

## **1 - DEFINITIONS AND CONTRACT FORMATION**

**“Supplier”** means Porcher Industries société anonyme à directoire et conseil de surveillance, a French company with a capital of 2 371 668 € registered on the VIENNE trade and companies register of Vienne under number 553 620 022, and located at 2440 RD 1085, 38300 Eclose-Badinières, France or any Affiliate of Porcher Industries.

**“Affiliate”** means any company controlled by another company as per the article 233-3 of the French commercial code.

**“Contract”** means the contract package comprised of (1) the Order Confirmation, (2) the Offer if any, (3) the GTC's, (4) the Product's technical specifications if any, and (5) the Order. For the interpretation of the Contract the rank of priority mentioned above shall apply between the Contract documents in case of discrepancies.

**“Customer”** means the contracting party of the Supplier under the Contract.

**“Product”** or **“Products”** means the products commercialized by Porcher Industries or an Affiliate of Porcher Industries.

**“GTCs”** means these General Terms and Conditions of Sale. In accordance with article L441-1 of the French Commercial Code, the GTCs constitute "the only basis for trade negotiations". They therefore apply to any sale of the Supplier and form the only terms and conditions applicable to the sale of the Products, to the exclusion of the Customer's general terms and conditions of purchase unless other conditions have been agreed between the parties.

**“Offer”** means the Supplier's commercial proposal for the supply of the Product, if any.

**“Order”** means the Customer's order for the supply of Products, as set out in the Customer's purchase order form.

**“Order Confirmation”**: means the document issued by the Supplier formalizing the acceptance of the Order or, as the case may be, a counteroffer of the Supplier. In case of discrepancies between the Order and the Order Confirmation, the latter shall prevail

## **2 – MODIFICATIONS OR VARIATIONS**

Any amendment or variation to the Contract is subject to an express written confirmation of the Supplier.

## **3 – DELIVERY**

### **3-1 Deadlines**

Unless otherwise stipulated in the Contract, the Products are delivered FCA (Incoterms 2020) Supplier's factory or storage facilities designated in the Contract.

Delivery deadlines are merely estimates and are provided for information only; they depend upon carrier availability and the order in which the purchase orders are dealt with.

### **3-2 Transfer of risk**

Unless otherwise stipulated in the Contract, the risk of loss or damage to the Product shall pass to the Customer upon FCA (Incoterms 2020) Supplier's designated factory or storage facilities of the Supplier.

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**3-3 Claims for defect or missing item of quantities visible on delivery**

If it has been agreed that the Products must be delivered at the Customer's facilities or any other location designated in the Contract, any visible damages or missing quantities of Products upon delivery must be indicated on the transport document in a mutually agreed statement to that effect and be notified to the Supplier by e-mail within 24 hours after the delivery. The Customer will be entitled to reject any claim for visible defects or missing quantities by made the Customer which does not comply with the aforementioned provisions.

**3-4 Claims for non-conformity after delivery**

Without prejudice to the above provisions in case of visible damages or missing quantities, any claim for non-conformity of the Products is subject to notification in writing delivered by mail with proof of delivery within an eight-day period following the Product delivery.

The Customer will not be entitled to make a claim against the Supplier in case of a difference of plus or minus ten percent between the quantities ordered and the quantities actually delivered, provided however that the Customer has not been invoiced for such missing quantities.

The Customer must furnish the proof of defects for non-conformity, by providing any relevant mean to that effect, such as samples demonstrating said defect. The Supplier is entitled to carry out any on-site verification.

**3.5. – Replacement as sole Remedy**

In case of a patent defect to the Product and/or missing quantities of Products and / or defect for non-conformity of the Products, the only remedy of the Customer will consist in the replacement of the non-conforming products and/or the supply of additional Products to make up for the missing Products, at the Supplier's expense. The Customer will not be entitled to any other compensation or remedy.

**4 – PRICE**

Unless otherwise stipulated in the Contract, the prices are in Euros, on FCA Supplier's designated facilities (Incoterms 2020) basis. They include the packaging but are exclusive of VAT, customs duties and insurance costs. Any withholding tax will be added to the prices and shall be reimbursed by the Customer to the Supplier. The Supplier reserves the right to modify the prices to take into account any change in its costs or in quantities, specifications or delivery dates.

The prices mentioned in the Offer are only valid during the period of validity of the Offer. In the absence of a validity date in the Offer, the prices are valid for a maximum period of 90 calendar days from the date of issue of the Offer.

If, due to the Customer, a shipment or a delivery date is delayed or postponed by more than one month, the Supplier is entitled to invoice and the Customer will be bound to pay the storage costs incurred thereof.

**5 - PAYMENT**

All payments must occur on the date set forth on the invoice. Payment terms are 30 days end of month. The Supplier reserves the right to withhold delivery of the Products as long as the Customer has not paid for the Contract in full. The Supplier does not grant any discount in case of early payment. No payment may be suspended, withheld or offset for any reason whatsoever, even if a dispute is pending.

In accordance with article L.441-10 of the French commercial code, the interest rate for late payment penalties due the day following the payment date mentioned on the invoice is 7% per year. In addition, the Supplier will be entitled to a lump sum compensation of 40 € for the recovery of costs without prejudice to the Supplier's right to recover costs in excess to such lump sum as stipulated by the above-mentioned provision.

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If the Customer fails to pay any amount due under the Contract on the due date for payment, the Supplier shall also be entitled to suspend deliveries of the Products without prior formal notice.

The Customer shall bear all consequences (if any) resulting from such a suspension, such as price increases and/or delays. If the Customer does not remedy its payment default within 30 calendar days of Customer being notified in writing to do so, the Supplier will be entitled to terminate the Contract without prejudice to its rights to recover the outstanding payments and the legal fees in connection with such recovery.

## **6 - RETENTION OF TITLE**

**In accordance with Article 2367 of the Civil Code and Article L 624-16 of the French Commercial Code the transfer of ownership of the Products is subject to the Customer having paid the full price of both the principal amount and additional charges. All provisions to the contrary, particularly those inserted into the general terms and conditions of purchase, are considered as void. In the event the Products are delivery in several lots, the ownership of the Products will be transferred upon payment of each delivered lot of Products. The Customer undertakes, until full payment of the price, not to transform or incorporate the Products, nor to resell the Products or pledge them. Should the Customer fail to comply with the above, the Supplier will be entitled to immediately claim the restitution of the Products from the Customer, the costs and risks of such restitution being borne by the Customer.**

**The Customer must keep the Products which subject to the retention of title so that they cannot be confused with goods or products of the same kind from other suppliers. Especially the Customer undertakes not to remove the package and the marking of the Products until the ownership has not been transferred to him.**

**In the event of total or partial non-payment of the price on the agreed due date for any reason whatsoever, the Supplier is already authorized by the Customer to have an inventory carried out for all the Products owned by him, either in a contradictory manner, or through an “huissier”.**

## **7 - DEFECT LIABILITY**

**If the Product must be integrated by the Customer into a material, equipment or product (“Final Product”) whatever it is, the Customer will be responsible for verifying the compatibility of the product with the Final Product as well as, if applicable, the conformity of the Product with the intended purpose of the Final Product. The Supplier declines in advance any liability arising from the incompatibility of the Product with the Final Product or the non-compliance of the Product with the use or application for which the Product or the Final Product is intended, unless otherwise agreed in writing with the Customer.**

### **7.1 Conditions for Defect Liability**

the Supplier shall remedy any defect or nonconformity (hereinafter “Defect”) of the Products resulting from faulty materials or workmanship pursuant to the following conditions:

Any warranty claim must be notified in writing to the Supplier within 8 days after the Defect has been discovered or should reasonably have been discovered and include appropriate documentation and data to permit the Supplier to ascertain the Defect and repair or replace the defective parts accordingly.

The Supplier shall not be liable under the warranty if:

- the Products have been altered without the written consent of the Supplier,
- the Defect arises as a result of the Supplier following any design or Products specification supplied by the Customer
- the Products have been subsequently processed for the purpose of transforming the Products or incorporating them into other goods, products or equipment,
- the Defect arises because the Customer failed to follow the Supplier’s instructions as to the storage or use of the Products or (if there are none) good industrial practice
- the Defect are due to the materials provided or a design stipulated or specified by the Customer.

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The Supplier's warranty for defects on the Products shall lapse (i) 12 months after their delivery, or (ii) at the end of a six-month period of use, or (iii) as soon as the Products have been transformed or incorporated into another product or equipment, whichever occurs first. The Supplier's warranty automatically terminates as soon as the Customer fails to inform the Supplier of an alleged defect within eight days following its discovery. The Customer must prove the date of such discovery.

**THE CUSTOMER WILL BE ENTITLED TO REJECT ANY CLAIM FOR DEFECT WHICH DOES NOT COMPLY WITH THIS CLAUSE 7.1.**

#### **7-2 Limitation of Liability for Defects**

It is expressly agreed that the Supplier's liability is strictly limited to (i) repair or (ii) replace the Products or (iii) refund price of the defective Products, at the Supplier's sole discretion.

#### **8 - FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from Force Majeure Events. Force Majeures Events are circumstances or event beyond the parties' control and that they could not reasonably avoid or overcome. In particular, the following events are considered as cases of Force Majeure: strikes involving all or part of the Supplier's personnel or its customary carriers, fire, flood, war (declared or not), production stoppages due to unintended breakdowns, impossibility of receiving supplies of raw materials, epidemics, weight limits during thaw conditions, road blocks, strikes or breakdowns in electricity supplies, or supply breakdowns attributable to our suppliers, war, rebellion, revolution, insurrection, military or usurped power, civil war and other hostilities, invasion, act of foreign enemies, mobilization, requisition or embargo, ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof,

In such circumstances, the Supplier will inform the Customer in writing, and in particular by fax or e-mail, as soon as possible after the events occurred, the contract between the Supplier and the Customer being suspended automatically without compensation as from the date the event occurred.

If the event lasts longer than 90 (ninety) days from its inception, the Contract between the Supplier and the Customer may be terminated by the first party to act, provided that no party may claim damages.

This termination will take effect on the date of the initial presentation of the letter sent with proof of delivery terminating the Contract.

#### **9 - RETURN OF DEFECTIVE PRODUCTS IN CASE OF PATENT DEFECTS DETECTED UPON DELIVERY**

The Products must be checked by the Customer upon delivery, and any complaint, reservation or dispute relating to missing goods must be made as set forth in Clause 3-4.

In the event of dispute, the delivered Products may only be returned by the Customer after the Supplier's consent and in suitable packaging.

The Products returned in this manner will only result in the issue of a credit note if:

- it was checked and accepted by the Supplier.
- it was actually returned to the Supplier warehouse no more than two month following the Supplier's written consent.
- it is in its original condition.
- it has not been used.

## **10 - LIMITATION OF LIABILITY**

The Supplier's total liability to the Customer for all claims of any kind, whether based upon contract, tort (regardless of the degree of fault or negligence) or otherwise for any loss or damage arising out of, connected with, or resulting from the performance or breach of the Contract shall in no event exceed the sums actually paid by the Customer under the Contract.

Notwithstanding the above, the Supplier, its officers, employees and agents shall have no liability to the Customer in respect of any actual or expected:

- loss of profits;
- loss of revenue, loss of goodwill, loss of opportunity, or loss of business;
- or special, indirect or consequential loss of any type including but not limited to any loss arising out of any liability of the Customer to any other person, even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring it.

## **11 - GENERAL**

### **11.1 Severance**

If any provision or part-provision of the GTCs or the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 11 shall not affect the validity and enforceability of the rest of the Contract.

### **11.2 Assignment**

The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

## **12 – DISPUTE RESOLUTION**

The Supplier elects its head office as its address for service.

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of France. Each party irrevocably agrees that the courts of the Commercial Court of Lyon - France (tribunal de commerce de Lyon) shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation, regardless of where the Contract is placed or delivered, the place of payment or payment method, even in the event of multiple defendants or third-party proceedings.