

Conditions of sales Black System

August 2019

Black System (“BS”) means all factories being part of the network Black System together with all its affiliates wherever located. The Seller is either BS Europe or a local alliance partner of BS.

All of the Seller’s offers are non-binding and subject to reasonable technical and other changes. If an Order is placed for the specified Products, the Offer including these Terms are deemed to be binding and accepted by the Buyer. Likewise, the Agreement is deemed to be binding and accepted by the Buyer if the Buyer accepts delivery or makes payment for the Products. Orders are subject to confirmation by the Seller. The Agreement is not deemed to be concluded until such time as the respective Seller sends a written Order Confirmation.

1. Goods

1.1 Subject to the terms agreed in this contract, the Seller shall deliver the good(s) as specified in the order confirmation (hereinafter: “the Goods”) to the Buyer

1.2. For all Products, the Seller shall be entitled to deliver above or below the quantity ordered for sales within the limits of the quantity percentage rate

0 – 9.999 pieces	50%
10.000 – 29.999 pieces	30%
30.000 – 999.999 pieces	10%
above 1 mio pieces	5%

The tolerances on quantity are effective for the total quantity ordered as well as for any partial delivery. The tolerances on quantity listed above do not constitute a defect and cannot be used to substantiate a complaint by the Buyer.

1.3. If the Buyer has not given special instructions, (which have been accepted by the Seller) the Order shall be carried out with the materials used regularly in the trade in accordance with customary manufacturing processes.

2. Delivery

2.1 Applicable International Chamber of Commerce Incoterms (by reference to most recent version of the Incoterms at date of conclusion of the contract).

3. Price

3.1. All prices are net prices. Any applicable taxes and other charges such as duties, customs, tariffs, imposts, and government-imposed surcharges shall be stated separately on the Seller’s invoice unless included in the base price and will be reimbursed by the Buyer.

3.2. All quoted prices are firm for thirty (30) days from the date of offer. In the event of a change of relevant raw material and transport prices, the Seller has the right to adjust the prices.

3.3. Price adjustments even during an agreed fixed price period can be negotiated in case costs of factors which have an impact on production are changing (e.g. costs of energy, labour, transport, logistics) more than 5 % on the global price of the Goods in the currency of the Seller and/or exchange rate between the Seller and the Buyer. If no reasonable agreement can be reached, the Seller reserves the right to terminate the Agreement unilaterally. If the Buyer cancels the Order, the Seller will invoice to the Buyer the full costs of the raw material it reserved for the Order plus all additional costs incurred for the preparation of the Order. The Buyer agrees to bear such costs.

3.4. Unless otherwise agreed upon, the agreement is based on Euro currency, the official national currency of the French Republic.

4. Payment conditions

4.1. The Seller shall submit invoices to the Buyer upon each delivery or partial delivery of Goods

4.2. Invoices shall include purchase order number, listing of Goods, dates of shipments, quantities 4.1

4.3. The Seller and the Buyer reserve the right to proceed factoring. Payment is wire transfer to the bank account of the Seller or the factoring bank if not agreed different.

4.4. The Buyer shall pay for such Goods within 30 calendar days after the invoice date, unless not agreed different. For any late payment, the Buyer shall automatically pay the Seller late payment penalties at a rate amounting to three times the annual legal interest rate in force in France and a minimum flat recovery costs indemnity of 40 (forty) Euros, due as of right.

4.5. The Buyer agrees to bear all expenses related to the recovery of a receivable, such as, in particular, collection expenses or other costs required for taking appropriate legal action. The Buyer has a right to set-off only if the Buyer's counterclaims have been established as legally binding or if acknowledged in writing by the Seller.

5. Documents

5.1 The Seller shall make available to the Buyer (or shall present to the bank specified by the Buyer) the necessary documents as Packaging list, Commercial Invoice, Customs documents, corresponding to the ICC Incoterms the Parties have selected for this contract.

6. Non-performance of the Buyer's obligation to pay the price at the agreed time

6.1. If the Buyer fails to pay the price at the agreed time, the Seller shall fix to the Buyer an additional period of time of 14 days for performance of payment. If the Buyer fails to pay the price at the expiration of the additional period, the Seller may declare this contract avoided in accordance with Article 10 of this contract.

6.2. If the Buyer fails to pay the price at the agreed time, the Seller shall in any event be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of three times the annual legal interest rate in force in France .

7. Non-performance of the Seller's obligation to deliver the Goods at the agreed time

7.1 If the Seller fails to deliver the Goods at the agreed time, the Buyer shall fix to the Seller an additional period of time of 4 weeks for performance of delivery. If the Seller fails to deliver the Goods at the expiration of the additional period, the Buyer may declare this contract avoided in accordance with Article 10 of this contract.

8. Lack of conformity

8.1 The Buyer shall examine the Goods, or cause them to be examined within as short period as is practicable in the circumstances.

8.1.1. The buyer shall notify the Seller within 1 day in case of visible damage of Goods and is obliged to state the damage on the delivery papers of the forwarder. Any costs resulting of non-statement may be born to the Buyer.

8.1.2. The Buyer shall notify the Seller of any lack of conformity of the Goods, specifying the nature of the lack of conformity, within 3 days after the Buyer has discovered or ought to have discovered the lack of conformity. In any event, the Buyer loses the right to rely on a lack of conformity if he fails to notify the Seller thereof at the latest within a period of 6 months from the date on which the Goods were actually handed over to the Buyer.

8.2. Where the Buyer has given due notice of non-conformity to the Seller, the Buyer may at his option:

8.2.1. Require the Seller to deliver any missing quantity of the Goods, without any additional expense to the Buyer;

8.2.2. Require the Seller to replace the Goods with conforming goods, without any additional expense to the Buyer;

8.2.3. Require the Seller to repair the Goods, without any additional expense to the Buyer;

8.2.4. Reduce the price in the same proportion as the value that the Goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. The Buyer may not reduce the price if the Seller replaces the Goods with conforming goods or repairs the Goods in accordance with paragraph 8.2.2 and 8.2.3 of this Article or if the Buyer refuses to accept such performance by the Seller;

8.2.5. Declare this contract avoided in accordance with Article 10 of this contract.

The Buyer shall in any event be entitled to claim damages.

9. Transfer of property

The Seller must deliver to the Buyer the Goods specified in the order confirmation and product specification free from any right or claim of a third person.

10. Avoidance (termination) of contract

10.1. There is a breach of contract where a party fails to perform any of its obligations under this contract, including defective, partial or late performance.

10.2. There is a fundamental breach of contract where:

10.2.1. Strict compliance with the obligation which has not been performed is of the essence under this contract; or

10.2.2. The non-performance substantially deprives the aggrieved party of what it was reasonably entitled to expect under this contract.

10.3. In a case of a breach of contract according to paragraph 10.1 of this Article, the aggrieved party shall, by notice to the other party, fix an additional period of time of 4 weeks for performance. During the additional period of time the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages, but may not declare this contract avoided. If the other party fails to perform its obligation within the additional period of time, the aggrieved party may declare this contract avoided.

10.4. In case of a fundamental breach of contract according to paragraph 10.2 of this Article, the aggrieved party may declare this contract avoided without fixing an additional period of time for performance to the other party.

10.5. A declaration of avoidance of this contract is effective only if made by notice to the other party.

11. Force majeure – excuse for non-performance

11.1. “Force majeure” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.

11.2. A party affected by force majeure shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party in accordance with Article 11.3. The time for performance of that obligation shall be extended accordingly, subject to Article 11.4.

11.3. If any force majeure occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

11.4. If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 days, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure”.]

12. Entire agreement

12.1. This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation.

12.2. This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail).

13. Notices

Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 13.2 below, in a manner that ensures receipt of the notice can be proved.

14. Dispute resolution procedure

Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of Versailles/France which will have exclusive jurisdiction. In case that the Seller and the Buyer are of the same nationality, they may commonly decide to use a local court.

15. Applicable law and guiding principles

15.1 Questions relating to this contract that are not settled by the provisions contained in the contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980, hereafter referred to as CISG). Questions not covered by the CISG shall be governed by the UNIDROIT Principles of International Commercial Contracts (hereafter referred to as UNIDROIT Principles), and to the extent that such questions are not covered by the UNIDROIT Principles, by reference to the applicable national law of the country where the Seller has his place of business,

15.2 This contract shall be performed in a spirit of good faith and fair dealing.