



Carter Process Control GmbH

CONDITIONS OF SALE

CONTRACT

1 (A) These conditions of sale (the “Conditions”) shall apply to all contracts for the sale of goods between the Company and the Buyer. In these conditions: “Buyer” means the person, firm or company specified in the Company’s acknowledgement.

“Company” means Carter Process Control GmbH (CPC)

No other terms and conditions shall be accepted by the Company except by written amendment to the Conditions signed by the Company’s authorised representative.

1 (B) Notwithstanding any prior agreement or discussion no contract between the Company and the Buyer for the sale of the goods shall arise until the Company has issued a printed acknowledgement form in respect of the Buyer’s order. The goods which are specified in the Company’s acknowledgement shall in these Conditions be referred to as “Goods”.

1 (C) These Conditions shall alone constitute the terms and conditions of the contract for the sale of the goods (the “Contract”) to the exclusion of all other terms and conditions and no variation of the contract shall be effective unless agreed in writing between the Company and the Buyer. For avoidance of doubt, the signing by the Company of any of the Buyer’s documentation does not imply a modification of these conditions. In case of any conflict between these conditions and any terms and conditions introduced by the Buyer and agreed by the Company in accordance with 1 (A) above, the provision of these conditions shall prevail.

1 (D) The Buyer may not cancel the Contract without prior written consent of the Company, which may impose such terms as compensation and indemnity as a condition of such consent as it deems fit. In the case of cancellation of Goods made or supplied to the Buyer’s special order, the Buyer shall be required to pay the full cost of all work and materials up to the date of cancellation.

1 (E) Any specification and/or description of the Goods appearing in any quotation or other documentation of the Company is given for the purpose of identification only and shall not be deemed to constitute a sale of the Goods as a sale by description. The Buyer acknowledges that it is not purchasing the Goods in reliance of any description or any other statement or representation which may have been made by the Company or any third party. All descriptions and illustrations contained in any of the Company’s documentation or otherwise communicated to the Buyer are intended merely to present a general idea of the Goods and nothing contained in any of them shall form any part of the contract.

1 (F) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby agreed that such sample was exhibited to and inspected solely to enable the Buyer to judge for itself the quality of the Goods and not so as to constitute a sale by sample under this Contract.

PRICE

2 (A) The price quoted for the Goods shall be exclusive of VAT and ex-works unless otherwise stated. The Buyer shall pay for all delivery, insurance and other packaging costs. Carriage shall be by the carrier nominated by the Buyer or in the absence of such nomination by a carrier selected by the Company.

2 (B) All prices in any quotations or tenders submitted by the company shall lapse 30 days after date of issue and do not in any event constitute an offer by the Company.

2 (C) The prices for the Goods quoted by the Company are not final and the Company reserves the right to increase or decrease such prices without notice, except where the Company has expressly stated in writing that a price is fixed and specified the period during which the price will be fixed.

2 (D) The Company reserves the right to impose a foreign exchange surcharge in addition to any prices quoted to take account of any changes in exchange rates which take place prior to payment for the Goods being received.

2 (E) The Company reserves the right to make additional charge for translations, drawings, instruction books or other documentation required by the Buyer.

2 (F) All prices exclude supervision, erection, fitting, service and commissioning (unless otherwise indicated in writing)

PAYMENT

3 (A) Payment shall become due and be made as stipulated on the Company's order acknowledgement and/or invoice.

3 (B) If the Buyer shall fail to pay any sums under the Contract, the company shall (without prejudice to any other rights of the Company) be entitled to charge interest on the outstanding sums from the due date at the rate of 5% per annum above the base rate for the time being of the Company's bank until such time as payment is received in full. The Company shall also be entitled to withhold delivery of any other Goods ordered by the Buyer until the Buyer has paid in full all outstanding sums and interest thereon.

3 (C) If the Buyer fails to make payment under this Contract or if the Buyer is otherwise in default of payment of its debts or commits to any act of bankruptcy or (if the Buyer is a company) shall be wound up or go into liquidation (except for the purpose of reconstruction or amalgamation) or if any petition to wind up shall have been passed or presented or if a receiver shall be appointed then the Company may (without prejudice to its rights under the Contract) immediately by written notice to the Buyer terminate the Contract.

3 (D) If any of the events specified in 3 (C) above has taken place and the Company has exercised its right to terminate the Contract, the Company shall invoice the Buyer for any work performed and expense incurred including any loss of profit and the Buyer shall pay any such invoice so rendered in accordance with these Conditions.

3 (E) Payment for the Goods and all invoices issued under the Contract shall be made in full without any deduction or set-off by the Buyer.

DELIVERY & RISK

4 (A) Delivery shall take place when the Goods are delivered to a carrier for the purpose of transmission to the Buyer or (if appropriate) within 7 days of the Company notifying the Buyer that the Goods are available at the Company's premises for collection (whichever is the earlier)

4 (B) The Company reserves the right to make delivery in partial shipments.

4 (C) All completion or delivery dates are estimates only and the Company shall not be liable for failure to make the Goods available by such dates. Under no circumstances shall the Company be liable to compensate the Buyer in damages or other-wise for non delivery or late delivery of the Goods or for any loss, consequential or otherwise arising there from.

4 (D) The Company shall be entitled at its discretion to charge the Buyer for storage of the Goods in the event that delivery is not accepted by the Buyer within a specific period.

4 (E) Risk in the Goods shall pass to the Buyer on delivery of the Goods to the Carrier for onward transmission to the Buyer or from the time the Buyer receives notification that the Goods are available for collection by the Buyer, or its agent or carrier. The Buyer should insure the Goods for their full value thereafter for such risks as the Buyer may think appropriate.

4 (F) Insurance of the Goods before delivery shall be the responsibility of the Company but the Company shall not be responsible for insurance cover for the Goods following delivery.

PROPERTY IN THE GOODS

5 (A) Property in the Goods shall not pass to the Buyer until payment in full has been received by the Company of all sums payable by the Contract and of any other sums owing to the Company by the Buyer. Until such time the Goods remain the absolute property of the Company and the Buyer shall take possession as bailee for and on behalf of the Company.

5 (B) The goods shall cease to be in the Buyer's possession with the Company's consent upon the happening of any of the following events:

- i) Payment in full for the Goods not being made by the due date
- ii) Payment in full of any other sums owing to the Company not being made by the due date.
- iii) The presentation of a petition or the passing of a resolution for the winding-up of the Buyer.
- iv) The commission of an act of bankruptcy or insolvency by the Buyer.

And in the event of any of the above taking place the Buyer irrevocably authorises the representatives of the company to enter upon the Buyer's premises where the Goods are stored or are thought by the Company to be stored for the purpose of repossessing them and subsequently reselling them. Such repossession shall not affect in anyway any right of action of the Company against the Buyer.

5 (C) At all times prior to the Company receiving payment in full for the Goods the Buyer shall store the Goods in such a way that they are clearly identifiable and marked as the property of the Company.

5 (D) Until such time as payment in full is made by the Buyer of all sums payable in respect of the Goods, the Buyer shall not be entitled to sell or otherwise transfer the property in any Goods in which the Company has retained property to a third party except on the following conditions:

- i) The Buyer shall be entitled to offer for sale and sell the Goods at the best obtainable price in the ordinary course of its business as principle vis-à-vis sub-buyers and not as agent for the company;and
- ii) The company shall be legally and beneficially entitled to the proceeds of sale and the Buyer shall pay all such proceeds into a separate bank account and shall ensure that such proceeds are kept in a separate and identifiable form and are not mixed with any other monies: and
- iii) Forthwith upon receipt of the proceeds of sale the Buyer shall pay to the Company any of the proceeds outstanding to the Company and shall not use or deal with the proceeds of sale in any way whatsoever until such sums shall have been paid.

5 (E) If the Buyer incorporates or mixes the Goods with other equipment or product (the new goods) in such a way that the Goods are not a readily identifiable removable part of the new goods the Buyer shall store such new goods separately and shall notify the Company of the location and position thereof and the ownership of such new goods and the property therein shall vest in the Company.

Upon any sale of the new goods by the Company then if the proceeds of sale exceed the price or the balance of the price of the Goods due to the Company from the Buyer, the Company shall apply the balance of proceeds of sale as follows:

- i) first, reimbursing the Company the costs and expense of the taking of possession and the sale of the new goods and any damages which the company has suffered as a result of any repudiation of the contract by the Buyer:
- ii) secondly, paying any sums due and owing to other creditors of the Buyer in respect of any other items and materials used in connection with the manufacture of the new goods where the property in such items and materials has remained vested in such other creditors by reason of effective reservation of title clauses and the claims of such other creditors pursuant to such clauses have been notified to the Company by the Buyer (or its liquidator, administrator, or receiver) or by such other creditors.

FORCE MAJEURE

6. Notwithstanding any other provision of these Conditions, should the manufacture, supply or delivery of the whole or any part of the Goods be interrupted, prevented or hindered by any cause or causes whatsoever beyond the Company's control, the Company shall be entitled to postpone or suspend delivery of the goods or of any part thereof until (in the Company's judgement) such cause has ceased to operate. The Company shall be under no liability whatsoever in respect of such postponement or suspension. Without limiting the generality of the causes referred to above the same shall include war, fire, accident, breakdown of plant, machinery, strikes, combinations of workmen and lockouts (which affecting the Company's works or those of supplying contractors or carriers), non delivery or delay in delivery of materials, materials supplied by a third party identified by the Company as defective or any other circumstances of whatsoever nature and not

limiting to the foregoing which directly or indirectly interrupts, prevents or hinders the due performance of the Contract.

GUARANTEES

7(A) The Company warrants that Goods manufactured by the Company shall be free from defects in materials and workmanship for twelve months from the date of delivery. Goods manufactured by the Company found to be defective through faulty materials or poor workmanship within twelve months of delivery shall at the Company's option be repaired or replaced free of charge.

7(B) The Company will wherever possible extend to the Buyer the benefit of any guarantee condition or warranty which may have been given to the Company by any manufacturer or vendor or otherwise implied in favour of the Company in respect of Goods not manufactured by the Company but so that the terms of any such guarantee conditions or warranty are only extended to the Buyer on condition that the Buyer fully indemnifies the Company against all costs claims damages and expenses incurred in connections with the enforcement thereof.

CHANGES TO THE GOODS

8(A) The Company reserves the right to make any changes to the design and/or specification of the Goods which it supplies in accordance with the principles of good engineering practice and without notice to the Buyer.

TESTING AND PERFORMANCE

9(A) All goods are subject to the Company's standard test and inspection procedures. The Company shall supply a standard test certificate for the Goods on request. Any additional testing/certification requested by the Buyer may incur additional charges.

10(A) The liability of the Company to the Buyer shall in no circumstances whatsoever exceed the total purchase price for the Goods (save for the liability for death or personal injury resulting from the Company's negligence).

10(B) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as consumer (within the meaning of Section 12 of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms whether express or implied by statute or common law are excluded to the fullest extent permitted by law.

10(C) Without prejudice to the generality of Clause 10(B) the Company shall have no liability to the Buyer in respect of any defect in the Goods:

- i) arising from any drawing, design or specification supplied by the Buyer.
- ii) arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's written approval.
- iii) If the total price of the Goods has not been paid by the due date for payment.

10(D) Any claim by the Buyer that the Goods are defective or fail to correspond with their specification shall (whether or not delivery is refused by the Buyer) be notified to the Company in writing within 14 days from the date of actual delivery and receipt (or attempted delivery) or, where the defect or failure was not apparent on initial inspection, within one month after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Company in accordance with this clause, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the full price for the Goods.

10(E) The Company shall have no liability whatsoever whether in contract or tort to the Buyer for any consequential loss or damage (whether for loss or profit or otherwise) costs, expenses or any other claim for consequential compensation.

10(F) Where any claim by the Buyer in respect of defective Goods or their failure to meet expectations is notified to and accepted by the Company, the Company shall be entitled at the Company's sole discretion to replace the Goods (or the part in question) free of charge, repair the Goods at the Seller's expense, or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Buyer.

10(G) The Company disclaims all liability arising as a result of any repair or renovation of any Goods not carried out strictly in accordance with our maintenance instructions.

EXPORT SALES

11(A) The Buyer shall be responsible for paying all customs duties, commissions or other charges arising from the importation of Goods into the country of destination and the Buyer acknowledges that it shall have sole responsibility for complying with any laws or regulations affecting the Goods in the country of destination.

INTELLECTUAL PROPERTY

12(A) If any claim is made against the Buyer that the use or sale of the Goods infringes the patent copyright design trademark or other intellectual property rights of any other person, the Company shall indemnify the Buyer against any loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with such claim provided that the Company is given full control over any proceedings or negotiations in connection with any such claim. The Buyer gives the Company all assistance reasonably requested by the Company, the Buyer shall not pay or accept any such claim without the consent in writing of the Company, and the Company shall be entitled to the full benefit of any damages and costs awarded in favour of the Buyer which are payable by any other party in respect of such claim.

WORK AND SERVICES

13(A) The whole of these Conditions shall apply mutatis mutandis to orders for the carrying out of work or services as well as to orders for Goods.

NOTICES

14(A) Any notice given pursuant to this Contract may be sent either by personal delivery or by registered or recorded delivery post, or transmitted by facsimile transmission, and if so sent or transmitted to the address of the party indicated in this Contract (or such other address

as either party may have previously provided in writing to the other) any notice shall be deemed validly given on the day (and during normal business hours) when in the ordinary course of that means of sending or transmission is would be first received by the addressee.

ARBITRATION

15(A) Any dispute or difference arising out of the Contract shall, if the Company so elects by notice in writing to the Buyer, be referred to the arbitration of a person to be mutually agreed upon or, failing agreement within fourteen days of the receipt by the Buyer of such notice as aforesaid, of some person appointed by the Law Society of Austria and upon the giving of such notice this shall be deemed to be a submission to the arbitration within the meaning of the Arbitration Act 1950 and 1979 or any statutory modification thereof for the time being in force.

MISCELLANEOUS

16(A) The Buyer shall not assign this Contract in whole or in part without the prior written consent of the Company.

16(B) Failure by the Company to enforce these Conditions or any part thereof shall not be construed as a waiver of any of the Company's rights.

16(C) These Conditions and the Contract shall be governed by and construed in accordance with the laws of Austria and the Buyer hereby submits to the exclusive jurisdiction of the Austrian courts.

Dated January 2008.