

## TADIRAN BATTERIES GMBH GENERAL TERMS AND CONDITIONS OF SALE

In these Conditions:

### 1. DEFINITIONS

“**SELLER**” shall mean Tadiran Batteries GmbH, having its registered office at Industriestrasse 22, 63654 Büdingen, Germany.

“**CONDITIONS**” shall mean the present general terms and conditions of sale which shall apply for the sale of the PRODUCTS to the PURCHASER.

“**INTELLECTUAL PROPERTY RIGHT**” shall mean a right in any of the following (wherever and whenever arising and for such right’s validity): any patent, TRADE MARK, design, design rights, copyright, database right, topography rights, moral rights, know how, trade secret and other confidential information, rights in the nature of any of the these items in any country, rights in the nature of unfair competition rights and rights to sue for passing off or other similar intellectual or commercial right (in each case whether or not registered or registrable) and registrations of and applications to register any of the these items.

“**OFFER**” shall mean an offer that includes a quotation for the ORDER PRICE for the purchase of PRODUCTS by PURCHASER from SELLER.

“**ORDER**” shall mean the order issued by the PURCHASER for the purchase of PRODUCTS, and acknowledged by the SELLER in accordance with these Conditions.

“**PRODUCTS**” shall mean the goods, materials or equipment and any part or component thereof and/or any work or services performed by SELLER as specified in the ORDER.

“**PURCHASE ORDER PRICE**” or “**ORDER PRICE**” shall mean the price payable by PURCHASER to SELLER for the PRODUCTS under the ORDER.

“**PURCHASER**” shall mean the buyer of SELLER’s PRODUCTS, being the addressee of the OFFER and of these Conditions.

### 2. TERMS

All OFFERS given and ORDERS acknowledged by the SELLER shall be deemed to incorporate these Conditions. No other agreement or representation of any kind shall form part of, alter, or operate as a waiver of any of these Conditions unless expressly accepted by the SELLER in writing.

These Conditions shall prevail over any other terms and conditions contained in any purchase order or other document of or communication from the PURCHASER.

Unless previously withdrawn an OFFER is open for acceptance within the period stated therein or (when no period is so stated) within 30 days only after its date of issuance.

The ORDER must be accompanied by sufficient information to enable the SELLER to proceed forthwith with the supply of the PRODUCTS contracted for.

Descriptions and illustrations contained in SELLER’s catalogues, publications, price lists and other advertisements are for general information purposes only and shall not form part of the contract and PURCHASER shall be deemed to enter into the contract without reliance on such descriptions and illustrations.

The order of precedence between the documents is established as follows:

- the ORDER and/or the contract;
- these Conditions; and
- the specifications.

### **3. PRICE – PAYMENT TERMS**

a) Price: SELLER's prices and discounts, now in effect or hereafter issued, are subject to change without any prior notice. All prices are exclusive of any present or future sales, revenue or excise tax, import duty or other tax applicable to the manufacture or sales of any product. Such taxes when applicable shall be paid by Purchaser or in lieu thereof SELLER shall be provided a proper tax exemption certificate.

Unless otherwise agreed in writing between PURCHASER and SELLER, all prices are given by SELLER on Delivery at place (DAP) basis (as defined by the ICC, Incoterm 2010, 7<sup>th</sup> Revision) for deliveries in Europe and where SELLER agrees to deliver the PRODUCTS otherwise than at SELLER's premises, PURCHASER shall be liable to pay all SELLER's charges in respect of carriage, freight, packaging and insurance.

The price is exclusive of any applicable value added tax or any other taxes and duties, which PURCHASER shall be additionally liable to pay SELLER.

b) Payment terms: Unless otherwise specifically agreed in writing or in the OFFER, payment for each PRODUCT shall be made 30 days net on receipt of the invoice by PURCHASER (the "Payment Due Date"), even if the execution of the ORDER is subject to a claim or litigation.

If PURCHASER fails to make any payment on the Payment Due Date, then without prejudice to any other rights or remedy available to SELLER, SELLER shall be entitled to: (i) suspend any further deliveries until payment is received, whether or not such deliveries are due under the same ORDER or contract or any other agreement between the parties; and (ii) charge PURCHASER interest on the amount unpaid: 1% on unpaid balance monthly; and (iii) terminate the ORDER and/or the contract for PURCHASER's default as per the present Article 15.

c) Transfer of title: Title of property to the PRODUCTS will pass to PURCHASER upon full payment to SELLER of the ORDER PRICE.

d) Retention of title: the PURCHASER shall keep the PRODUCTS separate from those of the PURCHASER and third parties and properly stored, protected and insured and identified as the SELLER's property until transfer of title. The PURCHASER may resell or transform or use the PRODUCTS in the ordinary course of business, provided that in case of resale or transformation, the PURCHASER shall pay immediately to the SELLER the part of price which is due to the SELLER. The authorisation of resale or transformation shall be automatically withdrawn in case of receivership, liquidation or insolvency of PURCHASER whereunder the current orders will be automatically cancelled and the SELLER reserves the right to lead an action for recovery of property for any PRODUCT held in stock by the PURCHASER. In the case the PURCHASER fails to pay the SELLER, the SELLER may, without prejudice to any other remedies, at any time enter on the premises of the PURCHASER or any third party where the PRODUCTS are stored and repossess the PRODUCTS.

### **4. MODIFICATION**

a) Modifications by the SELLER: SELLER reserves the right, at any time, to make any modifications related to technical improvements/data subject to an increase of price. This applies only for future ORDERS and/or contracts.

b) Modifications by the PURCHASER: PURCHASER may, by written order, after entering into the ORDER or the contract, propose changes in drawings, designs, specifications, method of shipment or packing or place of delivery (hereinafter the "Proposed Modifications"). SELLER may at its sole discretion accept or reject any such Proposed Modification. If any such Proposed Modification causes an increase or decrease in the cost of, or the time required for, performance of the ORDER, an equitable adjustment in the price, the schedule, or both shall be made to the said ORDER. Within a reasonable time after receipt of a Proposed Modification, SELLER shall notify PURCHASER of the impact of such Proposed Modification on the cost of, or the time required for, performance of the ORDER. SELLER shall not be obligated to proceed with the ORDER as changed until (i) SELLER has accepted the Proposed Modification and (ii) SELLER and PURCHASER shall have mutually agreed on the impact of the Proposed Modification.

c) Unless expressly otherwise agreed to in writing, SELLER shall own all INTELLECTUAL PROPERTY RIGHTS, including patent, copyright and trade secret, to any Proposed Modification and the implementation thereof which is based on, adapts, relies upon, is made with reference to or uses any confidential information of SELLER, as defined in Article 11 below.

### **5. PACKING AND TRANSPORT**

SELLER shall use commercially reasonable practices for packing and packaging the PRODUCTS to be delivered, using SELLER's standard packaging materials which meet industry standard packaging requirements. Unless otherwise specified in the OFFER, charges for the packing and packaging of the PRODUCTS are deemed to be included in the OFFER.

Any additional or special packing and packaging realized according to PURCHASER's special instructions as well as transportation means other than Truck or Rail which may be requested by PURCHASER, will be effected in the best possible conditions by SELLER on behalf of PURCHASER and at the latter's expense and risk.

Packing is not returnable to SELLER unless otherwise agreed upon.

It is recalled that in case of damage or partial loss duly established upon arrival, PURCHASER shall make all complaints to the carrier within 3 days from the arrival.

## 6. DELIVERY - ORDER

a) Delivery date: Delivery dates are given for guidance only and vary inter alia according to the conditions of supply. Delays shall, in no case whatever, justify the cancellation of the ORDER. The SELLER shall do its utmost to comply with the delivery date that it specifies at the date of acceptance of the ORDER according to the transportation lead time, and to carry out the ORDER and/or the contract, except in the case of a Force Majeure event. In no case late delivery shall lead to any liquidated damages, nor penalties, nor cause the termination of the ORDER and/or the contract.

b) Transfer of Risks: Delivery takes place in accordance with DAP Incoterms 2010, 7<sup>th</sup> Revision, inside Europe or as otherwise agreed between the parties.

Risks of loss or damage in each PRODUCT will pass from SELLER to PURCHASER upon delivery of such PRODUCT according to the applicable Incoterms. PURCHASER shall then take all necessary insurance to cover these risks.

c) Postponement: Should PURCHASER postpone delivery of any PRODUCTS, PURCHASER will be required to pay to SELLER a surcharge to off-set any costs incurred to fulfill the ORDER and/or the contract. The rate of surcharge shall be one per cent (1%) of the ORDER PRICE per week, for the PRODUCTS held by SELLER. Should PURCHASER postpone delivery of any PRODUCT above 12 weeks from the scheduled delivery date, SELLER shall have the right to deliver the PRODUCTS and to invoice accordingly. In all cases, PURCHASER has to notify SELLER of any postponement no less than 30 calendar days prior to the scheduled delivery date with respect to the concerned PRODUCTS. In the absence of notification within this 30 days period, SELLER shall have the right to deliver the PRODUCTS at the scheduled delivery date and to invoice accordingly.

## 7. INSPECTION & TESTS

Tests on the PRODUCTS ("TESTS") are to be performed by SELLER at its premises. The scope of those TESTS is predefined by SELLER for the application to which the PRODUCTS have been designed.

If PURCHASER requires tests other than the TESTS specified in the OFFER, or if PURCHASER requires that the specified TESTS be carried out in the presence of PURCHASER or any its representatives, PURCHASER shall pay for the cost of those TESTS, unless stated otherwise in writing by SELLER.

SELLER shall give PURCHASER such advance notice as is reasonably necessary to allow PURCHASER to witness the TESTS. PURCHASER shall be solely responsible for any costs incurred by PURCHASER representatives and employees in inspecting the work or witnessing the TESTS under this Article 7. TESTS shall be performed in the presence of PURCHASER at the date stipulated in the SELLER's notice. Should PURCHASER decide not to attend the TESTS, TESTS shall be deemed to have been successful and made in the presence of PURCHASER. No claim whatsoever relating to the conduct and results of the TESTS will be accepted after the PRODUCTS' delivery.

## 8. WARRANTY

a) The warranty is limited to a period of one (1) year starting from the delivery date of the PRODUCTS (the "Warranty Period"). The warranty shall apply only to defects that have appeared during this one-year period with no possibility of extension (even if during such period of time SELLER has already taken any action in application of the present paragraph), and provided that the PRODUCTS have at all times been the subject of normal and proper installation, use and maintenance.

b) Except where otherwise stipulated, SELLER warrants the PRODUCTS against any defect in design, material, manufacture and construction.

The above mentioned warranty is strictly limited to the replacement or repair of admitted faulty parts.

c) SELLER HEREBY EXPRESSLY EXCLUDES ALL EXPRESSED AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, except as such warranties may be set forth in SELLER's current operating manual, catalogue or written warranty covering such PRODUCT.

This warranty does not cover: (i) defects resulting from materials provided by PURCHASER or from designs required by PURCHASER; (ii) incidents related to fortuitous events, Force Majeure or any other reason which SELLER could not reasonably foresee or prevent; (iii) damage and accidents for which PURCHASER is liable such as those resulting from negligence, misconnection, non observance of maintenance or operating instructions; (iv) abnormal use through inter alia overloading or overcharging; and (v) modifications or repairs of the PRODUCTS carried out by the PURCHASER or any third party without SELLER's prior written consent or SELLER's supervision. Furthermore, this warranty does not cover parts, even brand new, used for repairing worn supplies.

In no event SELLER shall be liable to PURCHASER for any consequential or indirect damages including, but not limited to loss of profit.

d) In order to benefit from SELLER's warranty, PURCHASER must immediately and before expiry of the Warranty Period inform SELLER by means of a registered letter of the defects that PURCHASER believes due to the PRODUCTS themselves and bring sufficient evidence to this effect. PURCHASER must give SELLER the necessary help and assistance to establish the existence of the defects and to intervene as warranty allows. Save where the SELLER decides to effect repairs on the site, the defective parts are returned to the SELLER.

Replacement or repair work required by the warranty will be done at SELLER's option. As quickly as possible and at its own expense, for the completion of these works, SELLER shall have to take care of any preliminary and accessory operations required prior to the repair or replacement of the PRODUCTS. While the work is being done, SELLER may alter the characteristics of the PRODUCT if it deems this necessary. Parts replaced free of charge become the property of PURCHASER upon delivery.

## **9. INTELLECTUAL PROPERTY RIGHTS**

a) Ownership of any and all INTELLECTUAL PROPERTY RIGHTS related to or in connection with the PRODUCTS shall remain at all times with the SELLER. Ownership of designs and projects, including inter alia any drawings, details, specifications, technical descriptions and other data prepared by SELLER, or submitted with or in connection with SELLER's OFFER remains with SELLER and will not be disclosed and/or put into operation without SELLER's prior written consent.

b) SELLER agrees, at its own expense and to the extent hereinafter stated, to defend and hold harmless PURCHASER against any claim or suit based on an allegation that the use or sale of any PRODUCTS provided hereunder by SELLER constitute an infringement of any INTELLECTUAL PROPERTY RIGHTS of any third party (each an "Intellectual Property Claim"), provided that SELLER shall have exclusive authority to answer each Intellectual Property Claim and exclusive control over the defense of the same, including any settlement or resolution thereof.

In case said PRODUCTS are in such suit held to constitute an infringement and the use of said PRODUCTS is enjoined, SELLER shall, at its own costs and at its option, either acquire a right for PURCHASER to use such PRODUCTS, or modify the PRODUCTS or infringing parts thereof so that the same becomes non-infringing, provided that such modification or replacement shall not impair the operation and performance of such PRODUCTS, or replace the PRODUCTS or infringing parts thereof so with PRODUCTS of identical capability and performance, or remove said PRODUCTS and refund the purchase price.

PURCHASER (a) shall promptly notify SELLER of any Intellectual Property Claim and (b) shall give SELLER such assistance and information as is available to PURCHASER and requested by SELLER for the defense of such Intellectual Property Claim, and (c) shall not by any act (including any admission or acknowledgement or omission) prejudice such defense, unless act was required by law. Any such assistance or information which is provided by PURCHASER will be at SELLER's expense.

These remedies contained in this Article 10 shall not apply to: (i) any PRODUCTS specified by PURCHASER or manufactured to PURCHASER's design; and (ii) to any alteration of the PRODUCTS without SELLER's prior written approval; and (iii) to systems or combinations in which PURCHASER incorporates PRODUCTS supplied hereunder. As to such equipment, combinations or systems SELLER assumes no liability whatsoever for infringement of any Intellectual Property Claims.

The foregoing states the entire liability of SELLER for any Intellectual Property Claims and such liability shall in no event exceed the purchase price of the PRODUCTS supplied hereunder and subject of the Intellectual Property Claims. Such liability shall exclude any loss of profit, loss of use and more generally any damages of a consequential, incidental or indirect nature.

## **10. CONFIDENTIALITY**

All such proprietary material and data disclosed by the Seller shall at all times be treated by PURCHASER as strictly confidential and shall not without SELLER's prior consent be used by PURCHASER except for purposes of (i) the contract (if any) placed with SELLER and (ii) the operation of the PRODUCTS supplied thereunder, nor shall they without SELLER's prior written consent be communicated to third parties save insofar as may be necessary for the permitted purposes and provided such third parties are bound by similar confidentiality undertakings.

Confidentiality requirements do not apply to any information for which the PURCHASER reasonably proves that it: (i) was already known by the PURCHASER without restriction prior to receipt from the SELLER; or (ii) is or becomes generally known to the public through no wrongful act of the PURCHASER; or (iii) is received from a third party without similar restriction and without breach of these or other confidentiality undertakings; or (iv) is independently developed by the PURCHASER provided that the PURCHASER can demonstrate that such development was carried out by persons without access to the confidential information; or (v) is required to be disclosed by the PURCHASER by reason of law or other binding legal regulation or at the direction of any court or governmental or regulatory agency, provided that the PURCHASER shall provide the SELLER with reasonable advance written notice (where permitted by law) to permit the SELLER to seek a protective order or other appropriate remedy.

### 11. PURCHASER'S FURNISHED INFORMATION AND PROPERTY

SELLER agrees, with respect to all information and property, including but not limited to equipment, manufacturing tooling and devices, supplied by PURCHASER under ORDER or contract agreed upon:

- that title to such information and property shall remain in PURCHASER.
- to assume risk of loss or damage, reasonable wear and tear excepted, to such information and property while in SELLER's possession or control.
- to ensure that no lien, encumbrance, pledge or other interest whatsoever attaches to such information and property as a result of SELLER's acts or omissions.
- except as may otherwise be provided in the ORDER and/or contract to return such information and property to PURCHASER upon completion of the PRODUCTS or termination of the contract agreed upon.

### 12. FORCE MAJEURE - HARDSHIP

a) Force Majeure: "Force Majeure" shall mean any event existing or future, which is beyond the reasonable control of either party and, which could not be foreseen or which, though foreseen, was inevitable even after either party having taken all reasonable steps in order to prevent it. Such events shall include, without limitation, war, hostilities (whether declared or not), invasion, civil war, riots, nuclear risks, equipment accident, serious suppliers failings, stoppage or delays in transport, strike or any such operation of the forces of nature as SELLER could not foresee or reasonably provide against.

As soon as and when possible, SELLER will keep PURCHASER informed of all cases and events that may lead to a delivery delay. Should either party be prevented, in whole or in part, from keeping or performing its obligations by reason of Force Majeure, then such party shall be excused during the time and to the extent that the keeping or performance of such obligation is prevented. In case Force Majeure lasts continuously for at least three months, then both parties shall meet to consult and agree on the necessary arrangements for the further implementation of the ORDER and/or the contract. In case the further implementation is unforeseeable and/or impossible, then both parties shall arrange for the termination of the ORDER and/or the contract.

b) Hardship: Should the occurrence of events not contemplated by the parties fundamentally alter the equilibrium of the ORDER and/or the contract implementing these Conditions, placing an excessive burden on one of the parties in the performance of its contractual obligations, that party shall be entitled to request a revision of the ORDER and/or the contract. Such request shall be made to the other party within a reasonable time from the moment the requesting party becomes aware of the event and of its effect on the ORDER and/or the contract. The request shall indicate the grounds for revision. Failing such communication, the interested party shall be barred from making any request under this clause.

The parties shall consult one another with a view to revising the ORDER and/or the contract on an equitable basis, in order to avoid excessive prejudice to either party. Failing an agreement of the parties on the adaptation of the ORDER and/or the contract within a time limit of 30 days of the request, for revision, or such extended time as may be agreed between the parties, then: (i) the parties may choose to submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce, Paris. The decision, including the decision for bearing the costs, shall be binding on the parties. Performance of the ORDER and/or the contract shall be continued during the revision procedure; or (ii) either Party may terminate the ORDER and/or the contract with a three (3) months prior notice. In such a case, no indemnity or compensation of any kind resulting from termination of the ORDER and/or the contract shall be due between the Parties.

### 13. CANCELLATION

a) Cancellation of the ORDER by SELLER: Any ORDER may be automatically cancelled, the property of the PRODUCTS being immediately recovered by SELLER (i) when failure to pay due invoices by the payment due date is not cured by PURCHASER within 48 hours or any longer period agreed by SELLER, after receipt of a formal notice from SELLER to cure such breach, or (ii) in case PURCHASER becomes insolvent or bankrupted.

b) Cancellation of the ORDER by PURCHASER: No cancellation of any ORDER by the PURCHASER shall be accepted by the SELLER, unless (i) the cancellation is received by the SELLER in writing, and (ii) the SELLER accepts such cancellation in writing and is paid by the PURCHASER:

- the sales value to the SELLER of that part of the PRODUCTS completed and work done in connection with the ORDER; and
- the sales value of any items or materials bought by the SELLER which cannot reasonably be used elsewhere by the SELLER; and
- any other costs and liabilities which the SELLER incurs by reason of the PURCHASER's cancellation.

c) Manufacturing Tooling: Unless otherwise agreed in writing between SELLER and PURCHASER, the costs of specific tooling manufactured at SELLER's expense and/or products specifically purchased by SELLER for the purpose of performing its obligations under the ORDER and/or the contract shall be reimbursed by PURCHASER at the date of cancellation of the ORDER and the tooling and products above referred to shall be returned to PURCHASER at PURCHASER's risk and expense.

#### **14. TERMINATION**

Without prejudice to either party's other right and remedies under these Conditions and the ORDER and/or the contract, or at law, if either party is in persistent or substantial breach of any of its obligations hereunder, the other party after giving the party in breach not less than 30 days written notice to remedy such breach and if the breach is not remedied within such period may rescind the ORDER and/or the contract or any part thereof.

SELLER may also terminate the ORDER and/or the contract, in whole or in part, for default in the event that (i) the PURCHASER becomes insolvent or makes a general assignment for the benefit of its creditors; (ii) admits in writing to its inability to pay debts as they mature; (iii) a trustee or receiver is appointed by any court of competent jurisdiction with respect to the PURCHASER or any substantial part of its assets; (iv) an action is taken by or against the PURCHASER under bankruptcy or insolvency laws or laws relating to the relief of its debtors or any applicable foreign legal equivalent; or (v) a petition under any bankruptcy act or similar statute is filed by or against the PURCHASER and not accepted within ten days after it is filed.

In case of termination of an ORDER and/or the contract, the PURCHASER shall indemnify the SELLER against all losses, costs, damages, expenses including legal expenses suffered by the SELLER as a result of PURCHASER's default or insolvency, and against any direct or indirect loss suffered by the SELLER as a result thereof.

#### **15. LIABILITY**

SELLER shall not be liable to PURCHASER in contract, in tort or otherwise for any special, incidental, indirect or consequential damages of any nature arising out at any time or from any cause relating in any way to the ORDER and/or the contract, including but not limited to loss of profit or revenue, business opportunity or anticipated saving.

In all cases the SELLER's maximum liability shall not exceed ten per cent (10 %) of the total value of the ORDER and/or the contract.

The parties agree that nothing herein will be construed as requiring SELLER to indemnify PURCHASER, or to otherwise be responsible, for any acts or omissions of SELLER, nor shall anything herein be construed as requiring SELLER to indemnify PURCHASER, or to otherwise be responsible, for the acts or omissions of SELLER.

SELLER's liability for gross negligence and intent remains untouched.

#### **16. GOVERNING LAW – SETTLEMENT OF DISPUTES**

These Conditions and the associated ORDER and/or the contract and more generally the contractual and/or business relationship between the parties shall be governed by, and shall be construed in accordance with the laws of the country of incorporation of SELLER. Any disagreement or dispute which may arise out of or in connection with the interpretation and performance of these Conditions and the ORDER and/or the contract and more generally the contractual and/or business relationships between the parties and which the parties are unable to settle by mutual agreement, will be submitted upon simple request in writing by the most diligent party for arbitration under the Rules of Arbitration of the International Chamber of Commerce, Paris by maximum of three (3) arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Frankfurt am Main. The language of the arbitration shall be English. The awards of the arbitrators shall be conclusive and binding on the parties.

#### **17. MISCELLANEOUS**

a) Waiver: No failure or delay by the SELLER in exercising any of its rights under these Conditions shall operate as a waiver thereof nor shall any single defective or partial exercise thereof preclude any other or further exercise of that or any other right.

b) Assignment: The ORDER and/or the contract or any interest hereunder shall not be assigned or transferred by the PURCHASER without the prior written consent of the SELLER.

c) Amendment: Any modification to the terms of these Conditions or the ORDER and/or the contract shall be made only in writing after mutual agreement between the parties through an amendment completing or replacing the relevant text.

d) Severability: If any provision of these Conditions or the ORDER and / or the contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provisions of these Conditions or the ORDER and/or the contract.

e) This contract and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the international Sale of Goods (CISG).