

# DUARIB-CDH GROUP GENERAL TERMS AND CONDITIONS OF SALE

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## PREAMBLE

These General Terms and Conditions of Sale apply to all orders placed with the company CDH Group SAS marketed by Duarib-CDH Group (hereinafter referred to as the '**Vendor**') by its customers (hereinafter referred to as the '**Customer(s)**'), in the context of sales in Mainland France.

Consequently, the placing of any order with the **Vendor** implies full and unreserved acceptance by the **Customer** of these General Terms and Conditions of Sale.

Any terms or conditions to the contrary emanating from the **Customer**, including its purchasing terms and conditions and order forms, are therefore not enforceable on the **Vendor**, unless they are accepted in advance and in writing. In any case, any amendment or addition to these General Terms and Conditions of Sale will be made official in accordance with the regulation applicable to relations with the **Customer**.

The mere fact of not enforcing any of these General Terms and Conditions of Sale at any time cannot be construed by the **Customer** as constituting a waiver by the **Vendor** of its right to enforce said Terms and Conditions at a later date.

These General Terms and Conditions of Sale are liable to change at any time. Any amendment will take effect on the date when the **Customer** receives notification thereof.

## **1. PLACING AN ORDER**

Orders must be sent by mail, electronic mail, fax or electronic data interchange (EDI) to the following address:

### **DUARIB-CDH GROUP**

25 route de la Limouzinière, BP 41 – 44310 Saint-Philbert-de-Grand-Lieu – Fax: 02.40.78.80.45

The **Vendor** reserves the right to refuse orders in the case of failure by the **Customer** to fulfil any of its obligations and, in general, to refuse any order of an abnormal nature for whatever reason, or placed in bad faith.

Orders only become firm and final once they have been accepted by the **Vendor**, with delivery constituting acceptance.

Any cancellation or amendment of the order by the **Customer** must be notified to the Vendor in writing and must be the subject of express written acceptance by the **Vendor**, which the latter reserves the right to refuse.

No cancellation or amendment of an order will be enforceable on the **Vendor** if it occurs after the expiry of a 48-hour period commencing on the date of the order.

In case of doubt concerning the **Customer's** creditworthiness, the **Vendor** reserves the right to demand that the **Customer** should pay for the order before the equipment is shipped. For this purpose, the **Vendor** will send the **Customer** a pro-forma invoice. The order will not be considered as firm and final on encashment of the invoice amount by the **Vendor**.

The **Vendor** reserves the right, even during the fulfilment of the order, to demand a guarantee of the performance of the **Customer's** commitments, with any refusal allowing cancellation of all or part of the orders placed.

## **2. PRICES**

The prices of products are set by the pricing terms and conditions applicable at the date of order by the **Vendor**. The prevailing price on the date of the notification of these general terms and conditions is appended to the order.

The conditions for delivery 'carriage free', whether for Mainland France, or for islands forming part of French territory, are defined on the date of the price quote or order.

Where, within the limitations of the above, it is paying the cost of shipping the goods to the **Customer's** delivery point, the **Vendor** reserves the right to choose the most appropriate means of transport.

Prices and information shown in promotional documents, catalogues and prospectuses which may be issued by the **Vendor** are given for information only; the Vendor's price terms and conditions prevailing on the date of order are those which apply.

## **3. DELIVERY - LOGISTICS**

The products are made available to the **Client**, either on standard pallets with straps and film-wrap, or in bulk.

The products are transported at the Customer's risk, and it is its responsibility to check the products at the time of delivery in the presence of the transport contractor, and point out immediately any reservations and observations to the transport contractor, under the conditions laid down in Article L.133 of the Commercial Code.

If an abnormality was not identified (invisible damage) on delivery, or if the driver contests the reservation by a written counter-claim, or if the reservation on the delivery note is not legally valid (imprecise, with poor or missing explanation), the customer shall send the transport contractor a registered letter with return of acknowledgement of receipt, with a copy to the vendor, within 72 working hours after delivery. Beyond that period, any delivery, particularly to any logistics platform, will be deemed to have been in accordance with the order and can no longer be the subject of a subsequent complaint;

The **Vendor's** liability is limited to replacement or a refund of products acknowledged as defective or missing in the context of the compliance with the procedure described in Article 7 of these Terms and Conditions.

Moreover, the **Vendor** cannot be held liable in the event of the products sold being stored in conditions that are abnormal or incompatible with their nature.

#### **4. PAYMENT TERMS**

Invoices are payable to our establishment that issued the invoice **within 45 days of the end of the month (calculated as the end of the month plus 45 days), by cheque, bank transfer, bill of exchange whether accepted or not, or promissory note**. Invoices are payable at the address indicated in Article 1 above. Bills of exchange must be returned to the **Vendor** complete with the **Customer's** acceptance within twenty days of receipt.

Prior acceptance of the draft or bill of exchange cannot be deemed under any circumstances to constitute a derogation from the payment terms stipulated above.

Only settlement by the agreed due date constitutes full discharge.

Any failure by the **Customer**, in whole or in part, to fulfil its payment obligations, or any delay, will entail the imposition by operation of law of a penalty equal to three times the statutory rate of interest in force at the due date. Moreover, the **Customer** will also be liable to pay the flat-rate invoice collection fee of 40 euro, in accordance with the regulations. This flat-rate fee does not limit the amount of the other expenses that may be incurred by our company in order to collect its invoices.

The **Vendor** may offset, by operation of law, said penalties for overdue payment against any discount due to the **Customer**.

Failing settlement, even partial, of a single payment agreed for any one of its deliveries, the **Vendor** reserves the possibility of seeking immediate payment of all amounts due from the **Customer** for whatever reason.

In the event of payment by a commercial bill, failure to return the bill will be deemed a refusal of acceptance equivalent to payment default. No payment can be offset merely on the **Customer's** initiative, as the **Vendor's** prior, written consent is essential.

In the case of manifest insolvency, payment after the due date, court-ordered restructuring or liquidation, the **Vendor** may:

- proceed, by operation of law and without other formalities, to take back the goods corresponding to the order in question, and possibly to previous unpaid orders, whether they have fallen due for payment or not;
- terminate the contract in its entirety as of right, based on merely giving notice to the **Customer** by registered letter with a request for return of acknowledgement of receipt, without any other formalities and without prejudice to the exercise of all its other rights.

Any deterioration in the customer's creditworthiness may, at any time, depending on the risks incurred, justify the setting of a credit limit that the **Client** may be allowed, the requirement to meet certain payment terms, make cash payment for pending and future orders and provide certain guarantees.

This will be the case particularly if a transfer, lease-management, pledge or mortgage of its capital or some of its constituents, or a change in the control or the structure of the company or the person in charge, is liable to have a detrimental effect on the **Customer's** creditworthiness.

In accordance with the provisions referred to under Article L622-7 of the Commercial Code, by express agreement, in the event of the **Customer's** assets being placed in the custody of the courts, or the **Customer** being subject to a court-ordered restructuring or liquidation, the outstanding amount of the invoices that it was able to issue for work done for the benefit of the **Vendor** and any discounts due will be compensated by the amounts that remain payable to the **Vendor**, which then become payable immediately.

A discount of 0.10 % per full month will be granted in the event of payment being made before the due date shown on the invoice, with the rate of discount being shown on the invoice.

## 5. RETENTION OF OWNERSHIP

It is expressly agreed that the products sold remain the **Vendor's** property until the invoices have been paid in full.

If the products which are subject to retention of ownership have been re-sold by the **Customer**, the **Vendor's** claim will be automatically transferred to the claim for the price of the products sold by the **Customer**. The **Customer** hereby assigns to the **Vendor** all claims arising from the resale of products that were not paid for and which are subject to retention of ownership.

In the event of the **Customer's** assets being taken into the custody of the courts, or a court-ordered restructuring or liquidation of the **Customer**, the products may be claimed, in accordance with the prevailing legal and/or regulatory provisions. In case of a claim for the goods due to partial or total non-payment, the products in stock will be deemed to correspond to the outstanding amounts. The **Vendor** is hereby authorised by the **Customer**, who accepts, to draw up an inventory and/or distraint on the products not paid for and held by the **Customer**.

Any advance payments paid previously will remain entirely the property of the **Vendor** by way of a penalty clause.

Notwithstanding this clause of reservation of ownership, all the risks associated with the products sold are the **Customer's** responsibility once the products have been accepted on delivery.

Until payment has been made in full, the **Customer** undertakes to refrain from pledging or using as collateral the products subject to retention of ownership, or to use them by way of guarantee;

The **Customer** undertakes to inform any third party, particularly in the case of distraint, of the fact that the products subject to retention of ownership are the property of the **Vendor**, and to inform the **Vendor** immediately of any distraint or similar operation.

## 6. WARRANTY

### Statutory and regulatory warranty:

The products marketed by the **Vendor** are in compliance with the prevailing legislation and/or regulation and/or standards, and are warranted against all defects of manufacture,

excluding parts subject to wear, in accordance with the applicable legal and regulatory provisions.

### Contractual warranty:

In addition to the applicable statutory and regulatory warranties, the **Vendor** warrants its equipment (except for specific clauses accepted between it and the **Customer** or shown in the sales terms and conditions in catalogues) for five years (except for specific products not appearing in catalogues: two years) from delivery, excluding:

- labour, call-out and travel costs;
- parts subject to wear;
- wear caused by lack of lubrication or maintenance or due to impact;
- damage caused by improper use;
- products damaged during transport or handling;
- use of products in conditions not in accordance with those defined by the **Vendor's** instructions for use;
- products modified without the **Vendor's** agreement.

This contractual warranty is limited purely and simply to the exchange of products acknowledged as defective, without granting entitlement to payment of any compensation for whatever reason. The costs of transport are payable by the **Customer**, with the **Vendor** paying the return transport costs.

Any product defect is to be notified to the **Vendor** by the **Customer**, in the form of a written notification sent by registered letter with return of acknowledgement of receipt within a fortnight of the discovery of the alleged defect.

Products considered as defective will be held at the **Vendor's** disposal by the **Customer**, for the purpose of confirmation of the alleged defect, or returned by the **Customer** within a fortnight starting from the discovery of the defect.

The **Customer** undertakes to refrain from destroying the products considered defective before verification by the **Vendor**: if that destruction were to occur notwithstanding, the **Customer** would be ineligible to claim under the warranty.

To benefit from the warranty, the **Customer** must have retained proof of purchase (delivery note or invoice).

## 7. RETURNS

No return of product will be accepted without the prior, written consent of the **Vendor**.

In the absence of that written consent, the products returned will be held at the **Customer's** disposal with invoicing of the storage costs.

In any case, no request for a return will be accepted if the products concerned are no longer covered by the warranty at the date of the request for return.

The **Vendor** reserves the right to refuse the return if the products are not in their original condition.

In any case, the costs associated with the transport of the returned products will remain the responsibility of the **Customer**.

## 8. INTELLECTUAL PROPERTY RIGHTS – TRADE MARKS

The **Vendor** is the holder or the licensee of all the industrial property rights covering the products sold to the **Customer** under the 'DUARIB-CDH GROUP' brand name and/or any other trade marks used by the **Vendor**.

Products supplied by the **Vendor** under the 'DUARIB-CDH GROUP' brand name and/or any other trade marks used by the **Vendor** may only be resold in their original packaging and under conditions consistent with their brand image.

A **Customer** who is aware of any infringement of trade marks or patents or drawings or models held by the **Vendor** must inform the **Vendor** immediately by fax or by e-mail confirmed by registered letter with return of acknowledgement of receipt.

## 9. MAJOR FORCE

The performance by the parties of all or part of their obligations will be suspended in the case of a fortuitous event or *force majeure* which would disrupt or delay performance.

The following are considered as such, without this being an exhaustive list: terrorism, riots, insurrection, social unrest, strikes of whatever kind, bad weather, interruptions in the availability of means of transport and supply chain problems for the **Vendor**.

If this suspension were to continue beyond a period of seven days, the other party will have the possibility of cancelling the pending order.

## 10. COMMERCIAL DISPUTES

Any commercial dispute on the part of the **Customer** in relation to the overall business relationship with the **Vendor** (invoices, commercial cooperation contracts, separate service contracts, various amounts payable, etc.) should be submitted within twelve months following the end of the calendar year when the amount is due.

Any complaint relating in particular to the payment of amounts (discounts, commercial cooperation and remuneration for other services) which are due during the financial year  $n$  must reach the **Vendor** by 31 December of financial year  $n+1$ . Failing that, the complaint will be out of time and de facto inadmissible.

## 11. COMPETENT COURT – APPLICABLE LAW

All the contractual relationships between the **Vendor** and the **Customer** arising from the application of these General Terms and Conditions of Sale, and any specific agreements that may be entered into, and any disputes arising therefrom, of whatever nature, will be governed in every respect by French law, even if the products are sold to a **Customer** established outside French territory.

The parties agree to do everything in their power to find a amicable solution to disagreements liable to arise from the interpretation, performance or cessation of the business relationship between the **Vendor** and the **Customer**.

Any dispute whose origins lie in the performance of the contractual relationship between the **Vendor** and the **Customer**, as well as the actions arising therefrom, will be subject to the sole jurisdiction of the competent courts of Paris, notwithstanding any incidental claim or third-party proceedings or cases involving multiple defendants.

Commercial bills or acceptance of settlement will not constitute novation or derogation from this clause.

## 12. ENTRY INTO FORCE

These General Terms and Conditions of Sale will take effect on **1 January 2015**. They cancel and replace those drawn up prior to this document.

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