

## GENERAL CONDITIONS OF SALE

### ADCON Telemetry GmbH

#### **1. Scope**

- 1.1 These General Business Conditions shall apply to all supplies of goods by us and shall apply by analogy also to the rendering of services by us. Whenever Buyer places an order with us or, at the latest, receives our goods or services, this shall be construed as acceptance of these Business Conditions. These Conditions shall also apply to future transactions, even if there is no express reference to them.
- 1.2 Changes of these Business Conditions or ancillary agreements thereto are only valid if confirmed by us in writing and shall apply only to the respective transaction. ADCON expressly excludes acceptance of Buyers General Business Terms, if in contradiction to the terms herein. An acknowledgement of receipt forwarded by us shall not be construed as acceptance of Buyer's contract terms.
- 1.3 Our offers are non-binding as a whole unless otherwise stated. Orders placed by Buyer shall be accepted only upon our written acknowledgement of receipt or through delivery or performance. We shall have the right to accept offers in parts only or to refuse them without cause.

#### **2. Prices**

Our prices are ex works and do not include Governmental taxes. Prices shall be calculated according to the terms contained in Customers contract of even date and the price list as valid on the day of delivery.

#### **3. Delivery, Term of Delivery**

- 3.1 Any dates of delivery indicated are non-binding. The term of delivery will usually be about 14 days. Where a specific delivery date has been agreed, Buyer may rescind the contract only if delivery is not effected by us despite written reminder and granting of a four weeks grace period.
- 3.2 If any circumstances occur beyond the reasonable control of the Parties, such as delayed delivery by pre-suppliers, force majeure, unforeseeable operational failure, government intervention, delayed transport and customs clearance, transport damage, shortage of energy, material and raw materials and labor conflicts, the term of delivery shall be extended for the time such obstacles continue to exist.
- 3.3 Partial deliveries shall be acceptable only upon mutual written consent. Any agreed to partial delivery shall be deemed a separate transaction for which we may issue a separate invoice.

#### **4. Performance and Transfer of Risk**

- 4.1 The risk shall pass to Buyer upon delivery of the goods to the forwarding agent or carrier, at the latest as soon as the goods leave the warehouse. This applies even if we deliver the goods to a site designated by Customer with our own or another person's vehicle.
- 4.2 In the absence of specific instructions from Buyer to this effect, delivery is made at our best discretion with no warranty being accepted for the selection of the quickest and least expensive method of consignment. Packaging material shall not be taken back.

#### **5. Notice of Defects and Warranty**

- 5.1 We warrant that the products supplied by us are free and clear of material and manufacturing defects which considerably reduce the products' fitness and that they have any properties which we have expressly guaranteed. We do not warrant that the products may be resold or are fit for a specific purpose.
- 5.2 Upon receipt, Buyer shall promptly inspect the goods as to completeness, accuracy, or any other shipping damage and provide written notice of any defects, if any, no later than within five work days from receipt of the goods or services, to ADCON. If forwarding agencies require a shorter period for the reporting of damage occurred through transportation, Buyer or third party is obliged to notify both transporting company and ADCON about any externally visible damages within the period as set for by shipper. ADCON cannot be held liable for the loss of insurance coverage if Buyer or third party fails to meet shipper's deadlines. If goods are sent directly to third parties, the deadlines within which the goods must be inspected and the time period to identify complaints shall commence upon receipt of the goods by such third parties. Hidden defects shall be notified promptly after being detected.
- 5.3 The warranty period shall be 12 months from the passing of the risk. We shall not accept warranty for improper installation, maintenance, repair, use or alteration by Buyer or a third party, unless Buyer is able to demonstrate that these circumstances did not cause the notified defect.
- 5.4 Our warranty obligation shall at our option be limited to the supply of identical replacements, in terms of type and quality, or improvement. The warranty period shall not recommence to run again from delivery of replacements or improvements. Warranty is always on a delivery/bring-in basis.

#### **6. Indemnity**

Buyer shall not be entitled to special, incidental or consequential damages, arising out of contract, defects, use or inaccurate recommendations and advice, provided that these damages were not caused by us intentionally or grossly negligently.

#### **7. Software**

The grant of rights to use our data processing programs shall be subject to our software license conditions. Buyer shall not be entitled to use our software unless he has concluded a software license agreement for the respective program. If Buyer is not an authorized ADCON reseller, he shall not pass on or otherwise make available to third parties our software and associated documentation (performance description and user manual) before having received notice from us that there is a valid license agreement between us and the respective third party.

#### **8. Payment Terms**

- 8.1 By default all goods are to be prepaid upon receipt of ProForma invoice. A credit line will be provided only to the extent granted by our credit insurance. Default in payment is subject to default interest amounting to the interest rates charged by our banks, such rate not being lower than 10 % p.a., beginning with the 31st day from the invoice date, unless we have incurred higher costs. Reminder costs, information costs and any other costs incurred in connection with the collection of the claim shall be borne by Buyer.
- 8.2 Default payment method shall be by Wire Transfer, with Buyer covering all bank charges of senders bank including senders correspondence bank, and ADCON covering charges of receivers bank, including receivers correspondence bank. Checks will be honored for payment only if they are sent timely enough for Adcon to receive the funds at due date, and if the check amount includes all applicable bank charges. Drafts unfortunately cannot be accepted.
- 8.3 Buyer may make a set off or assert a retention right only with respect to unchallenged claims that have been acknowledged with binding effect.
- 8.4 In case Buyer is in default of payment or any other performance, we shall be entitled - notwithstanding any other rights - to retain supplies or services within the open delivery term until the agreed consideration is made, or, at the end of a reasonable grace period, rescind the contract and request damages for non-performance. In the latter case, we shall be entitled to claim or retain, respectively, the agreed advance, in any case a minimum amount of penalty of at least 15 % of the price.

#### **9. Retention of Title**

- 9.1 We shall retain title to any goods supplied by us until Buyer has completely paid the purchase price, ancillary charges and all other outstanding debts towards us as relating to such goods.
- 9.2 Buyer shall be entitled in the ordinary course of business to sell to third parties the goods supplied by us. Upon termination of Buyer's contract, Buyer shall retain the right to collect payments unless Buyer is in default with respect to payments to be made to us. In such event, Buyer shall notify Buyer's customers of an assignment of such portion of the outstanding payment due Buyer as is necessary to collect the balance due Adcon. Buyer shall provide us with any documents and information required to assert our rights.
- 9.3 If Buyer is in default of its payment obligations, if a petition in bankruptcy is made against it, or if Buyer breaches any other obligation hereunder, we may at our option demand payment in full of outstanding balances due Adcon, or delivery of those goods retained in Buyer's inventory which have not been paid for.

#### **10. Governing Law, Place of Performance, Venue**

- 10.1 The legal relationships with Buyer shall be governed by Austrian law, not including the US Sales Convention.
- 10.2 The place of performance of any obligations arising hereunder shall be Vienna.
- 10.3 Any disputes arising in connection with this Agreement, directly or indirectly, shall be referred to the competent court with subject-matter jurisdiction in Vienna. However, we are entitled to bring cases before any other court that has jurisdiction over Buyer.

#### **11. Miscellaneous**

- 11.1 Rights under the contract concluded with us may be assigned to third parties only with our written consent which such consent shall not be unreasonably withheld.
- 11.2 If any term hereunder is or becomes legally invalid, the remainder of terms and the contracts concluded on the basis thereof shall not be affected. The invalid term shall be replaced by a valid term that closest reflects its intent and purpose.