

## Terms and Conditions of Export Sales by TITANOBEL - effective 1st October 2017

### **1. PURPOSE AND SCOPE**

1.1 – These terms and conditions of sale exclusively apply to all sales of products (hereinafter “Products”) and services (hereinafter “Services”) provided by TITANOBEL to a buyer located outside Mainland France (hereinafter the “Buyer”). The placing of an order by the Buyer or its acceptance of delivery implies its unconditional acceptance to these terms and conditions of sale. They shall take precedence over any other document of the Buyer, including any terms and conditions of purchase or purchase order.

1.2 - TITANOBEL reserves the right to modify these terms and conditions of sale herein as well as the prices of its products at any time, provided the Buyer is notified of such a change.

### **2. LEGAL AND REGULATORY AUTHORIZATIONS (FOR EXPLOSIVE SUBSTANCES ONLY)**

2.1 – Prior to any sale, the Buyer shall obtain from the competent authorities all the official documents necessary for the acquisition of the Products as well as the necessary authorizations for importation at the place of dispatch and for possible transit to the final destination.

2.2 - TITANOBEL is entitled to request from the Buyer, prior to any sale, all valid official documents which certify that it is authorized to receive explosives.

2.3 - The Buyer shall be liable for the nature and quantities of the Products ordered, in particular with regard to the maximum quantities it is authorized to receive or to store at its own facilities.

2.4 - The Buyer shall engage in the exercise of its activity while respecting the laws and other statutes applicable in the territory where the goods shall be destined.

2.5 – Should the Buyer fail to fulfil any of its obligations, it shall bear all costs of such failure alone.

### **3. PRODUCT QUALITY**

Since TITANOBEL is an ISO 9001 version 2015 certified company, quality control is an integral part of its production and it guarantees that the Products shall comply with EU type-approvals issued by a notified body.

### **4. INTELLECTUAL PROPERTY**

4.1 - The Buyer agrees to comply with all intellectual property rights, know-how, manufacturing processes and trade secrets of TITANOBEL, in particular with regards to trademarks and designs, and generally, all other rights held by TITANOBEL.

4.2 - The Buyer shall hold no intellectual property rights relating to the Products. In no event shall the Buyer, for any reason, modify the Products' intellectual property rights or trademarks nor solicit or obtain any legal protection for any element of any nature whatsoever in connection with the Products.

4.3 - The Buyer is prohibited from acting in a manner that would endanger any of TITANOBEL's intellectual property rights described above. Insofar as certain Products and/or items contain or constitute information protected by TITANOBEL, in particular as regards business secrecy, the Buyer may not assign, transfer, entrust, make available or sell them to third parties without the express agreement of TITANOBEL.

4.4 - The Buyer agrees to inform TITANOBEL of any action or claim by third parties to intellectual property rights relating to the Products as well as any infringement by third parties of the intellectual property rights related to the Products and to assist in actions against the perpetrators or accomplices of such abuses.

### **5. OFFER**

5.1 - Any offer of Products or Services by TITANOBEL shall remain valid for the duration that is provided.

5.2 - With regard to Products, the tender's validity shall be conditional on the carrier's retention of its own conditions and the issuance by the competent authorities of the necessary authorizations for export and import.

### **6. ORDERS**

6.1 - By Order is meant any request for delivery of the Goods or Services from the Buyer to TITANOBEL in accordance with the provisions of this Article 6.

6.2 - An order from the Buyer is deemed accepted and the sale is confirmed when the order has been (i) confirmed in writing by TITANOBEL, subject to any reservations held by the latter, or (ii) delivery. In any event, the acceptance by TITANOBEL, even in writing, remains subject to the condition that, until the total payment for the order, no financial risk or other factors are identified which could call it into question. If an order is abnormal or, specifically, is of an excessive financial risk or is placed by a Buyer who has failed to fulfil all its obligations resulting from previous business or has shown unfair or contrary behavior towards TITANOBEL's commercial use, TITANOBEL reserves the right to refuse it or, at its discretion, to submit its acceptance to the application of special conditions appropriate to the situation.

6.3 - Orders by the Buyer shall be irrevocable unless TITANOBEL accepts a modification or cancellation in advance and in writing.

6.4 - No finalized sale can be cancelled by the Buyer. Otherwise, TITANOBEL may require the Buyer to pay the total price excluding taxes of the Products sold plus the additional costs incurred for transport, if any.

6.5 - TITANOBEL shall not be required to have all Products, listed on the TITANOBEL product sheets, in stock.

### **7. COST - PRICES**

7.1 - Prices for Products and Services are before tax prices.

7.2 - The prices of the Products are in accordance with INCOTERMS ICC 2010 defined in the order.

7.3 - TITANOBEL reserves the right to modify these at any time, subject to notification to the Buyer, especially in the event of fluctuations of these conditions or to reflect trends in general prices, competition, production costs of the Products, or in the event of an increase in the cost of raw materials and/or the cost of transport. Any changes in price will be immediately applicable on the date indicated on the new price sheet.

7.4 - All taxes, duties and fees originating in or outside of French territory shall be borne by the Buyer.

### **8. PAYMENT**

8.1 - TITANOBEL sales and related expenses shall be invoiced to the Buyer.

8.2 - Invoices issued by TITANOBEL shall be paid by bank transfer at the time of the order.

Any modification of the payment period specified above must be stated on the order form and have been previously agreed to by TITANOBEL.

### **9. FAILURE TO PAY**

9.1 - The Buyer is required to give notice by the expiry of the term.

In the event of total or partial default of payment at the end of the term, especially for the price of the Products or Services, postage, any costs related to the custody and delivery of the Products, bank fees, or other collection costs, TITANOBEL reserves the right to suspend performance of its contractual obligations.

9.2 - Additionally, except in the case of a deferral requested in time and granted by TITANOBEL in writing, the total or partial non-payment of a single instalment will result in the acceleration of the entire outstanding debt.

9.3 - TITANOBEL reserves the right to require a pre-delivery payment for any order already accepted; immediate payment of all other invoices, whatever their due dates; to suspend any delivery or presentation of Services and/or to cancel any order in progress until the full settlement of all outstanding bills.

9.4 - Any prepayment paid by the Buyer shall remain with TITANOBEL as a penalty clause, without prejudice to any other actions which it would be entitled to bring against the Buyer.

9.5 - In the event of total or partial default of payment at the end of the term, the Buyer shall be obliged, in addition to the payment of the principal claim, to pay, any banking fees and/or penalties per day of delay up to ten times the statutory interest rate and a lump sum indemnity of €40 (forty euros), pursuant to Article L. 441-3 and L. 441-6 of the French Commercial Code.

9.6 - In addition to any damages, TITANOBEL may also claim reimbursement of the costs of recovery and proceedings which it would be liable to incur in the event of it recovers its claimed amount by judicial or by any other means.

## **10. DELIVERIES - INCOTERMS**

- 10.1 - The transport of explosive substances is subject to the regulations in force concerning the transport of dangerous goods. TITANOBEL certifies that its marketed products have been approved for transport (ADR, RID, IMDG) and are packaged in accordance with the regulations in force.
- 10.2 - When, due to the means of transport, a change of packaging is carried out in accordance with the regulations governing the transport of dangerous goods, this additional cost shall be passed on in full to the Buyer.
- 10.3 - Unless expressly agreed, delivery will be to EXW (Vonges) according to ICC INCOTERMS CCI 2010 and delivery will be deemed to have occurred at the time it is made available for pick up by the Buyer or its carrier at the Vonges factory (21270).
- 10.4 - The Buyer agrees to remove or to receive, as the case may be, the Products as soon as they are made available at the agreed upon place of delivery, failing which all costs related to such delay or absence of receipt, including allowances for penalties and care, will be invoiced to the Buyer.

## **11. DELIVERY TIMES**

- 11.1 - The delivery lead times are given only as information; and shall depend in particular on the availability of carriers, the order in which deliveries arrive, the available Product stock and, where applicable, port infrastructure availability.
- 11.2 - TITANOBEL shall: (i) respect the projected delivery times indicated on the accepted order form, in accordance with the professional logistic reference period, and (ii) shall fulfil the accepted orders, except in cases of force majeure, as defined in Article 18, subject to the Buyer's compliance with the terms of payment and in terms of its general obligations under these terms and conditions.
- 11.3 - Unless otherwise expressly agreed by TITANOBEL, delays in delivery shall not justify the cancellation of the order or give rise to a penalty or compensation.

## **12. RECEPTION - REMOVAL OF PRODUCTS**

- 12.1 - The Buyer agrees to remove or receive, as the case may be, the Products on the pre-determined date, failing which the stated costs of custody and transport, will be invoiced to the Buyer.
- 12.2 - The Buyer who removes Products from a TITANOBEL warehouse or factory shall first issue an express request to do and shall be in compliance with the regulatory requirements. TITANOBEL may refuse to allow the goods to be removed if compliance with regulations has not been completed.

## **13. UNLOADING**

By express agreement, the unloading of the Products at the place of delivery shall be ensured exclusively through the care and under the responsibility of the Buyer who shall bear the risks, irrespective of the participation in the unloading by the carrier.

## **14. DISPUTES**

- 14.1 - RESERVATIONS - In the event of error or damage to the Products delivered, or which are missing, or in the event of disputes relating to the Services executed, it is the Buyer's responsibility to notify the carrier and TITANOBEL of any required reservations. In accordance with Article L. 133-3 of the French Commercial Code, any Product which has not been the subject of a reasoned reservation sent by registered letter with return receipt requested, within three (3) days of delivery, to the carrier with a copy sent at the same time to TITANOBEL, will be considered accepted by the Buyer. Reservations relating to Services shall be addressed to TITANOBEL under the same conditions.
- 14.2 - COMPLAINTS - Without prejudice to the stipulations of article 12.1, complaints concerning the quality of the Products delivered can be taken into consideration only if they are sent in writing to TITANOBEL, by registered letter, return receipt requested, within two (2) days following the use of the Products. In any event, no claim can be made after one (1) year following receipt of the Products in question.

## **15. TERMS AND CONDITIONS OF DISPUTE**

- 15.1 - TITANOBEL reserves the right to refuse any delivery of Products or Services pending the settlement of the dispute related to said Products and Services.
- 15.2 - It is the responsibility of the Buyer to provide any and all proof related to the actual defects or deficiencies found. Any dispute shall precisely define the defects involved.
- 15.3 - The Buyer shall allow TITANOBEL every opportunity to detect any imperfection or defect and to remedy them. No return of Products shall be made by the Buyer without the express prior written consent of TITANOBEL. The Buyer shall not suspend the performance of its obligations or deduct from its payments any amount without the express written consent of TITANOBEL.
- 15.4 - In the event of a dispute, and after review of the defect by TITANOBEL, the Buyer may only ask TITANOBEL to replace the non-conforming Products, to make up the deficiencies and / or to carry out a corrective action to remedy the performance of the defective Services, at the expense of TITANOBEL, without the Buyer being entitled to any indemnity or further resolution of the order.

## **16. RESERVATION OF OWNERSHIP AND TRANSFER OF RISK**

- 16.1 - TITANOBEL RESERVES OWNERSHIP OF THE PRODUCTS AND PACKAGES DELIVERED UNTIL THE RECEIPT OF THE FULL INVOICE PRICE AND ALL THE ADDENDUMS THERETO, IN PARTICULAR, ANY LATE FEE INTEREST WHICH MAY BE DUE. The delivery of bills of exchange or other instruments creating an obligation to pay shall not constitute a payment within the meaning of this provision. Payment shall only be considered complete when TITANOBEL receives the full invoice price.
- 16.2 - Throughout the period of the reservation of ownership, the Buyer shall be forbidden from giving, modifying, selling, damaging, defacing or transferring the Products and packaging as collateral.
- 16.3 - The Buyer shall identify and insure the Products, located at its premises, subject to the reservation of ownership, and shall list TITANOBEL as the beneficiary of the said insurance policy and, in the event of a claim, subrogate on behalf of TITANOBEL its insurance rights. The Buyer shall be obliged to immediately inform TITANOBEL of the seizure, for the benefit of a third party, of Products which have been delivered and which remain subject to a reservation of ownership.
- 16.4 - The Buyer undertakes to take all necessary measures to ensure that the Products are maintained as the property of TITANOBEL by being identified and kept in proper conditions.
- 16.5 - Notwithstanding the foregoing, risks relating to the Products shall be transferred to the Buyer in accordance with the INCOTERM identified within the Order.

## **17. LIABILITIES**

- 17.1 - In respect to the Buyer, TITANOBEL shall be liable, under common law and within the limits set forth below, for any negligence, error or fault which it may incur in connection with the execution of the terms and conditions of sale.
- 17.2 - TITANOBEL shall only be held liable in the event of non-performance or in breach of all or part of its obligations hereunder.
- 17.3 - TITANOBEL shall not be liable for any damage resulting from force majeure, defective storage conditions, hidden defects of the Product not known to TITANOBEL, improper use, normal wear and tear, as well as damage resulting from the fault or negligence of the Buyer.
- 17.4 - TITANOBEL shall not be held liable for any damage caused to goods and related to the use of the Product by the Buyer or by customers of the latter. TITANOBEL shall not be held liable for the consequences of the Buyer's failure to comply with the legislation in force regulating the use of the Products it markets.
- 17.5 - The Buyer agrees to indemnify and hold TITANOBEL harmless from and against any and all claims, costs or damages arising out of any abnormal, improper or non-conforming use of the Products, negligence, breach of these terms and conditions or through any fault of the Buyer, including but not limited to the storage of the Products under inappropriate conditions, the use of the Products under conditions or for purposes other than those for which they are intended.
- 17.6 - The technical advice given without charge to the Buyer shall not result in TITANOBEL being liable.

#### **18. COMPENSATION**

18.1 - TITANOBEL will only be liable for bodily injury and / or damage to the Customer, with the exclusion of any intangible damage.

18.2 - In the event of personal injury, TITANOBEL's total and definitive liability to the Customer is expressly limited to €1,500,000 (ONE MILLION FIVE HUNDRED THOUSAND EUROS) per event and per year.

18.3 - In the event of damage to property, TITANOBEL's total and final liability is expressly limited to the price of the Services concerned.

18.4 - As a consequence of what is stipulated in the paragraph above, the Customer and its insurers expressly waive any recourse they may have against TITANOBEL and its insurers for intangible damages and/or bodily injury exceeding €1,500,000 (ONE MILLION FIVE HUNDRED THOUSAND EURO) per event and per year and for material damage limited to the price of the Services concerned.

#### **19. FORCE MAJEURE**

19.1 - Any delay or failure to perform its obligations by TITANOBEL shall not result it being liable when this delay or failure to perform is due to a case of force majeure.

The following shall in particular be deemed to be cases of force majeure: breakdown of machinery or equipment, manufacturing incidents, total or partial strikes, flood, fire or other natural disasters, interruption of sources of raw materials and energy, riots, acts of violence, terrorism, state of war and any other similar events, transport incidents or failures, refusal of the carrier to take charge of the Products, refusal of the port authorities to allow the departure, stopover or arrival of the Product, legislative or regulatory changes, etc...

19.2 - In such circumstances, TITANOBEL will notify the Purchaser in writing, specifically fax or e-mail, as soon as possible after the occurrence of the events, with the contract binding TITANOBEL and the Buyer being suspended ipso jure, without compensation, effective the date of occurrence of the event. The delivery period shall then be extended for the duration of the force majeure.

19.3 - If the event lasts more than thirty (30) days from the date of its occurrence, the contract concluded between TITANOBEL and the Buyer may be terminated by TITANOBEL, without the Buyer being entitled to claim any award for damages.

#### **20. MISCELLANEOUS PROVISIONS**

20.1 - TITANOBEL's failure to comply with any of its obligations shall not result in the immediate termination of any relationship by the Buyer, such as cancellation of outstanding orders and/or termination of sales of goods already delivered.

20.2 - TITANOBEL's failure to rely at any time on any of the clauses of these terms and conditions of sale shall not be construed as waiving the right to avail itself of any provisions of these terms and conditions of sale at a later date.

20.3 - If any of the paragraphs or clauses of these terms and conditions of sale shall be deemed void or unenforceable, the remainder of the present terms and conditions of sale shall remain in force, unless the voided obligation is an essential obligation whose removal or cancellation shall prevent the continuation of the present terms and conditions of sale as a whole.

#### **21. JURISDICTION AND APPLICABLE LAW**

21.1 - TITANOBEL has elected its address to be that of its registered office.

**21.2 - ANY DISPUTE RELATED TO THE APPLICATION OF THESE TERMS AND CONDITIONS OF SALE AND THEIR INTERPRETATION, VALIDITY, PERFORMANCE AND SALES CONTRACTS CONCLUDED BY TITANOBEL OR THE PAYMENT OF INVOICED AMOUNTS SHALL BE BROUGHT IN FRONT OF THE COURT OF COMMERCE FOR DIJON, THIS SHALL INCLUDING IN THE EVENT OF APPEAL OR PLURALITY OF DEFENDANTS. BILLS OF EXCHANGE SHALL NEITHER NOTIFY NOR DEROGATE FROM THIS ATTRIBUTIVE CLAUSE OF JURISDICTION.**

21.3 - Any dispute shall be governed by French law, with the exception of the Vienna Convention on the International Sale of Goods and/or any other laws.

21.4 - In the event that the Buyer is summoned by third parties to another jurisdiction, the Buyer hereby waives the right to call the seller as security in any other jurisdiction.

#### **22. LANGUAGE**

These terms and conditions has been written in French and translated into English. Only the French version shall be considered authoritative.

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