

# GENERAL TERMS AND CONDITIONS OF SUPPLY FOR SOCIETE NOUVELLE BROCARD ET ROUX (SNBR) FROM

01/01/2013

**1. General:** These general terms and conditions of supply apply to all contractual relations between SNBR and the Client regarding the manufacture of Parts and/or equipment and the performance of services, hereinafter referred to as the Products. Any orders imply unconditional acceptance of the prices and the general terms and conditions. They form the basis for all commercial negotiation and shall prevail over any general terms and conditions of purchasing, which even if accepted expressly by SNBR shall apply solely in an auxiliary manner in the event of a provision not stipulated herein. These general terms and conditions cancel and replace the previous general terms and conditions.

**2. Field of application of the contract:** The following form integral parts of the contract: these general terms and conditions, any special terms and conditions accepted by the parties, all orders accepted, all documents of SNBR complementing these general terms and conditions, all quotations and surveys communicated before the main contract was drafted and that have been accepted by the parties, all delivery slips and all invoices.

**3. Offer – Order:** In the absence of any provisions to the contrary, offers shall be valid for a period of 30 days counting from their issue.

**3.1 Placing orders:** All orders or changes to orders must be sent in writing or electronically and must have been accepted by SNBR. Any orders including lists of requirements or technical specifications shall be valid only after all the documents have been validated by SNBR. Any changes to those specifications must be set out in a rider to the contract and shall automatically involve a revision of the price.

**3.2 Closed orders:** Closed orders stipulate firmly all quantities, prices and deadlines.

**3.3 Open orders:** Open orders must be limited in time and must indicate the characteristics and price of the Products. When these orders are closed, they shall specify minimum and maximum quantities and deadlines for realisation. The frequency of the delivery orders shall determine the exact quantities and deadlines that are to be entered in the Client's provisions schedule. In the event of a variation in quantity of more than 15% between one delivery schedule and another or between different delivery frequencies within a 6-week period, SNBR shall analyse these variations. If a positive or negative variation occurs, the parties shall be required to work together in order to find a solution to the consequences of that discrepancy, which are liable to affect the balance of the contract to SNBR's detriment. For positive variations, SNBR shall do its utmost to meet the Client's requirements to the extent permitted by its capacities (in terms of production, transport, subcontracting, re-stocking, etc.).

**3.4 Cancelling orders:** Any order cancellations shall require the express, prior and written consent of SNBR, and may not under any circumstances be justified by a change in prices. Any Client that cancels all or part of its order or that defers the delivery date, without SNBR being responsible for this, shall be required to reimburse SNBR for all costs incurred as at the date on which the Client's notice of cancellation was received and for all direct and indirect consequences emanating therefrom, with the right to claim damages remaining reserved. The deposit paid by the Client shall be retained by SNBR.

**3.5 Stocks:** SNBR shall draw up stocks (materials, equipment, Products) based on the requirements of the Client and in the latter's interest, either following an express request from the Client or in such a way as to ensure that the Client's provision programmes are respected. Any modification, failure to perform or suspension of the contract that acts to prevent the stocks being exhausted shall result in the initial economic conditions being renegotiated in order to prevent SNBR suffering loss.

**3.6 Subcontracting:** SNBR reserves the right to subcontract some or all of the performance of the order.

**4. Design of Products:** In the absence of any agreement to the contrary, the Client shall be the sole designer of the Products. The Client shall bear full responsibility that the design will be suitable for the industrial purpose sought. If some or all of the design of the Products is subcontracted, the Client shall bear full responsibility that that design will be suitable for the industrial purpose sought.

**5. Equipment:** If the Client provides equipment, the Client shall bear the responsibility for ensuring that this equipment corresponds perfectly with the plans and specifications. The equipment shall determine the shapes, dimensions and thicknesses of the Products obtained. If the equipment provided by the Client proves to be unsatisfactory, SNBR shall request that the prices for the Products be revised, and an agreement with the Client must be reached before any mass production of the Products is carried out.

**5.1 Payment for equipment:** The equipment realised by SNBR in agreement with the Client shall be paid for independently from the Products, according to the following payment schedule: 40% on ordering, 30% on presentation of the initial samples, hereinafter "IS", and 30% on acceptance of the IS. If production of the Products is commenced under derogation, the Client may not delay payment for the equipment any later than the date on which production is commenced. The Client may nevertheless apply a holdback of a value not exceeding 5% by virtue of Law no. 71-584 of 16 July 1972. Any costs for replacements or restoration following wear shall be borne by the Client. SNBR may not be held liable for any tooling cost after having supplied the quantities contractually stipulated or any equipment replaced following normal wear and tear. Any failure to make payment shall automatically result in deliveries being suspended.

**5.2 Initial samples:** Any manufacture of equipment or implementation of equipment provided by the client shall require the production of IS, which shall be submitted by SNBR to the Client and shall be accepted by the latter following any relevant tests and trials. This acceptance shall be deemed to have been made if no written observations are made within 30 days of the date on which the IS are submitted. Orders for mass production of the Products, including under derogation, shall count as tacit acceptance of the equipment.

**5.3 Conservation of equipment:** It shall be incumbent on the Client, who retains the property in the equipment, to take out insurance against the deterioration or destruction thereof for any reason whatsoever, and the Client waives any right of action against SNBR in this regard. This equipment shall be returned to the Client on the latter's demand or at SNBR's convenience, in its current state at that time, provided that full payment has been made for it and for all Products manufactured, delivered or in stock, semi-finished Products, specific materials, components and spare parts. The equipment shall be kept in the warehouse of SNBR, who in the absence of any specific agreement to the contrary shall keep it for 3 years after the last Product manufacturing run, with all costs for storage and supervision being payable by the Client. After this period has elapsed, SNBR shall be entitled to return the equipment to the Client at the latter's expense and risk, if formal notice to collect it sent by registered letter with acknowledgement of receipt fails to compel the Client to act within 3 months. The Client shall be required to give at least 6 months' notice in order to remove any equipment kept in the warehouse of SNBR.

**6. Intended use of Products:** The Client shall be responsible for implementing the Products under normal foreseeable operating conditions and in accordance with the legislation on safety and environmental issues applicable to the place of use and with the rules of its industry. It shall be incumbent on the Client to choose the Products that meet its technical requirements and, if necessary, to consult with SNBR to ensure that the Products are suitable for their intended use. The Client shall inform all subsequent purchasers of the Products of the conditions for their use.

**7. Packaging:** The Products shall be sent to the Client in packaging designed to ensure their protection. On request from the Client, special protection may be provided for the Products. The cost of this protection shall be charged separately from the cost of the Products. If SNBR supplies reusable packaging, this packaging may be used solely for the Products and must be returned in good condition and with all shipping costs paid by the Client within 30 days of their receipt at the latest. Failure to do so will result in the packaging being invoiced for by SNBR. If the packaging belongs to the Client, the latter must supply them, in good condition and in sufficient quantity for its requirements, to the location and by the date stipulated by SNBR.

## 8. Delivery:

**8.1 Delivery period:** Delivery periods shall run from the latest of the following dates: - date of acknowledgement of receipt of the order; - date of receipt of all materials, equipment, tools, specific packaging and instructions due from the Client; - date of performance of prior contractual or legal obligations incumbent on the Client. Delivery periods are given as indications only. Delays may not under any circumstances justify the cancellation, modification or deferment of the order in question or of other orders that have already been confirmed, and may not give rise to any penalties or damages whatsoever. Any change to an order currently being carried out may result in the delivery period being extended. If delivery of the Products is not taken or is refused on the agreed delivery date, SNBR reserves the right to invoice the Client for the costs of storing the Products, with such storage being carried out at the Client's expense and risk.

**8.2 Terms and conditions of delivery:** Delivery shall be carried out by the direct transfer of the Products prior to loading, on the premises of SNBR, either to the Client or to a carrier (either designated by the Client or, failing this, chosen by SNBR). The Client assumes the risks of loss or deterioration of the Products from the moment of delivery, as well as liability for any loss or damage they may cause. The Client assumes all risks involved in the transport of the Products. It is incumbent on the Client to check deliveries on arrival and, if necessary, to bring a claim against the carrier, even if the delivery was made 'all shipping costs paid'. SNBR shall be authorised to carry out deliveries in their entirety or partially, depending on the availability of the Products, and a separate invoice shall be generated for each partial delivery. The Client undertakes to accept deliveries where the packaging is incomplete.

**8.3 Acceptance:** The Client shall be required to accept in law within 48 hours all Products that it acknowledges as

conforming to the contract. Acceptance shall count as an acknowledgement that there are no patent defects. Any automatic deduction from the amount of the invoice drawn up by SNBR for the purpose of imposing penalties for failure to respect a delivery date or for the non-conformity of the Products where SNBR is not in a position to verify the accuracy of the relevant complaint is prohibited by Article L. 442-6, I, 8° of the Commercial Code.

**8.4 Quantity:** A tolerance of +/- 20% is allowed in the quantity of Products delivered compared with the quantity of Products ordered. Where quantities are measured by weighing or by delivery in strips, an additional tolerance of 3% shall apply. Any dispute regarding quantities must be notified to SNBR within 48 hours.

**9. Hardship clause:** If an event independent of the will of the parties takes place that jeopardises the balance of the contract to the extent that it would render performance disadvantageous to one of the parties, the parties agree to negotiate appropriate amendments to the contract in good faith. This clause contemplates the following events inter alia: variations in the price of raw materials, changes to import/export rights, changes in the exchange rate, new legislation and changes to the financial situation of the Client.

**10. Force majeure:** If an event of force majeure occurs, such as a shortage of raw materials or service; fire; flooding; tempests; storms; terrorist attacks; total or partial strikes at SNBR, one of its suppliers, a major player in the market or at the Client; blockages; public transport, postal or public service strikes; operating accidents; or embargoes, the party in default shall inform the other party in writing that this event has occurred and that they are unable to perform their contractual obligations. The contract shall be suspended until the event in question has ceased, provided that it lasts no longer than 3 months, at which point the contract may be terminated upon request from the other party. If an event of force majeure occurs, SNBR reserves the right to adjust the price of the Products.

## 11. Claims:

**11.1 Claim procedure:** Claims from the Client must be brought within two weeks of receipt of the Products. The costs and risks involved in verification shall be borne by the Client. No Products may be returned if SNBR is not in a position to verify the accuracy of the complaints on the basis of which the Products are returned. Any returns of Products shall require the prior written consent of SNBR, accompanied by references to the delivery note and the invoice in question, and may be done solely in respect of unused Products in perfect condition that are still in their original packaging. The costs and risks involved in returning Products shall be borne by the Client.

**11.2 Evidence of non-conformity:** The Client shall be required to furnish any proof substantiating any defects observed, and shall bear the cost of any verifications or checks that it carries out directly. SNBR reserves the right to carry out any observations, verifications or checks, whether directly or via the intermediary of its choice and whether on its own premises, on the Client's premises or on the premises of a third party.

**11.3 Warranty – bringing into conformity:** The responsibility of SNBR is strictly limited to observing the instructions stipulated and accepted in the specifications. Any defects in terms of choice and the specifications indicated by the Client shall be the sole responsibility of the latter. Any acceptance of IS that do not meet specifications shall be binding on the Client. If it is established that SNBR is liable for defective Products, these shall be replaced by identical or similar Products or shall result in a credit memo being issued, to the exclusion of any damages payable to the Client. Products shall be brought into conformity by common accord. SNBR shall bear the cost for this if it carries out the procedure itself; if the Client carries out the procedure it must obtain SNBR's prior written permission. If any parts manufactured are brought into conformity by the Client without the permission of SNBR, the Client shall forfeit the right to bring any claims against SNBR.

**11.4 Exclusion and Limitation of liability:** The liability of SNBR is limited to the direct material loss or damages caused to the Client and resulting from any faults attributable to SNBR during the performance of the contract. SNBR shall not under any circumstances be held liable for any immaterial or indirect loss or damage such as loss of business, loss of profit, loss of opportunity, loss of business or failure to make a gain. SNBR shall not be held liable for any actionable consequences of faults committed by the Client or by third parties in relation to the performance of the contract. SNBR shall not be held liable for loss or damage resulting from: the use by the Client of technical documents, information or data issued by the Client or imposed by the latter; designs created by the Client; defects arising from items supplied by the Client; defects arising wholly or in part from normal wear and tear of Parts; deteriorations or accidents imputable to the Client or to a third party; the modification, anomalous or non-standard use, use not in accordance with the intended use of the product or with industry standards or the instructions or recommendations of SNBR. If fixed penalties and damages have been agreed on by common accord, these shall be deemed to constitute a lump-sum settlement in full settlement of the claim in question, to the exclusion of all other penalties or damages. The civil liability of SNBR for all events with the exception of personal injury and gross negligence is limited to a sum equivalent to the amount already paid to SNBR on the date of the service. The Client warrants that its insurers and any third parties in contractual relationships with it shall not bring any claims against SNBR or its insurers in excess of the limitations and exclusions set out above.

**12. Retention of title:** SNBR shall retain the title in the Products until the principal and interest of the price and any ancillary expenses have been paid in full. Payment shall be deemed to have been made when the price is actually received. Presentation of a banker's draft shall not constitute payment. The Client shall assign all receivables in its favour to SNBR when the Products are sold on to third party purchasers. Products in stock are deemed not to have been paid for, and SNBR may draw up an inventory of such Products at any time. In the event of non-payment, the Client shall be required to return all products not paid for, at its own expense and risk, after a formal warning has been issued by registered letter with acknowledgement of receipt. The Client may not under any circumstances pledge Products that have not been paid for, give them as collateral or grant sureties in respect of them.

**13. Price – Terms and conditions of payment:** Prices shall be understood as 'ex works' (EXW Incoterms 2010), excluding packaging and insurance costs and excluding taxes, charges, rates and other taxes, which shall be payable by the Client. Prices may be adjusted on a monthly basis in accordance with changes in the price of raw materials. Invoices shall be payable, via any means of payment, at the registered office of SNBR at 30 days end of month counting from delivery, and no discount shall be given for early payment. The Client may not query these payment dates unilaterally. An effective provision of funds to SNBR shall constitute payment. Under no circumstances may the payments due to SNBR be suspended or have any reduction or set-off applied to them in the absence of SNBR's written permission. SNBR reserves the right to make any order contingent on the Client providing a payment demand on SNBR's first request covering some or all of the services, particularly in the event of payment incidents, doubts as to the Client's solvency, changes to the Client's legal structure or circumstances liable to increase the risk of insolvency. When the contract forms part of a series of commercial contracts as defined by Law No. 75-1334 of 31 December 1975, the Client is legally obliged to ensure that its own ordering party accepts SNBR and its terms and conditions of payment.

**14. Payment Delay:** Any amount not paid on the due date on the invoice entails the application of a penalty pursuant to what is owed to an interest rate equal to the most recent rate of interest of the BCE increased by ten points and the payment of flat-rate compensation for recovery of €40 charge.

Furthermore, any payment default will lead to a penalty of 15% of the sums due for injury and all amounts due and unpaid becoming payable immediately and the contract being terminated automatically with all deposits already paid together with all Products being retained, with the right to claim damages remaining reserved; it shall give SNBR the right to make any subsequent deals contingent on payment for the order, even after partial delivery, or on the provision of guarantees over and above those initially stipulated.

**15. Intellectual Property:** The Client shall inform SNBR immediately in writing of any legal action brought against it with regard to the intellectual property in the Products and shall not take any action without informing SNBR beforehand. The Client shall indemnify SNBR against all proceedings, claims or complaints brought by third parties based on any breach of intellectual or industrial property rights resulting from the manufacture of the Products at the request of the Client. All intellectual property rights and the know-how contained within all documents transmitted, tools manufactured and parts delivered shall remain the exclusive property of SNBR. Any transfer of intellectual property rights or know-how shall require an agreement to be signed. SNBR reserves the right to use its know-how and its research and development work.

**16. Confidentiality:** The parties undertake a reciprocal and general duty of confidentiality in respect of all oral or written information, regardless of the nature and medium of that information. The parties undertake to take all necessary measures to ensure that this duty of confidentiality is respected throughout the entire duration and even after it has expired, and shall emphasise the importance of respecting this duty to all their respective employees.

**17. Language – Applicable Law – Jurisdiction:** If this contract is translated into foreign languages, the French version shall prevail. These general terms and conditions are governed by French law. In the event of difficulties in performing or terminating this contract, the Parties shall endeavour to come to an agreement amicably. Any disputes between SNBR and the Client shall fall within the exclusive jurisdiction of the Commercial Court of Besançon (25000 France), including claims under referee, warranty and disputes involving several defendants.