

Sales Terms and Conditions

1. **AGREEMENT.** These terms and conditions ("Terms and Conditions") are incorporated into all written Order Confirmations from ALLBESMART, and subsidiaries (collectively referred to as "Seller") for, and are the only terms and conditions which govern, the sales of goods ("Products") to the customer identified in the applicable Order Confirmation (the "Customer"). All sales of Product are subject to the Seller's issuance of a Sale Confirmation and these Terms and Conditions are incorporated and become a part therein (collectively, the "Contract"). The Contract constitutes the entire agreement between the parties thereto, except as modified in writing signed by both Seller and Customer. Seller and Customer are identified in the Contract. Any terms in any purchase order or other Customer document, irrespective of their materiality, which are either different from or additional to Seller's conditions of sale in the Contract, are excluded unless Seller expressly agrees in writing to such terms. Placement of a purchase order by Customer shall constitute acceptance of Seller's Terms and Conditions in this Contract. Fulfilment of Customer's order does not constitute acceptance of any of Customer's terms and conditions. This Contract shall be binding upon Customer and Seller, and on their successors and assigns.

2. **ACCEPTANCE AND APPROVAL OF PURCHASE ORDER.** An Order Confirmation from Seller for the sale of Products shall not be considered an offer, but the basis for a purchase order from Customer which is subject to acceptance by Seller. Seller's acceptance of the purchase order on these Terms and Conditions occurs when Seller forwards a Sales Confirmation or Sales Order to the Customer.

3. **PAYMENT.** Unless otherwise set forth in the Sale Confirmation, payment for Product shall be made by Customer to Seller thirty (30) days from the date of invoice. Customer agrees to make payment in Euros via WIRE TRANSFER or other acceptable electronic means as set forth in the Sale Confirmation. All payments are made with no right of retention or set off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

4. **DELIVERY.** Seller shall make delivery in accordance with the Contract or within a reasonable time in the absence of any specific delivery commitment.

5. **FORCE MAJEURE.** Seller shall not be liable for any delays or defaults in its delivery or other performance under the Contract, in whole or in part, which are caused by or result from a Force Majeure Event. "Force Majeure Event" means any cause not reasonably within the control of Seller, including, but not limited to: (a) act of Nature; act of governmental authorities: any order or demand of any government, government agency, international, national, port, transportation or other authority or agency or of anybody or person purporting to be or to act for such authority or agency or any law, regulation or order; (b) strike, lockout or other industrial or transportation disturbance; and (c) act of the public enemy, war, blockade, insurrection, epidemic, public health emergency, terrorist attack (or threat thereof), landslide, lightning, earthquake, fire, flood, arrests

and restraints of government and people, disturbance, riot, civil unrest, explosion; loss of power and breakdown or destruction of property, facilities or equipment and unavailability of Product or components.

6. **CANCELLATION.** If Customer desires to cancel or change any portion of this Contract, Customer must make such request in writing to Seller. Seller may, in its sole discretion, accept or reject any such request. In the event a cancellation is accepted, Customer shall be responsible for all reasonable costs and expenses (including, without limitation, expenses and commitments to Seller's suppliers and subcontractors) incurred by Seller prior to Seller's receipt of the cancellation request, as well as a reasonable cancellation charges in an amount to be determined by Seller. Orders for custom, special or non-standard products and/or services are final and non-cancelable. Seller reserves the right to cancel an order under a Contract, in whole or in part if, in Seller's judgment, Customer's financial condition does not justify the terms of payment specified.

7. **INSPECTION AND TESTING BY SELLER.** Standard specifications and tests apply to all orders under this Contract. All charges for inspections or tests requested by Customer that are not regularly furnished by Seller are subject to prior negotiation. All inspections prior to shipment shall be conducted at Seller's plant, and failure of Customer to avail itself of inspection privileges shall be deemed a waiver of such privileges.

8. **INSPECTION AND REJECTION.** Customer shall inspect the Products within five (5) days of receipt. Customer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Goods during such period and furnishes such evidence as required by Seller. "Nonconforming Goods" means only: (i) Product shipped is different than identified in the order; or (ii) Product's label or packaging incorrectly identifies its contents. If Customer timely notifies Seller of any Nonconforming Goods, Seller will, in its discretion, (i) replace the same with conforming Products, or (ii) credit or refund the price for the same. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller. Customer agrees that the remedies in this Article 8 are the exclusive remedies for delivery of Nonconforming Goods.

9. **PRICING.** Prices are subject to change without notice. Orders shall be based on Seller's Order Confirmation in effect on the scheduled date of Product shipment and will be invoiced on such basis, unless otherwise specifically noted on the Sale Confirmation. Orders specifying special palletizing or packaging will result in special charges, for which Customer shall be responsible. Unless otherwise stated, the price is for Product only and does not include any Services. Errors or omissions in price are subject to correction. Prices are quoted as determined by Seller in EURO (EUR) and will remain open for thirty (30) days from Quotation date. Freight, customs fees, tariffs, VAT, duties, freight forwarder fees, consular fees, and taxes, however designated, and all other costs after shipment are Customer's obligations. Seller will bill Customer for all applicable taxes, unless Customer provides a valid exemption certificate, and provided that, if Seller is not registered to collect and remit sales and/or use taxes in the jurisdiction where product is shipped at Customer's request, then Customer hereby covenants and agrees that it shall pay and remit all applicable VAT, sales and/or use taxes to the proper taxing authorities and agrees to and shall indemnify Seller from any liability related to the payment, underpayment or nonpayment thereof.

10. **DELAYS.** All accepted orders are subject to Seller's ability to make delivery at the time and in the quantities specified, and Seller shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments or for any loss or damage in transit. Customer shall be liable for any additional expenses incurred by Seller because of Customer's delay furnishing requested information to Seller, delay resulting from accepted order changes by Customer or delay in unloading shipments at delivery point.

11. **SHIPMENT.** All shipping and shipping related charges will be the responsibility of and paid for by Customer. Products will be packed or packaged for shipment in accordance with Seller's standard commercial practices. Seller shall take commercially reasonable measures to abide by Customer requested delivery schedules regarding timing and quantities of Product shipped, and Customer expressly agrees that time is not of the essence and that Seller shall have the right to ship quantities of Product that vary either ten percent (10%) above or below the requested quantity. Each shipment will constitute a separate sale, and Customer shall pay for the Products shipped whether such shipment is in whole or partial fulfillment.

12. **TITLE & RISK OF LOSS.** Unless otherwise agreed to in writing by Seller and Customer, title to Products transfers upon delivery to Customer at the *Ex Works* (EXW) point of shipment as set forth in the Sale Confirmation. All risk of loss and insurance responsibilities pass to Customer upon delivery of Products by Seller to a shipping agent or carrier at the point of shipment. As collateral security for the payment of the purchase price of the Products, Customer grants to Seller a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time.

13. **EXPORT LICENSES AND PERMITS.** Customer shall be responsible for procuring all applicable export and import licenses and complying with all export and import laws, rules and regulations.

14. **IN TRANSIT CLAIMS.** Unless otherwise agreed to in the Sale Confirmation, claims for damage or shortage in transit must be made against the carrier by the Customer according to the terms of the Contract. Customer has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate written notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.

15. **CLAIMS.** Notice of claims against Seller hereunder for any reason, including, but not limited to, breach of warranty, must be made to Seller in writing within 48 hours of discovery to afford Seller an opportunity to make a prompt investigation of surrounding facts and mitigate any damages which might incur. Failure to give such notice to Seller shall constitute a waiver by Customer of any right later to assert such a claim.

16. **RETURNS.** Customer may not return Products purchased under this Contract (other than under Article 8). If Seller permits Products to be returned, returned product shall be accepted for credit only and only if in saleable condition and only with evidence of Seller's prior written consent. Seller will assess charges for freight both ways and any costs necessary to restore

such Product to the regular inventory. The amount of credit given will depend further upon the degree of saleability of returned Product as determined by Seller.

17. **WARRANTY.** Seller warrants: (a) title to each Product; (b) that the Product sold in this Contract conform to or exceed the specifications set forth in the Contract; and (c) all Products furnished hereunder shall be free of defects in material and workmanship under the normal service and use for which it was designed for a period of one (1) year after shipment, provided that if Product is stored then Product must be held in appropriate storage conditions or this warranty will be void. Seller's obligations and liability under this warranty, and Customer's sole and exclusive remedy, is limited to Seller providing a credit for or furnishing or repairing Products as determined by Seller to be defective. Customer must notify Seller promptly and within the warranty period of any claim under this warranty. If Customer fails to timely provide such notice, Seller shall not be liable for breach of warranty. Seller's warranty extends only to the first Customer of a Product from Seller or Seller's authorized distributor. All Products (and parts) not manufactured by Seller are warranted only to the extent of the warranties of the original manufacturer. Notwithstanding the foregoing, Seller shall have no obligation or liability hereunder if Product becomes defective in whole or in part as a result of the improper storage, improper use or misapplication of the Product after delivery to Customer, or if Customer makes further use of Products after giving Seller notice of an alleged breach. The rights and remedies set forth in this article are the sole and exclusive remedies available to customer, and seller's entire liability, for any breach of the warranties set forth in the contract. Seller will not be liable for any claims, injuries or damages caused by any negligent or other act or omission of customer.

18. **DISCLAIMER.** Except for the warranty set forth in article 19 above, seller makes no warranty of fitness, suitability or merchantability or fitness for a particular purpose, or any other warranty whatsoever with respect to the products or their sale or use, whether express or arising by operation of law, course of dealing, usage of trade or otherwise implied shall exist.

19. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law: (a) in no event will seller be liable for any special, punitive, indirect, incidental or consequential damages or commercial losses, including, but not limited to, loss of profits, opportunities or goodwill, even if seller has been advised of the possibility thereof, and (b) in no event shall seller's aggregate liability arising out of or related to the contract, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed customer's actual damages as limited by this contract and seller shall not be required to pay to customer actual damages in excess of the total amount actually paid by customer under this contract for the products out of which the claim or liability arose.

20. **FABRICATION TO CUSTOMER'S SPECIFICATIONS.** To the extent Product is fabricated to Customer's written specifications provided by Customer, Customer warrants and represents that: (i) Product will be fit for the purpose for which it is intended; (ii) Product will conform to all standards prescribed by law (iii) manufacture and sale of such Product by Seller will not be unlawful or result in any infringement or alleged infringement of any third party intellectual property rights.

21. **CONFIDENTIALITY.** Customer will ensure that the Products, services, and all related information covered by the Contract, including but not limited to patent, copyright, design and manufacturing information, which Customer receives from Seller ("Confidential Information") will be kept in strict confidence. Customer will exercise all reasonable precautions to prevent unauthorized disclosure of Confidential Information to any third party. Customer will not use the Confidential Information for any purpose other than for executing its obligations under this Contract. Customer will, at Seller's request, employ computer system(s) which will allow compatible electronic information interchange, electronic commerce, and other electronic communications with Customer's computer systems, including but not limited to manufacturing, engineering, quality and procurement systems. Any access to Seller's systems given to Customer by Seller for purposes of such communication will not be shared by Customer with any other person or entity and will be kept in strict confidence by Customer.

22. **OWNERSHIP.** Customer acknowledges and agrees that all patents and patentable ideas, trademarks, copyrights, mask work rights, patterns, designs, documents drawings, molds and tools created by Seller in its performance of this Contract shall be the sole and exclusive property of Seller, and Customer shall have no claim or right to the title or ownership of any such intellectual property created by Seller. Further, to the extent that title or ownership to any such intellectual property may vest in Customer by operation of law, Customer hereby irrevocably agrees to and hereby does assign to Seller all right, title and interest in and to such intellectual property. In such case, Customer agrees to execute instruments of assignment as may be reasonably requested by Seller.

23. **INDEMNIFICATION.** Customer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Seller from and against any claim, liability, loss, damage, settlement, penalty, costs or expenses made against or sustained by Seller arising from any claim resulting from: (a) any breach of the warranties contained in these Terms and Conditions; (b) Customer's use of Product(s) or incorporation of Products sold hereunder in any item produced or manufactured by Customer; and/or (c) any other claim resulting from Seller's design or manufacture of Products to specifications provided by Customer.

24. **MODIFICATION.** Seller reserves the right to change these Terms and Conditions at any time by publishing revised Terms and Conditions on Seller's website. The revised Terms and Conditions shall immediately become effective for all sales made after such publication.

25. **RESTRICTIONS ON ASSIGNMENT.** Any transfer or assignment, in whole or in part, whether voluntary or involuntary, by operation of law or otherwise, of this Contract or any rights or obligations under this Contract by Customer without the prior written consent of Seller shall be void and of no effect.

26. **SEVERABILITY.** If all or any part of one or more of the provisions of this Contract is or becomes invalid, illegal or unenforceable in any jurisdiction, the remaining parts or provisions of this Contract shall be, as to such jurisdiction, severable and: (a) the validity, legality or enforceability of such remaining parts or provisions shall not in any way be affected or impaired by the severance of the parts or provisions severed; and (b) the invalidity, illegality or unenforceability of all or any part or any provision of this Contract in any jurisdiction shall not



affect or impair such part or provision or any other provisions of this Contract in any other jurisdiction.

27. **WAIVER.** No failure or delay on the part of a party in exercising any right or power under this Contract shall operate as a waiver, nor shall any single or partial exercise of any such right or power preclude any other or further exercise of that right or power or the exercise of any other right or power under this Contract. No waiver of any provision, or the breach of any provision, of this Contract shall be effective unless it is contained in a written instrument duly executed on behalf of the party giving the waiver and then such waiver shall be effective only in the specific instance and for the purpose for which it is given and shall not operate as waiver of any future application of such provision.