



**Asia Pacific Solutions Pte Ltd**  
10 Ubi Crescent  
#03-82 Ubi Techpark  
Singapore 408564  
Tel: +65.6841.8403 / Fax: +65.6747.9550  
Registration # 201103015D

## **ENTREPOSE SERVICES GROUP COMPANIES GENERAL CONDITIONS OF SALE**

### **ARTICLE 1- SUBJECT AND FIELD OF APPLICATION**

**1.1** - Unless it has been otherwise agreed in writing, any order placed with ASIA PACIFIC SOLUTIONS PTE LTD (APS) a member of ENTREPOSE Services Group implies the unreserved and complete acceptance by the Purchaser of the present general conditions of sale which shall prevail over any other document from the Purchaser and especially its general conditions of purchase.

The present general conditions of sale, in conjunction with such other conditions as may be set out in the Order, shall apply to all sales of goods, also referred to herein as products, concluded by APS, and as may be provided in the Order, specific services provided by it.

The fact that APS does not enforce at a given moment in time any one of the present general conditions of sale shall not be interpreted as being a waiver of any right of APS to avail itself thereof at a later date.

**1.2** - Any document other than the present general conditions of sale such as catalogues, prospectuses, advertising, notices, shall be purely for information, be indicative and non-contractual.

**1.3** - The present general conditions of sale shall apply for as long as APS has not informed the Purchaser of its decision to replace them by new general conditions of sale. They may be amended at any time by APS with one month's prior notice. In such a case, APS shall so inform the Purchaser by any appropriate means.

### **ARTICLE 2 - ORDERS**

**2.1** - "Order" shall mean any Order placed for the products and/or services sold by APS. Orders, including the written attachments thereto, shall not be definitive, even when taken through one of the representatives or employees of APS, except when confirmed in writing by a duly authorised executive of APS.

For an Order to become binding upon APS, it must include the present General Conditions of Sale. Should this not be the case, the Order shall not be binding upon APS. APS's written acknowledgement of the Order shall render the Order irrevocable.

The Order constitutes the complete and full understanding between the Parties thereto with respect to the subject matter of the Order and save in respect of fraud supersedes all previous negotiations, representations, agreements, commitments and writing in respect thereof. Neither Party shall be bound by any terms conditions, definitions, warranties, understandings or



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representations with respect to such subject matter other than as expressly provided in the Order or as duly set forth on or subsequent to the effective date thereof in writing.

**2.2** - After confirmation by APS, Orders shall be irrevocable and the Purchaser may not cancel them.

Any request for change to the composition or volume of an Order placed by the Purchaser shall not be taken into account by APS unless the request is made in writing and is received by APS at the latest two calendar days after receipt by APS of the initial Order.

Should the Order be changed by the Purchaser, APS shall be exonerated from its obligation to meet the deadlines, if any, originally agreed for the execution thereof.

**2.3** - Acceptance of the Order by APS, shall be subject to the obtaining of the necessary administrative permissions, to the making of a down payment, in which case the down payment amount shall not be less than thirty (30) per cent of the Order Price, to the setting up a contractual guarantee or additional warranty (bank guarantee, opening a documentary credit, parent company guarantee or the like), or several of these conditions cumulatively.

### **ARTICLE 3 - RATE – PRICE**

**3.1** - APS reserves the right to change its prices. These may be reviewed upwards as long as the Purchaser has been previously so informed in writing.

Any change to the price shall be applicable on the date shown on the new price.

**3.2** - The supply of goods shall be made against payment by the Purchaser of the prices shown on the date on which the Order was placed, plus current taxes.

Unless it shall have been agreed otherwise in writing, the price shall be net, not including carriage, and expressed in USD exclusive of tax on the basis of the rates communicated to the Purchaser, and may not be amended once approved by the Parties.

Any tax, due, levy or other sum to be paid in application of French or other applicable regulations as well as those of an importing country or transit country shall be borne by the Purchaser.

Should APS have to bear additional costs in the performance of the Order that are not otherwise covered by the Order Price(s), APS shall notify the Purchaser of same with supporting documentation. Thereafter APS shall be entitled to invoice the Purchaser for such additional costs.



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**3.3 - Unless otherwise agreed in writing, APS's invoices shall be payable at thirty (30) calendar days from the date of the issue of the invoice.**

The price shall be payable by electronic bank transfer to APS's designated bank account and the Purchaser shall only be considered to have performed its payment obligation when the sums have been received by APS's bank in funds that are available immediately. Payment shall then be considered to have been made.

In the case of part payments based on the part delivery of products and/or services, each part payment defined in the Order shall be paid in full by the Purchaser before delivery of the next part delivery of product and/or services.

Where the Parties have agreed that payment be made by Purchaser-furnished Letter of Credit issued by a first-class bank acceptable to and in favour of APS, the Purchaser shall be obliged to have furnished such Letter of Credit within ten (10) calendar days of the date of the Order. Should Purchaser fail to so furnish the Letter of Credit APS shall be entitled to cancel the Order by simple written notice, without the need for legal proceeding, and without prejudice to any rights that APS may exercise against the Purchaser for such breach in accordance with the Order or at law, notably for damages and costs flowing from such termination.

The Letter of Credit, if required, shall be drafted in terms acceptable to APS, notably that it be irrevocable, confirmed, payable on sight at APS's confirming bank and, among other things, permit partial consignments and transshipments.

APS reserves the right to accompany this type of payment with a guarantee known as the Stand-By Letter of credit in order to protect itself against any default by the Purchaser.

Should the Parties have agreed that payment shall be guaranteed by a bank, the Purchaser shall furnish in a form acceptable to APS within ten (10) calendar days of the date of the Order a first-demand bank guarantee in accordance with the Uniform Rules concerning a Guarantee on Demand ICC Publication N° 758 or a Stand-By Letter of Credit that complies with the Uniform Rules or with the Rules and Uniform Usages concerning Documentary Letters of Credit published by the ICC, and in both cases issued by a reputable first-class bank previously approved in writing by APS.

**3.4 - In case of delayed payment, APS may suspend any orders in progress, without prejudice to any other course of action.**

Any amount unpaid by the due date and shown on the invoice shall lawfully result in the application of penalties, in an amount equal to the rate applied by the European Central Bank in its most recent financing operation plus 10 points, from the day following the due date.

These penalties shall be lawfully due, without any notification to Purchaser whatsoever being necessary.



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If payment is not made within 48 hours of APS's reminding notification for Purchaser payment, APS at its discretion shall be entitled to terminate the Order without the need for notice or legal proceedings. In addition APS may apply to any competent court for the recovery of the products, without prejudice to any rights to claim damages with interest. Said termination shall not only affect the Order, but also any previously unpaid orders whether or not they have been delivered or are in the process of being delivered and whether or not payment is past due or not.

When payment is in instalments, failure to pay a single instalment shall make the whole of the debt due immediately, without any notification to Purchaser whatsoever being necessary.

In all of the above cases, amounts due for other deliveries, or for any other reason, shall fall due immediately unless APS opts for the cancellation of the corresponding orders.

The Purchaser shall reimburse all of the costs occasioned by the recovery by legal means of the amounts due.

#### **ARTICLE 4 -RESERVED OWNERSHIP CLAUSE**

Notwithstanding any legislative or regulatory provisions to the contrary, it is agreed that the transfer of ownership of the goods shall be suspended until and shall only occur upon full payment of the Order Price, in principal and any additional costs relating thereto.

Any clause to the contrary, especially in clauses of any general conditions of purchase proffered by Purchaser, shall be considered as being null and void.

In the case of seizure or any intervention by a third party, the Purchaser shall be required to inform APS immediately. APS reserves the right to recover the goods at any place and in whomsoever's hands they may be found.

The Purchaser undertakes to permit, at any moment, the identification and claim of the goods, it being agreed that goods in stock shall be considered to correspond to the unpaid goods. Should the goods be resold before they have been paid for in full the Purchaser shall be required to so inform APS.

#### **ARTICLE 5 - INSPECTION OF PRODUCTS BEFORE DISPATCH**

If the Parties have agreed that the Purchaser is entitled to inspect the products before dispatch, or if the regulations of the country to which the goods are destined require such inspection, APS shall notify the Purchaser, within a reasonable period of time prior to dispatch, that the products are ready for inspection at the agreed place.

The Purchaser shall then act with due diligence so that the inspection may be made within a period of eight (8) calendars days following the date of the said APS notice at the agreed place, in such a way that the dispatch of the goods may be performed on the contractual date.



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If the Purchaser shall not have performed the said inspection within the eight-day period, it shall be required to pay the cost thereof and settle with APS any additional charges incurred, notably the costs of storage, and additional insurance.

## **ARTICLE 6 - DELIVERY**

**6.1** - Delivery dates are provided for information and are only indicative.

APS shall do its best to meet the delivery dates it has indicated in acceptance of the Order, on the basis of the logistics delays of reference in the industry and to execute orders, except in a case *force majeure*, or in a case of circumstances beyond its control, such as strikes, frost, fire, storm, flood, epidemic, difficulties of supply, without this list being exhaustive.

Delays in delivery cannot give rise to the payment by APS of any penalty or fine, nor may it be a reason for the cancellation or withdrawal of the Order.

In any event and in whatever circumstances, delivery by the given delivery dates can only occur if the Purchaser has performed or is performing timely its obligations towards APS.

**6.2** - The transfer of risk from APS to the Purchaser shall occur as provided in the Incoterms 2010 [corrected 2011], hereafter "Incoterms", of the ICC (terms and stipulations corresponding to the Incoterms published by the ICC), chosen by the parties.

In the absence of such a choice, Incoterms Ex-Works APS premises shall apply; APS shall not be responsible for the loading and the unloading of the Purchaser's transport vehicle.

**6.3** - It is up to the Purchaser, in case of damage to the goods delivered or missing, to make all the necessary reservations to the forwarder. Any reserve shall be made to the forwarder by registered letter with acknowledgement of receipt (of which a copy shall be sent simultaneously to APS) within 3 days of receipt of the consignment, unless there are imperative arrangements to the contrary. Once this deadline has passed, the goods shall be considered to have been accepted by the Purchaser, notably with respect to visible defects as well as any discrepancy or non-conformity between the goods delivered compared to the goods ordered.

**6.4** - No return of goods may be made by the Purchaser without the prior, express and written consent of APS's Management. Any goods returned without such agreement shall be held at the disposal of the Purchaser and shall not oblige APS to issue a credit note in favour of the Purchaser. Should APS elect to accept the return of goods a lump sum deduction for Purchaser's account equal to 20% of the ex-works value shall be applied to each returned item.

The cost of return shall always be for the Purchaser's exclusive account. All goods returned shall be returned in the same state as that in which they were delivered.



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Where inspection by APS confirms the existence of a visible defect or where something is missing, APS shall have several options as follows:

- to replace the non-conforming articles and/or to make up for the missing items at its own expense,
- to render the products conform at no cost to the Purchaser,
- to reimburse the Purchaser for the price it paid for the non-conforming and/or missing products and thus terminate the sale of the non-compliant and/or missing products.

In any event, the Purchaser shall not be entitled to claim any compensation from APS.

If the Purchaser decides to retain any of the non-conforming products, it shall have the right to a repayment of an amount equivalent to the difference between, on the one hand, the value of the products that ought to have been delivered in compliance with the Order, and on the other hand, the value of the products actually delivered, such difference not to exceed five per cent (5%) of the Order Price of the products actually delivered.

**6.5 -** The unreserved receipt of products and /or services ordered by the Purchaser shall include any apparent defect and/or missing part.

A claim made by a Purchaser under the conditions and according to the procedures described in the present article shall not suspend payment by the Purchaser for the goods in question.

**6.6 -** In the case of complete non-payment of an invoice that has fallen due and 48 hours after of APS's reminding notification, APS reserves the option to suspend any delivery in progress and/or to come.

**6.7 –** Should the Purchaser be prevented from accepting the delivery of the products at the delivery date, it shall nevertheless be obliged to pay that part of the Order Price which is payable upon delivery as if the delivery had taken place. APS shall take steps at the expense and risks of the Purchaser to store the goods. Upon Purchaser's written request, APS shall have the products insured at the expense of the Purchaser.

## **ARTICLE 7 - WARRANTY**

**7.1 –** Taking into account the status of APS acting on behalf of the Purchaser, the Parties agree that the Purchaser shall accept in its favour the guarantee as written of the manufacturer of the products who sold the goods to APS.



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In connection with the above-described guarantee, the sole obligation of Asia Pacific Solutions shall at its discretion be the free replacement or repair of the product or a defective part thereof recognised as defective by APS unless this method of reparation shall prove to be impossible or disproportionate.

In order to implement the warranty, the Purchaser must inform APS within a maximum of one (1) month by registered letter with acknowledgement of receipt from the time of the discovery of the defect, that the products supplied are not working or/and have broken down. It shall at its expense send the part judged to be defective, packed in its original packaging.

**7.2 - The warranty shall not cover apparent defects.**

Defects and deterioration caused by fair wear and tear, an external accident, incorrect installation, improper use, faulty maintenance or an intervention by personnel who are not part of APS or who have not been appointed by the latter, as well as any modification to the product that was not planned or specified by manufacturer, are also excluded from this warranty.

**7.3 – APS and the Purchaser have agreed that their respective rights, obligations and liabilities as provided for in this Order shall alone govern their rights hereunder.**

Accordingly, the remedies provided for herein in respect of or as a consequence of

- (a) any breach of contract, or
- (b) any negligent act or omission, or
- (c) death or personal injury, or
- (d) loss or damage to any property

are to the exclusion of any other remedy that either Party may have had or may have against the other at law or otherwise.

## **ARTICLE 8 -INTELLECTUAL PROPERTY**

Taking into account the status of APS acting on behalf of the Purchaser, the Purchaser agrees to respect the Industrial property Rights, if any, of the manufacturer who sold the goods to APS.

## **ARTICLE 9 - CONFIDENTIALITY**

The Parties undertake to keep strictly confidential any information concerning each of them, whatever it may be, and of which they may become aware during their commercial relationship,



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whether relating to the Order placed between the Parties, their commercial policy, their mutual business activities, their strategy or pricing.

They undertake to take every measure required with their staff and consultants in order to maintain this confidentiality.

## **ARTICLE 10- FORCE MAJEURE**

The following are considered as Force Majeure or fortuitous circumstances, events occurring independently of the wills of the Parties, that they could not reasonably have foreseen, and that they could not reasonably have avoided or overcome, to the extent that their occurrence renders totally impossible the performance of the affected obligations.

Force Majeure shall not include events such as the insolvency of a Party or default in the obligation to pay any amount under the Order.

The following are exemplary cases of Force Majeure or fortuitous circumstances discharging APS from its liability for performing an obligation to deliver within the initially planned deadlines: total or partial strike by its employees or usual forwarders, fire, flood, war whether declared or not, social disturbances including riots, roadblocks, strike or interruption to the electricity and/or gas supply, or disruption to supplies and/or services for which APS's suppliers are responsible.

APS shall notify the Purchaser in writing, fax or e-mail, within three (3) working days of the date of the occurrence of a Force Majeure event, the Order being automatically suspended from the date on which the event occurred. Similarly, when such Force Majeure event has ceased, APS shall notify the Purchaser accordingly.

Should a Force Majeure event occur, the delivery date(s) shall be extended by a period equal to the duration of the Force Majeure event plus a reasonable time to overcome the consequences of the Force Majeure event, and all additional costs and expenses incurred by APS, including without limitation expenses for securing and protecting and/or maintaining the product and/or services, shall be paid by the Purchaser to APS in addition to the Order Price ascertained at the date of the Force Majeure event.

Regardless of what might otherwise flow from these General Conditions of Sale, should the Force Majeure event last for more than eight (8) consecutive calendar days from the date on which it first occurred, APS shall be entitled by written notice to the Purchaser to terminate the Order. Such termination shall be without prejudice to Purchaser's obligation to pay the due Order Price.





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## **ARTICLE 11 – CONDITIONS FOR SERVICES TO BE PERFORMED AT PURCHASER’S PREMISES**

“Services” shall mean without limitation design, engineering and other specialist services ordered through APS by the Purchaser at the latter’s cost and under its responsibility which shall be performed at Purchaser’s premises that is to say at a location under the control of the Purchaser for the purpose of performing the Services.

The Parties agree that in connection with the Services the role of APS is limited to the placing of the Order for the Services and that thereafter the Purchaser shall be exclusively responsible for the mobilisation, management, implementation, including the Health and Safety of the personnel carrying out the Services, and demobilisation of the Services

## **ARTICLE 12 – LIABILITIES**

### **12.1 CONSEQUENTIAL AND THIRD PARTY LOSS**

Notwithstanding any other provision hereof, APS shall not be liable to the Purchaser, and Purchaser hereby agrees to release, indemnify and hold harmless Asia Pacific Solutions in respect thereof, whether based on the Order, tort (including negligence) or otherwise, for any consequential, indirect or incidental damages of any nature whatsoever, including, but not limited to, third party charges and costs howsoever arising, loss of or anticipated loss of contract, loss of profit or revenue or loss of use, whether or not foreseeable at the effective date of this Order, arising from the default of either APS or the Purchaser, or otherwise suffered as a result of entering into this Order.

In addition APS shall not be liable for any damage to property or legal persons caused by the merchandise, product and/or services being the object(s) of the Order after the same has been delivered and/or performed as the case may be, and whilst in the possession of the Purchaser. Nor shall APS be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser’s products form a part.

If Asia Pacific Solutions were to be threatened with or were to incur liability towards any third party for such damage to property or legal persons as described in the immediately preceding paragraph, the Purchaser shall indemnify, defend and hold harmless APS in respect of the same.

The Parties agree that they do not intend that a person who is not a party to the Order shall have any rights to enforce or benefit from any term of the Order, and the Order shall be interpreted and construed accordingly.

### **12.2 OVERALL LIMIT OF ASIA PACIFIC SOLUTIONS LIABILITY TOWARDS PURCHASER**



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APS's liability for damages and expenses hereunder or in any way related hereto, whether in an action in contract, tort or otherwise, will in no event exceed the amount of the Order exclusive of applicable Value Added Taxes.

## **ARTICLE 13 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES – LIMITATION PERIOD**

**13.1** - The Parties have agreed that the Order shall in all respects be governed, construed and interpreted in accordance with the Laws of France to the exclusion of any choice of law rules that would require the application of the laws of another jurisdiction, as well as to the exclusion of the 11<sup>th</sup> April 1980 Vienna Convention on the International Sale of Goods.

**13.2** - In the event of any dispute arising out of or in connection with the order that cannot be resolved amicably or has not been the object of an amicable resolution, the Parties shall upon the written request of either Party submit the matter to the Commercial Court of (tribunal de commerce) Pontoise, France for settlement, even if there is a plurality of defendants or if the case is a call upon a surety.

APS may, however, take action before any competent court, especially in an application for an interim or emergency injunction.

**13.3** - The Purchaser shall have no claim against APS, in contract or in tort, in relation to anything performed or delivered under the Order (including claims for defective services or goods), unless APS has been notified in writing of such claim within twenty-four (24) months of delivery of the services and/or goods as the case may be.

## **ARTICLE 14 – ETHICAL BEHAVIOUR**

The Purchaser shall acquaint itself and comply with the APS Code of Conduct as displayed on APS website (<http://www.ap-sols.com>) as may be updated or modified from time to time. The Purchaser agrees to perform its contractual obligations under the Order with substantially similar standards of ethical behaviour

**END OF GENERAL CONDITIONS**