



## TERMS AND CONDITIONS

### ARTICLE 1. DEFINITIONS, APPLICABILITY

The following definitions, both in the singular and in the plural, are used in these General Terms.

- a) Contract: any quotation and acceptance thereof, agreement including its exhibits and addenda or other agreed course of conduct or legal act between ITT Controls BV and Customer, regardless whether these have been made orally, in writing, electronically or in any other form.
- b) Customer: the party (a) to whom the offer of ITT Controls BV is addressed, (b) with whom ITT Controls BV has concluded the Contract or (c) for the benefit of whom the legal act is performed.
- c) Ex Works (EXW): Incoterm® defining that the Goods will be produced, packed, marked if applicable, and made available. Loading and clearing of the Goods and transportation/shipping thereof is at risk and costs of the Customer.
- d) Force Majeure: any event that incurs failure to perform beyond the control and not caused by the negligence of the performing party, such as – without limitation – fire, flood, environmental phenomena, war, revolt, sabotage, acts of terrorism, laws, rulings (e.g. embargo's), (supranational) governmental measures, strikes, disruption in electricity supply, non-availability of telecommunication services, with the exception of any events on the part of the Customer's client or project.
- e) Fundamental Breach: a breach of Contract by and attributable to ITT Controls BV, which substantially

deprives the Customer of his Contractual rights and benefits.

f) General Terms: the present general terms & conditions of ITT Controls BV, regardless of the form in which they are published (hard copy or electronically).

g) Goods: all products, affairs, materials, parts (including – but not limited to – documentation, merchandising goods, etc.) and services that are subject of Contract.

h) Invoice: commercial document issued by ITT Controls BV to the Customer requesting payment of Goods, indicating total amount in Euros, applicable taxes, bank transfer specifications and Purchase Order's reference.

i) ITT Controls BV: ITT Controls BV with its statutory seat in Amsterdam – Zekeringstraat 17A, 1014 BM Amsterdam – the Netherlands and registered at the Dutch Chamber of Commerce # 59217642, and its subsidiaries.

j) More Work: all requested or necessary extra Goods that are not included in the Quotation, proposition or task.

k) Purchase Order (PO): commercial document issued by the Customer to ITT Controls BV authorizing a purchase transaction and indicating part number(s), trademarks, type(s) and/or description(s), and quantities of Goods and/or prices.

l) Quotation: response to Customer's request for quotation in which ITT Controls BV quotes its prices for the Goods, payment condition and other terms and conditions. The applicability of any terms of the Customer is herewith explicitly excluded. Deviations from these General Terms shall apply only if they have been explicitly agreed upon in writing by ITT Controls BV.

If there is any conflict, contradiction or inconsistency between these General Terms and a written Contract, the written Contract shall prevail.

## **ARTICLE 2. QUOTATION**

A Quotation is valid for the period stated in that Quotation. A Quotation without an indicated validity period may ultimately be revoked within 2 (two) working days after acceptance thereof. A composed Quotation does not oblige ITT Controls BV to deliver a part of the Goods to the according part of the total price. If Customer's information seems to be incorrect or incomplete or is changed at a later stage, ITT Controls BV may adjust the quoted prices and/or contract terms. The Quotation does not automatically apply to reorders or future PO's. Models, part number(s), type(s) and/or description(s), indications of capacities and quantities of Goods and other details mentioned on the website(s) of ITT Controls BV serve only as an indication. No rights can be derived from these.

## **ARTICLE 3. CONCLUDING CONTRACT**

The Contract is concluded the moment ITT Controls BV receives the PO, even if the part number(s) type(s) and/or description(s) in the PO slightly differ from the Quotation. However, if the difference between Quotation and PO is substantial, the Contract will only be concluded after ITT Controls BV's written approval. In the event of a PO without a prior Quotation or an oral agreement, the Contract will only be concluded after ITT Controls BV's written approval (e.g. by Invoice) or by means of executing the Contract.

## **ARTICLE 4. OBLIGATIONS OF ITT CONTROLS BV**

ITT Controls BV will execute the Contract in manner according to the Contract and the standards of industry. ITT Controls BV check specifications, quantities, measures and/or weights before delivery. Goods will be delivered in usual (wholesale) packaging. Packaging is to be marked appropriately. Goods will be delivered in minimal amounts that are available at ITT Controls BV. Minor deviations that are deemed acceptable within the appropriate industry with regard to quantities, weights and part number(s) of Goods, and trademarks, type(s) and/or description(s) are not considered a shortcoming nor a Fundamental Breach. ITT Controls BV will bear all risks of loss of or damage to the Goods until such time as they have been placed at the disposal of the Customer. ITT Controls BV may engage one or more third parties to execute the Contract.

## **ARTICLE 5. OBLIGATIONS OF CUSTOMER**

The Customer assures that his information is accurate and releases ITT Controls BV from any claims that are or could be a result of his inaccurate information. The Customer will take delivery of the Goods as

soon as they have been placed at his disposal in accordance with article 9 first paragraph. The Customer is allowed for pre-shipment inspection, including inspection mandated by the authorities of the country of exportation. Unless otherwise agreed, the Customer will pay all costs for pre-shipment inspection. The Customer will report to ITT Controls BV any missing items, flaws, defects and/or damages of the Goods within 5 (five) working days after pre-shipment inspection. If the customer does not carry out any pre-shipment inspection or if no missing items, flaws etc. are reported within 5 (five) working days after pre-shipment inspection, the Goods are deemed to be delivered properly and according to the Contract. The Customer shall obtain at his own risk and expense any clearance or other official authorisation required for the export and import of the Goods and, if applicable, for transit through another country. The Customer will not settle any Invoices with alleged claims against ITT Controls BV, nor can he suspend his obligations.

#### **ARTICLE 6. POSTPONEMENT**

If the Customer does not fulfil his obligations, ITT Controls BV may postpone its execution of Contract as long as the Customer does not meet his obligations. ITT Controls BV may postpone its obligations, if its Invoice is due or if it has reason to doubt the creditworthiness of the Customer, even before the Customer is in default. The expenses caused by postponement, such as loss of working hours, the costs for the carrying out of extra services, may be charged to the Customer. If the Customer postpones the execution of Contract, ITT Controls BV may additionally charge either its actual damages and losses suffered during the postponement period, or a flat rate compensation equal to 25% (twenty five percent) of the invoiced amount. If the Contract cannot be reasonably executed after the postponement is lifted, ITT Controls BV may terminate the Contract without being liable for any damages incurred by its Customer.

#### **ARTICLE 7. CANCELLATION**

Prior his receipt of the pre-payment Invoice the Customer may unilaterally cancel his PO – and thus terminate the Contract – free of charge. Prior delivery, the Customer may unilaterally cancel his PO – and thus terminate the Contract – provided that he has paid a cancellation fee – at ITT Controls BV's discretion – either based on its actual damages and losses, or the invoiced amount. However, once the Goods are delivered, cancellation of the PO is not allowed in consequence of which the Contract shall be fully executed, unless ITT Controls BV has accepted the cancellation. Conditions may apply. The Customer bears sole responsibility for his cancellation and will release ITT Controls BV from any claims that are or could be a result of his cancellation. ITT Controls BV may cancel an order in case of force majeure or non-delivery of the ordered product. In that event, ITT Controls BV shall pay back within two weeks of its cancellation, less any damages that reasonably remain for the customer's account.

#### **ARTICLE 8. MORE WORK**

More Work has to be consented by ITT Controls BV and the Customer in writing. More Work will be charged if costs increase unforeseeable and/or if the Goods come only in higher quantities or qualities. Offsetting More Work takes place when drawing the final balance, unless both parties have agreed in writing to do otherwise.

#### **ARTICLE 9. TAKING DELIVERY**

Goods are delivered Ex Works (EXW). ITT Controls BV will place the Goods at the disposal of the Customer at its warehouse on the date or within the period stipulated or, if no such place or time is stipulated, at the usual place and time for delivery of such Goods. The Customer will pay all costs relating to the Goods from the time they have been placed at his disposal in accordance with article 9 first paragraph, considering however, that the Goods have been clearly set aside or otherwise identified as the contract goods. The Customer will pick-up the Goods on the delivery date or within five days after the delivery date, failing which the goods will be stored at Customer's cost and risk. Any storage costs shall be paid before pick-up. The Customer will provide ITT Controls BV with appropriate evidence of having taken delivery. The Customer will pay any additional costs incurred by failing to take delivery in due time. Whether or not facilitated by ITT Controls BV upon Customer's request, at all times pick-up, clearing and transport of Goods is and remains only at the Customer's cost and risk. ITT Controls BV is not responsible for any damage – be it on the Goods itself or anything else – occurred during pick-up or transport. ITT Controls BV puts effort to deliver the Goods within a reasonable period. However, agreed

delivery dates are no fatal terms. The Customer may request to expedite delivery, provided that expenses for overtime and other costs may be (pre-)charged. If, for whatever reason, (some of) the Goods can no longer be delivered (e.g. because they are no longer manufactured or in stock), ITT Controls BV will – if possible – propose alternative goods, adjusted prices and a new delivery date.

#### **ARTICLE 10. FORCE MAJEURE**

No party shall be considered in breach of Contract to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an event of Force Majeure that arises after the date of concluding Contract. The Party prevented from carrying out its obligations hereunder (the “Affected Party”) shall give notice to the other Party of an event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party. If and to the extent that the Affected Party is prevented from executing the Contract by an event of Force Majeure, while it is so prevented the Affected Party shall be relieved of its obligations to execute the Contract but shall endeavour to continue to perform its obligations under the Contract as far as reasonably practicable, provided that if and to the extent that the Affected Party incurs additional cost in so doing, the Affected Party shall be entitled to the amount of such cost. If the effect of Force Majeure continues for a period of 90 days, either party may give to the other a notice of termination, which shall take effect seven days after the giving of the notice. If, at the end of the seven-day period, the effect of the Force Majeure continues, the Contract shall terminate without obligation to pay damages. If force majeure occurs while the Contract is already partially executed, each party will in any case meet its obligations towards the other party until that time.

#### **ARTICLE 11. COMPLAINTS AND RETURNS**

The Customer will report all shortcomings to ITT Controls BV immediately after discovery or immediately after the moment when she could have discovered the shortcomings, but at the latest within one week thereof. In any case, no complaints will be taken into consideration after 3 (three) months after the delivery of the Goods. In case the Goods must be returned for examination or ITT Controls BV has to examine the Goods on-site, the costs are to be borne upfront by the Customer, and will be refunded if the claim is predominantly awarded. Goods prepared for return to ITT Controls BV must be well-sealed packed – if possible – in the original packaging, freight paid upfront by the Customer. Complaints concerning the following matters are not taken into consideration:

- a) deficiencies or features of Goods that are made from natural products if these deficiencies or features are inherent to those products;
- b) Goods whose nature and/or composition has been partly or completely changed by the Customer;
- c) properties/characteristics/qualities of the Goods, if those properties/characteristics/qualities have no or just barely influence on the Goods functioning (for example (but not limited to) the colour of the Goods) and
- d) non-Fundamental Breaches.

#### **ARTICLE 12. PRICES & PAYMENT**

Quoted prices and rates are excluding Dutch VAT, freight and administration costs, fees of third parties, and expenses. If applicable these expenses are charged additionally. The Goods must be fully paid in advance, unless otherwise agreed in Contract. If the Customer fails to pay within the payment period, he will automatically be in default allowing ITT Controls BV to demand fulfilment of the Contract and/or (alternatively) to terminate the Contract and claim damages (e.g. interests, storage-costs, costs of delay and loss of earnings). The Customer will pay the agreed price as provided in the contract. As long as the Goods are not paid, proprietary rights of the Goods will stay with ITT Controls BV allowing ITT Controls BV to reclaim the delivered Goods. Once the payment period of the Invoice has expired, an interest of 2% (two percent) per month is calculated cumulatively over the total Invoice amount plus eventual extra-legal collection costs of 15% (fifteen percent) over the total Invoice amount, with a minimum of € 150,00 (one hundred and fifty Euro).

#### **ARTICLE 13. GUARANTEES**

Unless otherwise agreed in Contract, ITT Controls BV guarantees to the Customer that the Goods shall be free from defects in materials and workmanship for a period of 1 (one) year from the date of delivery, providing that the Customer’s information is correct (see article 5) and the Goods are stored and used in accordance with the applicable manual(s), safety prescriptions and industry practices and conditions. If the Goods do not comply with the guarantee set out in section 1 and are returned to ITT Controls BV



within the guarantee period by the Customer, freight prepaid, ITT Controls BV will – at its discretion – either replace the non-compliant Goods at no additional charge or refund the total or partial amount paid for the Goods. Any repaired or replacing Goods are guaranteed for the remainder of the guarantee period or thirty (30) days, whichever shall be the longer. The aforementioned express guarantee is limited to ITT Controls BV, not transferable, and is in lieu of any other guarantee by ITT Controls BV. ITT CONTROLS BV GRANTS NO OTHER GUARANTEE, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, GUARANTEES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ITT Controls BV can only guarantee that the Goods can be used for particular purposes by explicit written confirmation to the Customer. ITT Controls BV disclaims any guarantee as long as the Customer has not fully met his obligations.

#### **ARTICLE 14. LIABILITY**

ITT CONTROLS BV SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THESE GENERAL TERMS OR CONTRACT, OR TO THE SALE OR USE OF GOODS, IRRESPECTIVE OF WHETHER OR NOT ITT CONTROLS BV HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF NON-PERFORMANCE OR MALPERFORMANCE BY ITT CONTROLS BV, ITS SOLE AND EXCLUSIVE MAXIMUM LIABILITY, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED THE INVOICED AMOUNT. In this regard a series of incidents relating to each other shall count as one incident only. ITT Controls BV accepts no liability whatsoever for any specification of Goods that relies mainly on information and documentation issued by the manufacturer, supplier and/or Customer. ITT Controls BV is not responsible for the content, correctness and completeness of this information and documentation. If the Customer provides materials for further processing or assimilation, ITT Controls BV is responsible for processing and assimilating these materials in a proper manner, but not for the solidness and soundness of the final Goods. ITT Controls BV accepts no liability for any damage whatsoever caused by the Goods or the Customer's incorrect storage or use of the Goods – including but not limited to: mismanagement, wrong packaging, processing, assimilation and adjustments. Furthermore, ITT Controls BV accepts no liability if the damage was inflicted:

- a) in consequence of instructions of the Customer;
- b) by deviating from ITT Controls BV's advice, the Contract and/or the industry practices and conditions;
- c) by regular wear, erosion or corrosion, by ageing and/or damage of the Goods by external factors, other than the factors against which the Goods should be resistant under normal circumstances;
- d) by Customer's choice regarding means of delivery and packaging;

#### **ARTICLE 15. INDEMNIFICATION**

The Customer shall indemnify, defend and hold harmless ITT Controls BV from and against any and all damages, liabilities, losses, fees, expenses, penalties and costs (including reasonable attorneys' fees, costs and disbursements) arising as a result of all claims, suits or proceedings brought by any third party to the extent that any such claim, suit or proceeding relates to any acts by the Customer, its employees, subcontractors, agents or resellers. As a condition of the aforementioned indemnification obligation, ITT Controls BV shall promptly notify the Customer of any indemnifiable claim, give the Customer sole control over the defense and settlement of such claims, and provide reasonable cooperation and assistance to the Customer in conducting his defense, at the Customer's expense. The Customer will defend, indemnify, and hold harmless ITT Controls BV from and against all fines, penalties, liabilities, damages, costs and expenses incurred by ITT Controls BV as a result of any violation of export (control) laws or regulations by the Customer or any of its resellers, agents or employees.

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

ITT Controls BV will keep confidential all information supplied by the Customer, and clearly labelled "confidential". ITT Controls BV will only provide confidential information to third parties to execute the Contract or required by applicable law or court order.

#### **ARTICLE 17. APPLICABLE LAW/COMPETENT COURT**

Dutch law applies to every Quotation of ITT Controls BV, the Contract and these General Terms, with the

Court of Amsterdam as the competent authority. ITT Controls BV may however direct a dispute to court at the location of the Customer. The Vienna Convention (CISG) is explicitly excluded. ITT Controls BV  
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