

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. Definitions**

The following terms, shall have, in these General Conditions, in any of the contractual documents and in general, in any sell order, stipulated or to be stipulated between TDK - Lambda France Sas, TDK – Lambda France Sas Italian Branch and the Buyer, the meaning indicated here below:

#### **1.1. The Seller:**

TDK - Lambda France Sas, TDK – Lambda France Sas Italian Branch.

#### **1.2 The Buyer:**

Any entity, natural or legal person, who enters or has entered into a sale contract with the Seller.

#### **1.3 Products:**

All goods that are sold by the Seller.

### **2. General Provisions**

2.1 The terms and conditions set out below (The General Terms and Conditions of Sale) shall form part of all the agreements executed between the Seller and the Buyer for the supply of the Products and they will prevail over any general rules submitted by the Buyer, unless accepted in writing by the Seller. These General Terms and Conditions of Sale are considered as known and fully accepted by the Buyer at the moment of the sending of the purchase order.

2.2 The Seller reserves the right to change, to integrate or to amend the General Terms and Conditions of Sale, by including such amendments in to the quotations or in to any other written correspondence sent to the Buyer.

### **3. Offers and Orders**

3.1 Orders sent to the Seller by the Buyer are considered as firm sales only once written acceptance has been issued by the Seller. The Buyer has to use the references of appliances as they are described in the catalogues.

3.2 Quotations and offers will keep in force for a period of 30 days (thirty days) from the date of issue, unless differently stated by the Seller in writing. Anyhow, the Seller will be entitled, at any moment, to cancel or to amend the quotations or offers before issuing the written confirmation of order acceptance.

3.3 Any information or data relating to technical features and/or specifications of the Products contained in depliants, price lists, web catalogs, catalogs and similar documents shall be binding only to the extent they are expressly referred to in the sale offer.

The Seller will be authorized to make any change to the Products which, without altering the essential features, appear to be necessary or suitable.

3.4 The eventual request of amendments or deletions by the Buyer of a confirmed order of Products not already shipped, will have to be submitted in written to the Seller within 5 (five) calendar days from the issue of the order acceptance. After the above mentioned term, the Seller will be authorized to reject the request of amendment/deletion and the Buyer will have to pay the entire amount of the order. In case the Seller accepts the request of amendment/deletion, the relevant costs will be charged to the Buyer and the time of delivery could be postponed.

### **4. Prices**

4.1 Prices described in depliants, price lists, web catalogs, catalogs and similar documents are for information only and are not binding. Only prices that are included in the order acknowledgment are binding for the Seller.

4.2 The prices provided for by under art. 4.1 above, shall exclude any statutory Vat, where applicable. 4.3 Unless otherwise agreed, for Products packed according to the usage of the trade with respect to the agreed transport means. It is agreed that any other cost or charge shall be for the account of the Buyer.

4.4. In case the parties agree to proceed with the “Factory Acceptance Test” of the devices, in the presence of the Buyer, such procedure will be executed at the Seller's premises and will be invoiced on a flat rate equal to 2% of the order value, with a minimum equal to € 228,67.

## **5. Invoicing, Terms and Payment Conditions**

5.1 At the moment of the delivery of the Products the Seller will issue the relevant invoice.

5.2 The payment must be made, unless otherwise agreed, within 30 (thirty) days from the date of receipt of the Products or from the execution of the agreed service, by bank transfer. Unless otherwise agreed, any expenses or bank commissions due with respect to the payment shall be for the Buyer's account.

5.3 The payment is deemed to be made when the respective sum is at the Seller's disposal at its bank.

5.4 Should the payment be delayed with respect to the agreed date, the Buyer shall pay to the Seller interests for late payment at a rate corresponding to the interests rate applied by the European Central Bank to its mean refinancing operations plus 7% points, according to local laws which implement the EC Directive 35/2000. In addition, should the delay exceed 30 (thirty) days from the date of receipt of the Products or from the execution of the agreed service, the Seller will be entitled to terminate the contract, to retain the part of the price eventually paid and to claim the return at “the Buyer's expense” of the delivered Products and to claim any suffered damages.

5.5 The Buyer is not authorized to make any deduction from the agreed price (i.e. if he claims defects of Products), unless agreed in writing with the Seller.

5.6 It is agreed that possible complains or objections do not entitle the Buyer to suspend or to delay the payment of the Products as well as payment of any other supplies.

5.7 Should the Seller be afraid that the Buyer will not be able or won't pay the Products on the agreed date, the Seller will be entitled to subordinate the delivery of the Products to the issue of appropriate payment guarantee (i.e. surety or bank guarantee). Furthermore, the Seller, in case of delayed payments, will be entitled to unilaterally amend the terms of payment of other supplies and/or suspend the performance until he obtains appropriate guarantees.

## **6. Time of Delivery**

6.1 The date of delivery is the one indicated in the order acknowledgment sent by the Seller.

6.2 If the Seller expects that he will be unable to deliver the Products at the date agreed for delivery, he must inform in writing the Buyer, as soon as possible, of such occurrence, stating, as far as possible, the estimated date of delivery. It is agreed that, if the delay for which the Seller is responsible lasts more than 24 (twenty four) weeks, the Buyer will be entitled to terminate the contract with reference to the Products the delivery of which is delayed by giving a 10 (ten) days' notice to be communicated in writing to the Seller by registered letter with return receipt. In such case, the Buyer may request, after having summoned in writing the Seller by registered letter with return receipt by giving a 10 (ten) days' notice, a compensation for damages actually suffered, that in any case can not exceed the maximum amount of 2% of the price of the Products that have not been delivered. It is agreed that in case the Buyer does not terminate the contract with reference to the Products the delivery of which is delayed, no compensation for suffered damages can be claimed.

6.3 Any delay caused by force majeure (as provided for by under art. 12 below) or by acts or omissions of the Buyer (i.e. lack or wrong indications which are necessary for the supply of the products, or not compliance with terms and payment conditions provided for by under art. 5 above) shall not be considered as a delay for which the Seller is responsible.

6.4 Except in case of fraud or gross negligence of the Seller, the payments of the amounts provided for by under art. 6.2 exclude any further compensation for damages arising out of non-delivery or delayed delivery of the Products.

## **7. Transportation, Customs, Movement and Insurance of the Products**

7.1 All the operations of transportation, customs, movement and insurance of the Products out of the Seller's premises will be executed under the Buyer's liability, who will be charged of the relevant costs, risks and dangers deriving from such operations.

## **8. Delivery, shipment and returns**

8.1 Any complaints relating to packing, quantity, number of exteriors features of the Products (apparent defects) must be notified to the Seller, by registered letter with return receipt, within 8 (eight) days from the receipt of the Products; failing such notification, the Buyer's right to claim the above defects will be excluded. Any complaints relating to defects which cannot be discovered on the basis of a careful inspection upon receipt (hidden defects) shall be notified to the Seller, by registered letter with return receipt, within 15 (fifteen) days from the discovery of the defects and in any case not later than the end of the warranty period of each Product; failing such notification the Buyer's right to claim the above defects will be excluded. The claim must indicate with accuracy the defects and the Products to which they refers.

8.2 It is agreed that any complaints or objections do not entitle the Buyer to suspend or to delay payment of the Products as well as payment of any other supplies.

## **9 Warranty for defects - Compliant**

9.1 Unless otherwise agreed, the Products supplied by the Seller are submitted to the warranty for any defects, lack of quality or non-conformity, only in case the installation/set up and the use comply with the specifications supplied by the Seller or with the commercial usage.

9.2 The Seller undertakes to remedy any defects, lack of quality or non-conformity of the Products for which he is liable, occurring within the warranty period of each Product that is expressly indicated in the Seller's catalogues, provided that such defects have been timely notified in accordance with art. 8.1 above. The Seller will have the choice between repairing or replacing the Products which have shown to be defective. The Products repaired under the warranty will be submitted to the same guarantee for a period of 6 (six) months starting from the date of repair. .

9.3 Some Products may be sold with a "Limited Lifetime Warranty". Products specifically designated as "Limited Lifetime Warranty Products" are covered by special provisions. They benefit from an extended warranty period of 5 (five) years as from the date production of the model ceases – at the discretion of the Seller – but, the length of the warranty shall be at least of 10 (ten) years, as from delivery to the original Buyer – direct user or the approved distributor.

This warranty does not cover fans, turbines or other ventilation devices that constitute an integral part of these Products. The "Limited Lifetime Warranty" only applies to the first user who purchased the Product. It cannot be transferred to other intermediaries or users.

9.4 The warranty shall not be valid if the defect or not conformity will prove to be depending on not correct or not suitable applications of the Products, or if the Products have been not correctly placed operation or if the warranty label placed on each Product is untouched. Any alteration, charge or replacement of product parts, which has not been authorized by the Seller may represent an accidental risk and therefore releases the Seller from any civil or penal liabilities and makes the warranty void.

9.5 In case the Seller recalls some Products because of defects, lack of quality or non-conformity, he will immediately inform the Buyer by registered letter with return receipt. The Buyer will have to turn back the above mentioned Products to the Seller within 10 (ten) days from the receipt of the letter. In this case, the return of the Products will be at Seller's care and expenses and the Seller may decide to replace, repair or terminate the contract by turning back to the Buyer the amounts eventually already paid for the recalled Products. It is agreed since now, that the Buyer will not be authorized to claim any amount as damage compensation. Should the Buyer do not provide within the above mentioned term, the Seller

will not be responsible for any damages (whether contractual or non-contractual) which may anyhow arise out of or in relation with the Products supplied/recalled (i.e. compensation of damages, loss of profit, recall campaigns, etc.) and the Buyer will have to pay the entire amount of the recalled Products he denied to turn back.

9.6 In case of returns of Products with reference to the provisions under art. 8.1, 9.2, 9.3, 9.4 and 9.5, the Buyer will have to follow the procedure available on the Seller's web site under section named "Service & Returns". It is agreed since now that the return of the Products must be made in the original, well preserved, packaging, at Buyer's expenses.

9.7 Except in case of fraud or gross negligence of the Seller, the Seller's only obligation in case of defects, lack of quality or non conformity of the Products will be that of repairing or replacing the defective Products. It is agreed that the above mentioned guarantee (i.e.: the obligation to repair or replace the Products) is in lieu of any other legal guarantee or liability with the exclusion of any other Seller's liability (whether contractual or non-contractual) which may anyhow arise out of or in relation with the Products supplied (i.e. compensation of damages, loss of profit, recall campaigns, etc.).

### **10 Retention of title**

10.1 The Products supplied shall remain in the property of the Seller until the date of the full payment by the Buyer of the entire price of the Products and of all amounts due to the Seller. Until that time, the Buyer shall hold the Products as the Seller's fiduciary keeper and shall keep the Products properly stored, protected and insured.

10.2 In the event of any third party action against the Seller's Products delivered under retention of title, the Buyer shall notify such party of the Seller's property and shall immediately inform the Seller about such action. The Buyer shall bear all the costs of any intervention.

### **11 Brands and Intellectual Property**

11.1 Any identification brand and/or any other identification form positioned on the Products which are sold by the Seller will not be removed without the Seller's written agreement. Any distortion and/or change of the brand name or technical data or labels applied by the Seller will represent a counterfeiting and illegal behaviour, prosecutable by the Seller at the Buyer's plant or at the third parties' who hold the Products. Moreover in those cases the Buyer's warranty will be considered as lapsed.

11.2 All the documents delivered by the Seller to the Buyer as well as the intellectual property rights, the copy rights on drawings, specifications, studies, projects and any other document, are and shall remain under Seller's ownership and in no case they shall be divulged.

### **12. Force Majeure**

12.1 Either Party shall have the right to suspend performance of his contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond his control, such as strikes, boycotts, lock-outs, fires, war (either declared or not, civil war, riots, revolutions, requisitions, embargo, energy blackouts, delay in delivery of components or raw materials).

12.2 If an event of force majeure occurs, the affected party shall send a written communication to the other party immediately providing all the information and proofs thereof, in particular concerning the period of time for which this event may delay the execution of the obligations.

12.3 Should the suspension due to force majeure last more than 6 (six) weeks, either party shall have the right to terminate the contract by a 10 (ten) days written notice to be sent by registered letter with return receipt.

### **13. Termination**

13.1 In case of breach of the obligations provided for by under articles 5.4, 5.7, 10.2, 11.1, 12.3 of the present General Terms and Conditions of Sale and in case of bankruptcy and



insolvency of the Buyer, the Seller will have the right to immediately terminate the relevant agreement by sending to the Buyer written notice by registered letter with return receipt. The termination will have effect at the date of receipt of the relevant notice.

**14. Applicable Law and Jurisdiction**

14.1 This General Terms and Conditions of Sale are governed by the United Nations Convention on the International Sales of Goods (Vienna, 1980) and, with respect to questions not covered by such Convention, are governed by the Seller's local law.

14.2 Any dispute arising between the parties in connection with interpretation, validity, performance and/or termination of the present General Terms and Conditions of Sale and of all the relevant agreements, shall be of the exclusive competence of the Seller's Court, by expressly waiving to the competence of any other Court.

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The Seller

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The Buyer