

## **GENERAL CONDITIONS OF SUPPLY**

Unless otherwise expressly provided for in the order or order confirmation of **Officine Meccaniche Zanatta Romeo Srl** (hereinafter the “**Supplier**”), the supply and sales of the products and/or the services rendered by the latter are governed by these General Conditions of Supply (hereinafter the “**General Conditions**”) which supersede any conflicting provision printed on the forms utilised by the parties or by the buyer (hereinafter the “**Buyer**”).

### **1. PRODUCTS AND ACTIVITY**

- 1.1 The Products covered by these General Conditions are those worked, manufactured and sold by the Supplier at the time the order is placed (hereinafter the “**Products**”). Catalogues and promotional material shall not constitute an offer and may be modified by the Supplier at any time without notice. The information and the technical characteristics of the Products contained in the catalogues, price lists, the promotional material and in the Supplier’s internet website are indicative and do not bind the Supplier.
- 1.2 The Buyer shall provide the Supplier, along with the order, appropriate and accurate drawings, schemes, specifications, inspection standards, specified standards, specimens, samples or similar items and in general all technical information and specifications necessary and useful to manufacture the Products including, but not limited to:
- (i) the geometric, linear and angular margins of error which shall be applied for the manufacture according to the drawings;
  - (ii) the margins of error and level of precision regarding the application of the tothing as foreseen in the drawings;
  - (iii) the specific material to be used for the manufacture according to the drawings;
  - (iv) any required heat treatments to be carried out on the materials;
  - (v) any quality or measure certification;
- (hereinafter the “Technical Documentation”).**
- 1.3 The Buyer shall be responsible for the Technical Documentation. Should the Buyer not provide the Supplier with the Technical Documentation, the latter is entitled, but not obligated, to use the “Technical Specifications” listed in Exhibit ‘A’ and to manufacture the Products using any draft and sample provided by the Buyer, if any. The Supplier has the right to calculate any missing information at

its discretion, being it agreed that the Buyer shall not be entitled to contest such method of calculation.

- 1.4 Even under circumstances indicated in art. 1.3 above the Buyer acknowledges that the Supplier only is the performer of the instructions furnished by the Buyer and that the Supplier is not the co-designer or the co-developer of the Products together with the Buyer.

The Buyer further acknowledges that it is the only party acquainted with the items on which the Products shall be installed as well as the only party who is aware of the specific use to which the Products are destined. Save for the hypothesis of non-conformity of the Products to the Technical Documentation provided by the Buyer or for defects in material and workmanship ascribable to the Supplier, only the Buyer will be therefore responsible for defects of the Products and for the relevant damages. Should therefore the Supplier be sued either for civil (including product liability) or for contractual responsibility or violation of law regulations (safety, pollution, etc.) as a consequence of the Products' defectiveness, the Buyer will be obliged to indemnify and hold the Supplier harmless from each and every damage or cost which may derive to the Supplier in respect of the Products.

## **2. ORDERS AND ORDER CONFIRMATIONS**

- 2.1 Orders shall be made in writing and shall be firm for 30 (thirty) working days from their receipt by the Supplier. Orders shall be deemed accepted and binding upon the Supplier only upon receipt by the Buyer of the duly signed order confirmation from the Supplier.
- 2.2 Should the order confirmation contain modifications in respect of the order, such modifications shall be deemed accepted by the Buyer after five (5) days of receipt thereof unless notice of disagreement is given within the above period.

## **3. PRICES**

- 3.1 Unless otherwise indicated in the order confirmation, prices of the Products are those indicated in Supplier's prevailing price list as of the date of receipt of the order. Such prices are expressed in Euros, V.A.T. or other sales tax or duty excluded.
- 3.2 In case of substantial variations in the costs (in particular, without limitation, costs of materials and workmanship), or in case of any other fact or circumstance which may affect the price of Products during the execution of the contract, prices

may be varied by Supplier even after confirmation of the order, should delivery take place beyond the agreed date for any reason not directly ascribable to it.

- 3.3 Unless otherwise agreed upon in writing, prices are for delivery Ex Works Supplier's offices at Via Schiavonesca Nuova n. 44, Volpago del Montello, 31040 (Italy) (EXW- Incoterms 2000) and do not include (i) shipping, transport and insurance costs of the Products as well as (ii) duties, taxes and other official charges payable upon exportation of Products from Italy and or importation into the territory of the Buyer and/or (iii) any other cost after delivery at Via Schiavonesca Nuova n. 44, Volpago del Montello, 31040 (Italy), which all under (i), (ii), (iii) shall remain for the Buyer's sole account. Any packaging is to be quoted separately by the Supplier.

#### **4. PAYMENT**

- 4.1 Terms and methods of payment are those indicated in the Supplier's order confirmation unless subsequently modified by an express declaration of the Supplier. Unless otherwise specified the payment shall be made within 60 (sixty) days from the date of the invoice sent by the Supplier.
- 4.2 Irrespective of what set out in the order confirmation, payment shall be deemed effected at Supplier's offices. The delivery of bills of exchange, cheques or other negotiable instruments by the Buyer shall not be considered as payment nor determine the shifting of the place of performance or the novation of the original obligations. All costs for issuance of the bills of exchange, cheques or other negotiable instruments including all relevant banking expenses, are for the Buyer's account.
- 4.3 Whenever a down-payment is agreed, same shall be paid by the Buyer at the time the order is signed. The down-payment shall not bear interest and will be promptly reimbursed to the Buyer should the relevant order not be confirmed by the Supplier within the period specified in paragraph 2.1 above.
- 4.4 In case of payment by instalments, the Buyer shall deliver to the Supplier the required negotiable instruments (cheques etc.), together with any security which may have been agreed. Should the Buyer fail to honour even one instalment or diminish the security granted to the Supplier, the latter shall have the right - without prejudice to what set forth under paragraph 4.7 hereunder in favour of the Supplier - to claim for immediate payment of the entire outstanding amount with forfeiture of any term benefit.

- 4.5. In case of payment by direct remittance, it shall be made by means of bank transfer via SWIFT - value date in favour of the beneficiary equal to the day on which payment is due – to the bank indicated by Supplier.
- 4.6. In case of payment by irrevocable Letter of Credit (L/C) same shall be issued pursuant to the ICC Uniform Customs and Practice for Documentary Credits in force at the time of the order (at present revision No. 600). The L/C shall be irrevocable, confirmed by a first class Italian bank and satisfactory to the Supplier, transferable in whole or in part, payable at sight and negotiable against the documents mentioned therein. Should the Supplier not require confirmation of the L/C, payment and negotiation thereof shall, in any event, be effected at the counters of the advising bank.  
The opening of the L/C shall be notified to the Supplier by the confirming or advising bank, as the case may be, without delay from receipt of the order confirmation by the Supplier. Failure to do so shall automatically cause the cancellation of the order unless Supplier otherwise communicates.
- 4.7. In case of non-payment or delayed payment, in whole or in part, the Buyer shall be charged with interest at the rate provided for in Art. 5 of Italian Legislative Decree no. 231/2002. In such an event the Supplier shall be further entitled to forthwith:
- a) suspend the production or delivery of any Products and orders in progress;
  - b) terminate the relevant sale contract;
  - c) claim for refund of all damages suffered as a consequence of the non-payment or delayed payment;
  - d) retain the down-payment and any other amounts so far paid by the Buyer, without prejudice to Supplier's right to proceed for the recovery of any additional damages it may have suffered as a result thereof.
- 4.8. The Buyer shall not be entitled to suspend or delay any payment in case of complaints, defects of the Products or delay in delivery by the Supplier.

## **5. DELIVERY**

- 5.1. Regardless of what may be agreed upon with respect to transport costs and/or regardless of any reference to the Incoterms contained in the Technical Documentation, in the purchase order, in the order confirmation or in any other document, delivery, identification of the Products and the relevant transfer of risks shall be deemed effected EXW at the Supplier' facilities at Via

Schiavonesca Nuova n. 44, Volpago del Montello, 31040 (Italy) (Ex Works - Incoterms 2000) with the loading of the Products onto the means of transport of the carrier entrusted therewith.

- 5.2 Time of delivery shall be calculated in working days and shall not be of the essence. Delivery periods are in no case less than 30 (thirty) days from Supplier's receipt of the order. In case down-payments are agreed, the relevant delivery period shall start from receipt by the Supplier of the down-payment.
- 5.3 Delivery may be suspended by the Supplier (i) in case of failure by the Buyer to effect the down-payment provided for in paragraph 4.3 or even the one instalment provided for in paragraph 4.4 or in case of not opening of the L/C provided for in paragraph 4.6, (ii) until all technical and administrative data and information required to properly fulfil the order are received.
- 5.4 Should Supplier be prevented from meeting any delivery date due to lack or delayed deliveries on the part of the suppliers, interruption or suspension of transport or energy, strikes or union agitations or by reason of any other event beyond its reasonable control, time of delivery shall cease to run from the day of communication of the impediment to the Buyer. In case the impediment of material deliveries lasts for more than 60 (sixty) days, each party shall be entitled to terminate the contract by giving written notice to the other, without any compensation or indemnity being due by the Supplier which will have in any case the right to have the Products already manufactured for the Buyer at the time of the communication of the impediment, duly paid by the Buyer.

## **6. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

- 6.1 The Buyer shall not register or assign the trademark of the Supplier (hereinafter the "**Trademark**") or any other Supplier's distinctive marks nor use the Trademark or other Supplier's distinctive marks, trademarks, names or expressions to register domain names and/or to build internet sites or web pages, even for the purpose of the promotion and resale of the Products. Buyer is not allowed to insert or display the Trademark and/or the Products on its own web sites or home pages. In case of express written authorisation by the Supplier, the registration is to be considered as effected on behalf of the Supplier and the Trademark and/or the domain name must, therefore, be assigned back to the Supplier.
- 6.2 The Buyer acknowledges the intellectual property rights of the Supplier on the

Products, whether titled or untitled also according to article 2598 of the Italian civil code, and must keep strictly confidential and secret all technical and commercial information related to the Supplier as well as to the know-how and show-how utilised by Supplier in the working or manufacture of the Products: as one of the consequences thereof the Buyer shall not deposit or register as industrial and intellectual property right, inventions, procedures or technical solutions developed by the Supplier.

**7. NON-COLLECTION**

Except as otherwise communicated by the Supplier, the Buyer shall collect the Products on the day indicated in the order confirmation. After 10 (ten) days have elapsed without the Buyer having collected the Products, the Supplier shall be entitled to forthwith terminate the sale contract by giving written communication thereof to the Buyer, save – in any case - for Supplier's right to claim payment of the penalty fee provided for under paragraph 8 herebelow, as well as compensation of any further damage it may have suffered as a consequence of non-collection of Products by the Buyer. The Supplier shall be further entitled to definitely retain the down-payment and any instalments so far paid by the Buyer and sell the Products to third parties by giving notice to the latter of the terms and conditions of the sale at least 10 (ten) days in advance. Any difference between the contractual price (increased by any custody and preservation costs) and the price actually recovered from the sale shall constitute a debt of the Buyer and shall yield interest at the rate set forth in paragraph 4.7 above.

**8. PENALTY CLAUSE**

In case of cancellation by the Buyer of a firm and/or confirmed order as well as in case of non-collection of the Products by the Buyer, the latter shall pay to the Supplier a penalty fee equal to 20% (twenty per cent) of the value of the cancelled order and/or non-collected Products, without prejudice to Supplier's right to claim compensation of any further damages suffered in connection therewith.

**9. WARRANTY**

- 9.1 Supplier warrants that the Products are worked and/or manufactured according to the Technical Documentation or to the Technical Specifications, as the case may be, and are free from defects in material and workmanship under normal use and maintenance.
- NO FURTHER EXPRESS OR IMPLIED WARRANTY, WHETHER BY

OPERATION OF LAW OR CONVENTIONAL, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR SPECIFIC PURPOSES, IS GRANTED BY THE SUPPLIER TO THE BUYER.

- 9.2 The warranty shall not apply in case of (i) Products damaged in transit, (ii) improper installation and/or assembly, use, application and/or maintenance of the Products, (iii) damages caused by accident, fire or other casualty or negligence not ascribable to the Supplier, (iv) failures resulting from modifications or alterations of the Products not effected by the Supplier, (v) damages occurred during repair and/or replacement operations not effected by the Supplier, (vi) normal wear and tear, (vii) damages incurred during Buyer's default in payment.
- 9.3 The Buyer shall, subpoena of forfeiture, examine the Products immediately after arrival and notify, subpoena of forfeiture, the Supplier of any incomplete or non-conforming consignments as well as of any patent defects discovered by it and/or its customers without delay and in any case not later than 8 (eight) days thereafter, clearly indicating the defective Product, the Product code, the relevant consignment lot and delivery date and the nature of the defect.  
Likewise, hidden defects shall be notified, subpoena of forfeiture without delay and in any case no later than 8 (eight) days from discovery by the Buyer and/or its customers, clearly indicating the defective Product, the Product code, the relevant consignment lot and delivery date and the nature of the defect.  
In no event shall the agents, buyers or intermediaries of the Supplier be entitled and have the authority to represent and bind the latter towards the Buyer or any third party. For the purposes hereof any notice of complaint for defects in the Products will, therefore, be of no effect if made to the Supplier's agents, buyers or intermediaries.
- 9.4 The Buyer shall hold the defective Products at Supplier's disposal for a reasonable period of time in order to permit the inspection thereof and no returns are allowed without the latter's prior written authorisation. Upon Supplier's request, the replaced parts shall be returned to the latter DDU at Via Schiavonesca Nuova n. 44, Volpago del Montello, 31040 (Italy) (Incoterms 2000).
- 9.5 Should any defect be notified timely and acknowledged by the Supplier, it will repair or replace or work again - at its sole discretion - within the usual time required therefore the defective Products free of charge Ex Works Officine Meccaniche Zanatta Romeo Srl at Via Schiavonesca Nuova n. 44, Volpago del

Montello, 31040 (Italy) (Incoterms 2000), ANY OTHER INTERVENTION AND REMEDY AS WELL AS ANY RESPONSIBILITY FOR DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES BEING, TO THE EXTENT PERMITTED BY LAW, EXPRESSLY EXCLUDED AND WAIVED BY THE BUYER, INCLUDING, WITHOUT LIMITATION, THE RIGHT OF REDRESS PROVIDED FOR BY ARTICLE 131 OF THE ITALIAN CONSUMER CODE.

- 9.6 The warranty hereof shall be valid for a period of 1 (one) year from the date of delivery of the Products and in no event shall the validity period of the warranty be affected by the non-use of the Products by the Buyer. It is however agreed that Supplier is not responsible for parts worked and/or processed by third parties and for material supplied by the Buyer nor for the suitability of the Products for any particular end use, it being understood that the determination of said suitability is for the sole responsibility of the Buyer.

#### **10. TERMINATION CLAUSE**

Without prejudice to any express provision on termination contained in these General Conditions, the Supplier shall have the right to terminate at any time the sale contract in case of breach or failure by the Buyer to perform or observe any material terms and conditions thereof, provided said breach or failure is not cured within 15 (fifteen) days of receipt of the relevant notice of complaint.

#### **11. RETENTION OF TITLE**

All Products delivered by the Supplier to the Buyer are subject to the retention of title clause hereof, although not mentioned in the relevant order confirmations or in other documents of the Supplier.

The Products shall remain the property of the Supplier until the invoiced price and any other pertinent obligation of the Buyer have been fully discharged by the latter. In case of lack of or delay in payment and/or breach of duty by the Buyer, the Supplier shall automatically be entitled to terminate the relevant sale contract and/or claim back the Products without any notice period being due. In such an event the Buyer shall be under the obligation to immediately return the Products to the Supplier.

As long as the property has not passed to it, the Buyer shall be bound to treat the Products with the utmost care, have them insured at its own cost against theft, vandalism and any damages caused by fire, water or other acts of God for an amount at least equal to the purchase price, notify the Supplier in writing and without delay of any levy of execution or interference by a third party and

immediately inform in writing the third party of the existence of the retention of title in favour of the Supplier. To the extent the third party is not able to reimburse the Supplier the full cost sustained for asserting its claim, the Buyer shall be liable for and will refund the Supplier any such amount promptly upon receipt of Supplier's written request.

All necessary inspections and maintenance interventions on the Products shall be for the Buyer's account. The above notwithstanding, the Buyer is entitled to sell the Products even prior to passage of title, provided (i) a retention of title clause substantially in the form hereof has been previously agreed upon between the Buyer and its customer and (ii) the relevant sale price has been insured against default. The Buyer hereby irrevocably assigns to the Supplier, who accepts, all claims under any such resale contract and relevant insurance policy, said assignment being valid and enforceable also in case the Products have been processed by the Buyer prior to resale. Even after assignment to the Supplier and without this affecting or impairing the latter's rights thereunder, it will be the duty of the Buyer to collect payment from its customers and/or the insurance company on Supplier's behalf. The Supplier will, therefore, not enforce any assigned claim as long as the Buyer fulfils its obligations, pays without delay, no insolvency petition is filed by or against it and no material deterioration of its financial and/or patrimonial situation has occurred. In case of delay in payment or upon Supplier's written request the Buyer shall promptly instruct in writing the customer to whom the Products under retention of title have been resold to effect payment directly to the Supplier. A copy of any such instructions will simultaneously be transmitted to the Supplier. Upon Supplier's demand the Buyer shall further deliver it all supporting documents which are necessary or useful to enforce the assigned claims or assert Supplier's rights under this retention of title clause.

As long as the property has not passed to the Buyer any treatment, processing or transformation of the Products shall be deemed to have been carried out on behalf and in the interest of the Supplier and the retention of title in favour of the Supplier shall automatically apply to the processed Products. Likewise, in case any Product is processed with other items not belonging to the Supplier, the latter shall automatically acquire joint ownership of the new product in proportion to the market value of the Product to the aggregate value of the other items at the time of processing. The same applies in case of commingling.

According to art. 11 of the Legislative Decree of 9.10.2002 n. 231 in the event of payment by instalments, the Buyer undertakes to subscribe a copy of each invoice received by the Supplier, reading as follows: "*payment by instalments with retention of title (vendita a rate con riserva di proprietà) ex. art. 1523 cc*", and to return it to the Supplier by registered mail.

In the event this retention of title clause is invalid, in whole or in part, according to the law of the country where the Products are situated, an equivalent security according to such law is considered as agreed between the parties. In such an event, the Buyer shall take all steps and carry out all formalities necessary to put in place such security and preserve the rights of the Supplier. The same applies in case any claim assigned to the Supplier is invalid or unenforceable, in whole or in part, under applicable law. Upon request of the Buyer, the Supplier shall exempt the securities to which it is entitled as far as their value exceeds the claims' value to be secured by more than 10%.

## **12. GOVERNING LAW**

The sales contracts ruled by these General Conditions as well as the working and manufacture of the Products shall be governed by the laws of Italy, the application of the April 11, 1980 Vienna Convention on International Sale of Goods being expressly excluded (except for what set forth in Article 11 thereof with respect to the form of the contract).

## **13. COMPETENT JURISDICTION AND ARBITRATION**

13.1 Any dispute between the Parties concerning supplies governed by any order and/or order confirmation of the Supplier and/or governed by these General Conditions will:

- a) in case of Buyers with registered offices within the European Union, be submitted to the sole jurisdiction of the Courts of Montebelluna, Italy;
- b) in case of Buyers with registered offices outside the European Union, be settled by one or more arbitrators appointed in accordance with the Rules of Arbitration of the National and International Chamber of Commerce of Milan, Italy. The arbitrator or the arbitrating body will decide according to the law and the award shall be deposited by the arbitrating body at the Secretary of the Chamber of Commerce of Milan within 6 (six) months from the constitution of the arbitrating body. The arbitration proceedings will be held in Padova in the English language.

13.2 As a partial derogation to what set forth under 14.1 points (a) and (b) above, the Supplier will have in any case the right to act, at its sole discretion, before the competent Court where the Buyer has its registered offices.

## **14. FINAL PROVISIONS**

14.1 Any sale contract ruled by these General Conditions may be amended only in

writing, signed by each of the parties subsequent to the date of its execution.

- 14.2 Failure by Supplier to enforce at any time any of the provisions of these General Conditions or of the sales contracts ruled thereby shall not be construed as a general waiver of such provision or of the right of the Supplier to thereafter enforce each and every provision contained therein.
- 14.3 In the event any of the provisions of these General Conditions or any of the clauses of the sales contracts governed thereby will be declared null and void or ineffective or contrary to law, the remaining portions thereof shall continue in full force and effect and the offending portion shall be severed therefrom, unless such provision constitutes an essential part of the contract and has been an essential inducement for the Supplier to enter thereinto.

**THE SUPPLIER**

**THE BUYER**



OFFICINE MECCANICHE  
ZANATTA ROMEO s.r.l.  
Tel. +39 0423/620311 - 621122 Fax. +39 0423/621419  
31040 VOLPAGO del Montello (TV)  
P. IVA 03937080261

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The Buyer further states and declares to expressly approve, for the purposes and to the extent provided for by Articles 1341 and 1342 of the Italian Civil Code, the provisions contained in the following paragraphs of the General Conditions printed above: 1.3 (Technical Specifications and right to calculate missing information), 1.4 (Work and/or manufacture according specifications and Buyer's responsibility), 2.2 (Tacit Acceptance), 3.2 (Price Variation), 3.3 (Costs, expenses), 4.4. (Forfeiture of Term Benefit), 4.7 (Consequences of non-payment or delayed payment), 4.8 (*Solve et repete* clause), 5.1 (loading operation, responsibility and assessment of the transfer of risk), 5.3 (Suspension of deliveries), 5.4 (Force majeure), 7. (Non-collection), 8. (Penalty), 9. (Limitation of warranty), 10. (Penalty on Termination Clause), 11. (Retention of Title and Products owned by the Supplier), 12. (Governing law) and 13. (Competent Jurisdiction and arbitration).

**THE BUYER**

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**EXHIBIT A**

**TECHNICAL SPECIFICATIONS**

**Geometric, linear and angular margins of error:**

[According to UNI 22768mk](#)

**Margins of error and level of precision regarding the application of the tothing:**

[According to DIN 3962/63/67 QUALITY' 8 - 9](#)

**Materials:**

[According to the requests in the drawings](#)

**Heat treatments to be carried out on the materials:**

[According to the requests in the drawings](#)