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Note to the user

The purpose of this diskette is to provide – as a service to the user – the text of the Specific and General Conditions of the ICC Model International Sale Contract (ICC publication N°556). Purchasers of this publication may seek to re-work certain parts of the model contract and adapt them for their own needs and purposes. The original text of the contract remains under ICC copyright (see above notice) and should in no circumstances be reproduced in any modified form under the ICC name.

International Sale Contract (Manufactured Goods Intended for Resale)

A. SPECIFIC CONDITIONS

These Specific Conditions have been prepared in order to permit the parties to agree the particular terms of their sale contract by completing the spaces left open or choosing (as the case may be) between the alternatives provided in this document. Obviously this does not prevent the parties from agreeing other terms or further details in box A-16 or in one or more annexes.

SELLER name and address	CONTACT PERSON name and address	BUYER name and address	CONTACT PERSON name and address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The present contract of sale will be governed by these Specific Conditions (to the extent that the relevant boxes have been completed) and by the ICC General Conditions of Sale (Manufactured Goods Intended for Resale) which constitute part B of this document.

SELLER signature	_____	BUYER signature	_____
place _____	date _____	place _____	date _____

A-1 GOODS SOLD

DESCRIPTION OF THE GOODS

If there is insufficient space parties may use an annex

A-2 CONTRACT PRICE (ART. 4)

Currency: _____

amount in numbers: _____ amount in letters: _____

A-3 DELIVERY TERMS

Recommended terms (according to Incoterms 1990): see Introduction, §5

_____	EXW	Ex Works	named place:	_____
_____	FCA	Free Carrier	named place:	_____
_____	CPT	Carriage Paid To	named place of destination:	_____
_____	CIP	Carriage and Insurance Paid To	named place of destination:	_____
_____	DAF	Delivered At Frontier	named place:	_____
_____	DDU	Delivered Duty Unpaid	named place of destination:	_____
_____	DDP	Delivered Duty Paid	named place of destination:	_____

Other terms (according to Incoterms 1990: see Introduction, § 5)

_____	FAS	Free Alongside Ship	named port of shipment:	_____
_____	FOB	Free On Board	named port of shipment:	_____
_____	CFR	Cost and Freight	named port of destination:	_____
_____	CIF	Cost Insurance and Freight	named port of destination:	_____
_____	DES	Delivered Ex Ship	named port of destination:	_____
_____	DEQ	Delivered Ex Quay (duty paid)	named port of destination:	_____

Other delivery terms

CARRIER (where applicable)

NAME AND ADDRESS	CONTACT PERSON
_____	_____
_____	_____
_____	_____

A-4 TIME OF DELIVERY

Indicate here the date or period (e.g. week or month) at which or within which the Seller must perform his delivery obligations according to clause A.4 of the respective Incoterm (see Introduction, § 6)

A-5 INSPECTION OF THE GOODS BY BUYER (ART. 3)

___ Before shipment place of inspection: _____
___ Other: _____

A-6 RETENTION OF TITLE (ART. 7)

___ YES
___ NO

A-7 PAYMENT CONDITIONS (ART. 5)

___ **Payment on open account (art. 5.1)**

Time for payment (if different from art. 5.1) ___ days from date of invoice. Other: ___
___ Open account backed by demand guarantee or standby letter of credit (art. 5.5)

___ **Payment in advance (art. 5.2)**

Date (if different from art. 5.2): _____ Total price ___ % of the price

___ **Documentary Collection (art. 5.5)**

___ D/P Documents against payment ___ D/A Documents against acceptance

___ **Irrevocable documentary credit (art. 5.3)**

___ Confirmed ___ Unconfirmed
Place of issue (if applicable): _____ Place of confirmation (if applicable): _____

Credit available:

___ By payment at sight
___ By deferred payment at: ___ days
___ By acceptance of drafts at: ___ days
___ By negotiation

Partial shipments:

___ Allowed
___ Not allowed

Transshipment:

___ Allowed
___ Not allowed

Date on which the documentary credit must be notified to seller (if different from art. 5.3)

___ days before date of delivery ___ other: _____

___ **Other:** _____

(e.g. cheque, bank draft, electronic funds transfer to designated bank account of seller)

A-8 DOCUMENTS

Indicate here documents to be provided by Seller. Parties are advised to check the Incoterm they have selected under A-3 of these Specific Conditions. (As concerns transport documents, see also Introduction, § 8)

___ **Transport documents:** indicate type of transport document required _____

___ **Commercial Invoice** ___ **Certificate of origin**
___ **Packing list** ___ **Certificate of inspection**
___ **Insurance document** ___ **Other:** _____

A-9 CANCELLATION DATE

TO BE COMPLETED ONLY IF THE PARTIES WISH TO MODIFY ARTICLE 10.3

If the goods are not delivered for any reason whatsoever (including force majeure) by (date) _____ the Buyer will be entitled to CANCEL THE CONTRACT IMMEDIATELY BY NOTIFICATION TO THE SELLER

A-10 LIABILITY FOR DELAY (art. 10.1, 10.4 AND 11.3)

TO BE COMPLETED ONLY IF THE PARTIES WISH TO MODIFY ART. 10.1, 10.4 OR 11.3

Liquidated damages for delay in delivery shall be:

___ % (of price of delayed goods) per week, with a maximum of ___ % (of price of delayed goods)

or:

___ (specify amount)

In case of termination for delay, Seller's liability for damages for delay is limited to ____ % of the price of the non-delivered goods

A-11 LIMITATION OF LIABILITY FOR LACK OF CONFORMITY (ART. 11.5)

TO BE COMPLETED ONLY IF THE PARTIES WISH TO MODIFY ART. 11.5.

Seller's liability for damages arising from lack of conformity of the goods shall be:

____ limited to proven loss (including consequential loss, loss of profit, etc.) not exceeding ____ % of the contract price;

or:

____ as follows (specify):

A-12 LIMITATION OF LIABILITY WHERE NON-CONFORMING GOODS ARE RETAINED BY THE BUYER (ART. 11.6)

TO BE COMPLETED ONLY IF THE PARTIES WISH TO MODIFY ART. 11.6

The price abatement for retained non-conforming goods shall not exceed:

____ % of the price of such goods

or:

____ (specify amount)

A-13 TIME-BAR (Art.11.8)

TO BE COMPLETED ONLY IF THE PARTIES WISH TO MODIFY ART. 11.8.

Any action for non-conformity of the goods (as defined in article 11.8) must be taken by the Buyer not later than _____ from the date of arrival of the goods at destination

A-14(a), A-14(b) APPLICABLE LAW (Art.1.2)

TO BE COMPLETED ONLY IF THE PARTIES WISH TO SUBMIT THE SALE CONTRACT TO A NATIONAL LAW INSTEAD OF CISG.

The solution hereunder is **not** recommended (see Introduction, § 3)

(a) This sales contract is governed by the domestic law of _____ (country)

To be completed if the parties wish to choose a law other than that of the seller for questions not covered by CISG

(b) Any questions not covered by CISG will be governed by the law of _____ (country)

A-15 RESOLUTION OF DISPUTES (Art.14)

The two solutions hereunder (arbitration or litigation before ordinary courts) are alternatives: parties cannot choose both of them. If no choice is made, ICC arbitration will apply, according to art. 14

— **ARBITRATION**
— ICC (according to art. 14.1)
Place of arbitration _____
— Other _____ (specify)

— **LITIGATION (ordinary courts)**
In case of dispute the courts of
_____ (place)
shall have jurisdiction

A-16 OTHER

International Sale Contract (Manufactured Goods Intended for Resale)

B. GENERAL CONDITIONS

Art. 1 GENERAL

1.1 These General Conditions are intended to be applied together with the Specific Conditions (part A) of the International Sale Contract (Manufactured Goods Intended for Resale), but they may also be incorporated on their own into any sale contract. Where these General Conditions (Part B) are used independently of the said Specific Conditions (Part A), any reference in Part B to Part A will be interpreted as a reference to any relevant specific conditions agreed by the parties. In case of contradiction between these General Conditions and any specific conditions agreed upon between the parties, the specific conditions shall prevail.

1.2 Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed:

A. by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred to as CISG), and

B. to the extent that such questions are not covered by CISG, by reference to the law of the country where the Seller has his place of business.

1.3 Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce

1.4 Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date of conclusion of the Contract.

1.5 No modification of the Contract is valid unless agreed or evidenced in writing. However, a party may be precluded by his conduct from asserting this provision to the extent that the other party has relied on that conduct.

ART. 2 CHARACTERISTICS OF THE GOODS

2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of the Seller, shall not take effect as terms of the Contract unless expressly referred to in the Contract.

2.2 Unless otherwise agreed, the Buyer does not acquire any property rights in software, drawings, etc. which may have been made available to him. The Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the goods.

ART. 3 INSPECTION OF THE GOODS BEFORE SHIPMENT

If the parties have agreed that the Buyer is entitled to inspect the goods before shipment, the Seller must notify the Buyer within a reasonable time before the shipment that the goods are ready for inspection at the agreed place.

ART. 4 PRICE

4.1 If no price has been agreed, the Seller's current list price at the time of the conclusion of the Contract shall apply. In the absence of such a current list price, the price generally charged for such goods at the time of the conclusion of the Contract shall apply.

4.2 Unless otherwise agreed in writing, the price does not include VAT, and is not subject to price adjustment.

4.3 The price indicated under A-2 (contract price) includes any costs which are at the Seller's charge according to this Contract. However, should the Seller bear any costs which, according to this Contract, are for the Buyer's account (e.g. for transportation or insurance under EXW or FCA), such sums shall not be considered as having been included in the price under A-2 and shall be reimbursed by the Buyer.

ART. 5 PAYMENT CONDITIONS

5.1 Unless otherwise agreed in writing, or implied from a prior course of dealing between the parties, payment of the price and of any other sums due by the Buyer to the Seller shall be on open account and time of payment shall be 30 days from the date of invoice. The amounts due shall be transferred, unless otherwise agreed, by teletransmission to the Seller's bank in the Seller's country for the account of the Seller and the Buyer shall be deemed to have performed his payment obligations when the respective sums due have been received by the Seller's bank in immediately available funds.

5.2 If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by the Seller's bank in immediately available funds at least 30 days before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article.

5.3 If the parties have agreed on payment by documentary credit, then, unless otherwise agreed, the Buyer must arrange for a documentary credit in favour of the Seller to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period. Unless otherwise agreed, the documentary credit shall be payable at sight and allow partial shipments and transshipments.

5.4 If the parties have agreed on payment by documentary collection, then, unless otherwise agreed, documents will be tendered against payment (D/P) and the tender will in any case be subject to the Uniform Rules for Collections published by the International Chamber of Commerce.

5.5 To the extent that the parties have agreed that payment is to be backed by a bank guarantee, the Buyer is to provide, at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period, a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby letter of credit subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in either case issued by a reputable bank.

ART. 6 INTEREST IN CASE OF DELAYED PAYMENT

6.1 If a party does not pay a sum of money when it falls due the other party is entitled to interest upon that sum from the time when payment is due to the time of payment.

6.2 Unless otherwise agreed, the rate of interest shall be 2% above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

ART. 7 RETENTION OF TITLE

If the parties have validly agreed on retention of title, the goods shall remain the property of the Seller until the complete payment of the price, or as otherwise agreed.

ART. 8 CONTRACTUAL TERM OF DELIVERY

Unless otherwise agreed, delivery shall be "Ex Works" (EXW).

ART. 9 DOCUMENTS

Unless otherwise agreed, the Seller must provide the documents (if any) indicated in the applicable Incoterm or, if no Incoterm is applicable, according to any previous course of dealing.

ART. 10 LATE-DELIVERY, NON-DELIVERY AND REMEDIES THEREFOR

10.1 When there is delay in delivery of any goods, the Buyer is entitled to claim liquidated damages equal to 0.5% or such other percentage as may be agreed of the price of those goods for each complete week of delay, provided the Buyer notifies the Seller of the delay. Where the Buyer so notifies the Seller within 15 days from the agreed date of delivery, damages will run from the agreed date of delivery or from the last day within the agreed period of delivery. Where the Buyer so notifies the Seller after 15 days of the agreed date of delivery, damages will run from the date of the notice. Liquidated damages for delay shall not exceed 5% of the price of the delayed goods or such other maximum amount as may be agreed.

10.2 If the parties have agreed upon a cancellation date in Box A-9, the Buyer may terminate the Contract by notification to the Seller as regards goods which have not been delivered by such cancellation date for any reason whatsoever (including a force majeure event).

10.3 When article 10.2 does not apply and the Seller has not delivered the goods by the date on which the Buyer has become entitled to the maximum amount of liquidated damages under article 10.1, the Buyer may give notice in writing to terminate the Contract as regards such goods, if they have not been delivered to the Buyer within 5 days of receipt of such notice by the Seller.

10.4 In case of termination of the Contract under article 10.2 or 10.3 then in addition to any amount paid or payable under article 10.1, the Buyer is entitled to claim damages for any additional loss not exceeding 10% of the price of the non-delivered goods.

10.5 The remedies under this article are exclusive of any other remedy for delay in delivery or non-delivery.

ART. 11 NON-CONFORMITY OF THE GOODS

11.1 The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify the Seller in writing of any lack of conformity of the goods within 15 days from the date when the Buyer discovers or ought to have discovered the lack of conformity. In any case the Buyer shall have no remedy for lack of conformity if he fails to notify the Seller thereof within 12 months from the date of arrival of the goods at the agreed destination.

11.2 Goods will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties but the Buyer will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.

11.3 Where goods are non-conforming (and provided the Buyer, having given notice of the lack of conformity in compliance with article 11.1, does not elect in the notice to retain them), the Seller shall at his option:

- (a) replace the goods with conforming goods, without any additional expense to the Buyer, or
- (b) repair the goods, without any additional expense to the Buyer, or
- (c) reimburse to the Buyer the price paid for the non-conforming goods and thereby terminate the Contract as regards those goods.

The Buyer will be entitled to liquidated damages as quantified under article 10.1 for each complete week of delay between the date of notification of the non-conformity according to article 11.1 and the supply of substitute goods under article 11.3(a) or repair under article 11.3(b) above. Such damages may be accumulated with damages (if any) payable under article 10.1, but can in no case exceed in the aggregate 5% of the price of those goods.

11.4 If the Seller has failed to perform his duties under article 11.3 by the date on which the Buyer becomes entitled to the maximum amount of liquidated damages according to that article, the Buyer may give notice in writing to terminate the Contract as regards the non-conforming goods unless the supply of replacement goods or the repair is effected within 5 days of receipt of such notice by the Seller.

11.5 Where the Contract is terminated under article 11.3(c) or article 11.4, then in addition to any amount paid or payable under article 11.3 as reimbursement of the price and damages for any delay, the Buyer is entitled to damages for any additional loss not exceeding 10% of the price of the non-conforming goods.

11.6 Where the Buyer elects to retain non-conforming goods, he shall be entitled to a sum equal to the difference between the value of the goods at the agreed place of destination if they had conformed with the Contract and their value at the same place as delivered, such sum not to exceed 15% of the price of those goods.

11.7 Unless otherwise agreed in writing, the remedies under this article 11 are exclusive of any other remedy for non-conformity.

11.8 Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Buyer, whether before judicial or arbitral tribunals, after 2 years from the date of arrival of the goods. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the goods, or make a counter-claim thereon, in defence to any action taken by the Seller against the Buyer for non-performance of this Contract.

ART. 12 COOPERATION BETWEEN THE PARTIES

12.1 The Buyer shall promptly inform the Seller of any claim made against the Buyer by his customers or third parties concerning the goods delivered or intellectual property rights related thereto.

12.2 The Seller will promptly inform the Buyer of any claim which may involve the product liability of the Buyer.

ART. 13 FORCE MAJEURE

13.1 A party is not liable for a failure to perform any of his obligations in so far as he proves:

- (a) that the failure was due to an impediment beyond his control, and
- (b) that he could not reasonably be expected to have taken into account the impediment and its effects upon his ability to perform at the time of the conclusion of the Contract, and
- (c) that he could not reasonably have avoided or overcome it or its effects.

13.2 A party seeking relief shall, as soon as practicable after the impediment and its effects upon his ability to perform become known to him, give notice to the other party of such impediment and its effects on his ability to perform. Notice shall also be given when the ground of relief ceases.

Failure to give either notice makes the party thus failing liable in damages for loss which otherwise could have been avoided.

13.3 Without prejudice to article 10.2, a ground of relief under this clause relieves the party failing to perform from liability in damages, from penalties and other contractual sanctions, except from the duty to pay interest on money owing as long as and to the extent that the ground subsists.

13.4 If the grounds of relief subsist for more than six months, either party shall be entitled to terminate the Contract with notice.

ART. 14 RESOLUTION OF DISPUTES

14.1 Unless otherwise agreed in writing, all disputes arising in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

14.2 An arbitration clause does not prevent any party from requesting interim or conservatory measures from the courts.