

**GENERAL TERMS & CONDITIONS OF SALE OF SEMPERTRANS  
VERSION JAN 2016**

**1. General**

- 1.1 These General Terms and Conditions of Sale ("GTC") will apply to the entire business relationship between a customer and Sempertrans in particular to the present supply agreement and any supply agreements to be concluded in the future. Deviating provisions shall be ineffective even if Sempertrans does not expressly object thereto. Deviations from these GTC proposed by a customer, if any, shall only be effective if Sempertrans accepts the same in writing prior to conclusion of the contract of sale.
- 1.2 An order (Purchase Order) in writing from a customer made to Sempertrans shall be binding on Sempertrans only if Sempertrans accepts the same and acknowledges it in writing. The order so accepted/acknowledged by Sempertrans or the counter offer accepted by a customer, pursuant to GTC 1.3 below shall constitute contract of sale.
- 1.3 The offer shall be valid for a maximum period of four weeks as of its date of issue.
- 1.4 Mailing of Sempertrans price list which will be only indicative shall not be construed to be an offer from Sempertrans to any recipient thereof.
- 1.5 Agreements concluded orally or over the telephone as well as written and oral agreements with agents of Sempertrans will only be binding on Sempertrans if Sempertrans has acknowledged them in writing.
- 1.6 Instructions/information provided by Sempertrans in brochures, instructions for use or other product information shall be strictly complied with by a customer in order to prevent damage. **Sempertrans expressly warns the Customer against any use or treatment of the products beyond the defined areas of application.** The Customer shall ensure that any further customer or user will be instructed sufficiently, at the risk and cost of the customer.
- 1.7 The Customer shall, at the time of delivery of goods, before according his acceptance, inspect the goods. The Customer shall have the right to inspect the goods at Sempertrans' factory or warehouse before acceptance upon reasonable notice in case the customer exercises the right of inspection before the goods are parcelled for delivery. In case, if a Customer carries out inspection or fails to carry out inspection he shall have no right to reject the goods thereafter. If the Customer shall be in default of carrying out the inspection, shall omit his required collaboration or shall the inspection be delayed by any other reason caused by the Customer, then GTC 4.2 prevails.
- 1.8 Unless explicitly agreed otherwise in writing, Sempertrans shall be entitled to assign any Agreement to any other production site that is a member of the Semperit Group without the Customer's approval.
- 1.9 In case the order is being cancelled by the customer with short notice, Sempertrans is eligible to request cancellation fees. These cancellation fees represent 30% of the goods value until 4 weeks before the production is planned to start, 70% of the goods value from 4 weeks until the production is started and 100% once the production is being started.

**2. Terms of delivery**

- 2.1 Deliveries will be made and invoiced at the prices as agreed on the terms and conditions applicable on the date of delivery of the goods by Sempertrans.
- 2.2 The Incoterms in their latest available version at the date of order shall apply to all trade clauses. The presently applicable Incoterms are Incoterms 2010'. Unless otherwise agreed between Sempertrans and the customer, Sempertrans will deliver EX WORKS at Sempertrans' premises.
- 2.3 The measurements provided for by the relevant applicable standards and the statutory provisions shall be complied with.
- 2.4 Partial shipments shall be permitted.
- 2.5 Risk shall pass to the customer upon delivery pursuant to GTC 2.2 above.

**3. Packaging**

- 3.1 Sempertrans shall, at its own expense, package the goods in a manner appropriate for their transport, unless the customer has notified Sempertrans of specific packaging requirements before the contract of sale is concluded, in which case the additional cost of packaging shall be borne by the customer.
- 3.2 No packaging of any kind will be taken back by Sempertrans unless specifically agreed by contract.
- 3.3 In case of agreement on packaging to be taken back, it has to be returned in a perfect condition with freight prepaid to the plant of dispatch.

**4. Delivery periods**

- 4.1 Sempertrans undertakes to observe delivery periods as stipulated in the relevant contract of sale, provided only that there is an undisturbed course of production and delivery.
- 4.2 If the Customer shall be in default of acceptance, shall omit his required collaboration or shall the delivery be delayed by any other reason caused by the Customer, Sempertrans is eligible to request storage, extra handling and caretaking fees of 0.5% of the goods value to be collected per commenced week of delay after a grace period of 5 business days from the initially confirmed delivery date or the time of notice of the goods being prepared for shipment. The proof of a higher damage and our statutory rights (e.g., reimbursement of extra expenditures, adequate compensation, cancellation of the contract) shall not be affected.
- 4.3 The Production and Delivery shall be deemed to be disturbed on account of Force Majeure as mentioned below.
- 4.4 Force Majeure and consequence thereof:

Force Majeure shall include occurrence of any unforeseeable event which is beyond the control of Sempertrans or third parties with whom Sempertrans maintains business relations. The term "Force Majeure" shall include interruptions of operations or traffic, fire, floods, lack of workforce, energy or raw materials, strike, port congestion, lock-out, civil commotion, war (either declared or not), cyclone or tempest or the like, official measures or the like. The consequences of Force Majeure will release Sempertrans from its obligation of timely delivery and grant Sempertrans, in addition, the right to discontinue further deliveries without having to pay damages and without being obliged to make subsequent deliveries.

## **5. Passing of Property**

- 5.1 It is the express intention of Sempertrans and the customer that the Property (Title) in the goods shall pass only upon receipt of full payment of agreed price.
- 5.2 Without prejudice to the Transfer of Title retained by Sempertrans till payment of total price as agreed is received, pursuant to these GTC, the goods shall remain at the customer's risk immediately upon delivery of the goods including part shipment, to the customer on Ex-Works basis or upon the readiness on the part of Sempertrans to delivery on Ex-Works basis but where delivery is delayed through the fault of the customer.

## **6. Retention of title**

- 6.1 As stipulated in GTC 5 above, Sempertrans will retain title to all goods supplied by it until receipt of full payment of the amounts invoiced. This shall also apply if the purchase price has been paid for certain shipments of goods defined by the customer.
- 6.2 If goods which are the property of Sempertrans are mixed, blended or combined with other items, the customer shall be deemed to assign its ownership rights or co-ownership rights to the new item, to Sempertrans and shall hold the item in safe custody for Sempertrans with the care of a prudent businessman.
- 6.3 The customer may only sell the goods which are the property of Sempertrans in the ordinary course of business provided that he is not in default of payment to Sempertrans. However, the Customer may sell the goods received from Sempertrans before making payment thereto only with the prior written permission of Sempertrans. Such failure by Customer shall be subjected to the following condition:  
The customer at this point shall assign its purchase price claims from resale vis-à-vis his customers to Sempertrans and shall make the note which is required for this assignment clause to become effective in its books or on its invoices. In the case of assignment, Sempertrans shall also be entitled to notify the sub-customers of the customer. The consent to resale shall automatically expire if insolvency proceedings are commenced over the assets of the customer.

## **7. Reservation of right of disposal**

Sempertrans shall always have the right of disposal of the goods until full payment of the price as agreed is received by Sempertrans from the customer. Such right shall be in addition to the right which Sempertrans would have for receiving or recovery of the price from the customer.

## **8. Unpaid right of Sempertrans**

Sempertrans, as the unpaid seller of goods, has by implication of law:

- (a) In the case of insolvency of the customer, a right of stopping the goods in transit after Sempertrans has parted with the possession of the goods;
- (b) A right of resale as permissible in law;
- (c) A lien on the goods for the price while he is in possession of them.

## **9. Terms of payment**

- 9.1 Unless otherwise agreed the selling prices of Sempertrans as well as all offers and calculations shall be considered net amounts in Euros.
- 9.2 In case prices are agreed with the Customer in a currency other than Euro, and this currency devaluates by 5% versus the Euro after the conclusion of the Agreement compared to the date of conclusion of the Agreement, Sempertrans shall be entitled to set a new price increased accordingly by such amount of devaluation and to invoice such higher price.
- 9.3 In the case of unforeseeable increases in the cost of raw materials, energy or production Sempertrans will be entitled to adjust the prices accordingly as of the date of delivery.
- 9.4 The amounts invoiced shall be payable within 30 days after invoice date without any deductions and shall be paid free of any other charges/fees. Each invoice shall be raised by Sempertrans immediately upon delivery or deemed delivery of goods on Ex-Works basis, pursuant to GTC 2 above. For orders exceeding an amount of 300.000 Euros, a down payment of 10% of the total amount is due at order confirmation, then 40% at the purchase order production start. The remaining shall be payable within 30 days after invoice date.
- 9.5 Employees and agents of Sempertrans will only be authorized to accept payments if they hold collection authority. Advance payments and payments on account shall yield no interest against Sempertrans.
- 9.6 Any retention or set-off by the customer of any claims whatsoever against claims of Sempertrans shall be excluded.
- 9.7 In principle, the Customer shall transfer payments into the account advised by Sempertrans at his risk and cost.
- 9.8 Acceptance of bills of exchange in lieu of payment shall require the written consent of Sempertrans.
- 9.9 If the customer is in default of payment, Sempertrans shall be entitled to charge default interest at a rate of at least 10% plus EURIBOR 3 months p.a. on the due amount. If Sempertrans is entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by Sempertrans due to higher borrowing costs, Sempertrans shall be entitled

to charge such interest. In addition, the defaulting customer shall bear any and all dunning charges, collection charges, investigation and information charges incurred in connection with collection of the outstanding accounts receivable from the customer. A minimum amount of 85€ will be systematically charged for each dunning letter or interest invoice in order to cover the administrative costs.

#### **10. Insurance**

The customer shall obtain a suitable insurance cover for the value of the goods from the time the risk therein passes to it, pursuant to these GTC.

#### **11. Taxes & Duties**

The customer shall bear the taxes/duties leviable on the sale of goods including Value Added Tax, Sales Tax, etc.

#### **12. Warranty**

12.1 Warranty shall be effective for a period of 12 months from the date of delivery of the belts to Customer but not more than for a period of 24 months from the belts production date.

12.2 During the warranty period, Sempertrans will remedy any defects in production or material that occur in the goods or at its option by means of repair or substituted delivery. It may be noted that there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale unless otherwise agreed in the contract of sale specifically.

12.3 If the items are to be in conformity with earlier deliveries, deviations will be avoided to the extent technically possible. In the case of substantial deviations Sempertrans shall at its option either provide substitute delivery or rescind the contract.

12.4 In the event of belt failure within the warranty period due to reasons for which Sempertrans is liable, i.e. defects in the material or workmanship we undertake according to our choice

- to maintain the belt in a serviceable condition at our expense, by means of repairs, until the end of the warranty period
- or to replace the damaged product or damaged part of the product pro rata temporis
- or to reimburse the related value of the order pro rata temporis

All other claims, especially with regard to consequential damages of any kind whatsoever, are explicitly excluded from our liability.

12.5 Special warranty conditions may apply to your purchase and shall be furnished to you separately, if applicable:

To the extent the special warranty conditions deviate from the general warranty conditions they shall replace the same; for the rest they shall supplement the general warranty conditions.

#### **13. Liability**

13.1 No liability shall be assumed by Sempertrans for indirect or consequential loss or damage including for lost profit due to delayed or defective delivery, for disadvantages due to business interruptions caused thereby, for transportation costs incurred in connection with replacing the defective goods, for costs of dismantling or installation, if any, for damage to items that are in the custody of Sempertrans for processing resulting from a violation of custody or occurring during processing, or for claims asserted vis-à-vis the customer by the sub-customers of the customer.

13.2 Liability for damage to property will only be accepted by Sempertrans if suffered by a consumer and is not otherwise excluded. In the case of resale of products purchased from Sempertrans, the customer shall be liable to the subsequent sub-customer as may be agreed with such sub-customer at its cost, without recourse to Sempertrans.

13.3 If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the Customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the Customer shall indemnify and hold Sempertrans harmless.

#### **14. Miscellaneous**

14.1 Unless mandatory statutory regulations to the contrary exist, the entire business relationship between Sempertrans and the Customer (in particular the supply agreements concluded) shall exclusively be subject to Austrian substantive law. Applicability of UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements is hereby excluded.

14.2 Unless mandatory statutory regulations to the contrary exist, warranty claims shall be asserted in court within 1 year and Sempertrans shall not be liable for any claim made on it beyond the above limits.

14.3 Sempertrans and all of its affiliated companies will be entitled to offset claims against accounts receivable, whether already due or not, including future accounts receivable to which Sempertrans is entitled vis-à-vis the customer or to which the customer is entitled vis-à-vis Sempertrans.

14.4 If any provision of these GTC or any contractual agreement between Sempertrans and the customer is held by any court or other competent authority to be void, illegal or unenforceable in whole or part, the other provisions of these GTC as well as the remainder of the affected provisions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal and enforceable provision that comes closest to the business purpose of the replaced provision.

14.5 If after conclusion of the contract Sempertrans learns that the financial situation of the customer has developed unfavourably or that insolvency proceedings have been initiated or have not been initiated for lack of assets or that proper fulfilment of the contract is not secured, Sempertrans may demand advance payment or collateral security equal to the

value of the delivery. If the customer fails to fulfil this request, Sempertrans shall be entitled to rescind the contract with immediate effect, without prejudice to its other rights either under the contract or law.

- 14.6 For all legal disputes arising out of or in connection with the business relationship between Sempertrans and the Customer (in particular in connection with supply agreements) the court having jurisdiction over the subject-matter and over 1010 Vienna, Austria, shall be the exclusive place of jurisdiction. Sempertrans shall, however, at its option be entitled to sue the Customer also before the court having jurisdiction over (i) the place of the Customer's registered office or (ii) the location of any goods which may be subject of dispute.