

# MULTI-WING

## TERMS OF SALES AND DELIVERY FOR MULTI-WING ITALIA SPA

### 1. SCOPE AND SALES ORDER

- 1.1 These Terms of Sales and Delivery (hereinafter referred to as the "General Terms") of Multi-Wing Italia Spa, a limited liability company registered and existing under Italian laws having its address at Via Edison 112 20019 Settimo Milanese (MI), Italia, REA MI - 996090 ("Multi-Wing") shall apply to all quotations and offers and any deliveries and sales orders made by Multi-Wing of any products or goods including services incidental thereto (hereinafter referred to as the "Products"), except to the extent where the General Terms are inconsistent with an agreement in writing signed by Multi-Wing and the Purchaser deviating from the General Terms.
- 1.2 These General Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement documents issued by the Purchaser. In such case, the terms contained in the General Terms shall govern, and acceptance of the Purchaser's order is conditioned upon the Purchaser's acceptance of the terms and conditions herein, irrespective of whether the Purchaser accepts these conditions by written acknowledgement, by implication, or by acceptance or payment of Products ordered hereunder. Multi-Wing's failure to object to any deviating terms and conditions or additions, modifications or limitations to these General Terms contained in any communication from the Purchaser shall not be deemed to be a waiver of the provisions herein.
- 1.3 A final agreement of sale ("Sales Order") shall only be deemed to be binding for Multi-Wing, if Multi-Wing has sent a written confirmation of order to the Purchaser.

### 2. SUITABILITY OF GOODS, TECHNICAL DATA AND PRODUCT INFORMATION

- 2.1 The Purchaser shall ensure the selected Products and design are fit for purpose and meet all regulatory, legislative and specified requirements for the proposed application. The Purchaser shall be deemed to have satisfied itself as to the suitability of the design, performance characteristics and materials to meet local conditions, building requirements or any other factors which may in any way affect the operation of the Products supplied.
- 2.2 The use of and reference to, drawings, data sheets, specifications, calculations, samples or other information provided to Multi-Wing by the Purchaser or any nominated third party, shall not relieve the Purchaser of its liabilities with regard to ensuring the accuracy, integrity, suitability and general fitness for purpose of this information and its subsequent use and Multi-Wing accepts no responsibility for the accuracy of any information submitted by the Purchaser or any nominated third party.
- 2.3 All information stated in brochures, price list, technical reports, samples, drawings, descriptive matter, specifications and advertising, including in respect of weight, dimensions, capacity, performance, and other technical data shall be for guidance only.

### 3. CONSTRUCTIONAL CHANGES

- 3.1 Multi-Wing reserves the right, before delivery and with three (3) months written prior notice to the Purchaser, to undertake any constructional changes in the specifications including in design or execution as it may, at its sole

discretion, deem necessary, provided that the alteration does not materially affect the quality or adversely affect the performance of the Product.

- 3.2 Such changes shall entitle the Purchaser to cancel the Sales Order only: (i) in respect of Products which have been altered; and (ii) where the alteration materially affects the quality or adversely affects the performance of the Product.

#### **4. PRICES AND TAXES**

- 4.1 Unless otherwise agreed to in writing by the parties, prices quoted by Multi-Wing are those current at the date of quotation and shall be subject to variation by Multi-Wing.
- 4.2 The price payable for the Products ordered by the Purchaser is set out in the Sales Order
- 4.3 Multi-Wing reserves the right to adjust accepted Prices without notice in the case of considerable exchange rate fluctuations, increases in costs of raw materials, labour, and shipping, government intervention, customs duties, direct and indirect taxes and other cost-increasing factors.
- 4.4 All Prices stated are exclusive of GST, VAT or equivalent goods and services taxes or government duties, and exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance.

#### **5. DELIVERY AND DELAY**

- 5.1 Where a delivery term has been agreed, it shall be interpreted in accordance with the incoterms® 2020 in force at the formation of the Sales Order. Unless otherwise stated in the Sales Order, delivery shall be made Ex Works (incoterms® 2020) at the place of Multi-Wing or a warehouse as the case may be as stipulated in the Sales Order. After delivery, the Purchaser shall be responsible for proper transport and storing facilities for the Products.
- 5.2 Multi-Wing may deliver the Products in one or more consignments and invoice each consignment separately. Multi-Wing reserves the right to ship Products in advance of the agreed shipping date.
- 5.3 In the absence of any specific instructions, Multi-Wing shall be free to select the carrier and ship the Products prepaid and added to the price of the relevant Products. Multi-Wing will not be deemed responsible for any liability in connection with any shipment because of the selection of a carrier or such carriers' failure to maintain an insurance.
- 5.4 Any delivery time stated by Multi-Wing is approximate only and is not binding on Multi-Wing. Multi-Wing shall not be liable for any losses or damages suffered by the Purchaser due to any delay in delivery or non-delivery of the Products howsoever caused.
- 5.5 If delivery cannot be made due to circumstances for which the Purchaser is responsible, Multi-Wing has the right to provide for storage of the Products at the Purchaser's expense and risk. Multi-Wing is entitled to charge storage rent, claim reimbursement of costs, etc.
- 5.6 If delivery is delayed, and Multi-Wing is responsible for the delay, the Purchaser shall be entitled by written notice to Multi-Wing to demand delivery. This is, however, conditional on the Purchaser fixing a final deadline of minimum ninety (90) working days, within which deadline the delivery shall be made, thus indicating the Purchaser's intent to revoke the Sales Order, if delivery has not taken place within such deadline. Only where delivery has not taken place within this deadline, the Purchaser shall be entitled to cancel the Sales Order.

5.7 Apart from the right of cancellation mentioned in Clause 5.6, the Purchaser shall have no other right to allege breach of a Sales Order for delay, as all other remedies are agreed excluded. Consequently, the Purchaser shall not be entitled to claim for damages of any kind, including trading loss, etc., in consequence of such delay.

**6. PAYMENT**

6.1 Unless otherwise agreed in the Sales Order, the terms of payment shall be net cash by delivery and paid in the currency of the invoice.

6.2 If the Purchaser fails to pay on due date, Multi-Wing shall be entitled to interest from the day on which payment became due at a rate of two percentage (2 %) per month.

6.3 Multi-Wing may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Multi-Wing. Multi-Wing shall be entitled to cancel the Sales Order and/or suspend any further deliveries under any current Sales Order until any and all outstanding sums have been paid in full.

6.4 The Purchaser shall not be entitled to make any deductions, set-offs, or counterclaims in sums payable to Multi-Wing.

**7. RETENTION OF TITLE**

The Products shall remain the property of Multi-Wing until paid for in full to the extent that such retention of property is permitted by applicable law.

**8. WARRANTY, INSPECTION, AND MAKING GOOD OF DEFECTS**

8.1 Multi-Wing provides warranties as to material and workmanship for the Product sold by Multi-Wing to the Purchaser. Such warranties are given for a period of twelve (12) consecutive months after delivery ("Warranty"). All other warranties, conditions, statements or undertakings (whether express or implied) as to quality, condition, description, compliance with sample, or Products fitness for purpose or suitability for any purpose (however or whenever statutory, custom of the trade or otherwise) are expressly excluded to the fullest extent permitted by applicable law.

8.2 The signing of a delivery note is deemed to be acceptance of the Product(s) with regard to the arrival and number of items delivered. The Purchaser shall, within seven (7) days of the arrival of each delivery of a Product and in any event prior to the use of the Product(s), give written notice of rejection to Multi-Wing on account of any defect which is apparent on reasonable inspection, and by reason of which it believes that the Product does not comply with the Warranty. In the absence of any such notice within seven (7) days of the arrival of the delivery and in any event prior to the use of the Product(s), the Product(s) shall conclusively be presumed to comply with the Warranty and, accordingly, the Purchaser shall be deemed to have accepted the delivery of the Product(s) in question and Multi-Wing shall have no liability to the Purchaser with respect to that delivery (except in relation to liability for any latent defects).

8.3 If the Purchaser alleges that any Product is defective, the Purchaser shall without undue delay, if so requested by Multi-Wing and at the Purchaser's own expense, return the Product (unaltered) to Multi-Wing for inspection or to give Multi-Wing a reasonable opportunity to inspect or test the Product(s).

- 8.4 If the Purchaser rejects any delivery of a Product which does not comply with the Warranty, Multi-Wing shall, as soon as practicable after having accepted that the Product does not comply with the Warranty at its discretion either:
- a) repair or supply a replacement Product which complies with the Warranty, in which event: (i) any repaired or replacement Product shall be subject to the same unexpired 12-month Warranty period with effect from the date of delivery, and (ii) Multi-Wing shall be deemed not to be in breach of the Sales Order or have any liability to the Purchaser for the rejected Product; or
  - b) notify the Purchaser that it is unable to supply a replacement Product, in which case Multi-Wing may grant, at its own volition, the Purchaser a credit equal to the value of the Product(s) and/or a cash refund for the value of the Product(s) that Multi-Wing agrees do not comply with the Warranty.
- 8.5 The repair or replacement obligation referred to in Clause 8.4 above shall not apply where, in Multi-Wing's reasonable opinion:
- a) the Product was not installed or used in accordance with the requirements or conditions specified in the technical requirements and/or operating instructions relating to the product.;
  - b) the defects were attributable to normal wear and tear;
  - c) the defects were attributable to the negligence of the Purchaser, its agents or employees;
  - d) modifications or technical intervention were carried out without Multi-Wing's consent in writing;
  - e) the Purchaser made further use of the Products after giving written notice of the defect in accordance with Clause 8.2;
- 8.6 The remedies under Clause 8.4 are the sole and exclusive remedies available to the Purchaser in case of a Product not complying with the Warranty. Thus, Multi-Wing shall under no circumstances be liable to the Purchaser or any other person for any special, incidental or consequential damage or losses, whether based on loss of goodwill, loss of resale profits, breach of contract, negligence or otherwise.

## **9. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- 9.1 Multi-Wing's total liability in contract, tort (including negligence), product liability, misrepresentation or otherwise in relation to the Sales Order shall be limited to the price of the Product to which Purchaser's claim relates. However, notwithstanding the aforementioned, Multi-Wing's liability can never exceed DKK 1,000,000.
- 9.2 Multi-Wing shall not be liable to the Purchaser for:
- a) any indirect, special or consequential loss or damage; or
  - b) loss of data or other equipment or property; or
  - c) economic loss or damage; or
  - d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
  - e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill

even if Multi-Wing is advised in advance of the possibility of any such losses or damages.

- 9.3 The Purchaser shall indemnify and keep indemnified Multi-Wing (and its employees and agents) fully from and against any and all actions, claims, costs, losses, damages, demands, expenses, proceedings, charges and other liabilities arising, suffered or incurred in respect of:
- a) any error in or omission from any information supplied by the Purchaser (or its nominated third party);
  - b) any threats, claims or allegations that any information supplied by the Purchaser (or its nominated third party) or the use thereof, infringes any intellectual property or other rights of any third party;
  - c) any threats, claims or allegations that any information supplied by the Purchaser (or its nominated third party) or the use thereof, breaches the provisions of any statute, statutory instrument or regulation or other law of any applicable country or territory; and
  - d) the use of reliance by Multi-Wing upon any information supplied by the Purchaser (or its nominated third party) including, without limit, any claim made against Multi-Wing by any third party as a result thereof.
  - e) any third party claim made against Multi-Wing related to Products sold by the Purchaser to a third party, whether such Products have been (re)sold separate or together with one of Purchaser's products. Notwithstanding the aforementioned, the Purchaser shall only indemnify Multi-Wing for third party claims based on the EC directive on product liability, if the Purchaser has a) implemented/integrated the Products into the Purchaser's own products, and b) sold such products to the third parties.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Purchaser acknowledges that:
- a) all intellectual property rights and other rights, including but not limited to copyright, database rights, topography rights, design rights, trademarks, trade names, utility models, patents, domain names, documentation and knowhow (whether or not registered) (the "Intellectual Property Rights") shall in any event remain the sole property of Multi-Wing Intellectual Property Rights specifically developed to the Purchaser and/or for the Purposes of the Sales Order by Multi-Wing shall also be the sole property of Multi-Wing.
  - b) nothing in the Sales Order shall be construed as a grant of any license to the Intellectual Property Rights or other rights to the Intellectual Property Rights. Multi-Wing asserts its full rights to control the use of its trademarks within the territories the Products are sold;
  - c) any reputation in any trademarks affixed or applied to the Products by Multi-Wing or the Purchaser shall accrue to the sole benefit of Multi-Wing or any other owner of said trademarks from time to time.
- 10.2 The Purchaser shall not repackage the Products and/ or remove any copyright notices, confidential or proprietary legends or identification from the Products except for any removal which is the necessary result of a manufacturing process of which Multi-Wing has been previously notified in writing by the Purchaser.
- 10.3 The Purchaser shall not use or seek to register any trademark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trademark or trade name which Multi-Wing or any associated company of Multi-Wing owns or claims rights in anywhere in the world.
- 10.4 Third party claims contending that the Products delivered by Multi-Wing infringe a third party's intellectual property rights, will be settled or defended by Multi-Wing, and Multi-Wing will pay reasonable defence costs, settlement

amounts and court-awarded damages, on the condition that the Purchaser (i) promptly provides written notice to Multi-Wing, (ii) cooperates with Multi-Wing and follows the instructions given by Multi-Wing in the defence or settlement of the claim, and (iii) grants Multi-Wing sole control of the defence and potential settlement of the claim.

- 10.5 Should a third party claim be raised or in case that Multi-Wing finds such a claim likely to be raised, Multi-Wing is entitled to at its own choice (i) modify the Products, or (ii) replace the Products with a product of a similar kind. If neither (i) nor (ii) can be achieved after the exercise of commercially reasonable efforts, Multi-Wing may terminate the Sales Order for the affected Product and refund to the Purchaser all payments paid by the Purchaser to Multi-Wing with respect to the affected Product.
- 10.6 Multi-Wing will not be liable for claims of infringement arising from (i) modifications of a Product not made by Multi-Wing, (ii) compliance of the Product with any third party or Purchaser designs, instructions, specifications or technical information, (iii) Purchaser's use with products and services not provided by Multi-Wing, or (iv) Purchaser's noncompliance with instructions or specifications provided by Multi-Wing.
- 10.7 This Clause 10 is exclusive and sole as regards to Multi-Wing's liability for claims of intellectual property infringement.

## **11. FORCE MAJEURE**

- 11.1 Multi-Wing shall not be liable for any failure or delay in performing its obligations under the Sales Order to the extent that such failure or delay is caused by any event beyond Multi-Wing's reasonable control which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, including but not limited to, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemics, disease outbreaks or similar events, cyber attacks, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 11.2 Both Parties shall be entitled to terminate the Sales Order immediately by notice in writing if the performance of its obligations becomes impossible for a period of time exceeding 60 days due to any of the circumstances set forth in Clause 11.1 above.

## **12. NOTICES**

- 12.1 Any notice hereunder shall be deemed to have been given if sent by registered mail or by courier to the party concerned at its last known address. Notices to Multi-Wing shall be sent to Multi-Wing A/S, Staktoften 16, 2950 Vedbæk, Denmark.

**13. WAIVER**

- 13.1 Failure by Multi-Wing to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

**14. ASSIGNMENT**

The Purchaser shall not, without the prior written consent of Multi-Wing, assign, transfer, charge or deal in any other similar manner with the Sales Order or its rights or any part of them under the Sales Order, subcontract any or all of its obligations under the Sales Order, or purport to do any of the same.

**15. SETTLEMENT OF DISPUTES, GOVERNING LAW**

- 15.1 Any dispute arising out of or in connection with these General Terms and any Sales Order shall be settled in accordance with Danish law. This provision on applicable law shall not include Danish law on Conflict of Laws.
- 15.2 The courts having jurisdictions over Multi-Wing at its business place in Denmark shall be the agreed venue. Multi-Wing shall nevertheless always be entitled in lieu hereof to bring an action against the Purchaser at the venue of the Purchaser.
- 15.3 Irrespective of Clause 15.2, Multi-Wing shall be entitled to demand that any dispute arising out of or in connection with any Sales Order or the General Terms, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. Both parties shall be entitled to nominate an arbitrator, and the arbitration tribunal shall be seated in Copenhagen, and the proceeding be conducted in English