

LUVATA SAO PAULO TERMS AND CONDITIONS OF PURCHASE

1. Definitions and Interpretation
- 1.1 In these Conditions:  
 "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in Brazil are open for business;  
 "Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 12.5;  
 "Contract" means an agreement between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions;  
 "Customer" means Luvata São Paulo – Comércio e Indústria Ltda.;  
 "Delivery" means completion of delivery of the Goods in accordance with clause 4.3;  
 "Goods" means the goods (or any part of them) set out in the Order including any instructions and other related documentation;  
 "Order" means the Customer's order for the Goods, as set out in the Customer's purchase order form overleaf;  
 "Specification" means any specification for the Goods, including the details set out in the Order, that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer;  
 "Supplier" means the person or company from whom the Customer purchases the Goods;
- 1.2 In these Conditions, unless the context requires otherwise:  
 (a) reference to a person includes all forms of legal entity including a natural person, corporate, unincorporated association, governmental entity and a partnership;  
 (b) reference to a party includes its personal representatives, successors or permitted assigns;  
 (c) reference to any statute or statutory provision includes a reference to it as from time to time consolidated, modified, re-enacted or replaced;  
 (d) the words including, include and in particular shall not be construed so as to limit the generality of the words preceding them; and  
 (e) paragraph headings are to be ignored in construing the Conditions.
2. General
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No terms endorsed upon, delivered with or contained in the Supplier's acceptance of an order or other document shall form part of a contract unless expressly agreed in writing by the Customer.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:  
 (a) the Supplier issuing a written acceptance of the Order; and  
 (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
3. The Goods
- 3.1 The Supplier shall ensure that the Goods (including any replacement or repaired Goods) shall:  
 (a) correspond with their description and any applicable Specification;  
 (b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. For the purposes of these Conditions, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances;  
 (c) be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and  
 (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
4. Delivery
- 4.1 The Supplier shall ensure that:  
 (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and  
 (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods:  
 (a) on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;  
 (b) to the Customer's premises at Av. dos Autonomistas, 4900, Km 18, Shed PR 406-B, CEP 06194-060, or such other location as is set out in the Order, or as instructed by the Customer prior to delivery ("Delivery Location");  
 (c) during the Customer's normal business hours, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.
5. Remedies
- 5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:  
 (a) to terminate the Contract;  
 (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;  
 (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);  
 (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;  
 (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and  
 (f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 If the Goods are not delivered on the due date the Customer may at its option claim or deduct [INSERT] per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of [INSERT] per cent of the total price of the Goods. If the Customer exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 5.3 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:  
 (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;  
 (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and  
 (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- This clause 5 shall survive termination of the Contract.
- 5.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law and also apply to any repaired or replacement Goods supplied by the Supplier.
6. Title and risk
7. Title and risk in the Goods shall pass to the Customer on completion of Delivery.
- 7.1 Price and payment
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods includes the costs of packaging, packing, insurance, carriage of the Goods and any and all applicable taxes. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 7.3 The Supplier may invoice the Customer for the Goods on or at any time after the completion of Delivery. The Customer shall pay correctly rendered invoices to agreed terms. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.4 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 12% per annum. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 7.5 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
8. Customer property
- The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, data supplied by the Customer to the Supplier ("Customer Materials") and all rights in the Customer Material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.
9. Termination
- 9.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 9.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:  
 (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 94 of Law n.º 11.101/05, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of sections 748, 749 and 750 of the Law n.º 5.869/73, or (being a partnership) has any partner to whom any of the foregoing apply; or  
 (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescinding or restructuring of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier; or  
 (c) a compulsory liquidation or petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier; or  
 (d) (being an individual) the Supplier is the subject of a bankruptcy petition or order; or  
 (e) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy;  
 (f) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Termination of the Contract, however effected, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
10. Insurance
- During the term of the Contract and for a period of 24 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such risks of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
11. Force majeure
- Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.
12. General
- 12.1 Confidential Information. A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
- 12.2 Assignment and subcontracting. The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.
- 12.3 Notices.  
 (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier or fax.  
 (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.3(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, 24 hours after transmission.
- 12.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.5 Variation. The Contract, including the introduction of any additional terms and conditions, may only be varied in writing signed by or on behalf of each of the parties.
- 12.6 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 Severance. If any provision of the Contract is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction, the validity and enforceability of the other provisions of the Contract and its validity and enforceability in any other jurisdiction shall not be affected.
- 12.8 Language. The Contract is drawn up in the English language and if translated into another language the English language text shall prevail.
- 12.9 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Brazilian law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Osasco. The Supplier irrevocably submits to that jurisdiction and waives any objection to it, on the ground of inconvenient forum or otherwise.