

## General Conditions of Sale of System 3R Switzerland AG, Flawil

### **1 Validity**

- 1.1 These conditions of sale are valid for all present and future deliveries and services by System 3R Switzerland AG Flawil, Switzerland (hereinafter referred to as "System 3R").
- 1.2 Any provisions that differ from or complement them, in particular the General Conditions of Purchase of the customer, as well as any oral agreements only apply if they are validated by System 3R. The written form shall be deemed to be fulfilled by all forms of transmission, evidenced in the form of text, such as telefax, e-mail, etc.

### **2 Offers**

Offers are only binding if they include a clearly defined term of acceptance.

### **3 Scope of the deliveries and services/changes to orders**

The scope of the deliveries and services is based on the order confirmation by System 3R.

Modifications to the ordered delivery item or the order of additional parts, services or functions are deemed to be a new order for which the delivery deadline, price and payment conditions must be agreed once more.

### **4 Data and documents/deviations from the layout/drawings**

- 4.1 Technical documents such as drawings, circuit diagrams, descriptions, illustrations, measurements, weights and other characteristics as well as reference to standards are for information purposes only and do not contain any assurance of given properties.

Where technical advance seems apparent, System 3R reserves the right to make changes, as long as these changes do not in any way affect the agreed contractual price. System 3R also reserves the right to take delivery items and services indicated in catalogues and price lists out of the programme.

- 4.2 Layout, drawings and any other details on the delivery item, and/or the installation thereof are to be checked carefully by the customer. If neither of the parties contacts the other within a calendar week of receiving said items, the relevant details are deemed to have been accepted by the customer.
- 4.3 All technical documents including the software supplied to the customer remains the intellectual property of System 3R. The relevant documents and the software are to be treated with strict confidentiality and may only be used for the purposes agreed or prescribed by System 3R. The customer shall take particular care to use the software supplied by System 3R only on the PCs and machines stipulated in the relevant licensing agreements. Any other use of the software requires the prior written consent of System 3R.
- 4.4 The customer agrees that personal data may be disclosed to third parties (e.g. subcontractors) within the country and abroad if this is necessary in order to fulfil the supply contract.

### **5 Regulations at the point of destination**

At the latest, when the order is issued, the customer must bring to the attention of System 3R any local, legal or other regulations which could have a bearing on the execution of the agreement as well as on compliance with safety regulations and permissions. In case of re-exports, Purchaser shall be responsible for compliance with pertinent export control regulations.

### **6 Prices**

- 6.1 The prices are deemed to be, unless otherwise agreed, without packaging, net, ex works ("EXW stated by System 3R or the sub-contractor") in accordance with the INCOTERMS that were valid at the time the order was confirmed.
- 6.2 If the costs of packaging, freight, insurance, outlay and other subsidiary costs are included in the offer or agreement price, or referred to specifically in the offer or order confirmation, System 3R reserves the right to adjust the objectives accordingly, if the rates are modified.

### **7 Payment conditions**

- 7.1 Payment is to be made within 30 days of receiving the invoice, without any deductions such as discounts, expenses, taxes or fees.

As long as nothing else has been agreed, the following payment conditions are valid for orders in excess of CHF 50,000:

- a) 30 percent at the signing of the agreement
- b) 60 percent when the item is delivered
- c) 10 percent when installation is authorised

7.2 If the payment is delayed, System 3R is authorised, without giving notice, to charge the customer late payment interest at 2 % over the LIBOR (London Interbank Offered Rate) p.a.

7.3 The customer is only entitled to a right of set-off or a right of retention for demands that are either expressly recognised or are established as legally binding. In particular, payments are still to be made if insignificant parts of the delivery or service are missing, but where the delivery or service can still be used.

## **8 Reservation of property rights**

8.1 The supplied goods remain the property of System 3R until the customer has paid all sums owed which System 3R is entitled to now and in the future.

8.2 The risk of degradation, loss or theft of the goods or of damage caused by the goods is transferred to the customer at the time of delivery. The customer must, if requested, prove that it has insured the goods appropriately.

8.3 If the customer disposes of goods subject to retention of title, the customer cedes to System 3R, internally, until all sums owed to System 3R have been paid, the rights accruing to it by dint of the disposal, against its purchasers, along with all subsidiary rights, securities and retention titles.

8.4 If the value of the goods subject to retention of title along with any securities granted to System 3R exceeds the claims of System 3R against the customer by more than 20 %, System 3R is obliged to release as much of the security as is requested by the customer.

8.5 If the customer acts in a manner that is contrary to the terms of the agreement, in particular in the case of late payment, System 3R may, after giving notice, take back the goods subject to retention of title, and the customer is obliged to hand them back.

## **9 Delivery**

9.1 The delivery deadline becomes effective as soon as the agreement comes into force, all administrative formalities such as import and payment authorisation have been obtained, and all important technical and commercial issues have been cleared up.

It is deemed that the deadline has been respected, if the delivery is ready at the agreed place of dispatch in accordance with INCOTERMS.

9.2 The delivery deadline may be appropriately extended:

- a) if System 3R does not receive on time information that is necessary to execute the order, or if the customer modifies it later, thereby causing the delivery to be delayed,
- b) if System 3R is prevented from making the delivery because of force majeure or any other events out of its control, such as natural catastrophes, sabotage, fire, labour disputes, unrest, war, administrative measures and unforeseeable difficulties in acquiring components and/or energy, irrespective of whether these events came about at System 3R or one of its suppliers. If these circumstances last more than 6 months, the parties will undertake negotiations in good faith as to whether to dissolve or continue the agreement.
- c) if the customer falls behind with the fulfilment of its contractual obligations, in particular, if it does not respect payment conditions or the obligation to procure documents.

The customer may not claim damages because of delays caused by the above-mentioned grounds.

9.3 The customer is authorised – with the exception of further damages claims – to demand compensation for late delivery if the delay can be proven to be attributable to System 3R and if the customer has suffered damage as a result thereof.

Liquidated damages for late delivery shall be 0.5 (half a) % for every full week's delay and shall in no case exceed an aggregate of 5 (five) % of the contract price of the supplies in delay

For the first two weeks of the delay no compensation for late delivery is owed.

Once the maximum compensation for late delivery has been reached, the customer may inform System 3R of an appropriate extension of the deadline in writing. If this is exceeded for reasons attributable to System

3R, the customer may refuse to accept the delayed part of the delivery or service. Should just partial acceptance put an unreasonable burden on the customer, the latter may withdraw the entire agreement and demand reimbursement of any payments made in return for the delivered goods being returned.

- 9.4 If the customer does not collect any goods that have been declared ready for dispatch, System 3R may store the goods at the cost and risk of the customer and invoice them as having been delivered.
- 9.5 Partial deliveries are allowed. System 3R may issue partial invoices for partial deliveries.
- 9.6 If System 3R insists on fulfilment of the agreement, in whole or in part, and if the order is cancelled by the customer, a penalty for breach of contract of 10 % of the contract price is applicable to the cancelled part of the delivery or service, unless System 3R can prove a higher level of damages.

## **10 Packaging**

As long as legally permitted, packaging items will not be taken back.

## **11 Transfer of risk, transport and insurance**

- 11.1 Transfer of risk, transport and insurance thereof, are to be agreed upon in accordance with the INCOTERMS that were valid at the time the order was confirmed.
- 11.2 Otherwise, the delivery is made ex works (EXW stated by System 3R or the sub-contractor) in accordance with valid INCOTERMS.

## **12 Verification and inspection**

- 12.1 The goods will be checked by System 3R and its subcontractors during manufacture in the usual manner.
- 12.2 If the customer demands additional checks, they must be agreed upon in writing and paid for by the customer. Any parts that are missing or damaged must be replaced or improved upon by System 3R immediately.
- 12.3 If the goods are damaged or lost during transportation, the customer must record a corresponding reservation on the receipt document, and arrange for the carrier to establish without delay the facts of the case.
- Transportation damage that cannot be established immediately must be announced to the carrier and System 3R in writing within 8 days of the goods being received.
- 12.4 The customer must also check for any defects or missing parts within 8 days of the receipt of the goods. A corresponding claim must be made immediately in writing and sent to System 3R, and at the latest within the agreed warranty period.  
If this is not carried out, the goods are deemed to have been approved.

## **13 Liability for physical defects**

- 13.1 Claims for physical defects to the delivery items supplied by System 3R lapse 12 months from delivery to the customer.

Claims for defective services lapse 12 months after the corresponding service has been supplied.

Claims for physical defects for replacement deliveries or improvements lapse 6 months at the earliest, and in any case, once the limitation period has elapsed for the original delivery item or the original service.

If the service or commissioning is delayed for reasons that are not attributable to System 3R, the warranty period lapses no later than 12 months after it has been announced that the delivery is ready for dispatch.

- 13.2 System 3R shall, at the written request of the customer, improve or replace, free of charge, as quickly as possible, all parts of the delivery, as chosen by them, and which become damaged or unusable following construction, material or manufacturing faults.
- 13.3 Replaced parts become the property of System 3R and are to be sent back if requested and paid for, if System 3R does not relinquish acquisition and/or return.
- 13.4 The customer may request that the agreement be rescinded or the price of the agreement be reduced if:
- it is not possible to make improvements or an additional delivery;
  - System 3R does not manage to make the improvement or an additional delivery within an appropriate period of time, or
  - System 3R refuses or culpably delays the improvement or additional delivery.
- 13.5 Defects as a result of normal wear, incorrect storage or maintenance, failure to respect the assembly and operating instructions, excessive use, unsuitable equipment, incorrect intervention on the part of the cus-

customer or a third party, the use of non-original parts, and defects on other grounds that cannot be attributed to System 3R, are excluded from the guarantee.

The guarantee of System 3R for consumables is limited to the scope of the guarantee of the third party supplier.

- 13.6 The software provided by System 3R has been developed with utmost care. System 3R guarantees that the software for the most part operates in line with the corresponding requirements. Any defects will be rectified by System 3R as quickly as possible taking into consideration the business interests of the customer and any improvement costs incurred by System 3R.

For software that System 3R purchases from third parties, the guarantee of System 3R is limited to the scope of the guarantee of the third party supplier.

- 13.7 The above-mentioned guarantee is final, and replaces the legal guarantee for expressly or tacitly assured characteristics, in particular the suitability of the goods and software delivered for a specific purpose of use.

#### **14 Limitation of liability**

The rights and remedies of the customer shall be exclusively governed by these General Conditions of Supply and shall be in lieu of any remedies at law. All further claims for damages, reduction of the purchase price, termination of or rescission of the contract are excluded.

In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit, third party recovery claims and other direct or indirect or consequential damages.

This limitation of liability equally applies to the extent System 3R is liable for acts or omissions of its employees or third parties engaged for the performance of its obligations. It does not apply in case of unlawful intent or gross negligence on the part of System 3R's management and in case of Georg Fischer's statutory liability, in particular under applicable product liability laws.

#### **15 Place of fulfilment and competent court**

- 15.1 The place of fulfilment is Flawil, Switzerland.

- 15.2 The contractual relationship is subject to the United Nations convention on the international sale of goods with regard to any issues that are governed by this agreement, and to Swiss substantive law for all such questions.

- 15.3 The court of jurisdiction for any disputes relating to this agreement is Flawil, Switzerland. System 3R is however authorised to address any other competent court.

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