and spare parts not recommended by SET,

defective repairs which have not been carried out by SET or its agents, or resulting from other reasons beyond SET's control as well as in case of modifications made by the customer or improper system integration, construction, assembly and installation work not undertaken by SET, provided that the respective burden of proof is with the customer if a dispute regarding exclusion of warranty may arise.

15.4. Supplies and services of subcontractors

SET warrants for goods and services of subcontractors requested or provided by the customer to the extent of such subcontractor's warranty and liability obligations only.

15.5. Exclusivity of warranty claims

The customer shall not be entitled to any warranty, express or implied, except those specifically set forth in clause 15.1 to 15.4 and SET shall have no liabilities for any other claims, including but not limited to, claims arising out of injury to or interference with customer's production or any other consequential or indirect damages.

16. Termination of the contract by SET

16.1. The contract shall be modified appropriately, and in a manner consistent with maintaining these General Terms to the extent reasonably possible, in the event that any unforeseen events substantially change the economic effect or the content of the goods or services or considerably affect the activities of SET, or if performance subsequently becomes impossible. In so far as such modification is not economically feasible, SET shall be entitled to terminate the contract or the parts affected thereby.

16.2. If SET wishes to terminate any contract, it shall promptly inform the customer. In case of termination of a contract, SET shall be entitled to the payment of those parts of the goods and services which have already been carried out. The customer shall have no claim for damages as a result of such a termination.

17. Exclusion of further liability

17.1. SET makes no representation or warranty of any character with respect to infringement or to the exemption of the goods and services from third parties' protective rights.

17.2. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS.

17.3 Without limiting the generality of the foregoing, this exclusion from liability is also not limited to claims arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental, indirect or consequential loss.

18. No liability for additional obligations

SET is not liable for claims by the customer arising out of insufficient information or faulty advice and the like or out of breach of any additional obligations whatsoever except where caused by SET's gross negligence or willful misconduct.

19. Assembly and installations

If SET also undertakes the assembly and installation or the supervision of the installation the "General Terms for Assembly and Installation" of SET are applicable thereto.

20. Applicable law and Arbitration

20.1. These General Terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive law provisions of the United States and the State of Arizona, as if between parties both situated in Arizona.

20.2. All disputes arising from or in any way in connection with these General Terms shall submitted to and finally settled by binding arbitration. Arbitration shall be administered exclusively by the American Arbitration

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Association in accordance with its Commercial Arbitration Rules (“**AAA Rules**”) in effect as of the date hereof as well as any requirements imposed by state law, by one (1) arbitrator appointed in accordance with the AAA Rules. Such arbitration shall occur at the offices of the AAA in Phoenix, Arizona. In such arbitration the Parties shall attempt to agree upon an arbitrator within thirty (30) days of the notified party’s receipt of the notifying party’s request for arbitration. In the event the Parties cannot agree upon an arbitrator within such thirty (30) day period, then each party shall select an independent representative and the representatives so selected by the Parties shall agree upon the arbitrator within thirty (30) days of their selection. Notwithstanding the above, nothing herein shall prevent the Parties from seeking injunctive relief in any jurisdiction before a court of competent jurisdiction.

20.3. In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys’ fees and all other litigation costs, including expert fees, and all actual attorneys’ fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

20.4. The parties acknowledge that the only official text of these General Terms and related documents are written in English and that any translations into other languages, even if signed by both parties, shall not be binding. In case of difference between the various texts, the English text shall prevail.

21. Indemnity

22.1 Customer shall defend, indemnify, and hold harmless SET, its parent company affiliates, successors, and assigns and their respective directors, officers, employees, agents, and independent contractors (collectively the “**SET Indemnitees**”) from and against any and all liabilities, damages, losses, settlements, claims, actions, suits, judgments, interest, penalties, fines, costs, or expenses (including, without limitation, reasonable attorneys’ fees) (any of the foregoing, “Section 22.1 Damages”) incurred or asserted against any SET Indemnitee of whatever kind or nature including, without limitation, any claim or liability based upon negligence, warranty, strict liability, or violation of governmental regulation, or otherwise arising from or occurring as a result of a claim or demand made by a Third Party against any SET Indemnitee (a “**SET Third Party Claim**”) arising out of any negligence by customer in using any of the goods or any use of the goods for any purposes not contemplated by these General Terms or as the result of the breach of any material terms of these General Terms.

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