

## General Conditions of Purchase

### 1. Form and Contents

- 1.1 These general conditions of purchase (the “**General Conditions**”) are attached to and form, together with the documents listed in paragraph 1.2 below, an integral part of the supply agreement and any amendment and integration thereof (the “**Contract**”) entered into between the supplier (the “**Supplier**”) and PIETRO ROSA T.B.M. S.R.L. (the “**Buyer**”). Unless otherwise expressly provided for herein, these General Conditions shall apply to all purchase orders (the “**Order/s**”) transmitted by the Buyer to the Supplier and shall prevail on any different terms and conditions contained in Supplier’s general conditions of sale or in any other forms or documents drawn-up by the Supplier.
- 1.2 The Contract is composed of the documents listed herebelow. In case of conflict or discrepancy between the provisions of said documents, the following order shall apply to determine which of the conflicting provisions will prevail:
- 1 – Order
  - 2 – “**Drawings, Technical Specifications and Quality Standards**”, to be intended as the drawings, technical specifications and quality standards and other relevant functional requirements including, without limitation, samples, diagrams and other designs enclosed with the Order or otherwise disclosed from time to time by the Buyer to the Supplier.
  - 3 – Contract
  - 4 – General Conditions.
- 1.3 Unless otherwise agreed, the Supplier shall proceed with the design and/or with the manufacture, if so requested, and generally with the supply and invoicing of the goods, equipment and all other products or services ordered by the Buyer (the “**Products**”) only upon receipt of the relevant Order from the latter.

### 2. Transfer of Title and Risks

- 2.1 Unless inconsistent with the terms of delivery shown in the Order, title to the Products and transfer of risks will pass to the Buyer upon their acceptance by the latter at the place of destination indicated in the Order. In no event shall acceptance of the Products by the Buyer relieve the Supplier of any responsibility in case of defects or non-conformities therein.
- 2.2 Any good supplied by or belonging to the Buyer and made available to the Supplier for any reason whatsoever, including those referred to in Section 12 hereof, must be clearly marked and registered by the latter as the property of the Buyer. All risks connected therewith shall be for Supplier’s account, who will be in charge of their custody and maintenance, either ordinary or extraordinary, and accomplish at its own cost all formalities required by applicable law to grant the Buyer the right to repossess at any time the goods, including the case of insolvency of the Supplier.

### 3. Orders and Order Confirmations

- 3.1 Orders shall be transmitted by mail, telefax or e-mail and shall indicate:
- Supplier’s name and address

- Number and date of the Order
- Means of transport and delivery terms pursuant to Incoterms 2000/Incoterms 2010®
- Delivery address
- Terms and method of payment
- Product code, description, quantity and measurement unit
- Unit price and delivery date

3.2 The Supplier shall send its order confirmation within 10 (ten) working days of receipt of the Order. Upon expiration of the above term and in the absence of any communication by the Supplier, the Order shall be deemed automatically confirmed. Should any amendment to the Order be requested by the Supplier within the above term, same will be deemed as a new proposal and shall require Buyer's written confirmation in order to become binding. In such an event and for record purposes only, the Buyer shall issue an update of the Order pursuant to the new terms and conditions agreed with the Supplier.

3.3 Orders may be either:

- 3.3.1 for the supply of the Product as a whole, this meaning that the Supplier will directly acquire the material necessary to manufacture the Product;
- or
- 3.3.2 for the supply of services only or of services and part of the material, the material not directly acquired by the Supplier being provided at no cost by the Buyer to the Supplier on account of manufacture;

Orders may further be:

- 3.3.3 **"firm"** if the quantity ordered by the Buyer is to be entirely delivered on the date shown in the Order
- or
- 3.3.4 **"open"** if the quantity ordered has to be delivered pursuant to delivery programs transmitted by the Buyer weekly or at other periodical intervals. Open Orders will contain all terms and conditions applicable to deliveries to be made thereunder;

3.4 Products shall be supplied to Buyer together with all requested documents. The following information must at least be indicated on such documents:

- full name and address of the Supplier
- number and date of the Order
- item code, description, unit measurements and quantity of ordered material

3.5 The Supplier shall accept any amendment which may be reasonably requested by the Buyer to the Drawings, Technical Specifications and Quality Standards, quantity and/or date of delivery set out in the Orders. The price of the Products may be adjusted, as may be fair and reasonable, in order to take into account any such amendments. Any amendment to the Orders shall be binding only if confirmed in writing by the Parties.

3.6 The Buyer may, without prejudice to any other right and remedy available under applicable law or any other provision contained in these General Conditions, cancel and /or terminate any Order and/or the Contract, as the case may be, should:

- (i) it has been informed of a delay exceeding 30 (thirty) calendar days in the delivery of the Products, regardless of whether the delay is ascribable or not to Supplier's fault;
- (ii) the Supplier fail to abide by its contractual duties to Buyer's satisfaction within 15 (fifteen) calendar days of receipt of the relevant notice of complaint;
- (iii) the last term provided for by the liquidated damages clause, if any, set forth in the Order have expired without delivery having taken place;
- (iv) the Supplier be declared bankrupt, suspend payments, propose any form of arrangement or composition with creditors, either judicial or extrajudicial, assign in whole or in part its assets for the benefit of creditors and/or a receiver be appointed or any other proceedings be instituted against the Supplier under bankruptcy law or other like laws;

- (v) Buyer's customer cancel the corresponding order placed with the latter, provided such cancellation is not due to Buyer's exclusive fault. In such an event the Supplier will be entitled, save in case it is responsible, either in whole or in part, for the cancellation of the order placed by Buyer's customer, to be indemnified of any reasonable and non-recoverable cost sustained by it in the performance of the Order up to receipt of the cancellation notice from the Buyer. It will in any case be Supplier's duty to use its best efforts to minimize any such cost, being it further understood that Buyer's indemnification and compensation shall in no event exceed the agreed upon price under the Order.

#### **4. Delivery**

- 4.1 Unless otherwise set forth in the Order and without prejudice to what provided for in paragraph 2.1 above, delivery shall be made DDP (Incoterms 2000) Via Petrarca n. 7, 33085 Maniago (Italy).
- 4.2 Time of delivery is of the essence, so that in case the date of delivery is not met, Buyer shall, without prejudice to its right to compensation of damages suffered as a result thereof (as for example price difference, costs of urgent transportation, costs billed by Buyer's costumers, shutdown et cetera) and to the penalty clause provided for in paragraph 4.3, be entitled, at its sole discretion, to (i) cancel the Order by giving written notice thereof to the Supplier within 5 (five) working days of expiration of said term or (ii) avail itself of the remedy provided for in paragraph 3.6. Should the Order provide for testing of the Products at Buyer's premises, delivery will be deemed effected only upon the successful completion of the relevant tests approved by the Buyer.
- 4.3 The Supplier shall at all times keep the Buyer informed of the progress of the work as well as notify it in advance of any envisaged delay in delivery. In case the date of delivery is not met, without prejudice to further compensation of damages suffered as a result thereof, a penalty shall be automatically charged to the Supplier, the basis of calculation being 0,5% (zero point five per cent) of the total amount of each Order for each calendar day of delay after the scheduled delivery date, up to a maximum of 10% (ten per cent) of the total value of the Order. The Buyer shall be entitled to set off such amount against any Supplier's outstanding credits.

#### **5. Prices – Payment**

- 5.1 Prices, terms and method of payment are specified in the Order. Prices are final and cannot be varied and, unless otherwise stated in the Order, include shipping, transport and insurance costs, packaging as well as the costs of all customs formalities and all taxes, duties and charges, except VAT, levied on the Products either in the country of the Supplier or of the Buyer.
- 5.2 Save for any other remedy available hereunder or under applicable law, payment by the Buyer may be suspended in case of defective or non conforming Products. In such an event payment terms shall start running from the date on which any fault or non-conformity has been remedied to the satisfaction of the Buyer.
- 5.3. Payment shall be made upon receipt of the invoice by the Buyer within the terms indicated in the Order. The period allowed for the payment shall in any case run in case of acceptance of the Product by the Buyer and under the condition that the delivered Product include all relevant documentation (technical specifications, instruction manuals, handbooks et cetera) and has been manufactured and completed in compliance with the Order.

#### **6. Packaging**

- 6.1 Unless otherwise agreed, the Supplier, shall provide, at its own cost, for adequate packaging of the Products in order to avoid any damage during transportation and facilitate their storage and handling at the place of destination.
- 6.2 All delivered parcels shall mention the Buyer's Product code indicated by the latter.

#### **7. Warranty**

- 7.1 The Products shall (i) be free from defects in design, materials, workmanship and packaging, (ii) comply with the Drawings, Technical Specifications and Quality Standards, any applicable contractual provisions and/or approved sample and (iii) attain the quality standards and norms applicable to that Product type for its intended use. Products failing to meet even one of the above requisites will be deemed as non conforming and shall give the Buyer the right to require the corrective actions provided for in Sections 8, 9 and 10 hereof or forthwith cancel and/or terminate the relevant Order and/or the Contract, as the case may be, and claim for compensation of damages.
- 7.2 The Supplier further warrants that each lot of Products delivered shall meet the quantities shown in the corresponding Order and shipping documents. Should, upon inspection at receipt, the quantity of Products delivered differ therefrom, the Buyer may, at its own discretion:
- reject the whole lot;
  - accept it by reserving the right to amend accordingly both the quantities of any subsequent delivery and the price of the non-compliant lot in proportion to the quantities actually delivered;
  - reject at Supplier's cost any excess part of the supply;
  - have the Supplier immediately provide at its own cost for delivery of the missing part, in such case delivery of the entire lot shall be deemed effected only upon receipt of the missing part;

## **8. Defective or non conforming Products**

- 8.1 The Buyer may refuse delivery of defective or non-conforming Products. To this extent, reference shall be made to the "Non-Conformity Report" sent by the Buyer to the Supplier, specifying any defect/non-conformity discovered. Rejected Products shall be promptly collected by or returned to the Supplier at its own cost. In any such event, the Buyer shall be further entitled to cancel and/or terminate the relevant Order and/or the Contract, as the case may be, and claim for compensation of damages.
- 8.2 Save in case of cancellation and/or termination of the Order and/or of the Contract by the Buyer and without prejudice to Buyer's right to reimbursement of any further costs or damages, if any Product or any part thereof is defective or fails to meet the requirements then (i) the Supplier shall immediately, at Buyer's option, replace or repair, at its cost and on a DDP (Incoterms 2000) Via Petrarca n. 7, 33085 Maniago (Italy) basis, the Products which result defective or non-conforming within the warranty period of 24 (twenty-four) months from date of delivery of the Products or execution of the work by the Supplier or successful completion of any tests made by the Buyer under the terms of paragraph 4.2 or any subsequent processing, provided that notice of any such defect or non-conformity, also due to transport damages, is given by the Buyer to the Supplier within 30 (thirty) days from the discovery or (ii) the Buyer or any third party appointed by the latter shall correct the defects or repair the Products at Supplier's expense, including without limitation all costs associated with the inspection, handling, shipping and replacement of any defective part. A like Supplier's warranty shall apply to the Products repaired or replaced by the Supplier.
- 8.3 In case of recurring defects or non-conformities or in case of epidemic defects (i.e. defects which appear on a Product-by-Product basis involving defects in the Products or in any components or parts thereof and which defects are either the same or have the same cause), the Buyer shall be further entitled to cancel and/or terminate the relevant Order and/or the Contract, as the case may be, and claim for compensation of damages by giving 15 (fifteen) days prior written notice to the Supplier. Without prejudice to the above, the warranty with respect to recurring defects or non-conformities or in case of epidemic defects shall apply for 24 (twenty four) months after delivery by the Supplier of the last Products delivered to the Buyer hereunder.
- 8.4 The Buyer, its customers and all potential regulatory authorities, reserve the right, upon reasonable notice, to visit and conduct inspections and/or quality audits at the premises of the Supplier to ensure that Supplier conforms with the obligations set forth in the Order or in the Contract and all documents forming part thereof.
- 8.5 In no event shall any inspection carried out by the Buyer on the Products relieve the Supplier of any responsibility for lack of quality or conformity of the Products.
- 8.6 Supplier shall maintain for the term of the Contract and 10 (ten) years thereafter complete and accurate records of each lot of Products delivered to the Buyer so to assure at all times its full and prompt traceability. The Buyer shall have the right to audit such records at Supplier's premises or have copies certified by an independent auditor jointly appointed by the both parties or, in case of disagreement, by the President of the Courts of Pordenone ("*Presidente del Tribunale di Pordenone*"), Italy.

**9. Product Recall**

- 9.1 Supplier shall promptly notify the Buyer of any failures, defects, deficiencies of the Products or other matters which Supplier becomes aware of or has reason to expect, which affect or may affect the proper use and performance of the Product. Where the subject matter affects or may relate to the safe use of the Product, the notification shall be immediately given, oral or written. Any oral notification will be promptly confirmed in writing.
- 9.2 Upon such notification, the Buyer shall have the sole right to decide, after a due assessment of the circumstances, on the actions and remedies to be taken including, but not limited to, initiating a recall or service campaign on a specific volume of Products.
- 9.3 If an action is taken according to paragraph 9.2 above and such action is caused by a fault Supplier is responsible for, Supplier shall bear all reasonable costs incurred therefor, including labour, inspection, material, freight, duty and handling charges.

**10. Product Liability**

- 10.1 Supplier shall defend, indemnify and hold the Buyer harmless from and against any claim for damage (actual, consequential or indirect), liability or expense (including all fees and expenses of legal counsel and expenses of investigation and recall fees) based upon personal injury or property damage to which the Buyer may become subject as a result of any actual or alleged design, engineering, manufacturing or assembly defect in the Products caused by any act or omission of the Supplier or which the Supplier is responsible for.
- 10.2 The Buyer shall have the sole right to decide to undertake the defense or to institute proceedings against third parties relating to such action. The Buyer shall have control over the defense of any such action, and shall consult with the Supplier in all matters relating to such defense. Supplier agrees to provide all needed information, assistance and authority required by the situation.
- 10.3 Without prejudice to what set forth in the preceding paragraph 10.2, any measure or action taken by the Supplier in the context of this Section 10 shall be first submitted to the Buyer for its written approval.

**11. Force Majeure**

- 11.1 Neither party shall be under liability to the other on account of any loss, damage or delay caused by strikes, accidents, fire, compliance with any law, regulation or other governmental order, whether or not valid, insurrection, war or war-like acts, the elements, embargoes, acts of God or any other cause beyond its reasonable control.
- 11.2 The party invoking the force majeure event shall immediately notify the other party by further providing an estimate as to the envisaged duration thereof. Should the force majeure event last for more than 30 (thirty) calendar days, each party shall be entitled to forthwith terminate the Order and/or the Contract, as the case may be, without any indemnity or compensation being due therefor to the other party.

**12. Equipment and Material**

- 12.1 Whenever an Order for the manufacture or purchase of tools or equipment (tooling, fixtures, dies, models, accessories and equivalent material) to be used in the manufacture of the Products has been placed by the Buyer with the Supplier, the ownership of any such tools and equipment (the “**Equipment**”) shall pass to the Buyer as soon as same have been manufactured by the Supplier and regardless of the payment date agreed upon therefor. Unless otherwise agreed upon, the Supplier shall use the Equipment under a gratuitous loan scheme and be bound to deliver it to the Buyer, either in whole or in part, promptly upon the latter’s written request.
- 12.2 Likewise, whenever the Buyer provides the Supplier with material and equipment (raw material, semi-finished products, finished products, proprietary software programs, tooling, fixtures, dies, models, templates, components,

accessories and the like) to be used in the manufacture of the Products (the “**Material**”), same shall, unless otherwise agreed upon, remain the property of the Buyer and be used by the Supplier under a gratuitous loan scheme. The Supplier, subpoena of forfeiture, shall examine the Material immediately after arrival and notify the Buyer of any incomplete or non-conforming consignments as well as of any patent or hidden defects discovered by it without delay and in any case not later than 8 (eight) days thereafter. The Supplier warrants that the Material is fit for use and respond to the requirements provided for by applicable laws and regulations and shall custody and keep at all times the Material in good and functioning conditions. The allocation of any surplus Material will be decided by the Buyer at its sole discretion.

- 12.3 In no event shall the Supplier use the Equipment or the Material for purposes other than the manufacture of the Products to be delivered to the Buyer. Any derogation to the above provision shall be previously authorised in writing by the Buyer.
- 12.4 The provisions of this Section 12 are in addition to, and not to the exclusion of, those set forth in paragraph 2.2 above.

### **13. Know How and Intellectual Property Rights**

- 13.1. The Supplier acknowledges the intellectual property rights of the Buyer on the Products as well as on the Drawings, Technical Specifications and Quality Standards whether titled or untitled also according to article 2598 of the Italian civil code, and must keep strictly confidential and secret all technical and commercial information related to the Buyer and the Products as well as to the know-how and show-how communicated by Buyer for the working or manufacture of the Products (the “**Information**”), being it understood that the Information shall be used by the Supplier only for the purposes and within the scope of the Contract and/or the Order: as one of the consequences thereof the Supplier shall not deposit or register as industrial and intellectual property right, inventions, procedures or technical solutions developed by the Buyer or deriving from the Drawings, Technical Specifications and Quality Standards and the Information.
- 13.2. The Supplier further acknowledges the exclusive intellectual property rights of the Buyer on the Equipment used or developed for the working and manufacture of the Products: as one of the consequences thereof the Buyer has the right to keep and hold back the Equipment also after the termination of the business relationship with the Supplier.
- 13.3. The Supplier shall return any data, document and Information related to the Buyer, the Products and the Drawings, Technical Specifications and Quality Standards promptly upon cancel, termination or expiration of the Order and/or of Contract, for any reason whatsoever, and shall not make or keep any copy thereof. The duty of secrecy hereof shall retro-actively be in full force and effect from the date first contacts were established with respect to the subject matter of the Contract and shall survive termination or expiration of the Contract.
- 13.4. The Supplier will be responsible for any use not authorized in writing by the Buyer of the Drawings, Technical Specifications and Quality Standards and of the Information by itself or any, either directly or indirectly, related company, entity or individual, including, without limitation, its employees, consultants or subcontractors, and shall compensate Buyer for any damages suffered as a consequence thereof, such damages, if necessary, to be assessed also on an equitable basis pursuant to article 1226 of the Italian Civil Code.
- 13.5. Without Buyer’s prior written consent the Supplier shall not use Buyer’s names or trademarks as such and/or use same in connection with any advertisement or sales literature. Furthermore, the Supplier shall not advertise that it is a supplier of the Buyer and/or that the Contract has been concluded, unless expressly authorized in writing by the Buyer.
- 13.6. The Supplier represents that the Products do not infringe any third party’s intellectual property right or know how. The Supplier agrees that it shall indemnify and hold harmless the Buyer and its/their customers against all fines, losses, damages, costs and expenses including attorney’s fees, whether direct or indirect, resulting from a claim brought by a third party claiming that the Products supplied hereunder constitute infringement of one or more of the intellectual property rights or know how of such third party. In case a Product is held to constitute infringement and the use thereof is enjoined, the Supplier shall, at its option and expense, (i) either procure for the Buyer and its/their customers the right to continue using said Product, or (ii) replace same, or a part thereof with a non-infringing modification in a manner such that performance of the Product is not degraded: in this case the Buyer will have the



right to cancel and/or terminate the relevant Order and/or the Contract, as the case may be, and claim for compensation of damages.

#### **14. Hazardous Products**

Should the Products contain hazardous substances or require particular safety precautions during their handling, transport, storage or use, the Supplier shall, before delivery to the Buyer, provide it in writing with the necessary instructions and information. The Supplier shall further clearly indicate such instruction and precautions on the Products and each container thereof. The Supplier shall further notify in writing the Buyer of any indications, instructions and precautions required to meet all applicable laws and regulations on health and safety and shall be under the obligation to compensate and hold harmless the Buyer from any cost, claim and loss resulting from non-compliance with its duties under this Section 14.

#### **15. Assigning and Subcontracting**

- 15.1. The Supplier is not entitled to subcontract, assign or transfer to third parties, even partially, the Order, the Contract or the related payment arrangements for the activities specified therein, unless it is expressly authorised thereto in writing by the Buyer. Should the Supplier receive such authorisation, the latter may not change or replace the subcontractors (or the third parties to which the Order or the Contract was assigned or transferred) unless expressly authorised in writing by the Buyer.
- 15.2. Should the subcontracting be authorized by the Buyer, its representatives shall, in accordance to what provided for in the Section 8. above, be entitled to, but not obligated to, obtain information on and inspect the Products. In any such event, the Supplier shall be responsible for subcontractors' supplies and services and undertakes to transfer to its subcontractors all applicable requirements stated in the Order.

#### **16. Duties and Taxes**

As indicated in paragraph 5.1, the Buyer shall have the right to deduct from the amounts owed to the Supplier all taxes, duties and charges levied on the Products in the country of origin and/or of destination.

#### **17. Governing Law, Jurisdiction and Arbitration**

- 17.1. The Contract, the Order and these General Conditions are governed by Italian law.
- 17.2. Any dispute between Buyer and Supplier concerning supplies of Products and therefore governed by these General Conditions will:
  - a) in case of Suppliers with registered offices within the European Union, be submitted to the sole jurisdiction of the Courts of Padova, Italy;
  - b) in case of Suppliers with registered offices outside the European Union, be settled by one or more arbitrators appointed in accordance with the Rules of Arbitration of the National and International Chamber of Commerce of Milan, Italy. The arbitrator or the arbitrating body will decide according to the law and the award shall be deposited by the arbitrating body at the Secretary of the Chamber of Commerce of Milan within 6 (six) months from the constitution of the arbitrating body. The arbitration proceedings will be held in Padova in the English language.
- 17.3. As a partial derogation to what set forth under 17.2 points (a) and (b) above, the Buyer will have in any case the right to start litigation, at its sole discretion, before the competent Court where the Supplier has its registered offices.

#### **18. Final Provisions**

- 18.1. The General Conditions, Orders and the Contract may be amended only in writing, signed by each of the parties subsequent to the date of its execution.

- 18.2. Failure by Buyer to enforce at any time any of the provisions of these General Conditions or of the Orders and of the Contract ruled thereby, shall not be construed as a general waiver of such provision or of the right of the Buyer to thereafter enforce each and every provision contained therein.
- 18.3. In the event any of the provisions of these General Conditions or of the clauses of the Orders and of the Contract governed thereby will be declared null and void or ineffective or contrary to law, the remaining portions thereof shall continue in full force and effect and the offending portion shall be severed therefrom, unless such provision constitutes an essential part of the contract and has been an essential inducement for the Buyer to enter thereinto.
- 18.4. The paragraph and section headings contained herein are for ease of reference only and do not affect the construction and interpretation of any of the provisions hereof.

Date \_\_\_\_\_

Supplier \_\_\_\_\_

For the purposes and to the extent of articles 1341 and 1342 of the Italian Civil Code, the Supplier hereby states and declares to have carefully read and to approve the provisions set out in the following sections and paragraphs of these General Conditions:

1 (Form and Contents), 2.1 (Transfer of Title and Risks), 3.2 (Tacit Acceptance), 3.5 and 3.6 (Variations and Cancellations), 4.2 and 4.3 (Acceptance Testing and Penalty for Delayed Delivery), 5.2 and 5.3 (Suspension and Expiration of Payment), 7. (Terms and Conditions of Warranty), 8 (Defective or non-conforming Products), 9. (Product Recall), 10.1 (Product Liability), 11.2 (Force Majeure), 12. (Equipment and Material), 13. (Know How and Intellectual Property Rights), 15. (Assigning and Subcontracting), 17.2 and 17.3 (Governing Law, Jurisdiction and Arbitration).

Date \_\_\_\_\_

Supplier \_\_\_\_\_