



**SEMCO ENGINEERING S.A.
STANDARD TERMS AND CONDITIONS OF SALE**

1. **TERMS OF SALE.** Acceptance of Buyer's order is expressly made conditional on Buyer's assent to Seller's *Standard Terms and Conditions of Sale* set forth herein and Seller agrees to furnish the equipment, parts, and materials (the "Equipment") and services covered thereby (the "SERVICES") described in the Buyer's order only upon these terms and conditions (the "Terms and Conditions"). Any terms or conditions of Buyer's order or of Buyer's other purchase documents and correspondences inconsistent with or in addition to these Terms and Conditions hereof shall not be binding on Seller. No waiver, alteration, or modification of any of these Terms and Conditions shall be binding on Seller unless made in writing and signed by an authorized representative of Seller.
2. **TERMS OF SHIPMENT.** All shipments are made Ex Works, Factory, according to Incoterms 2000 as issued by the International Chamber of Commerce. Shipments are made in a commercially reasonable manner as determined by the Seller. Title and risk of loss or damage shall pass to Buyer at the Ex Works named site. Partial and/or installment shipments are authorized and shall be paid for when due. Shipment schedules are approximate and Seller will use commercially reasonable efforts to complete shipment as indicated. Sub-assemblies for the Equipment may be shipped from different Ex Works named sites and integrated during installation.
3. **PAYMENT.** Payments are due in Euro unless the parties specifically agree otherwise in writing. Seller reserves the right to require an irrevocable letter of credit from a bank that it designates.
4. **PRICES.** All prices are exclusive of sales, use, import, value added (VAT), or similar taxes or duties, whether imposed currently or in the future. Such taxes shall be borne by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes, Buyer shall reimburse Seller those taxes. Unless otherwise explicitly indicated, prices quoted assume the timely return by Buyer of Seller's transportation containers and other materials used in transporting the Equipment. Seller is entitled to charge Buyer for the cost of such containers and materials if these are not returned to Seller in a timely manner.
5. **CHANGES.** Seller reserves the right to modify or change the Equipment in whole or in part at any time prior to the delivery thereof in order to include therein electrical or mechanical refinements deemed appropriate by Seller, but without incurring any liability to modify or change any product previously delivered or to supply new products in accordance with earlier specifications. If Buyer requests changes in the configuration of the Equipment, subject to Seller's acceptance, Buyer shall pay for the reasonable cost for rework and rescheduling of the Equipment. Any deleted feature, option, or accessory shall be subject to the cancellation fee shown in Section 11. All requested changes must be made by revised order in writing to the Seller. Seller shall inform Buyer of the new delivery date and additional costs via a new order acknowledgement.
6. **DELIVERY DELAY.** Buyer can delay delivery of the Equipment one-time only up to thirty (30) days beyond the scheduled shipment date by written notice to Seller provided that written notice of Buyer's delay request is received by Seller at least sixty (60) days prior to the scheduled shipment date. For the purpose of payment of the purchase price, if the Buyer-requested delay exceeds thirty (30) days or moves the requested ship date out of the Seller's fiscal quarter or if the Buyer's request for delay is received by Seller less than sixty (60) days prior to the scheduled shipment date, shipment shall be deemed to have occurred on the scheduled shipment date and the Site Acceptance Date as defined in Section 10 shall be deemed to have occurred thirty (30) days thereafter. Buyer shall be responsible for any and all costs associated with any such delay including storage, maintenance, and retesting costs.
7. **INSPECTION.** Buyer shall visually examine the Equipment promptly upon receipt thereof. Within ten (10) days of such receipt, Buyer shall notify Seller in writing of any complaint that Buyer may have concerning the Equipment delivered hereunder, including, but not limited to, any claimed shortages, defects, delivery errors, or any other problems.
8. **PRE-INSTALLATION.** Buyer is responsible for the following items: ensure the site's compatibility with Seller's shipment crates; provide environmentally adequate storage space for the Equipment upon its arrival at Buyer's facility prior to installation; provide access to the facility to Seller's employees for preinstallation surveys, unpacking, and installation of each system; make available Buyer's personnel in sufficient numbers and of adequate capabilities on site to assist Seller during pre-installation, unpacking, and installation; use Seller approved equipment, rigging, or other services to transport the Equipment, either assembled or in parts, to the place of installation; establish and maintain additional site conditions as indicated pursuant to Seller's then-current installation requirements; and provide any other support or assistance as requested by Seller (the "Pre-Installation Conditions"). If, as a result of Buyer's failure to comply with the Pre-Installation Conditions, Seller is unable to complete installation as scheduled, Buyer shall compensate Seller for any additional costs or expenses incurred, including the cost of subsequent or extended visits necessary to complete the installation.
9. **INSTALLATION.** The Equipment shall be installed by Seller, provided that all the Pre-Installation Conditions stated in Section 8 have been met by Buyer. In the event installation cannot be completed within thirty (30) days of the delivery of the Equipment due to Buyer-caused delays, including, but not limited to, Buyer's failure to comply with the Pre-Installation Conditions, installation shall be deemed complete and the Site Acceptance Test (SAT) as defined in Section 10 shall be deemed satisfied and met thirty (30) days after shipment. Any unpaid balance of the purchase price shall thereupon become due, and the warranty will start.
10. **ACCEPTANCE TEST.** Notwithstanding anything to the contrary in these terms and conditions, the final acceptance date shall be the earlier of
 - Such time as the Equipment meets the acceptance criteria documented in the CAP including any mutually-agreed specifications referenced therein
 - Such time Buyer uses the Equipment for any purpose including production or Research and Development (R&D) prior to fulfillment of the acceptance criteria documented in the CAP including any mutually-agreed specifications referenced therein
 - Ninety (90) days from shipment if acceptance or use has been delayed through no fault of Seller.
 Any unpaid balance of the purchase price shall become due and payable within ten (10) days after the final acceptance date. Minor deviations from specifications or acceptance criteria that do not affect Buyer's ability to effectively use the Equipment shall not be grounds for delayed acceptance, but shall be remedied under the terms of the applicable warranty.
11. **CANCELLATION.** No order may be cancelled by the purchaser, nor may shipments be deferred, unless agreed to by a separate document and signed by an officer of Semco Engineering, setting forth and conditioned upon the payment to Semco Engineering, of amounts as specified therein sufficient to compensate Semco Engineering for any loss incurred due to such cancellation, including any lost profit.

WEEKS PRIOR TO SCHEDULED DELIVERY	PERCENT OF SELLING PRICE
26	30
18	50
13	70
9	90
6 or less	100

12. **RETURNS.** Buyer shall have no right to return the Equipment or any part thereof, and no Equipment may be returned without Seller's written consent, which may be withheld at Seller's sole discretion. Seller assumes no responsibility for unauthorized returns. All expenses for returned Equipment shall be borne by Buyer.
13. **WARRANTY.**
 - 13.1. Seller warrants that for the warranty period the Equipment used under normal operating conditions shall be free of defects in materials and workmanship and that the Services shall be performed in a workmanlike manner. The warranty period for the Equipment will be defined in the governing quotation or, if applicable, the governing mutually-agreed purchase specification. If no warranty period is defined in the governing quotation or mutually-agreed purchase specification, the following warranty periods will apply.
 - New Equipment – twelve (12) months from shipment
 - Refurbished Equipment – six (6) months from shipment
 - Upgrade Kits and Spare Parts – ninety (90) days from shipment
 - Consumables – fit for use at shipment. Notification of defective consumables must be made within ten (10) days of shipment and prior to installation in the Equipment.
 - 13.2. Equipment sold hereunder may include additional warranty terms and conditions for systems and components. Such additional warranty terms and conditions shall be stated in the body of the quotation. This warranty is extended to the first end user and is not transferable to subsequent users and is conditioned upon Buyer maintaining and operating the Equipment in accordance with Seller's then-current specifications. If, after notice from Buyer substantiated by appropriate Seller tests and inspections, Seller finds the Equipment or any part of it to have any defect covered by this warranty, Seller will, at its sole discretion, either repair the same or install a replacement. Any parts removed from the Equipment for replacement will be retained by Seller. Warranty service shall be provided during

normal business hours – Monday through Friday, 8:00 a.m. to 5:00 p.m. Liability for the warranty made herein shall in no event exceed the cost of correcting defects or, at the Seller's option, of replacing the defective item.

- 13.3. With respect to any Service performed by Seller, Seller's sole liability for any defect therein shall be to perform again such services at Seller's expense. Parts furnished in warranty services shall be new or refurbished, at the option of the Seller, but shall be comparable to new parts.
- 13.4. The foregoing warranty is exclusive of all other warranties whether written, oral, implied or by trade usage, in connection with the design, sale, installation, service, or any use of the equipment or any part of the equipment including any warranty of merchantability or fitness for a particular purpose.
- 13.5. Without limiting the generality of the foregoing, Seller's warranty does not cover and no warranty is made with respect to
- Failures discovered, but not reported within the warranty period
 - Accessories, attachments, or other devices not furnished by Seller
 - Failure of the Equipment that in Seller's judgment is caused by other than normal wear and tear or by conditions not controllable by Seller, including, but not limited to,
 - Attempts by other than Seller personnel to install, modify, repair, or maintain the Equipment without Seller's specific, prior written authorization
 - Improper use, misuse, or lack of use of the Equipment
 - Installation of unapproved software
 - Fluctuations of line voltage, current, vacuum, gas, humidity, temperature, or other factors that exceed those limits as indicated in the then-current Pre-Installation Conditions
 - Damage by fire, water, vandalism, riots, civil unrest, or Acts of God
 - Strikes, lockouts, embargoes, insurrection, inability to obtain shipping space or materials, or government acts, restrictions, or limitations
 - Damage in shipment or otherwise not caused by faulty packing or crating, whether or not Seller selected means of shipment and/or carrier
 - Such parts that by their nature have a life expectancy shorter than the applicable warranty period under normal use in accordance with Seller's specifications, commonly referred to as "consumable"
- 13.6. As a condition of Seller's obligations under this warranty, Buyer shall
- Notify Seller immediately of any claimed failure of the Equipment
 - Upon request, provide raw data substantiating the claimed failure
 - Allow Seller's service personnel prompt, full, and free access to the Equipment and the premises on which it is located
 - Not impose a waiver of liability or other restriction on Seller's service personnel as a site access requirement
 - Ensure that at least one (1) of Buyer's employees shall be on the premises during the performance by Seller of any warranty service
 - Provide free of charge to Seller service personnel performing warranty service a reasonable and secure space for documentation, tools, test equipment, etc.

Furthermore, Buyer agrees to permit Seller to implement remote, automatic means of collecting data from the Equipment. Such data may relate to the use of the Equipment, including tool and process parameters, environmental conditions, and interconnections with other equipment. Seller will use such data solely for purposes of fulfilling its obligations under this Section, supporting the use of the Equipment, providing maintenance and repair services, analyzing Equipment problems, analyzing performance, providing preventive maintenance monitoring, developing recommendations for use of the Equipment, performing tuning and performance enhancement, developing new features, and improving performance. Such data shall be deemed Buyer's Confidential Information, and Seller will protect the data in accordance with Section 19. Buyer agrees to permit Seller to continue the data collection processes for so long as it owns or operates the Equipment.

14. **LIMITATION OF LIABILITY.** The extent of Seller's liability for damages of any nature to Buyer or any other entity whether in contract, tort (including negligence and strict liability), or otherwise shall in no case exceed the price allocable to Service, Equipment, or part thereof that gives rise to the claim. In no event will Seller be liable for any loss of production, loss of profits, loss of use, business interruption, cost of cover, or for any special, indirect, incidental, consequential, or contingent damages howsoever caused including any such damages caused in connection with, arising out of, or resulting from the provision of the Services or from the design, manufacture, sale, delivery, resale, inspection, repair, maintenance, operation, or use of any Equipment or parts thereof, even if Seller has been advised of the possibility of such damages. Any liability for direct or indirect damage or loss, such as, but not limited to, loss of profits and any claims by third parties that may arise from non-performance by Buyer of its contractual obligations or from use or cessation of use of products or components supplied by Seller, is expressly excluded.
15. **DOCUMENTATION.** Upon request, Seller shall furnish with each Equipment one (1) copy of the manuals as stated in the quotation from which the Equipment was purchased. Buyer shall not make copies of such documents for any purpose other than for its own internal use, and all such copies shall bear any Seller copyright notice that appears on the original. Seller manuals and other documentation, including, but not limited to, training and sales presentations, shall be treated by the Buyer as Seller confidential information and shall be protected by the Buyer in accordance with Section 19.
16. **DEFAULT IN PAYMENT.** Failure by Buyer to make any payment promptly when due shall be default by Buyer and shall entitle Seller, at its sole discretion, to collect interest on overdue amounts equal to one and one-half percent (1 ½ %) per month or at a maximum rate permitted by law and/or to repossess any Equipment for which any payment or partial payment has not been made in full when due in addition to other remedies provided by law including, but not limited to, suspending all business activities, warranty service, and post warranty service with respect to Buyer. Buyer shall reimburse Seller for any and all collection fees incurred.
17. **SECURITY INTEREST.**
- 17.1. For sales involving Equipment used or to be used in Europe and/or the United States and/or Asia, Seller retains a security interest in the Equipment, materials, or spare parts including modification and replacements delivered hereunder and in the proceeds from the sale, exchange, collection, or disposition thereof until Buyer has made payment in full for such Equipment, materials, or spare parts. This section serves as a security agreement, and Buyer authorizes Seller to file any financing statements deemed appropriate by Seller for purposes of perfecting the security interest granted herein. Without limiting the foregoing, Buyer shall upon request by Seller provide all information and signatures required by Seller to perfect such security interest. Seller reserves all rights granted to a secured creditor under the California and other applicable Uniform Commercial Codes including, but not limited to, the right upon demand to repossess the Equipment, materials, or spare parts delivered hereunder if Buyer fails to make timely payments. To simplify such possession, Seller may require the Buyer to assemble the collateral and make it available to Seller at a place reasonably convenient to both parties and designated by Seller.
- 17.2. Notwithstanding anything else to the contrary, for sales involving Equipment used or to be used in Asia or Europe, Buyer explicitly accepts that Seller shall retain title of the Equipment until full payment has been received of all amounts due in accordance with the transaction and Buyer shall only sell, pledge, or alienate the Equipment in Buyer's ordinary course of business. Buyer shall take all measures to protect the Equipment and to ensure that Seller's right to the Equipment is in no way prejudiced. For the avoidance of doubt, parties agree that the only rights Seller retains with the title are those enabling recovery of the Equipment in the event of Buyer's default on payment. Buyer shall be obliged to insure the Equipment at its own expense for the time the equipment is not paid for in full by the Buyer. Buyer shall give Seller any assistance in taking any measures required to protect Seller's rights in Equipment not fully paid. If Buyer fails to make any payments to Seller when due, the Buyer shall, upon Seller's first notice, be obliged to return to Seller, at Buyer's risk and expense, any Equipment that is subject to the retention of title. The retention and the shipping back of the Equipment shall not in any way affect any other rights of compensation Seller may have under this Agreement or applicable law.
18. **SOFTWARE LICENSE.** All operating software, revisions of operating software, source code, and other software optionally purchased or used by the Equipment and furnished by Seller shall remain the property of Seller or its suppliers, whichever is applicable, and title thereto is not being sold or transferred to Buyer under this Agreement. Seller hereby grants to Buyer a personal, revocable, no-exclusive, paid-up, site-specific, non-transferable license to use all such software contained in the Equipment for the purpose of operating the Equipment for its intended purposes. Buyer may not make copies, may not transfer, and may not export the software without Seller's prior written consent. Buyer may not transfer the right to make copies to any third party without Seller's prior written consent.
19. **CONFIDENTIALITY.** Each of the parties shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the party in connection with this transaction. Each party warrants to the other that such care is reasonably calculated to prevent the disclosure of Confidential Information. The term "Confidential Information" shall mean all information that is not generally known and that is confidential or proprietary including, but not limited to, all customer information, customer lists, price lists, supplier lists, marketing plans, financial information, processes, methods, practices, technical plans, research, development, manufacturing, purchasing, accounting, marketing or business systems or techniques and related documentation. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other that was in the public domain at the time it was disclosed or becomes in the public domain through no fault of the receiver; is disclosed with the prior written approval of the discloser; was independently developed by the receiver prior to the receipt of the Confidential Information or without access to or use of Confidential Information; becomes known to the receiver from a source other than the discloser without breach of the Agreement by the receiver and otherwise not in violation of the discloser's rights; or is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body. The parties' obligations pursuant to this paragraph shall survive for a period of five (5) years after the date of disclosure.
20. **PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT INDEMNITY.**
- 20.1. Seller shall, at its sole cost and expense, defend Buyer in a suit based upon an assertion that the sale of a Seller system hereunder, as such, hereinafter referred to as the Relevant System, directly infringes a third party US patent, trademark, or copyright issued by the country into which the Equipment has been initially sold, hereinafter referred to as Third Party Right, and indemnify Buyer against any final award of reasonable cost and compensatory damages in such suit subject to other provisions in Section 20. Such defense and indemnity are each strictly conditioned upon Buyer providing to Seller prompt and written notice of such suit of infringement, claim for infringement, and request for defense or indemnity with full authority at Seller's discretion to conduct such defense or to settle such suit or claim, and full assistance and cooperation in such conduct or settlement as Seller may request.
- 20.2. In the event of such suit or claim, Seller may, at its sole cost and expense and at its sole discretion, obtain adequate license to such Third Party Right, modify the Relevant System so that it becomes non-infringing, replace the Relevant System, or repurchase the Relevant System by repayment to Buyer of the sales price of the Relevant System, paid by Buyer to Seller hereunder less straight-line depreciation.

- 20.3. Seller shall not be liable for any cost or expense of defense incurred by Buyer in connection with any such suit or claim without Seller's prior and specific authorization and consent.
- 20.4. Notwithstanding any other section herein, Seller shall not be obligated to defend against and shall not be obligated to indemnify for any suit for infringement of any Third Party Right covering a modification by or for Buyer of the Relevant System or a combination by or for Buyer of the Relevant System with any other part or product whether or not such part or product is supplied by Seller or any method, process, or products in which, or in connection with the manufacture of which, the Relevant System may in any way be used excepting a modification or combination for which Seller specifically agrees in writing to defend and indemnify Buyer.
- 20.5. Notwithstanding any other section herein, Seller shall not be liable for any suit or claim that the use of the Relevant System, as opposed to the sale of the Relevant System, as such, infringes, contributes to infringement of, or induces infringement of any Third Party Right or that the nature or number of products manufactured by Buyer's use of the Relevant System, directly or indirectly, infringes any Third Party Right.
- 20.6. Notwithstanding any other clause herein, Seller shall not be liable for any suit or claim against Buyer by any future purchaser or user of the Relevant System without Seller's prior and specific consent.
- 20.7. Seller's aggregate liability and obligation under Section 20 shall be limited to a suit formally commenced within a term of five (5) years starting on the shipment date of the Relevant System subject to such suit and a maximum amount not to exceed the sales price of the Relevant System paid by Buyer to Seller hereunder less straight-line depreciation over said five (5) years.
- 20.8. The foregoing states Seller's entire liability and obligation in connection with any suit or claim for infringement of any Third Party Right by the sale and/or use and/or other handling of a Seller system hereunder, and, except as expressly stated in Section 20, Seller makes no warranty, express or implied, regarding non-infringement of any Third Party Right. Furthermore, Seller shall not under any circumstances be liable to buyer or any other party for any other loss or damage whatsoever not explicitly provided for herein including without limitation consequential, enhanced, exemplary, incidental, punitive, or special damages or for any claim by Buyer or any other party for loss of data, profits, revenue, savings or use of the seller system however caused or under any theory of liability.
21. **GOVERNING LAW ; JURISDICTION.** This Agreement shall be governed by and construed according to the laws of France. The parties consent to the jurisdiction of the federal and state courts in Montpellier France, for any actions involving this Agreement. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods in its entirety. No action by Buyer may be brought more than twelve (12) months after the facts occurred upon which the cause of action arose.
22. **FORCE MAJEURE.** Seller shall not be liable in any manner for failure to deliver or delays occasioned by causes beyond Seller's reasonable control to include without restriction strikes; lockout; fires; embargoes; war; riots; insurrection; Acts of God; accidents; delays of carriers, subcontractors, or suppliers; inability to obtain shipping space or materials; and governmental acts and regulations. If such delays occur, the time for performance shall be extended for such time as may be reasonable necessary to enable Seller to perform. If, due to any such contingency, Seller's supplies of the Equipment covered hereby are limited, Seller shall have the right to allocate and prorate the available supply in such a manner as it, at its sole discretion, determines.
23. **COMPLIANCE WITH LAW.** In the performance of its obligations under this Agreement, Buyer shall at all time strictly comply with all applicable laws, regulation, and orders including export control laws and regulations of any country having proper jurisdiction. Buyer specifically acknowledges that the Equipment and other information, including technical data, technology, and software (the "Controlled Matter") related to the Equipment may be subject to the jurisdiction of the European Export Administration Regulations and European trade embargo regulations as well as to the US export control regulations. Without limiting the generality of this provision, Buyer agrees that no Controlled Matter supplied under this Agreement will be
- Re-exported, released, or in any way transmitted to countries other than Europe except as authorized under European law with prior written authorization of Seller
 - Re-exported, released, or in any way transmitted to any other person outside of Europe if such a re-export, release, or transmission would violate European law
24. **ASSIGNMENT.** Buyer shall not assign or delegate its rights and obligations hereunder. Any attempted assignment or delegation by Buyer without the written prior consent of Seller shall be void or of no effect. Seller shall be permitted to assign or delegate its rights and obligations hereunder.
25. **MISCELLANEOUS.** This document constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and supersedes all prior representations, negotiations, and agreements whether written or oral. No term or provision hereof shall be waived or modified or deemed waived or modified by either party unless such waiver or consent to modify is in writing signed on behalf of the party against whom it is asserted. All communications required or permitted hereunder shall be in writing. No consent by either party to or waiver of a breach by either party will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. If any provision of the Terms and Conditions is held unenforceable, ineffective, or illegal for any reason, such decision shall not affect the validity or enforcement of any or all of the remaining portion of the Terms and Conditions.