



## General Conditions and Terms of Sale of SPS-EUROPE GmbH

### 1. General provisions, applicability

1.1 All sales are governed exclusively by these General Conditions and Terms of Sale of SPS-EUROPE GmbH (hereafter also referred to as Seller). SPS-EUROPE GmbH will not recognize any contrary conditions of the Customer's or conditions that differ from SPS-EUROPE GmbH General Conditions and Terms of Sale unless SPS-EUROPE GmbH explicitly consents in writing to their applicability. SPS-EUROPE GmbH Conditions and Terms of Sale shall apply even if SPS-EUROPE GmbH, with knowledge of contrary or differing conditions of the Customer's, executes delivery to the Customer without reservation.

1.2 All Agreements made between SPS-EUROPE GmbH and the Customer must be recorded in writing.

### 2. Acceptance of orders

2.1 All merchandise orders must be accepted in writing by a duly authorized representative of SPS-EUROPE GmbH

### 3. Contract revocation, order cancellation

3.1 No order accepted by SPS-EUROPE GmbH may be cancelled or revoked unilaterally by the Customer. Cancellation or revocation is only valid after written approval/consent by SPS-EUROPE GmbH, regardless of the reason for cancellation or revocation and without limitation of the rights and/or damage compensation claims to which SPS-EUROPE GmbH is entitled thereafter. The onus is on the Customer to provide evidence that SPS-EUROPE GmbH incurred no or substantially lesser damages. SPS-EUROPE GmbH shall be at liberty to assert greater damages as permitted by the relevant law.

3.2 Special orders for merchandise not ordinarily in stock and/or manufactured according to the Customer's specification, cannot be cancelled or revoked.

### 4. Prices and terms of payment

4.1 Unless otherwise indicated in the order confirmation, SPS-EUROPE GmbH prices are FCA Free Carrier – Incoterms 2010, exclusive of packaging and shipping and any import duty which will be billed separately. For international payments we require costs paid by remitter "no charges to beneficiary" (OUR) with the exception of EU-payments in EUR which can be made with SHA (shared) instruction.

4.2 Value added tax (VAT) as required by law is not included in the prices. VAT will be indicated separately on the invoice to the amount required by law on the billing date.

4.3 The deduction of cash discounts requires special prior written arrangements. The total gross invoice amount is due and payable to SPS-EUROPE GmbH within 30 days of billing without any settlement against open invoice or deduction. If the Customer is in payment-arrears, SPS-EUROPE GmbH is entitled to charge penalty interest at the rate of 8 percentage points above the current interest rate of the European Central Bank per year. If SPS-EUROPE GmbH suffers greater damages due to payment delay, it is entitled to claim these damages. It is up to the Customer to prove that SPS-EUROPE GmbH incurred no or substantially lesser damages as a consequence of payment delay.

4.4 Cheques shall be accepted only subject to collection. If a credited amount is re-debited, the Customer is liable for all damages thus incurred, including reasonable legal fees. SPS-EUROPE GmbH may apply any cheques received from the Customer toward the Customer's obligations to SPS-EUROPE GmbH arising from this or any other transaction, regardless of any statement made on the cheque or in relation thereto. Acceptance of a partial payment does not signify waiver by SPS-EUROPE GmbH of total payment of all outstanding amounts owed by the Customer to the Seller.

4.5 SPS-EUROPE GmbH may refuse to supply merchandise on credit to the Customer at any time. Merchandise supplied to the Customer for payment upon delivery or similar methods shall be subject to these General Conditions and Terms of Sale.

4.6 The Customer may declare a settlement against open invoice to SPS-EUROPE GmbH only if his or her counterclaims have been decided finally and absolutely, are uncontested, or are recognized and acknowledged by SPS-EUROPE GmbH

4.7 Unless there is a contrary agreement elsewhere, SPS-EUROPE GmbH reserves the right to raise the selling price unilaterally for merchandise ordered from SPS-EUROPE GmbH if it has not yet been shipped from a SPS-EUROPE GmbH registered office. In the event of a price increase by the supplier, the selling price stated to the Customer will be raised by the same percentage as SPS-EUROPE GmbH's costs for the merchandise have risen due to the price increase.

4.8 Order fee €25 applies for orders below €500 / USD 30 for orders below USD 500

### 5. Delivery period and delivery

5.1 SPS-EUROPE GmbH is obliged solely to provide merchandise after clarification and agreement on all technical matters. This presumes and requires that the Customer fulfills all agreed and other obligations properly and in due time.

5.2 If the Customer defaults in accepting delivery of merchandise or violates other participation obligations, SPS-EUROPE GmbH is entitled to require compensation for damages thus incurred, including any added expenses. In this event, the risk of accidental destruction or accidental deterioration of the goods shall devolve upon the Customer at such time as the Customer enters default in accepting delivery.

5.3 SPS-EUROPE GmbH is not responsible for arrears in delivery or performance due to reasons beyond its control. Such reasons include – without restriction or limitation – acts of nature, actions taken or refrained from by the Customer or by civil or military authorities, fires, strikes, epidemics, quarantine regulations, floods, earthquakes, unrest, war, shipping delays, etc., as well as the impossibility of obtaining labor, materials, or supplies. In case of such delay, any contractually agreed delivery deadline will be extended by a period corresponding to the time lost due to the delay, so as to prevent incurring any damages requiring compensation or contractual penalties to SPS-EUROPE GmbH

5.4 SPS-EUROPE GmbH is entitled to refuse or delay providing goods if the Customer fails to make immediate payment of amounts due and payable, regardless of

whether such amounts are the result of the same or another contractual relationship with SPS-EUROPE GmbH

5.5 SPS-EUROPE GmbH may provide merchandise falling under the present provisions at any time or in several partial shipments within the period set in the respective order.

5.6 All stated prices and shipped merchandise shall be FCA SPS-EUROPE GmbH (free carrier – Incoterms 2010) registered office or factory or warehouse. This entails particularly that legal regulations regarding the sale involving transport of the goods are applicable. That in turn entails that the Customer shall bear all expenses and risk of loss or damage from that time onward. All rights to the merchandise and the risk of loss, damage or accidental destruction shall devolve upon the Customer from the moment SPS-EUROPE GmbH hands over the merchandise into the charge of the carrier for shipment. The Customer is responsible for all freight and shipping costs, as well as any applicable insurance premiums for shipment of the merchandise, subject to written approval of contrary arrangements by SPS-EUROPE GmbH Unless otherwise instructed by the Customer, SPS-EUROPE GmbH may itself determine the carrier, shipping method, and transport route.

### 6. Transport insurance

6.1 If so desired by the Customer, SPS-EUROPE GmbH will provide transport insurance coverage for the merchandise shipment. Costs so incurred are payable by the Customer.

### 7. Warranty for defects

7.1 The Customer's rights under the warranty require that the Customer has duly fulfilled his/her inspection and notification duties. It is assumed that the Customer has accepted the merchandise if he or she has not refused acceptance within a reasonable period. Such period is defined as 10 days from receipt of the merchandise, and time is of the essence. Claims due to delay in delivery shall be ruled out unless made prior to receipt of the merchandise. Merchandise acceptance represents renunciation of any and all claims due to delay in delivery. Return shipments will be accepted only if a "Return Material Authorization" is previously obtained from SPS-EUROPE GmbH. Merchandise must be returned in the original packaging and must conform to the instructions of the office that issued the aforementioned "RMA". Returned merchandise in electrostatic packaging will be accepted only if such packaging has not been opened.

7.2 SPS-EUROPE GmbH shall provide no warranty whatsoever for merchandise sold to the Customer, nor any assurances about its suitability for particular purposes, in so far as this is legally permissible. SPS-EUROPE GmbH agrees to transfer to the Customer any transferable warranties that SPS-EUROPE GmbH has received from the manufacturer of the merchandise sold to the Customer. Value-addition work performed by SPS-EUROPE GmbH shall correspond to the Customer's applicable specifications for such work.

7.3 To the extent that the purchased merchandise shows a defect for which SPS-EUROPE GmbH is responsible, SPS-EUROPE GmbH shall be entitled at its option to either correct the defect or provide a replacement. In the event of defect correction, SPS-EUROPE GmbH shall be obliged to pay all expenses necessary for the purpose of correcting the defect of the delivered product, in particular costs of transport, travel, labor and materials, in so far as such costs are not increased due to the merchandise having been moved to a location other than the place of performance.

7.4 Additional claims of the Customer – for any legal reason whatsoever – shall be ruled out insofar as no other provisions are set forth hereinafter. Therefore, SPS-EUROPE GmbH shall not be liable for damage which has not been caused to the article of sale itself. In particular, SPS-EUROPE GmbH shall assume no liability for lost profits or other financial detriment to the Customer. In no event will SPS-EUROPE GmbH be liable for indirect accessory or consequential damage.

7.5 To the extent permitted by the relevant law, compensation of the Customer on the basis of a payment claim by the Customer shall be limited to the purchase price he paid for the merchandise, regardless of the type of the payment claim, arising either from warranty or from the contract.

7.6 Claims for damages for any legal reason whatsoever shall be made within a period of one (1) calendar year after the date of delivery, time is of the essence, failing which, such rights and/or remedies, if any, shall lapse. Where permissible by the relevant law, personal injury claims and claims pursuant to product liability under German Law are excluded herefrom. The limitation periods as prescribed by German Law are applicable to these and other warranty claims.

### 8. Aggregate liability

8.1 Further liability for damage compensation is precluded hereby, irrespective of the legal nature of the asserted claim. This shall not apply in cases of injury to life, body or health in so far as the injury arises from a willful or grossly negligent breach of duty on the part of SPS-EUROPE GmbH or on the part of a legal representative or fulfillment agent of SPS-EUROPE GmbH Furthermore, liability for other damage shall not be excluded if the latter arises from a willful or grossly negligent breach of duty on the part of one of SPS-EUROPE GmbH's legal representatives or fulfillment agents.

8.2 Insofar as liability is precluded pursuant to 8.1 or limited for SPS-EUROPE GmbH, this shall also apply for personal liability on the part of SPS-EUROPE GmbH's staff, employees, representatives, and fulfillment agents.

### 9. Retention of ownership

9.1 SPS-EUROPE GmbH shall retain ownership of the merchandise pending receipt of all payments resulting from the supply contract. SPS-EUROPE GmbH is entitled to repossess the merchandise in the event of behavior by the Customer in violation of the contract, especially default in payment. The repossession of the merchandise by SPS-EUROPE GmbH does not constitute a revocation of the contract unless so expressed by SPS-EUROPE GmbH explicitly and in writing. The seizure of the merchandise through SPS-EUROPE GmbH

always signifies revocation of the contract. SPS-EUROPE GmbH is entitled to sell the merchandise following repossession; the proceeds from the sale are to be credited toward the amounts owed by the Customer, minus reasonable sales expenses.

9.2 The Customer is obliged to treat the merchandise with care until it is paid for in full.

9.3 In the event of seizures or other interventions by third parties, the Customer must notify SPS-EUROPE GmbH thereof in writing without delay to enable SPS-EUROPE GmbH to file any necessary legal actions. To the extent that the third party is not able to reimburse SPS-EUROPE GmbH for court costs and other expenses associated with the aforementioned legal actions, the Customer shall be liable for the financial loss suffered by SPS-EUROPE GmbH

9.4 The Customer is entitled to resell the merchandise by way of a proper business transaction. The Customer thereby assigns to SPS-EUROPE GmbH all payments receivable from customers or third parties to which the Customer becomes entitled on account of such resale to the amount of the final invoice total (including value-added tax), regardless of whether the merchandise is resold with or without processing. The Customer remains authorized to collect such payment receivable even following this assignment. SPS-EUROPE GmbH's rights to collect the payment itself shall remain unaffected thereby. Nevertheless, SPS-EUROPE GmbH undertakes to refrain from collecting the payment as long as the Customer fulfills his or her payment obligations from the agreed proceeds, does not fall into payment arrears, and in particular no application is made to open bankruptcy or composition proceedings and there is no stoppage of payments. If the latter is the case however, SPS-EUROPE GmbH may require the Customer to disclose to SPS-EUROPE GmbH the assigned receivables and the debtors, to provide all information necessary for collection, to relinquish the associated records, and to notify the debtors (third parties) of the assignment.

9.5 Processing or modification of the merchandise by the Customer shall always be performed on SPS-EUROPE GmbH's behalf. If the merchandise is processed with other objects not belonging to SPS-EUROPE GmbH, then SPS-EUROPE GmbH shall acquire co-ownership of the new item in the ratio of the value of the merchandise to the other processed objects at the time they are processed. The item created through such processing shall be covered by the same stipulations as the merchandise supplied with rights reserved.

9.6 If the merchandise is inseparably combined with other objects not belonging to SPS-EUROPE GmbH, then SPS-EUROPE GmbH shall acquire co-ownership of the new item in the ratio of the value of the merchandise to the other combined objects at the time they are combined. In the event the Customer's item is considered the main item, then it shall be considered agreed that the Customer will transfer to SPS-EUROPE GmbH prorated co-ownership. The Customer holds the thus created jointly owned property or sole property of SPS-EUROPE GmbH in safe custody for SPS-EUROPE GmbH

#### 10. Patents, violations

10.1 SPS-EUROPE GmbH shall provide no assurances whatsoever that merchandise sold to the Customer is free of third party legal claims based on a violation or infringement of a patent, trademark, copyright, intellectual property right or the like, and shall provide no warranty whatsoever in the event of a violation in connection with the merchandise. The Customer consents to address himself or herself only to the manufacturer or licensor of the merchandise in the event of a claim based on a violation. In addition, the Customer undertakes to protect, defend, and indemnify SPS-EUROPE GmbH from any third-party claims, claims for damages, costs, expenses, and legal fees resulting from the unlicensed and/or unauthorized utilization, alteration or improvement of the merchandise by the Customer.

#### 11. Assembly and installation

11.1 The Customer is solely responsible for assembling, installing, and operating the merchandise sold herewith, including – without limitation – obtaining all approvals, licenses, and certificates required for assembling, installing, and operating the merchandise.

#### 12. Technical consultation and data

12.1 Any technical consultation or advice offered or given in connection with the use of the merchandise shall be a gratuitous favor for the Customer. SPS-EUROPE GmbH bears no responsibility and assumes no liability whatsoever for the content, application or consequences of any such consultation or advice. The Customer may not utilize, reproduce, or disclose technical data provided or disclosed by SPS-EUROPE GmbH without the seller's prior written approval. Exceptions shall be assembly, installation, operation, and maintenance of the merchandise acquired by the Customer.

#### 13. Software

13.1 Any computer software to be supplied to the Customer by SPS-EUROPE GmbH shall be provided by way of license directly to the Customer by the owner of the software or by third parties in accordance with a separate licensing agreement or other arrangement. The Customer shall confirm receipt of a separate licensing agreement or other arrangement. The Customer acknowledges that SPS-EUROPE GmbH is not a party to the aforementioned license for providing software. The Customer will address himself or herself directly to the licensor in the event of claims based on maintenance or support or violations or warranties in connection with software provided pursuant to these provisions.

#### 14. Rights of seller

14.1 In the event the Customer falls into arrears with his or her payments, the Customer shall pay all costs incurred by SPS-EUROPE GmbH in collecting amounts owed by the Customer, including reasonable legal fees and collecting fees.

14.2 If SPS-EUROPE GmbH waives its rights in the event of violation of these provisions and conditions or in case of payment arrears, this shall not constitute renunciation of such rights in case of subsequent violations and omissions.

#### 15. Agreement, amendments/supplements to agreement

15.1 The present agreement shall represent the sole and total agreement between the parties with regard to the subject matter of the contract, replacing all earlier or contemporaneous agreements between them, whether written or oral, regarding the same subject matter. Previous transactions between the parties and procedures customary in the industry shall not be authoritative as an interpretation or amendment of a provision hereof. Acceptance or tolerance in the event of a performance rendered in the context hereof shall not be authoritative for determining the meaning of the present agreement,

even if the accepting or tolerating party had knowledge of the type of performance and had the opportunity to object. Any later changes to this agreement are binding upon SPS-EUROPE GmbH only if made in writing and signed by both the Customer and SPS-EUROPE GmbH. An assignment by the Customer of this agreement or the rights arising there from shall be valid only with the written consent of SPS-EUROPE GmbH

#### 16. Customer's provisions and conditions

16.1 SPS-EUROPE GmbH shall strive to serve its customers promptly and efficiently. Accordingly, SPS-EUROPE GmbH will provide its merchandise and render its services exclusively in accordance with the provisions and conditions set forth in this agreement.

16.2 Contract fulfillment by SPS-EUROPE GmbH depends exclusively on the content of SPS-EUROPE GmbH's General Conditions and Terms of Sale, unless SPS-EUROPE GmbH expressly consents beforehand in writing to different arrangements. If such an agreement is lacking, the service and/or delivery shall begin only with the intention of accommodating the Customer; this shall not establish an act of acceptance of any or all of the Customer's provisions and conditions, and cannot be interpreted as such.

16.3 If no contract is concluded in writing beforehand by mutual consent, then acceptance of the merchandise or services shall be considered acceptance of the provisions and conditions named herein.

#### 17. General Provisions

17.1 The present agreement and the performances to be rendered by the parties shall be governed by and construed in accordance with laws of Germany. The parties hereby explicitly rule out the applicability of the United Nations' law on the international sale of goods and the Hague Convention on the law governing international sales agreements for moveable property/Uniform Law on the Sale of Goods. All provisions, conditions and agreements contained in this agreement shall apply to all legal successors of the Customer and are binding upon them.

17.2 If a provision or part of the present agreement is or becomes invalid, illegal, contrary to law or to public policy, or unenforceable, the remaining provisions or portions thereof shall remain unaffected thereby.

17.3 The individual Section headings employed in this agreement serve only to help the parties to categorize performances hereunder.

#### 18. Legal venue, place of performance

18.1 In the event of a dispute, the courts at the location of the registered office of SPS-EUROPE GmbH at which the sale was concluded will have exclusive jurisdiction. However, SPS-EUROPE GmbH is also entitled to bring action against the Customer at the court of his or her domicile.

18.2 The place of performance shall be the location of the SPS-EUROPE GmbH's registered office.

SPS-EUROPE GmbH

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