

**GENERAL CONDITIONS OF SALE  
ELECTROMAGNETICA SA  
August 2008 Version**

**Definitions and interpretation**

In these Conditions (except where the context requires otherwise) the terms and phrases set forth below shall have the following meaning:

„**Conditions**”: means these terms and conditions of sale;

„**Contract**”: means the Sale and Purchase Agreement entered into by us and the party to which the Goods are sold/delivered („**Beneficiary**”), which shall be deemed concluded upon the acceptance by the Beneficiary of our offer, or upon the acceptance by the other contracting party of a counteroffer; in any case, insofar as there are no provisions to the contrary, these Conditions shall be deemed an integral part of the Agreement;

„**Goods**”: means the goods ordered by the Beneficiary and executed by us pursuant to the Agreement;

„**Order**”: means an Order received by us from the Beneficiary in relation to the Goods;

„**Incoterms 2000**” means the Conditions of international delivery of goods issued by the International Chamber of Commerce, Paris, the 2000 Edition.

**1. General**

For any kind of offers, contracts, information and orders are deemed valid these Conditions exclusively. Other business conditions or delivery conditions communicated to us, or modifications of the terms of these documents, even if requested in the Beneficiary's Order or other documents, including the transportation documents, shall only be considered valid after having received our written approval.

Any Order shall lead to the acceptance of these Conditions by the Beneficiary, and the Beneficiary's implicit waiver of its own general conditions of purchase. This provision is valid also in case we make deliveries or execute orders without reservations being aware of other conditions.

We reserve any ownership rights and copyrights with regard to all documents attached to our offers, such as: bills of quantities, sketches, drawings and samples, these general conditions; they may be neither traded nor made available to third parties, and shall be returned to us immediately in all cases that we are not chosen for the Order/ the Contract is not concluded.

**2. Execution of the Contract**

2.1 Our offers are valid for 30 calendar days after their issue in writing, except where we specify otherwise in writing. We reserve the right to make errors.

2.2 The orders must be operated in writing in order to be valid. They shall be deemed to have been received the moment we confirm in writing the receipt thereof.

2.3 Any derogation by the Order from the terms of our offer must be confirmed by us in writing in order to be valid.

### **3. Price and terms of payment**

- 3.1 The price of the execution, delivery and additional services provided by us is the one determined in the Contract. Unforeseen variations in the cost of labour, raw materials, energy, and other similar variations shall entitle us to adjust the price accordingly, such adjustment not to exceed 10% of the price as determined under the Contract.
- 3.2 All prices agreed upon shall be understood as net prices, any costs related to the payment of the price to be borne by the Beneficiary. The VAT shall be paid separately, at the rate determined by law. Invoicing the VAT shall not be necessary where the condition of tax exemption for export deliveries or the deliveries inside the EU are complied with. If the due date of payment is not observed, we shall be entitled to charge delay penalties equal to the reference interest of the National Bank of Romania, increased by 8 (eight) per cent. The aforementioned penalties may exceed the amount to which they apply. Our right to other compensation shall remain unchanged.
- 3.3 The costs related to the samples for testing and the moulds/tools required for manufacturing thereof are not included in the price of the Contract, and shall be invoiced separately. This is also valid in the same manner for the moulds/tools required for mass production.
- 3.4 Unless there is a provision to the contrary agreed upon by the Parties, we shall issue the invoice for the payment for the Goods on the day the Goods are delivered to the Beneficiary, or on the day the Beneficiary takes possession of the same in any other way. In the event that, upon the Beneficiary's request, the delivery term is extended and the Goods are, during such extension, deposited by us, the invoice related to the Goods shall be issued when the Goods are ready for delivery, and the invoice for storing shall be issued monthly according to Art. 5.3.
- 3.5 The payment is due within 15 calendar days since the issue of the invoice. The payments shall be made by bank transfer, unless the Contract provides for another modality of payment. The Payments shall be exclusively made by SWIFT bank transfer.
- 3.6 For the orders referring to the manufacture of moulds/tools, the payments conditions are the following: 30% of the price shall be paid as down payment upon the sending of the order, 60% of the price – after the first samples are presented, and 10% - upon the delivery of the mould/tool, or 70% - after the presentation of the first samples in case the mould/tool remains with us for production. For parts/modules: 30% down payment upon the sending of the order, and 70% within 15 days since the delivery of the merchandise.
- 3.7 The Beneficiary shall not have the right to ask us to return the down payment it has paid in case the Ordered Goods cannot be executed due to reasons the Beneficiary is accountable for.
- 3.8 In case the Beneficiary fails to comply with the payment due dates agreed upon, without other rights of ours being affected, we reserve the right to suspend immediately and without any prior notice, the delivery of any Goods to the Beneficiary, under any contracts in progress between the parties, without such behaviour to give the Beneficiary the right to claim any responsibility of ours whatsoever.

### **4. Execution and quality of the goods**

- 4.1 The Beneficiary hereby undertakes the responsibility and guarantees that the drawings, samples or any other documents imposed by the Beneficiary, as well as the process of

manufacturing the Goods according to the same shall not breach the rights of third parties, as determined by law or by convention. In case third parties have legally grounded claims with regard to the drawings, samples, or other documents imposed by the Beneficiary, we are entitled to consider the Contract duly terminated, without notice of default, prior formality, or intervention of any court of justice (termination clause of 4<sup>th</sup> degree), and/or to cease any other activity, and to claim damages against the Beneficiary. The Beneficiary hereby undertakes to release us immediately from any claims of third parties in connection therewith.

- 4.2 The quality of our products is checked by using a quality control system implemented according to the relevant standards in the industry and modern engineering. Our products are endorsed in terms of quality only after control tests of quality are carried out. It is hereby guaranteed a quality of the products according to DQS/IQNET ISO9001/2000 and DQS ISO/TS 16949:2002. The special checks and approvals shall be the responsibility of the Beneficiary and are not included in our offer.
- 4.3 For moulds/tools and mass production, the acceptance shall be performed by presenting the samples and the measurement reports. The mass production shall only begin after the express approval by the Beneficiary of the samples and measurement reports. The parties to the contract shall inform each other permanently as to the possibilities of improving the quality.
- 4.4 The Beneficiary, as early as the stage of the presentation of our offer, shall draw our attention, in writing, to potential requests exceeding the common parameters of use of the Goods, as well as of any risks that might occur during the use thereof.
- 4.5 In case the Beneficiary undertakes to procure, in behalf of Electromagnetica, but at the Beneficiary's expense, the material required for the execution of the order or other necessary Goods, the Beneficiary shall supply the same, on the date agreed upon and at its own expense, at the place indicated by us, in the quantity indicated by us as sufficient, including a reasonable additional quantity – for trials and/or tests, if any.

The ownership of the materials procured by the Beneficiary and of the Goods manufactured from the materials procured by the Beneficiary shall belong to Electromagnetica until the transfer of ownership of the executed Goods becomes effective according to these Conditions. The costs incurred by the Beneficiary with the procurement of the materials shall be taken into consideration when determining the price of the Goods, which price shall be agreed upon in the Contract. In case of breach of this obligation, we shall be entitled to consider the Contract duly terminated, without a notice of default, prior formality or intervention of any court of justice (termination clause of 4<sup>th</sup> degree), or to claim damages for failure to fulfill the obligations. Other rights according to law shall remain unchanged. In case of Contracts with delivery upon request, we are entitled to procure the material necessary for the entire contract, and to manufacture the whole ordered quantity immediately.

## **5. Delivery**

- 5.1 The delivery terms are mentioned in the Contract. Any delivery term begins the earliest on the day we confirm the order; in case of moulds/tools – when our account is credited with the down payment. Compliance with the delivery terms requires the fulfillment of all of the contractual and legal obligations of the Beneficiary.
- 5.2 In case the delivery terms cannot be met due to any events of force majeure (e.g. strikes, lay off, war, terrorist attacks, import and export restrictions) or causes for which the Beneficiary is accountable, the delivery terms agreed upon shall be extended accordingly. This is valid also when events of force majeure occur at the sub-suppliers. If the delivery hindrance persists

more than six months, and the delivery is thus postponed accordingly, either party is entitled to terminate the Contract unilaterally upon a 30-calendar day notice sent to the other party.

- 5.3 If the Beneficiary, by written notice sent by certified mail or by fax (to be attached to the Contract), requests that the Goods be delivered on a date subsequent to the due date agreed upon under the Contract/Order, we shall be entitled to invoice monthly the costs related to the storing of the Goods. The Beneficiary shall be informed within 48 hours after the receipt of the notice aforementioned of the storage availability and the costs related to such storing.
- 5.4 In case we are late with the delivery due to causes that we are accountable for, the Beneficiary may terminate the Contract only if, after the expiry of a term of 30 business days it has granted to us, we fail to make the delivery or part of it. After the expiry of such term, the Beneficiary is entitled to terminate the Contract only in what concerns the part of the Order that has not been delivered, having the obligation to carry out any and all of its undertakings and obligations it has assumed, which are related to the partial delivery that has been made.
- 5.5 Insofar as it is not determined otherwise under the Contract, the delivery shall be always made „ex works” (Incoterms 2000).
- 5.6 Partial deliveries and invoicing are allowed, except for the cases when they are unacceptable for the Beneficiary.
- 5.7 In case a claim for the initiation of insolvency procedures against the Beneficiary is filed by a creditor or even the Beneficiary itself, we shall be entitled to terminate the Contract without prior notice, and to request that the delivered Goods be returned immediately insofar as the price for them has not been paid yet.

## **6. Transfer of the risks, dispatch and packing**

- 6.1 The risks shall be transferred to the Beneficiary „ex works”, when the Goods have been loaded in the means of transport, at our premises, irrespective of whether we are responsible for the transportation service or not.
- 6.2 In case the merchandise is ready for dispatch and the transportation is postponed, upon the Beneficiary’s request or following circumstances that the Beneficiary is responsible for, the risks shall be transferred to the Beneficiary in full, as soon as the notice regarding the availability of the merchandise for transportation has been sent.
- 6.3 The deliveries shall be carried out at the Beneficiary’s expense and risk. We reserve the right to determine the transportation route and the dispatch place, as well as the means of transport and the type of the packing. There is no obligation as to choosing the cheapest dispatch. We shall, upon the Beneficiary’s request and at the Beneficiary’s expense, buy an insurance covering the risks of transportation.
- 6.4 The costs of the one-use packing are not included in the price of the Contract, and shall be invoiced to the Beneficiary separately. Special packing shall be invoiced to the Beneficiary at the factory price, regardless of the value of the goods.
- 6.5 The ordered quantities may have variations of plus or minus 5% without entailing a variation of the price established in the Contract.

## **8. Reservation of the ownership right**

8.1 We reserve the ownership of all of the goods we deliver until all debts in the current business relationship have been settled. The Beneficiary, during its regular activity, is entitled to resell the goods delivered by us subject to the ownership right. We may revoke this authorization at any time. The Beneficiary secures the fulfillment of its obligation to pay for all the goods delivered by us with any and all of its receivables deriving from the resale of our goods to third parties, and with the related rights it has from this activity. The pledge of the rights to receivables above mentioned shall be entered in the Electronic Archive for Secured Transactions.

In case the executed goods are withheld by us, and the Beneficiary fails to fulfill its contractual obligations, pursuant to the provisions of the Contract, we shall exercise our lien on the good until the breach of the Contract by the Beneficiary has been remedied.

In case the receivables assigned to a third party are included in a current invoice, the agreed assignment shall also refer to all of the claims in the current account reports. The Beneficiary undertakes to hold in custody and to transfer to us the amounts collected from the resale of our Goods. The right to transfer the proceeds from the resale, in relation to the competent banking institute, shall also be assigned to us in advance, as security.

8.3 The Beneficiary is entitled to process or integrate our goods in its ordinary business activity. In order to secure our claims mentioned in Art. 8.1, we shall acquire the co-ownership right of the new goods made by processing or integration according to the ratio between the value of the invoice related to our delivery and the value of the invoice related to the new goods, and the goods represent the merchandise owned in co-ownership, which goods are subject, materially and legally, to the rule of unanimity. The trading of the reserved goods to third parties shall only take place insofar as the Contract or the invoices make express mention of the fact that the sellers of such goods are we together with the Beneficiary. The Beneficiary assigns to us, as security, its receivables from the resale of the new goods, amounting to the value specified in the invoice related to the reserved goods, delivered by us. The assignment of the receivables shall be entered in the Electronic Archive for Secured Transactions. In case of delay in payment or other breach of the contractual or legal obligations of the Beneficiary or third parties, we shall be entitled to collect such assigned receivables, and the Beneficiary shall have to provide information related to all circumstances necessary for the collection of such receivables, and to collaborate with us in any way in order for us to collect such receivables.

8.4 We are entitled to capitalize on our rights to receivables, related to the lien mentioned in Art. 8.1, and/or the receivables assigned as security pursuant to Art. 8.3, by any legal method, and the extra proceeds shall be paid to the Beneficiary. The Beneficiary has the obligation to buy, at its own expense, and in our favour, an insurance policy for the merchandise delivered by us, subject to the ownership right, the value of which shall be the amount representing the value of the invoice, covering the risk of fire, flood, and theft, and to prove, upon our request, the existence of such policy. In addition, the Beneficiary shall have to supply, upon request, information regarding all circumstances necessary for the collection of the assigned receivables, to deliver us all the documents necessary for filing claims against third parties, and to inform the creditor third parties about the assignment, upon our request.

8.5 In addition, the Beneficiary has the obligation to inform us immediately of any imminent or already occurred breach of the rights from the extended and prolonged reservation of the ownership right, global assignments, or forced execution of third parties, and to warn such third parties with regard to our rights from the reservation of the ownership right, as agreed hereunder.

## **9. Complaining about defects**

- 9.1 The addressee must take delivery of the executed Goods upon the delivery thereof, and complain in the acceptance protocol about the apparent defects, if any, of the Goods. Hidden defects shall be mentioned by the Beneficiary in a written complaint, within 2 business days after the discovery thereof, but no later than 6 months after the delivery of the Goods.
- 9.2 We shall be released from our responsibility for defects if the defects are found to have been caused by the transporter's fault.
- 9.3 In case a deficiency that has been claimed about proves unjustified, we have the right to claim for the costs the Beneficiary caused us thereby.
- 9.4 In case the Beneficiary fails to complain about apparent or hidden defects of the executed Goods according to Art. 9.1, we shall be released from our responsibility in relation to such defects.

## **10. Guarantee for defects and liability**

- 10.1 The claims arising from the existence of significant defects the Beneficiary complained about within the terms mentioned in clause 9.1. shall be subject to a 6-month statute of limitations, provided the defects are discovered within 12 months after the delivery. Otherwise, if the defects are not discovered within 12 months after the delivery to the Beneficiary, the latter shall lose the right to denounce them. In case there is a significant defect, we can remedy the situation, at our choice, either by repairing the defect or by delivering goods without defects.
- 10.2 In case the remedy mentioned in Art. 10.1 fails, the Beneficiary, may, following a 30-calendar day notice, terminate the Contract, or reduce the payment accordingly.
- 10.3 An insignificant variation from the agreed or regular quality or an insignificant decrease in the usability shall not be considered significant defaults.
- 10.4 We shall not be liable for the defects caused by improper use, poor or negligent treatment, failure to comply with the provisions related to the handling, maintenance, or by natural wear and tear, as well as by interventions unauthorized by us carried out by the Beneficiary or third parties on the object of delivery. It is particularly excluded the liability for the defects resulting from any use of any good, which use is inconsistent with the Contract.
- 10.5 Insofar as these general business conditions do not specify otherwise, we shall hold responsibility and indemnify and compensate the auxiliary expenses (hereinafter referred to as the "Indemnification") following the breach of the contractual or extra-contractual obligations only in case of intention or serious fault of our legal representatives or auxiliary staff resulting in human death, body injuries, or health damages, for undertaking a guarantee or a quality risk, breaching the material contractual obligations, based on the mandatory responsibility according to law on responsibility for goods and other compulsory responsibilities.

Indemnification for breaching the material contractual obligations is nevertheless limited to the predictable damages, specific to the contract, insofar as such damages are not the result of the intention of our legal representatives or auxiliary staff, or for human death, body injuries or health damage or undertaking a guarantee or a quality risk. Modifying the obligation of proving against the Beneficiary is not connected to the provisions herein.

## **11. Offsetting**

11.1 The Beneficiary's offsetting our payment demands or withholding payments is excluded, except for legal setoffs.

## **12. Confidentiality**

12.1 The contractual partners hereby undertake to treat as business secret any details coming to their knowledge in the course of their business relationship, the nature of which is obviously neither economic nor technical. This clause shall be valid for a period of 3 years after the termination of the Agreement.

## **13. Termination**

13.1 Without prejudice to other rights and remedies available to us, we shall have the right (but not the obligation) to terminate this Agreement without any prior formality or the intervention of any court of justice (termination clause of 4<sup>th</sup> degree), and to suspend further deliveries to the Beneficiary upon the occurrence of any of the following events:

13.1.1 failure by the Beneficiary to pay when due any amounts owed to us pursuant to any Contract;

13.1.2 the Beneficiary is in breach of any of these Conditions;

13.1.3 in case the Beneficiary is subject to a reorganization, bankruptcy, merger, spinoff procedure, an official receiver or a liquidator shall be appointed for the Beneficiary, or the Beneficiary is subject to any kind of liquidation or any other similar measure;

13.2 In case of termination, without prejudice to other rights and relief measures available to us, we shall be entitled to:

13.2.1 enter the spaces possessed, occupied, or controlled by the Beneficiary, and take the possession of the Goods that are our property;

13.2.2 receive all the amounts owed by the Beneficiary at that moment with regard to the Goods we have delivered.

## **14. Miscellaneous**

14.1 The place of the execution hereof is the headquarters of ELECTROMAGNETICA. Any disputes arising from or in connection with this Contract, including with regard to the validity, interpretation, performance or termination hereof, shall be resolved by commercial arbitration organized by the Court of International Commercial Arbitration of the Chamber of Commerce and Industry of Romania and Bucharest, according to the Rules of arbitral procedure of this chamber. The arbitral award shall be final and binding.

The arbitral tribunal shall consist of 3 members, one arbitrator appointed by each of the parties, and a superior arbitrator appointed by the two arbitrators.

The arbitral tribunal shall judge the dispute de jure, applying Romanian law. The place of arbitration shall be the headquarters of the Court of International Commercial Arbitration of

the Chamber of Commerce and Industry of Romania and Bucharest. The arbitral tribunal shall pronounce the award within 6 months.

14.2 Implementing the norms of the UN Convention on Contracts for International sale of Goods is excluded, the applicability of the provisions of Art. 12 thereof excepted.

14.3 If any of the provisions contained in these conditions is or becomes invalid from whatever reason, the validity of the remaining provisions shall not be affected. The contractual partners undertake to replace the invalid provision with another provision to meet the purpose of the invalid provision especially as regards the economic achievement. In case of any doubt, these conditions shall be construed in such a way as not to contravene the mandatory legal provisions.