

GENERAL TERMS AND CONDITIONS OF SALE / JDC Electronic SA

1. **APPLICABLE TERMS AND CONDITIONS.** These terms and conditions of sale establish the rights, obligations, and remedies of JDC Switzerland («JDC») and Buyer. They apply to any order issued by Buyer for the purchase of JDC goods or services unless JDC and Buyer have signed a valid written purchase agreement that covers the specific goods that are the subject of Buyer's purchase order. JDC'S ACCEPTANCE OF BUYER'S ORDER IS MADE EXPRESSLY CONDITIONAL ON AGREEMENT BY BUYER TO THESE TERMS AND CONDITIONS OF SALE. NO ADDITIONAL, DIFFERENT, OR VARIATION IN THE TERMS, NO MATTER HOW MINOR, WHETHER OR NOT CONTAINED IN BUYER'S PURCHASE ORDER, CONTRACT, OR ANY OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER, SHALL BE BINDING ON JDC UNLESS JDC THROUGH AN AUTHORIZED REPRESENTATIVE EXPLICITLY AGREES TO SUCH TERM IN WRITING.
2. **QUOTATIONS.** Unless otherwise stated, quotations are valid for sixty (60) days and are non-binding until JDC accepts Buyer's written purchase order.
3. **MINIMUM ORDERS.** Unless expressly waived in a written quotation, a surcharge of CHF100 (or €/US\$ equivalent) will be applied to orders below CHF1000 (or \$/€ equivalent). In addition, any product-specific minimum order quantities shall be specified in a written quotation.
4. **PRICING AND DELIVERY.**
 - a. Unless otherwise agreed, all prices are in CHF and exclude V.A.T. and any other applicable tax, duty, customs charge, or fee associated with the import or export of the good through local customs, or any other charge of any nature imposed by any governmental authority. Buyer shall reimburse JDC in the event JDC is required to prepay any such tax, charge, or fee.
 - b. Unless otherwise agreed, delivery will be Ex-Works, the JDC site of manufacture (Incoterms 2018). Goods will be packed in non-returnable packaging unless JDC has agreed in writing to customer-specific packaging or labeling. Transportation will be arranged at Buyer's request and expense.
 - c. Any quoted delivery date is an estimate only and commences from JDC's written acknowledgment of Buyer's order. Buyer's sole remedy for failure of JDC to deliver in a timely manner shall be to acquire the goods from another source, in which case said quantity shall be eliminated from this contract. Except in the case of unlawful intent or gross negligence, Buyer shall have no claim against JDC for damages due to late delivery.
5. **CANCELLATIONS.** In the case of customer-specific/configurable goods, JDC reserves the right to charge a cancellation fee equal to the amount of its irrevocable raw material purchase commitments, the value of finished goods, inventory carrying costs, and WIP (whichever applicable) if Buyer cancels or modifies its purchase order (i) before the acknowledged delivery date, (ii) during the quoted lead-time, or (iii) before the Buyer's original requested ship date, whichever is later. Buyer's payment of the cancellation fee shall be due within thirty (30) days of the date of the JDC invoice for the cancellation fee. Buyer's request to delay/extend delivery by an additional ninety (90) days after the original delivery date may be deemed a cancellation/modification of the purchase order.
6. **INSPECTION AND ACCEPTANCE.** Buyer will inspect the goods within twenty (20) days after receipt. Goods will be presumed to be accepted unless JDC receives written notice of rejection explaining the basis for rejection.
7. **TITLE AND RISK OF LOSS.**
 - a. Title (ownership) of the goods will pass to the Buyer only on receipt by JDC of full payment for its invoice. Buyer shall cooperate in any measures necessary for the protection of JDC's title, including authorization to notify and register the reservation of title in public registries, books, or records.
 - b. Unless otherwise required by the applicable INCOTERM, risk of loss shall pass to Buyer upon dispatch of the goods to the carrier for delivery to Buyer. All goods are shipped at Buyer's risk and claims for goods damaged or lost in transit should be filed by the consignee direct with the transportation company.
8. **PAYMENT.**
 - a. Subject to credit approval and unless otherwise agreed to in writing, payment shall be due without deduction thirty (30) days from the date of invoice. Payments must be made in the quoted currency. Buyer shall not withhold payment on account of any claim against JDC.
 - b. On any sum outstanding after the due date, JDC reserves the right to charge interest of 4 % p.a. above the then applicable 3-month LIBOR of the applicable currency. Such interest shall be payable on demand without any further reminder by JDC and may be charged and added to the balance of overdue payments.
 - c. In the event that Buyer fails to remit a payment when due, JDC may with reasonable written notice to Buyer, stop work and withhold future shipments until all delinquent amounts and interest, if any, are paid. In addition, at its option, upon thirty (30) days written notice to Buyer, JDC may (i) repossess the goods for which payment has not been made, (ii) cancel this contract, and/or (iii) recover all costs of collection, including but not limited to, reasonable attorney fees. These remedies may be in addition to any other remedies available to JDC, at law or in equity.
9. **LIMITED PRODUCT WARRANTY.**
 - a. JDC warrants title to the goods sold under this contract and that for the applicable warranty period set forth in Paragraph (b) below, the goods conform to JDC specifications and are free from defects in material and workmanship. JDC MAKES NO OTHER WARRANTY AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF MER-CHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE EVEN IF THAT PURPOSE IS KNOWN TO JDC, OR ANY WARRANTY RELATING TO PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY.
 - b. **Warranty Period.** The warranty period shall be two (2) years from the date of first consumer purchase.
 - c. The warranties set forth in Paragraph (a) do not apply to engineering samples or prototypes, which are delivered on an «as is» basis.
 - d. JDC's warranty does not extend to and any warranty is expressly excluded for non-conformities or defects of the goods deriving or resulting from (i) components of other manufacturers included in the good, (ii) improper handling, testing, installation or use, (iii) unauthorized repair or alterations, (iv) use not covered by the specifications or use for specific applications, (v) Buyer's design, specifications, or instructions, (vi) negligence or accident, or (vii) defects due to accident, fair wear and tear, tampering, improper operation, improper storage, or fault on the part of any person other than JDC.
 - e. If the good(s) fails to meet the warranties set forth in Paragraph (a), JDC shall, at its option, provide replacement parts (for purposes of this provision, «replace» does not mean go into the field and replace installed parts) or repair the non-conforming good(s) at no cost to Buyer. Repair or replacement shall be Buyer's sole and exclusive remedy for a breach of warranty. Any other rights or remedies of Buyer are expressly excluded, particularly, but not limited to, entitlements (if any) to a reduction of compensation, rescission, or the bringing in of a third party. JDC SHALL NOT BE LIABLE FOR DAMAGES, LOSSES, COSTS, OR CLAIMS ARISING FROM ITS FAILURE TO CONFORM TO A WARRANTY.
10. **BUYER'S WARRANTY.** Buyer warrants that the designs and specifications furnished by it to JDC will not infringe any patent, trademark or copyright with respect to the manufacture or sale of the resulting goods.
11. **SERVICES.** JDC performs Services in a professional and workmanlike manner and with qualified personnel. JDC does not assume any obligation to deliver particular results or deliverables when providing Services and disclaims all warranties, if any, for the provision of Services.
12. **RETURNS.** Buyer's warranty claim will be subject to JDC's Return Material Authorization (RMA) procedures (available upon request). The claim must be in writing and made within the warranty period. Buyer must return non-conforming goods within sixty (60) days of receipt of an RMA Number from JDC. Freight costs to return non-conforming goods will be at JDC's expense, unless JDC rejects the warranty claim, in which case Buyer shall be responsible for such costs.
 - a. Only standard, catalog goods may be returned at Buyer's convenience. Returns for convenience are subject to an 80 € or 15% (whichever is greater) re-stocking fee, excluding freight charges. Goods must be returned in «as new» condition and in proper packaging and shipping materials (must comply to ESD safety precautions, if applicable). CUSTOMER-SPECIFIC GOODS, INCLUDING CONFIGURABLE GOODS CAN NOT BE RETURNED FOR RE-STOCKING.
 - b. Goods shipped to Buyer under a government-issued export license or other governmental export authorization shall not be returned unless specifically authorized by JDC. Buyer shall comply with all instructions issued by JDC for the return of export-licensed goods.
13. **EXCUSABLE DELAYS (FORCE MAJEURE).** Except for payment obligations, neither party will be liable to the other for delay in performance or non-performance, in whole or in part, if performance has been made impracticable by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not it later proves to be invalid, or by the occurrence of a contingency the non-occurrence of which was a basic assumption on which this contract was made, including, but not limited to, acts of God, fire, flood, accident, riot, war, sabotage, strike, labor trouble or shortage, or embargo. JDC's inability to obtain at prices and on terms deemed by it to be practicable any required raw material, energy source, equipment, labor, or transportation, or any increased costs due to capital improvements for environmental protection shall also be sufficient to relieve JDC of its obligation to perform hereunder. If any of such circumstances affect only a part of JDC's capacity to perform, JDC shall have the right to allocate goods and deliveries among all of its customers and its own requirements in a manner and at such times as JDC may determine. Quantities affected by this paragraph may, at the option of either party, be eliminated from the contract without liability, but the contract shall remain otherwise unaffected.
14. **BUYER-CAUSED DELAY.** JDC shall not be liable for any delays or increased costs caused by Buyer, such as delays in providing necessary information, end-use certificates, late payments, or other Buyer deliverables or delays by Buyer-designated suppliers in providing goods or services. In the event of a non-force majeure Buyer-caused delay, the price and other affected terms will be adjusted accordingly to reflect JDC's increased costs or other adverse impacts associated with the delay. In addition, if delivery of goods or services is delayed due to acts or omissions of Buyer or Buyer-designated suppliers, JDC may store the goods at Buyer's risk and expense and may invoice Buyer just as if there had been no delivery delay.
15. **INDEMNIFICATIONS.**
 - a. Buyer will indemnify, defend and hold JDC harmless from and against any liability, cost, expense (including reasonable attorneys' fees), claim, judgment, settlement or damage that JDC may be required to pay to any third party (including, but not limited to, any employee of Buyer who alleges or proves injury in the course of his or her employment while working with the goods supplied by the JDC under this contract), which is caused or contributed to by the negligence or fault of Buyer; or results from the infringement of any patent, trademark or copyright related to designs or specifications supplied by Buyer. In case the Buyer resells the goods supplied by JDC under this contract, Buyer will request and, if possible, obtain from its customer an indemnification similar to the foregoing for the benefit of Buyer and JDC.
 - b. Subject to the Limitation on Liability section, JDC will indemnify, defend and hold Buyer harmless from and against any liability, cost, expense (including reasonable attorneys' fees), claim, judgment, settlement or damage that Buyer may be required to pay to any third party, which is caused or contributed to by the negligence or fault of JDC.
16. **INTELLECTUAL PROPERTY RIGHTS.**
 - a. Unless otherwise agreed to in writing, ownership of any intellectual property rights in goods or services provided by JDC under this contract, including all patents, copyrights, trademarks and other intellectual property rights relating, shall at all times remain solely and exclusively with JDC. JDC's sale of goods to Buyer does not convey to Buyer any license or any other right, express or implied, to such intellectual property rights.
 - b. JDC confirms to the best of its knowledge that there are no third-party intellectual property rights infringed by the goods. JDC, however, does not warrant that the goods do not infringe rights of third parties.
17. **LIMITATION ON LIABILITY.**
 - a. Except in the case of unlawful intent or gross negligence, JDC shall not be liable in contract, tort or otherwise for any injury, loss, or damage suffered by Buyer arising out of or in connection with the supply of goods or services by JDC under this contract.
 - b. **IN NO EVENT SHALL JDC BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, CAPITAL OR BUSINESS OPPORTUNITY, OR DOWNTIME COSTS.**
 - c. **JDC'S LIABILITY UNDER ITS INDEMNIFICATION OBLIGATIONS IN THIS CONTRACT SHALL NOT EXCEED TWICE THE AMOUNT ACTUALLY PAID TO JDC FOR THE**
- PORTION OF SUCH GOODS OR SERVICES TO WHICH LIABILITY ARISES.
- d. **ALL OF THE FOREGOING LIMITATIONS SHALL APPLY IRRESPECTIVE OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. NOTWITHSTANDING THIS LIMITED LIABILITY, JDC DOES NOT DISCLAIM LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY DEFECTIVE PRODUCTS TO THE EXTENT SUCH LIABILITY IS EXPRESSLY MANDATED BY APPLICABLE LAW.**
18. **TERMINATION.**
 - a. Either party may terminate this contract and any or all unperformed orders by giving written notice to the other party in the event:
 - i. The other party materially breaches this contract and fails to remedy the breach within forty-five (45) days after receipt of written notice that specifies the grounds for the material breach;
 - ii. The other party fails to make any payment required under this contract when due, and fails to remedy the non-payment within thirty (30) days after written receipt of the notice of non-payment;
 - iii. The other party becomes insolvent or files a petition for bankruptcy, or a petition is filed against it relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of its creditors.
 - b. Termination for the reasons set forth in Paragraph (a) shall take effect immediately. However, termination shall not affect any debt, claim, or cause of action accruing to any party against the other party before the termination.
19. **ENTIRE AGREEMENT.** These terms and conditions of sale constitute the entire contract of sale and purchase of the goods between the parties. It is not assignable by Buyer without the written consent of JDC. No modification of this contract shall have any force or effect unless in writing signed by the parties and no modification shall be affected by the acknowledgment or acceptance of purchase orders containing different terms or conditions.
20. **GOVERNING LAW.** This contract shall be governed by and construed in accordance with Federal Laws of Switzerland without reference to its conflicts of law rules to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The Courts of Lausanne, Switzerland will have exclusive jurisdiction, and the party's consent to such jurisdiction, concerning disputes arising under this contract, except that domestic arbitrations initiated pursuant to the Dispute Resolution provision below shall be governed by the arbitration provisions of the Swiss Civil Code of Procedure.
21. **DISPUTE RESOLUTION.**
 - a. The Parties shall use their best efforts to resolve any disputes, disagreements, or controversies arising out of or related to this contract by good faith negotiations. If such disputes are not resolved within sixty (60) days after notification by one party to the other of the problem, either party may formally submit the dispute to binding arbitration. If both parties are incorporated (organized to conduct business) in Switzerland, the dispute shall be finally settled by arbitration submitted to the Swiss Chambers' Court of Arbitration and Mediation and administered in accordance with the Swiss Rules of Commercial Arbitration. The place of arbitration shall be Lausanne, Switzerland. The judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction thereof. Nothing in this contract shall prevent either party from seeking provisional Cures (e.g., pre-arbitral attachments, temporary restraining order, temporary injunction, permanent injunction and/or order of specific performance) from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement herein to arbitrate, or a waiver of such right to arbitrate.
 - b. If Buyer is incorporated in North or South America, any dispute will be finally resolved by arbitration submitted to the International Centre for Dispute Resolution (ICDR) in accordance with its International Arbitration Rules. The place of arbitration will be New York, New York USA. The arbitration will be conducted, and the award rendered, in English. Any award will be payable in U.S. dollars, and may be entered or enforced in any court having jurisdiction, the parties hereby consenting to the jurisdiction of said court.
 - c. If Buyer is incorporated in Europe (other than Switzerland), Africa or the Middle East, any dispute will be finally resolved by arbitration submitted to the International Centre for Dispute Resolution (ICDR) in accordance with its International Arbitration Rules. The place of arbitration will be London, England. The arbitration will be conducted, and the award rendered, in English. Any award will be payable in the currency of the purchase order and may be entered or enforced in any court having jurisdiction, the parties hereby consenting to the jurisdiction of said court.
 - d. If Buyer is incorporated in a country located in the Asia-Pacific region, any dispute will be finally resolved by arbitration submitted to the International Centre for Dispute Resolution (ICDR) in accordance with its International Arbitration Rules. The place of arbitration will be Singapore. The arbitration will be conducted, and the award rendered, in English. Any award will be payable in U.S. dollars, and may be entered or enforced in any court having jurisdiction, the parties hereby consenting to the jurisdiction of said court.
22. **TECHNICAL ASSISTANCE AND DATA.** JDC may, at Buyer's request, furnish technical assistance, advice and information with respect to the goods supplied under this contract, if and to the extent that such assistance, advice and information is readily available, except for proprietary techniques or procedures. It is expressly agreed that there is no obligation to provide such information, and that the information is subject to the Limitation on Liability Section of this contract. JDC accepts no liability in contract, tort or otherwise for any damages or injury arising directly or indirectly from any error or omission in such technical data or literature.
23. **TOOLS.** Tools made for the manufacture of goods to be supplied under the contract and the copyright therein remain JDC property notwithstanding that the Buyer may have been debited with any sum in respect of their cost.
24. **EXPORT AND IMPORT COMPLIANCE.**
 - a. Buyer is responsible for compliance with all applicable import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for the goods, services, or technical data delivered under this contract and will retain documentation evidencing compliance with those laws and regulations.
 - b. Upon request, Buyer shall provide information within the stated deadline, including end-use certificates, to JDC for purposes of JDC's export compliance requirements.