

GENERAL TERMS AND CONDITIONS OF SALE

DJK Europe GmbH (Form 2019-S-01-covid19)

1. **OFFER OF SALE:** DJK Europe GmbH's ("Seller") proposal or quotation, including these General Terms and Conditions of Sale (altogether, the "Contract"), is considered an offer to sell Seller's equipment and/or services (collectively, "Products") set forth in the proposal or quotation to the party identified in the proposal or quotation ("Buyer"). Any purchase order or other written documentation issued by Buyer in response to this Contract is considered to be Buyer's acceptance of Seller's offer to sell. Any provision in Buyer's purchase order or other documents issued by Buyer which conflicts with or adds to the terms set forth in this Contract are hereby rejected unless expressly accepted by Seller in a writing signed by an authorized representative of Seller.
2. **PRICES - PAYMENT:** Unless otherwise provided in Seller's written quotation or proposal or agreed in writing by Seller, prices are not subject to trade or other discounts and do not include any taxes, duties or costs of special packaging and insurance. Buyer shall pay these charges, when applicable. Unless requested by Buyer, Seller shall have no obligation to obtain insurance for Buyer.
Unless otherwise provided in Seller's written quotation or proposal or agreed in writing by Seller, Terms of payment are net thirty (30) days. The invoiced amount shall not be subject to offset for any claims by Buyer against Seller, including any claims for Products returned by Buyer for repair or correction of defects. If Buyer delays shipments, the payment due date will be based on the date Seller is prepared to make shipment. Products held for Buyer shall be held at Buyer's expense. Overdue accounts shall bear interest on the unpaid balance of five (5%) per annum over the European Central Bank base rate per month.
3. **WARRANTY:** Unless otherwise provided in the Contract, Seller warrants to the original Buyer that Products will be free from defects in material and workmanship.
 - a. Products:
 - (i) New Products will be warranted for a period of twelve (12) months from shipment.
 - (ii) Spare/replacement parts and other rebuilt or pre-owned products will be free from defects in material and workmanship for a period of ninety (90) days from date of shipment.
 - b. Service performed by Seller or its authorized representatives will be covered under a workmanship warranty for a period of ninety (90) days from the date of service. As the initial response to a warranty claim, Seller will consult with Buyer's qualified personnel via telephone.
 - c. The above warranty does not extend and shall not apply to defects in Products resulting from:
 - (i) accident or neglect, abuse, or misuse of Products;
 - (ii) any drawing, design or specification supplied by Buyer;
 - (iii) any improper or unauthorized maintenance, overhaul, installation, storage, operation or use or willful damage, negligence on the part of Buyer or its servants, agents or employees;
 - (iv) any alteration, modification, or repair to Products by anyone other than Seller or its authorized representatives;
 - (v) Products incurring normal wear and tear or accelerated wear and tear due to use of abrasive materials;
 - (vi) damage after date of shipment where the damage is not directly due to a defect in material or workmanship; or
 - (vii) damage to or failure of Product arising from use of non-Seller or non-approved repair or replacement parts.
 - d. Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for Product has not been paid by the due date for payment.
 - e. Seller's sole liability in the event of non-compliance with this warranty will be, at Seller's option, the modification, adjustment, repair or replacement of the product, re-perform the services or refund the purchase price. Following expiration of the warranty period, Seller may elect to obsolete entire Products or spare and replacement components for Products without a continuing obligation to stock such Products or components.

SELLER AND BUYER AGREE THAT, IN CONSIDERATION OF THE ABOVE EXPRESS WARRANTY AND ANY PERFORMANCE GUARANTEE(S) SPECIFICALLY SET FORTH IN SELLER'S QUOTATION OR PROPOSAL, ALL OTHER WARRANTIES AND GUARANTEE(S), OTHER THAN TITLE, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE CONTRACT.
4. **TITLE AND RISK OF LOSS:** Unless otherwise provided by the Contract, title to and right of possession of Product remains on the Seller until Buyer's payment of the Contract price in full. The risk of loss or damage to Product shall pass to the Buyer in accordance with the shipment terms quoted to Buyer.
5. **FORCE MAJEURE:** If the performance by Seller of its obligations connected with the sale, manufacture, supply, shipment or delivery of the Products hereunder is entirely or partially affected or prevented by Force Majeure, including without limitation, act of God, flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine restriction, perils of the sea, war, declared or not, or threat of the same, civil commotion, blockade, arrest or restraint of government, rulers or people, requisition of vessel or aircraft, strike, lockout, sabotage, other labor dispute, explosion, accident or breakdown in whole or in part of machinery, plant, transportation or loading facility, bankruptcy or insolvency of the manufacturer or supplier of the Products, inability or shortage of an adequate supply of oil, gas, electricity or materials required to maintain Seller's normal level of operation or other severe economic dislocation, any material change in circumstances that would impose hardship upon Seller's performing its obligations hereunder, or any other causes or circumstances whatsoever beyond the reasonable control of or not attributable to the willful misconduct or negligence of Seller, regardless of such Force Majeure event existed prior to this Contract, and whether or not Seller may have taken into account, avoided or overcome such affect or prevention then, Seller shall not be liable for loss or damage, including without limitation liquidated damages, penalties, delay interests or the kind, or failure or delay in performing its obligation under this Contract.
6. **DELAY IN PERFORMANCE BY CORONAVIRUS (COVID-19)**
Seller's prices and delivery dates are not considering the effects of the Coronavirus (COVID-19) crisis (such as but not limited to longer delivery times, necessity to change suppliers, price increases) to Seller's terms or to any resulting Seller commitment/offer/order/contract or the like, Seller is free of such obligation or commitments but the parties is free of such obligation or commitments. The Parties will discuss in good faith to find a mutually satisfactory solution.
The Parties agree that the current Coronavirus (COVID-19) and any effects attributable to it are a Force Majeure event and Seller may, by written notice to the Buyer, declare Force Majeure due to the Coronavirus (COVID-19) as soon as any of its obligations or commitments is or will be affected. In the event of such delay, the price and other affected terms of the Contract shall be adjusted to reflect the impact of any delay.
7. **PROPRIETARY INFORMATION:** Buyer agrees that any data, such as Seller's specifications, drawings, software and information (including, without limitation, designs, reports, software documentation, manuals, models, process information and the like), revealed by Seller to Buyer and containing confidential or proprietary information, whether marked or not marked or identified as proprietary or confidential, shall be kept in confidence by Buyer with at least the same care and safeguards as are applied to Buyer's own proprietary information, but in no event less than a reasonable degree of care. Such information shall only be used by Buyer to fulfill its obligations under the Contract and shall not be duplicated, disclosed to others, or used in any other manner without the written permission of Seller. These obligations shall not apply to any information that is in or comes into the public domain without violation of this Contract; or is received lawfully and on a non-confidential basis by Buyer from a third party subsequent to this Contract, provided that such third party is not and was not prohibited from disclosing such information to the Buyer by any fiduciary or contractual obligation; or is developed by Buyer independently and without benefit of information received from Seller as established by documentary evidence. Buyer shall return or destroy all documents, copies, notes or other materials (whether written or electronic) containing any portion of the confidential or proprietary information at the written request of Seller. The restrictions and obligations relating to Seller's confidential or proprietary information shall expire five (5) years after the execution of the Contract.
8. **CANCELLATION:** Buyer may cancel all or any of the Products purchased by written notice to Seller received prior to sixty (60) days before shipment. Buyer agrees to pay for completed Products (including profit thereon) and any direct or indirect costs or expenses incurred by Seller as a result of cancellation, including a restocking charge of 10% of the purchase order price. Seller reserves the right to complete and ship Products canceled within sixty (60) days of scheduled shipment and shall be entitled to the full purchase order price or invoice for a restocking charge of 10%. Return freight charges will be for Buyer's account.
9. **PACKAGING AND SHIPMENT:** Unless otherwise provided in Seller's written quotation or proposal or agreed in writing by Seller, Seller's Products will be packaged in accordance with standard commercial practices for domestic and international shipments. Buyer will pay all shipping charges. In the absence of specific instructions, Seller will select the carrier. When applicable, Buyer shall obtain ocean freight space and marine insurance.
10. **COMPLIANCE WITH LAWS & REGULATIONS:** Unless otherwise provided in Seller's written quotation or proposal or agreed in writing by Seller, Product has been manufactured in compliance with applicable laws of the manufacturing location jurisdiction in effect at the time of manufacture. Compliance with local laws related to operation of the Products is Buyer's responsibility.
11. **RE-EXPORTS:** Product may not be exported or re-exported to any country, person or entity on the United States Department of Commerce Denied Persons List or on the United States Department of Treasury's list of economic or trade sanctioned countries or Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists.
12. **GOVERNING LAW:** Unless otherwise provided in Seller's written quotation or proposal or agreed in writing by Seller, this Contract shall be construed under and governed by the law of Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be explicitly excluded and not applied.

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13. **LIMITATION OF LIABILITY:** SELLER SHALL NOT BE LIABLE, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, COST OF MONEY, LOSS OF USE OF EQUIPMENT, CAPITAL OR REVENUE, OR FOR ANY ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGE. SELLER'S MAXIMUM LIABILITY WHETHER ARISING FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE SHALL NOT EXCEED THE CONTRACT PRICE.
14. **COMPLETE AGREEMENT:** This Contract is the complete, final and exclusive statement of the agreement between Buyer and Seller. Any prior or contemporaneous agreements, understandings and representations, whether oral or written, are merged herein. This Contract shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade. No modifications or additions to this Contract will be binding upon Seller unless in writing and signed by an authorized representative of Seller.