

# Standard Terms and Conditions of Sale and Delivery for C.M. Hammar AB

**1 GENERAL CONDITIONS**

- 1.1 Unless the parties agree otherwise in writing, these Standard Terms and Conditions (“Conditions”) shall apply to C.M. Hammar AB [556075-4508] and C.M. Hammar AB (“CM Hammar”) supply of the Products.
- 1.2 “Contract” means the agreement entered into between CM Hammar and the Purchaser regarding CM Hammar’s supply of the Product;
- 1.3 “Product” means any product agreed in the Contract to be bought by Purchaser from CM Hammar; and
- 1.4 “Purchaser” means the person, legal entity or company who buys the Products.
- 1.5 Neither CM Hammar nor the Purchaser shall be bound by any terms other than those contained in these Conditions or those agreed by both parties in writing. Wherever these Conditions use the term “in writing”, this shall mean by document signed by the parties, or by letter, fax, and electronic mail and by such other means as agreed by the parties.
- 1.6 These Conditions shall have precedence over any conditions appearing on any acceptance form, delivery form or other document or letter from the Purchaser. Such conditions shall have no effect whatsoever except in so far as they confirm the terms and conditions of the Contract or these Conditions.

**2 PRICE**

- 2.1 All prices are stated in EUR, USD, SEK and are exclusive of packaging, freight, tax and insurance charges.
- 2.2 The “Purchase Price” is the amount payable for the Products by the Purchaser and shall be exclusive of VAT and all duties and expenses incurred after delivery of the Product.
- 2.3 CM Hammar reserves the right to change the price if new or increased costs are incurred by CM Hammar as a result of changes in customs duty, taxes, etc., including taxes payable to transport, terminal or port authorities, etc., to the extent that any such additional costs can be attributed to the consignment in question.

**3 DELIVERY**

- 3.1 Delivery shall be in accordance with Ex Works (INCOTERMS 2010).

**4 DELAY**

- 4.1 If the parties have specified a period of time within which delivery must take place, CM Hammar shall have the right to decide within the limits of this period when actual delivery will take place.

- 4.2 If CM Hammar anticipates that he will not be able to deliver the Product at the time of delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason, and if possible, the time when delivery can be expected.
- 4.3 If delay in delivery is caused by any of the circumstances mentioned in Clause 15 or by an act or omission on the part of the Purchaser, including suspension under Clauses 7.4 or 11, the time for delivery shall be extended by a period which is reasonable having regard to all circumstances of the specific case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
- 4.4 If the Product is not delivered at the time of stipulated delivery, the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place until actual delivery takes place. The liquidated damages shall be payable at a rate of zero point five (0.5) per cent of the Purchase Price for each completed week of the delay. The liquidated damages shall not exceed seven and a half (7.5) per cent of the Purchase Price.

If only part of the Product is delayed, the liquidated damages shall be calculated on the basis of the part of the Purchase Price which is attributable to such part of the Product which cannot as a consequence of the delay be used as intended by the parties.

The liquidated damages become due at the Purchaser's demand in writing but not before delivery has been completed or the contract is terminated pursuant to Clause 4.5. The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within six months after delivery should have taken place.

- 4.5 If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages pursuant to Clause 4.4 and the Product is still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If CM Hammar does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible or circumstances mentioned in Clause 15, then the Purchaser may by notice in writing to CM Hammar terminate the contract in respect of such part of the Product which cannot as a consequence of CM Hammar's failure to deliver be used as intended by the parties.

If the Purchaser terminates the contract he shall be entitled to compensation for the loss he has suffered as a result of CM Hammar's delay. The aggregate compensation payable by CM Hammar for delayed delivery, including the liquidated damages which are payable pursuant to Clause 4.4, shall not exceed fifteen (15) per cent of that part of the Purchase Price which is attributable to the part of the Product in respect of which the contract is terminated.

The Purchaser shall also have the right to terminate the contract by notice in writing to CM Hammar, if it is clear from the circumstances that a delay in delivery will occur, which under Clause 4.4 would entitle the Purchaser to maximum liquidated damages. In case of termination on this basis, the Purchaser shall be entitled to maximum compensation under the third paragraph of this Clause 4.5.

- 4.6 Liquidated damages under Clause 4.4 and termination of the Contract with compensation under Clause 4.5 are the only remedies available to the Purchaser in case of delay on the part of CM Hammar. All other claims against CM Hammar based on such delay shall be excluded, except where CM Hammar has been guilty of gross negligence. Within these Conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

## **5 ACCEPTANCE OF DELIVERY**

- 5.1 If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivery time, he shall forthwith notify CM Hammar in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the Purchase Price which becomes due at the time of the scheduled delivery, as if delivery had taken place. CM Hammar shall arrange for storage of the Product at the risk and expense of the Purchaser. CM Hammar shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

- 5.2 Unless the Purchaser's failure to accept delivery is due to any such circumstances as mentioned in Clause 15, CM Hammar may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If for any reason for which CM Hammar is not responsible, the Purchaser fails to accept delivery within such final period, CM Hammar may by notice in writing terminate the Contract in whole or in part. CM Hammar shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default.

## **6 CLAIMS**

- 6.1 The Purchaser must inspect or arrange for inspection of the Product. This inspection shall take place immediately after actual delivery of the Product and shall be as thorough as necessary to reveal any defects except for latent defects.
- 6.2 If the Product is defective and the defect was or could have been ascertained during the inspection pursuant to Clause 6.1, the Purchaser shall not be entitled to claim

compensation for those defects unless he notifies CM Hammar of the nature of the defect in writing within seven (7) days after he ascertained or could have ascertained the defect.

- 6.3 CM Hammar shall rectify defective Products or replace the Product in question provided the Product is covered by warranty.
- 6.4 If no measures have been taken to rectify a defective Product covered by the warranty pursuant to Clause 6.3 within reasonable time, the Purchaser shall be entitled to cancel the transaction, get a deduction in the Purchase Price or get compensation at the discretion of CM Hammar.
- 6.5 Changes to or unauthorized interfering with a Product without CM Hammar's prior approval in writing exempts CM Hammar from any liability for defects of the Products.

## **7 PAYMENT**

- 7.1 Unless otherwise agreed, the Purchase Price shall be paid in full when CM Hammar notifies the Purchaser that the Product, or the essential part of it, is ready for delivery.
- 7.2 Regardless of the means of payment used, payment shall not be deemed to have been effected before CM Hammar's account has been fully and irrevocably credited.
- 7.3 If the Purchaser fails to pay by the stipulated date, CM Hammar shall be entitled to interests from the day on which payment was due. Unless agreed otherwise in writing, the rate of interest shall be eight (8) percentage points above the rate of the main refinancing operations (MRO) of the European Central Bank in force on the due date of payment.
- 7.4 In case of late payment CM Hammar may, after having notified the Purchaser in writing, suspend its performance of the Contract until payment is received. If the Purchaser has not paid the amount due within three months, CM Hammar shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed Purchase Price.

## **8 RIGHT OF OWNERSHIP**

- 8.1 Right of ownership to the Product remains with CM Hammar (or a third party to whom the right have been assigned) until the Purchase Price is paid in full, cf. Clause 7.2, including interests and other costs which the Purchaser must bear according to these Conditions or otherwise agreed between the parties.

## **9 PRODUCT CHANGES**

- 9.1 Without giving notice, CM Hammar reserves the right to change the Product as a result of general changes to the Products or generally for technical reasons, provided that the

Products are not adversely affected whether generally or in any other material respect to the Purchaser.

**10 LIMITATION OF LIABILITY**

10.1 All claim raised by the Purchaser against CM Hammar pursuant to these Conditions in respect of a Product cannot exceed the Purchase Price for the Product in question.

10.2 Save for gross negligence or wilful misconduct on the part of CM Hammar, CM Hammar shall in no event be liable for any consequential loss, loss of profits, or any other indirect loss suffered by the Purchaser.

**11 ANTICIPATED NON-PERFORMANCE**

11.1 Notwithstanding other provisions in these Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof in writing. The suspension shall last until said circumstances are changed and both parties are confident that performance will take place.

**12 RETURNS**

12.1 Return of the Products will only be accepted by CM Hammar subject to prior agreement between the parties in writing.

12.2 Products which are being returned to CM Hammar pursuant to Clause 12.1 must be returned in their original packaging and must be shipped at the Purchaser's account and risk. If the Products are returned in order for CM Hammar to repair them or provide a replacement delivery, the repaired or new Products shall be delivered in the same manner as the original consignment at the Purchaser's account and risk.

**13 PRODUCT LIABILITY**

13.1 As between the parties and notwithstanding the provisions of any other applicable local law, CM Hammar cannot be held liable for any consequential loss, loss of profits or other indirect loss as a consequence of product liability. Should CM Hammar be met with third party claims for product liability, the Purchaser shall indemnify CM Hammar against such third party claims.

**14 INTELLECTUAL PROPERTY RIGHTS**

14.1 All specifications, plans, drawings, patterns, blue prints, descriptions, designs, formulations, knowhow, technical information, advice and all intellectual property rights therein and in the Products supplied by CM Hammar to the Purchaser in connection with the Contract shall remain the property of CM Hammar. All of the foregoing and any information derived therefrom or otherwise communicated to the Purchaser in connection

with the Contract shall be treated by the Purchaser as confidential and shall not without the consent in writing of CM Hammar be published or disclosed to any third party or used by the Purchaser except to the extent necessary to implement the Contract.

- 14.2 No liability shall be accepted for the infringement of any third party intellectual property rights caused by any design or instruction furnished to CM Hammar by the Purchaser, and the Purchaser shall indemnify CM Hammar against such third party intellectual property claims.
- 14.3 To the best of CM Hammar's knowledge, the intellectual property rights related to the Products do not infringe any third party rights. However, CM Hammar does not make any warranty to that effect.
- 14.4 If any claim is asserted against the Purchaser in relation to the Products, or if the Purchaser learns that a third party has or claims rights in property which would or might conflict with the proposed or actual use of the Product, or the Purchaser discovers that any intellectual property rights of the Product have been infringed upon by a third party, then the Purchaser shall immediately notify CM Hammar. In no event shall the Purchaser have the right, without the prior written consent of CM Hammar, to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of CM Hammar to contest the claim of such party if CM Hammar so elects. The Purchaser agrees at CM Hammar's request to take such reasonable action as requested by CM Hammar in the Purchaser's use of the Product, if CM Hammar, in its sole discretion, determines that such action is necessary to resolve or settle the claim or suit or eliminate or reduce the threat of a claim or suit by such party.
- 14.5 CM Hammar may, at its own discretion, take or defend any claim or action relating to the establishment, protection, maintenance, preservation or infringement of any of the intellectual property rights and shall be entitled to do so in either its own or, if applicable, the Purchaser's name and/or to join the Purchaser as a party to any such proceedings and CM Hammar shall be entitled to retain all of the expenses and damages recovered as a result of such proceedings. The Purchaser shall provide CM Hammar and its nominees with such reasonable assistance as CM Hammar may from time to time require in connection with any such claim or action. The Purchaser shall not without CM Hammar's prior written approval make any demands or claims, bring actions, effect any settlements or take any action against any person who has infringed intellectual property rights in the Products.

## **15 FORCE MAJEURE**

- 15.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by

any of the following circumstances: industrial disputes and any other circumstances beyond the control of the parties such as fire, war, extensive military mobilizations, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by subcontractors caused by any such circumstances referred to in this Clause.

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

- 15.2 The party claiming to be affected by force majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstances.

If force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate CM Hammar for expenses incurred in securing and protecting the Product.

## **16 SANCTIONS**

The Buyer shall at all times comply with all applicable national and international economic or financial sanctions laws (Sanctions Laws). The Buyer shall not use, export, re-export or otherwise transfer Seller's products to a country or to a person or entity in breach of Sanction Laws.

The Buyer commits to not selling the products to third parties whom he has reason to assume will disregard Sanction Laws. Upon request, the Buyer must provide to us, without delay, all required information about the final recipient, final destination and end-use of the products or services.

The Buyer shall be liable to the fullest extent for any damage and loss sustained by the Seller as a result of the Buyer's non-compliance with Sanctions Laws. If the Buyer acts in breach of this clause or otherwise fails to comply with Sanctions Laws, the Seller is entitled to immediately withdraw from the contract entirely or from that part that has not yet been fulfilled, without the Buyer having the right to raise any claim of whatsoever nature against the Seller, who may claim losses as mentioned above.

## **17 DISPUTES AND APPLICABLE LAW**

- 17.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

- 17.2 These Conditions shall be governed exclusively by Swedish law without regard to any provision on the choice of law.