

**H.B. FULLER – EIMEA REGION  
CONDITIONS OF SALE**

**THESE CONDITIONS CONTAIN EXCLUSION AND LIMITATION CLAUSES**

**1. DEFINITIONS.**

"Applicable law": the law governing the Contract is Swiss law without prejudice to any Compulsory law which may be applicable;  
"BUYER" the person(s), entity or company who intends to purchase Goods from the SUPPLIER;  
"Conditions" these conditions for the supply of Goods;  
"Contract" means any contract agreed between the BUYER and the SUPPLIER for the supply of Goods, including, without limitation, call-off contracts lasting for an agreed period of time or one-off orders, and which shall comprise these Conditions, the Order and Order Acknowledgement;  
"Compulsory law": any compulsory European law and/or local law provision which may be applicable to the Contract in addition to or by derogation of the Applicable law in some cases; notably in case (i) both BUYER and SUPPLIER are located in same country or (ii) if such Compulsory law is regarded as a mandatory rule applicable in an international context  
"Goods" any description to be supplied by the SUPPLIER, including but not limited to full or part finished product, materials, equipment or machinery for example;  
"Order" the BUYER's instruction to supply the Goods (or the BUYER's acceptance of the SUPPLIER's offer to supply the same);  
"Order Acknowledgement" the SUPPLIER's written acknowledgement of BUYER's Order, which may include price, delivery or other clarifications of terms, or SUPPLIER's commencement in practice to process the Order;  
"Price" the price of the Goods as set out in the Contract or otherwise agreed in writing;  
"Services" services of any kind performed by SUPPLIER in relation to any Contract, see clause 7.3;  
"SUPPLIER" that member of the H.B. Fuller group of companies which intends to sell Goods or Services (including its successors and assignees) as the case may be each time;  
"working day" means any day which is not a weekend day or a public holiday in the country where the Goods will be delivered.

**2. ORDERING, AVAILABILITY OF GOODS, ORDER CHANGE AND CANCELLATION**

2.1 SUPPLIER shall sell and the BUYER shall purchase the Goods in accordance with these Conditions.  
2.2 No Contract exists until SUPPLIER has provided the Order Acknowledgement. No terms and conditions proposed by BUYER (whether before or after any SUPPLIER's Order Acknowledgement) shall apply. Any Order from or request by the BUYER for delivery or acceptance by BUYER of Goods delivered shall, notwithstanding any terms or conditions proposed by the BUYER or other action of BUYER, constitute complete acceptance of these Conditions. BUYER's terms and conditions are hereby objected to and rejected, unless otherwise specifically accepted in writing and signed by an authorised representative of SUPPLIER.  
2.3 Descriptions and specifications contained in brochures or other materials are for general information only and do not form part of the Contract. Unless clearly marked to the contrary, any quotation issued by SUPPLIER shall be without obligation and shall not constitute an offer to sell.  
2.4 Any Order Acknowledgement is subject to supplies being available or becoming available. If supplies are not available for delivery by the estimated delivery date SUPPLIER reserves the right to delay delivery unless BUYER has clearly specified in the Order that initial delivery date was essential. In such event and subject to 3.1 BUYER is entitled to cancel the Order.  
2.5 If the BUYER requests and SUPPLIER at its sole discretion accepts an amendment or cancellation of the BUYER's Order SUPPLIER shall be entitled to impose a reasonable charge for losses, costs and expenses suffered or incurred by SUPPLIER as a direct result of the amendment or cancellation which the BUYER shall be obliged to pay.

**3. DELIVERY**

3.1 Delivery dates referred to in the Contract are estimates only. Where the Contract agreed is for more than a one-off order, late delivery shall not entitle termination of the Contract as a whole.  
3.2 Unless otherwise agreed in writing by SUPPLIER, delivery of the Goods shall take place at the delivery point agreed in the Contract.  
3.3 Without prejudice to any other rights or remedies, SUPPLIER may suspend all deliveries under the Contract or any other contract SUPPLIER has with BUYER if (a) payment is overdue under the Contract or such other contract; or, insofar as permitted by any Compulsory law (b) upon the happening of any event described in clause 9.2 until SUPPLIER receives or is satisfied that it will receive any outstanding payments and/or as the case may be, that it will be paid for such pending or future deliveries.  
3.4 SUPPLIER may, without liability to the BUYER, suspend delivery or cancel an Order if in the reasonable opinion of SUPPLIER delivery would not comply with SUPPLIER's safety, health and environmental policies or applicable laws and regulations.  
3.5 BUYER shall pay all SUPPLIER's costs associated with the BUYER's failure to take Goods on delivery or SUPPLIER's non-delivery in accordance with clause 3.4 including without limitation costs of return transport, demurrage, storage, redelivery or disposal.

**4. PRICE**

Other than where the price for Goods is agreed to be fixed in the Contract, the price for the Goods will be that ruling on the date of dispatch. The price is exclusive of value added tax at the applicable rate and any other duties or levies. Prices quoted are based on the currency situation, freight and customs rates, raw material and production costs or other charges and costs applicable at the time of quotation; the SUPPLIER reserves the right to make price changes if the costs of such factors should rise.

**5. PAYMENT**

5.1 Payment in net cash or other cleared payment is due 30 days from date of invoice unless otherwise expressly agreed in the Contract. Time for payment is of the essence.  
5.2 SUPPLIER shall be entitled but not obliged to charge the BUYER interest on overdue amounts, payable by the BUYER immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of the European Central Bank (interest rate minimum or maximum as is permitted by, or as is required by, any Compulsory law). Such interest shall accrue on a daily basis and be compounded monthly, without prejudice to the right of SUPPLIER to charge 40 euros for recovery costs applicable to all unpaid invoices. If recovery costs exceed the 40 euro sum per invoice, SUPPLIER reserves the right to charge any additional costs incurred in recovering monies owed by BUYER.  
5.3 BUYER shall have no right of set-off against any payment due to SUPPLIER.  
5.4 SUPPLIER may sue for the price even though title in any Goods has not passed to BUYER.

**6. FORCE MAJEURE**

SUPPLIER may, without liability, delay, reduce or cancel orders or deliveries if it is hindered, delayed or prevented from manufacturing or delivering the Goods through circumstances beyond its reasonable control including, but not limited to, employment disputes, strikes, adverse weather conditions, accidents, shortages of or inability to obtain raw materials and operating resources, breakdown of plant or machinery, terrorism, acts of God, fire, war, national emergency, flood, explosion, transport problems or shortages or governmental action or inaction.

**7. WARRANTIES**

7.1 Quality-If properly handled and stored by Buyer or its agents the SUPPLIER warrants that the Goods shall conform at the time of delivery in all material respects with the SUPPLIER's specification for the Goods. BUYER shall notify any apparent or non-apparent defect, loss or damage under the terms referred to in clause 10. Immediately a non-apparent defect is discovered BUYER shall stop using the Goods; return, subject to SUPPLIER's prior approval and in accordance with SUPPLIER's instructions, any Goods and containers still available and in any event provide all necessary assistance to allow SUPPLIER to investigate. If these conditions are satisfied and Goods are proven to be not compliant with SUPPLIER's specifications, SUPPLIER will replace any non-conforming Goods (or, if that is not reasonably practicable, refund the price (or an appropriate proportion)) and refund all reasonable return costs. This undertaking is SUPPLIER's sole liability for non-conforming Goods.  
7.2 Recommendations-Recommendations or suggestions as to the use, application, storage, handling or disposal of the Goods given (whether before or after delivery) in sales or technical literature or in response to an enquiry or in any other form are given in good faith but ultimate reliance is for the BUYER's sole assessment (by trial processing if necessary) and SUPPLIER accepts no liability for such recommendations or suggestions. No warranty is given as to the Goods' quality or fitness for any particular purpose and all implied statutory or common law terms as to quality, description or fitness for purpose (under the laws of any jurisdiction) are excluded to the maximum extent permitted by Applicable law.  
7.3 Where SUPPLIER provides assistance to BUYER, whether with regard to installation or delivery or technical suggestions relating to Goods or similar ("Services"), SUPPLIER does so in good faith but such Services are performed subject to the warning issued in clause 7.2 above and clause 12 below.

**8. TERMINATION**

Without prejudice to any other rights or remedies, SUPPLIER may terminate the Contract by notice to BUYER if the BUYER is in breach of its obligations under the Contract or insofar as permitted by any Compulsory law upon the happening of any event described in clause 9.2. The price of Goods delivered but not then paid for shall become immediately due and payable.

**9. TITLE AND RISK**

9.1 Title shall not pass until SUPPLIER receives cleared payment in full for the Goods and all other Goods agreed to be supplied by SUPPLIER to BUYER for which payment is then due. Where payment is overdue or insofar as permitted by any Compulsory law upon the happening of any event described in clause 9.2 SUPPLIER may recover or re-sell any Goods that have not been resold (or resold subject to retention of title) and may enter BUYER's premises for that purpose. Until title passes the Goods shall be held by BUYER as SUPPLIER's bailee and fiduciary agent and the Goods shall be separately stored and identified as those of SUPPLIER and insured for their full reinstatement value. BUYER shall allow SUPPLIER on site, free of trespass, and shall provide to SUPPLIER all reasonable assistance with the recovery of such Goods. If Goods are intended for commercial resale then the BUYER may resell as part of its ordinary course of business but, in consideration for this permitted resale of the Goods, it hereby assigns to the SUPPLIER as security all of the future claims that the BUYER may have against its own customers. The SUPPLIER is entitled to collect the claims so assigned on its own behalf if the BUYER is in default of meeting its payment obligations regarding the Goods.

Title in any Goods worked on continues to belong to the SUPPLIER unless they are irretrievably incorporated with other Goods, at

which point the BUYER agrees that it transfers to and maintains for SUPPLIER a co-ownership interest in the newly created item in proportion to the value of the Goods for which payment in full has not been made (relative to the value of the other combined or intermixed items) and for which interest the SUPPLIER may maintain an action to claim. The BUYER shall provide all reasonable assistance to the SUPPLIER in support of any its onward claims, including notifying its customers of the debt claim.

9.2 Insofar as permitted by any Compulsory law, BUYER's right to use the Goods or resell the Goods to its customers shall cease and any sums due to SUPPLIER under the Contract shall become immediately due and payable if the BUYER becomes subject to any form of receivership, administrative receivership or administration (whether out of court or otherwise); liquidation (other than for a bona fide and solvent amalgamation or reconstruction); bankruptcy; any form of composition with creditors; any of the foregoing under any analogous foreign provisions or proceedings affecting the BUYER or if the BUYER proposes any of the foregoing or where SUPPLIER reasonably believes that any of the foregoing is about to occur.

9.3 All risks in the Goods shall pass upon delivery of the Goods at the delivery point agreed in the Contract unless delivery is made by BUYER's selected carrier. In such event, the risks will pass to BUYER at delivery in the carrier's hands.

9.4 All intellectual property rights in and to the Goods, their manufacture, development or creation (including improvements to the same) shall be or remain vested in SUPPLIER (whether or not commissioned by the BUYER) and the BUYER will, at the request and cost of SUPPLIER, do any act and execute any documents necessary to confirm such rights in or transfer such rights to SUPPLIER.

9.5 The BUYER shall not disclose to any other party any confidential information belonging to SUPPLIER or to which SUPPLIER has lawful access (including, but not limited to, specifications, formulae, manufacturing processes, know-how or any technical or economic information), or use such information for any purpose except as expressly authorized in writing by SUPPLIER.

9.6 In order to protect the proprietary and confidential nature of SUPPLIER's Goods BUYER shall not (i) analyse or have analysed or permit the analysis of any sample or Goods supplied (except as may reasonably be required for safety purposes), nor (ii) copy or permit the copying of the Goods.

**10. NOTIFICATION OF DEFECTIVE DELIVERY**

10.1 BUYER has an obligation to inspect Goods with regard to appearance and quantity upon delivery and shall make a note of any visible damage or obvious default in writing upon the carrier's delivery note at the time of delivery. BUYER shall notify SUPPLIER of the same immediately, following up in writing to SUPPLIER within 3 working days of such delivery, providing photographic evidence to support its complaint where possible.

10.2 BUYER shall notify SUPPLIER of any concealed damage or losses discovered after delivery in writing within 7 working days of such delivery, providing photographic evidence to support its complaint where possible.

10.3 BUYER shall notify SUPPLIER of any non-apparent / latent damage in writing within 7 working days of when any non-apparent / latent damage should reasonably have been discovered, providing samples and other evidence to support its complaint (see clause 7.1).

**11. SHORTAGES AND OVER DELIVERY**

SUPPLIER's ex works weights verification shall be final. SUPPLIER may deliver to within plus or minus 10% of weight or volume ordered. BUYER shall pay for actual weight or volume delivered within such tolerances. Subject to compliance with 10.1, SUPPLIER shall as soon as practicable deliver any shortfall or collect any over delivery outside of such tolerances. Failure to give notice of over delivery outside of such tolerances in accordance with 10.1, or any use or dealing in such Goods shall require the BUYER to pay for them at the Contract rate.

**12. EXCLUSIONS AND LIMITATIONS**

**This section applies unless otherwise specifically agreed in writing and signed by authorized representatives of both BUYER and SUPPLIER.**

12.1 SUPPLIER's total aggregate liability to the BUYER for any claim or series of related claims howsoever arising, in contract, tort (including without limitation negligence), breach of statutory duty, misrepresentation (unless fraudulent), strict liability or otherwise, is limited to replacement of affected Goods or refund of the purchase price for affected Goods.

12.2 Where a claim relates to Services, SUPPLIER's total aggregate liability to the BUYER for any claim or series of related claims howsoever arising, in contract, tort (including without limitation negligence), breach of statutory duty, misrepresentation (unless fraudulent), strict liability or otherwise, is limited to replacement of affected Goods or Services or refund of the purchase price for those Services or the Goods related to the Services only.

12.3 SUPPLIER shall not in any event be liable to the BUYER for its loss of profit, loss of margin, loss of contract, loss of business, loss of goodwill or any indirect or consequential losses arising out of or in connection with the Contract.

12.4 Nothing shall exclude, restrict or limit the SUPPLIER's liability (i) for fraud or (ii) for gross negligence or (iii) for death or personal injury relating to the supply of the Goods or Services and arising from the SUPPLIER's negligence, or (iv) under any applicable Compulsory law for which liability cannot be contracted out.

12.5 BUYER shall use its best efforts to minimise or reduce any amount claimed.

12.6 Subject to other applicable limitations set out in the Contract and insofar as permitted by Compulsory law, any claim made or action commenced by BUYER must be brought within one year of from the date of shipment by SUPPLIER.

**13. GENERAL**

13.1 The Contract sets out the entire agreement between the parties and BUYER has not relied on any representation or warranty except as expressly set out in writing in the Contract. This provision shall not affect any liability of SUPPLIER for fraudulent misrepresentation.

13.2 Any waiver, indulgence or delay by SUPPLIER in enforcing any right shall not constitute any waiver of rights.

13.3 This Contract is personal to the BUYER and SUPPLIER and neither party shall assign or transfer any rights and benefits hereunder to any other person without the other party's prior written consent (such consent not to be unreasonably withheld or delayed) provided that SUPPLIER is permitted (without the need to obtain consent) (i) to assign or transfer the rights and benefits under the Contract in whole or in part to any subsidiary, holding company or subsidiary of such holding company of SUPPLIER and (ii) to assign or transfer to any third party its rights to collect the debts or receivables arising under the Contract.

13.4 No amendment, variation or waiver of the Contract or any provision of it shall be effective unless agreed in writing by the parties' authorised representatives.

13.5 Any provision of the Contract or these Conditions that is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of the Contract or these Conditions. The void or unenforceable provision(s) shall be replaced by a substitute provision which comes closest to that intended by the parties.

**14. EXPORT CONTROL AND CONTROLLED USE**

14.1 BUYER shall not supply import or export the Goods contrary to (a) United States, United Nations, European Community or other sanctions; or (b) other applicable export or import restrictions.

14.2 Goods must not in any way be used or disposed of or sold on in connection with any actual or suspected use relating to (a) nuclear, chemical or biological weapons or their delivery systems; or (b) precursors for prohibited or controlled substances.

14.3 Delivery or other arrangements which SUPPLIER agrees to or is obliged to undertake beyond the delivery point per the agreed INCOTERMS shall be as BUYER's agent and BUYER shall pay all duties, charges or expenses incurred. Goods not taken in by BUYER or BUYER's carrier may be warehoused at the BUYER's risk and cost;

14.4 BUYER shall reimburse to the SUPPLIER any additional costs or expenses incurred as a result of any delay or failure of the BUYER in performing its export or import obligations;

14.5 The 1980 United Nations Convention on International Sale of Goods (the Vienna Convention) and the United Nations Convention on the Limitations Period in the International Sale of Goods Convention, as amended shall not apply but the international rules for the interpretation of trade terms (Incoterms) shall apply except where they conflict with the provisions of the Conditions;

14.6 BUYER shall advise SUPPLIER of any special requirements required for importation of the Goods into the country of delivery.

14.7 BUYER shall remain responsible for accurate information in this regard and shall indemnify SUPPLIER for any costs, losses or damages suffered by SUPPLIER where BUYER provides inaccurate or late information or otherwise does not comply with this section 14.

**15. BUYER OBLIGATIONS**

15.1 The BUYER shall not use any SUPPLIER trademarks or trade names in the re-sale of the Goods, other than where specifically authorised by SUPPLIER in advance in writing. Where SUPPLIER agrees to supply Goods under BUYER's name, BUYER warrants that its instructions regarding manufacture, packaging, labelling and marking (i) shall be provided in a timely and accurate manner, (ii) shall ensure compliance of the same with all applicable laws, and (iii) shall not infringe the rights of any third party. BUYER shall comply with all applicable laws regarding the placing of product on any market for sale and is responsible also for all its own customer communications and interactions.

15.2 The BUYER shall indemnify the SUPPLIER against all third party claims, losses, costs and expenses (including legal costs) suffered or incurred by the SUPPLIER in relation to the Goods arising directly or indirectly out of any acts or omissions of the BUYER, its employees or agents in this regard.

**16. LAW**

These Conditions and Contract shall be governed and construed in accordance with Applicable law. In the event the BUYER and SUPPLIER are located in different countries, the BUYER agrees (a) to submit any dispute arising out of or in connection with the Conditions and/or the Contract to the exclusive jurisdiction of the Commercial Courts of the Canton of Zurich, but (b) that the SUPPLIER may elect to take action or proceedings before either the Commercial Courts of the Canton of Zurich or in any court located in any country where (i) the SUPPLIER's registered office is incorporated or (ii) the SUPPLIER suffers any damage. In the event that both SUPPLIER and BUYER are located in the same country, the BUYER agrees (a) to submit any dispute arising out of or in connection with the Conditions and/or the Contract to the exclusive jurisdiction located where the SUPPLIER's registered office is incorporated, and (b) that the SUPPLIER may elect to take action or proceedings in the court located in the country where (i) its registered office is incorporated or where (ii) the SUPPLIER suffers any damage. In any case, the BUYER waives any right to apply to any other court(s) other than the one designated in (a).