

**General**

- 1.1. These General Terms and Conditions of Sale (hereinafter the "Terms and Conditions") apply to all contracts for provision of services or sale of goods, including offers and orders issued or accepted by Sitomeca, entered into by Sitomeca SA (hereinafter "Sitomeca") with its customers (hereinafter the "Purchaser"), Sitomeca and Purchaser being hereinafter referred to as "Party" or "Parties" individually, respectively collectively. By acceptance of an offer made by Sitomeca (hereinafter the "Offer"), by placing an order with Sitomeca (hereinafter the "Order") or by making a payment to Sitomeca pursuant to an Offer, Purchaser shall be deemed to have unconditionally accepted these Terms and Conditions.
- 1.2. The Terms and Conditions shall be binding regardless any stipulations to the contrary in a document issued by Purchaser. In case of conflict between the Terms and Conditions and general conditions of Purchaser, the former shall prevail.

Any stipulation by Purchaser that is in contradiction to the Terms and Conditions shall not be binding on Sitomeca and shall not apply unless expressly acknowledged by Sitomeca in writing.
- 1.3. The Terms and Conditions and the terms and conditions agreed between Sitomeca and Purchaser in accordance with the Terms and Conditions with regard to a delivery of a service or a good, shall constitute the entire agreement between the Parties (hereinafter the "Contract"). The Contract cannot be modified unless such modification is agreed in writing between the Parties. A text communication by means of electronic media will not constitute a written communication unless the Parties specifically agree to the contrary.
- 1.4. Should any provision of the Contract be wholly or partly invalid or unenforceable, the Parties shall in good faith agree on a valid and enforceable replacing provision that has a legal and economic effect that is as similar as possible as the replaced provision.

**Offers and orders**

- 2.1. Offers which do not stipulate an acceptance period and verbal Offers are not binding on Sitomeca, nor is any information or prices indicated in Offers, unless such information is confirmed by Sitomeca in the Contract.
- 2.2. No Offer and no Order acceptance shall bring about a valid Contract unless the Offer, c.q. the Order, is unconditionally accepted by respectively Purchaser or in writing by Sitomeca. In case of (a partial) payment of the Price according to an Offer Purchaser shall be deemed to have unconditionally accepted that offer.
- 2.3. Sitomeca may accept a cancellation or a modification of an accepted order by Purchaser. In such event all costs resulting from such cancellation and or modification shall be borne by Purchaser.

**Goods and services**

- 3.1. The scope and the subject of the goods and services that are the subject of the Contract (hereinafter the "Deliverables") are exhaustively specified in the Contract.
- 3.2. Sitomeca shall be entitled to make any changes to the Deliverables without Purchaser's agreement provided such changes constitute improvements to the same and do not result in a price increase.

- 3.3. Sitomeca may oversupply or undersupply the Deliverables to the maximum of 5% and in reserves the right to adjust the Price accordingly.

#### **Information, technical documents and tools**

- 4.1. If not expressly stipulated to the contrary in such a document, no information contained in a document provided by Sitomeca, including brochures, technical documents and catalogues, is binding unless stipulated as such in the Contract.
- 4.2. Each Party shall retain all rights to the technical documents it provides to the other Party who shall not make these documents available to a third party, either in whole or in part, nor use them for purposes other than those for which they were provided, unless expressly authorized to the contrary by the first-mentioned Party.
- 4.3. The tools used by Sitomeca for manufacturing the Deliverables under the Contract, including devices, gauges and test equipment, shall remain Sitomeca's property, even if Purchaser bears part or all of the manufacturing costs.

#### **Regulations in force in the country of destination and safety devices**

- 5.1. Purchaser shall be exclusively responsible for the compliance of the (use of the) Deliverables with any standards and regulations, including health and safety regulations, applicable in the country of destination of the Deliverables and shall inform Sitomeca about all such standards and regulations at the latest when placing an Order or accepting an Offer. Unless agreed in the Contract, Sitomeca shall have no obligation to supply any goods, services or devices required for compliance with the said standards and regulations.
- 5.2. Sitomeca shall not be liable for and Purchaser shall indemnify and hold harmless Sitomeca for and against the (results of the) non-compliance of the Deliverables with standards and regulations about which Sitomeca was not informed in accordance with Clause 5.1.

#### **Prices**

- 6.1. Unless otherwise agreed upon, all prices agreed in the Contract (hereinafter the "Price") shall be net and ExWorks. Any and all additional charges, premiums and fees, such as, but not limited to, the charges, premiums and fees related to freight, insurance, export, transit, import, permits and certifications, shall be borne by Purchaser. Likewise, Purchaser shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the Contract and shall refund them to Sitomeca against adequate evidence of payment.
- 6.2. If in the course of the performance of the Contract the wage rates, the prices of raw material or other external costs which were used for the calculation of the Price change, Sitomeca reserves the right to adjust the Price accordingly. Sitomeca also reserves the right to adjust the Price if the agreed delivery time is extended in accordance with Clause 9.4, or if in the course of the performance of the Contract the nature or the scope of the Deliverables changes or if any information provided by Purchaser in relation to Deliverables appears to be inaccurate.

#### **Terms of payment**

- 7.1. Purchaser shall make all payments in accordance to the agreed terms of pay-

ment, in freely available funds and in Euro to the bank account indicated by Sitomeca, without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like. Unless otherwise agreed upon, the Price shall be paid within thirty (30) days from the date of the invoice.

Payment shall be deemed to be made on the date that the paid sum is available on Sitomeca bank account.

If payment by bills of exchange is agreed, Purchaser shall pay the discounting cost for such bills of exchange as well as the taxes and the collection charges.

- 7.2. No delay in the supply of the Deliverables (including delays with regard to transport, delivery, erection, commissioning or taking over of the Deliverables) that is not solely attributable to Sitomeca or that is due to reasons beyond Sitomeca's control, no imperfections of or defaults in the Deliverables that are of a minor importance, no circumstances in which post-delivery work can be carried out without the Deliverables being prevented from use and no complaint with regard to the Deliverables, shall entitle Purchaser to withhold the payment of the Price or to set-off any amount against the Price without Sitomeca's prior written consent.
- 7.3. If (a) the agreed securities are not provided in accordance with the Contract, or (b) Purchaser fails to make payment in due time or (c) Sitomeca has reasons to believe that a future payment will not be made (in full) or in due time, then, without prior written notice, all outstanding amounts due by Purchaser (including unmatured invoices) shall immediately become due and Sitomeca shall have the right to terminate the Contract and/or to suspend it and/or to refuse the release of the Deliverables, until, to Sitomeca's sole discretion, Purchaser fully complies with its obligations and/or new terms of payment are agreed and/or Purchaser provides satisfactory security for payment, without detriment to Sitomeca's right under the applicable law in particular with regard to compensation for losses, damages and costs suffered as a result of Purchaser's breach.
- 7.4. If Purchaser fails to make a payment on the agreed date, without prior notice, from that date on and until payment in full Sitomeca shall be entitled to payment of default interest at a rate of 12% per year and to a compensation for administrative costs and collection charges equal to 6% of the unpaid amount, without detriment to Sitomeca's right under the applicable law in particular with regard to compensation for losses, damages and costs suffered as a result of Purchaser's breach. Payment of default interest, of the administrative costs and of the collection charges does not free Purchaser from its obligation to make full payment of the amounts due.

### **Retention of title**

- 8.1. Sitomeca shall retain title to all Deliverables until full payment of their Price by Purchaser and, without limitation in time, to all scrap materials.
- 8.2. Purchaser shall take all necessary measures in order to safeguard Sitomeca's title and to ensure that this title is not prejudiced in any way. Purchaser authorizes Sitomeca to enter or to notify the retention of title in or to any public register, book or similar record in accordance with the applicable law and to fulfill all corresponding formalities at Purchaser's cost.
- 8.3. Purchaser shall not process, alter or intermix the Deliverables prior to full payment of the Price. If the Deliverables are processed, altered or intermixed this shall not diminish Sitomeca's title in the Deliverables which title will be transferred upon the result of the process, alteration or intermixing, as the case may be, in the same proportion as the proportion between the value

of the Deliverables and the value of other goods used for processing if the Deliverables are processed with goods that are not Sitomeca's property.

- 8.4. Until full payment of the Price, Purchaser shall at its own cost maintain the Deliverables in perfect condition and insure them against any risk, including theft, breakdown and fire and water damage, for the benefit of Sitomeca.

### **Supply of Deliverables**

- 9.1. Unless expressly otherwise agreed upon in writing, no information provided by Sitomeca with regard to dates, deadlines and duration of services will be binding on Sitomeca.
- 9.2. If a supply term or a supply date is agreed in the Contract, the Deliverables shall be supplied within such a term or on such a date. No supply term shall however commence unless on its intended commencement date all documents required for the performance of the Contract and to be provided by Purchaser are in Sitomeca's possession, the technical points are agreed on and all formalities such as, but not limited to, import, export, transit and payment permits are completed and obtained, all down payments are made and all agreed securities are provided.
- 9.3. Unless agreed to the contrary, the supply shall be deemed to be made on the date that Sitomeca informs Purchaser that the Deliverables are at Suppliers disposal or ready for dispatch at Sitomeca's premises. Purchaser shall accept delivery and inspect the Deliverables within the term of five (5) days from the said date.
- 9.4. The delivery time and any deadline against Sitomeca is extended in following circumstances with the time that such circumstances are in effect:
- 9.4.1. if the information required for performance of the Contract by Sitomeca is not received in time or changed by Purchaser;
- 9.4.2. in case of force majeure events, acts of god and other circumstances independent of Sitomeca's will and which Sitomeca cannot prevent using normal required care, regardless of whether they affect Sitomeca, Purchaser or a third party; such events shall include, but will not be limited to, natural catastrophes, epidemics, mobilization, war, social unrest, serious breakdown or late delivery of tooling and machinery in the works, accidents, labor conflicts, late or deficient work by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by state authorities or public bodies;
- 9.4.3. if Purchaser or a third party for which Sitomeca is not liable fails to fulfill its obligations within the agreed time-frame, in particular if Purchaser fails to observe the agreed terms of payment.
- 9.5. Sitomeca reserves the right to make partial supplies, which are considered as partial sales. The partial supply of an order does not entitle Purchaser to refuse to pay the Deliverables effectively supplied.
- 9.6. Purchaser shall not be entitled to any compensation for delay in supply whatsoever unless that delay is attributable to Sitomeca's fault and on the condition that Purchaser establishes that as a result of such delay it has suffered a loss. If Purchaser obtains substitute material, Purchaser shall not be entitled to any compensation whatsoever.

Compensation for damages caused by delayed supply is only due if the supply is delayed by at least two (2) weeks. Unless the delay is due to Sitomeca's unlawful intent or gross negligence (excluding unlawful intent or gross neg-

ligence of persons employed or appointed by Sitomeca) the compensation shall not exceed zero point five (0,5) % of the Price of the Deliverables whose supply is delayed for every full week's delay and shall never exceed the maximum of five (5) % of the Price of the Deliverables whose supply is delayed. Once the said maximum is reached, Purchaser shall grant to Sitomeca a reasonable time extension. Only if such extension is not observed for reasons within Sitomeca's control, Purchaser shall have the right to reject the (part of) the Deliverables whose supply is delayed.

Sitomeca's liability for delayed supply is always limited to what is provided under clause 9.6.

- 9.7. If the execution of a significant portion of the Contract is delayed by more than twelve (12) months, each Party may terminate the Contract.

### **Packaging**

Sitomeca shall charge the packaging material separately. Unless it is agreed that Sitomeca retains title in the packaging material, in which case Purchaser shall return the material at its expense to Sitomeca, such material may not be returned to Sitomeca.

### **Passing risk**

- 11.1. All risk, including the risk of loss of or damage to the Deliverables, including seizure of property, shall pass on to Purchaser on the moment that the Purchaser accepts the supply and at the latest on the last day of the term mentioned in clause 9.3. Unless agreed to the contrary in the Contract, in any event the risk shall pass to Purchaser on the moment that Sitomeca transfers the goods to the forwarding agent, the carrier or any other person designated to ship the Deliverables and at the latest when the Deliverables leave Sitomeca's premises.
- 11.2. A delay in supply or in shipment of the Deliverables attributable to Purchaser or due to reasons beyond Sitomeca's control, shall not delay the passing of risk as set out in clause 12.1

### **Forwarding, transport and insurance**

- 12.1. Unless agreed to the contrary in the Contract, Sitomeca shall only provide special requirements regarding forwarding, transport and insurance upon Purchaser's request and at Purchaser's expense and risk.
- Purchaser shall submit any objections regarding forwarding or transport immediately upon receipt of the Deliverables or of the shipping documents to the last carrier.
- 12.2. Unless otherwise agreed upon, Purchaser shall be responsible for insuring the Deliverables during the forwarding and transport.

### **Defects and inspection and testing of the Deliverables**

- 13.1. "Defect" in the Deliverables shall mean such defect attributable to Sitomeca's fault that consists of non-conformity of the Deliverables with the Contract and renders the Deliverables unusable either in whole or in part for the intended purpose due to poor materials, faulty construction or defective manufacturing. Sitomeca may agree to remedy other shortcomings which do not constitute a Defect but such shortcomings shall in no event entitle Purchaser to refuse the acceptance of the Deliverables.

No Defect in the Deliverables shall be deemed to exist unless it is confirmed by means of a check according to Sitomeca's standard methods of analysis and measuring tools. The results of such checks shall be decisive. Purchaser may request Sitomeca to provide Purchaser with information about the method of the said checks.

In case of a Defect claim by the Purchaser, Purchaser must give Sitomeca the reasonable opportunity to verify the claim and to become fully convinced of the existence of a Defect attributable to its fault. If Purchaser fails to comply with this obligation, Purchaser shall have no claim whatsoever against Sitomeca with regard to the alleged Defect.

In case Sitomeca accepts the Defect, Sitomeca shall have the right, to its sole discretion, to remedy the Defect within a reasonable time or to supply substituting Deliverables at its expense, Purchaser having in the latter case the obligation to return the substituted Deliverables to Sitomeca.

- 13.2. Purchaser shall inspect the Deliverables at Sitomeca's premises in accordance with Clause 9.3 for the purpose of identification of quantities and of visible Defects. Purchaser shall notify Sitomeca in writing amply specifying and identifying any alleged shortcomings with regard to quantities and Defects at the latest within eight (8) days after the inspection of Deliverables and in any event prior to agreed shipment of the Deliverables, failing which the Deliverables shall be deemed to be in conformity with the agreed quantities and free from visible Defects.

The Deliverables will be inspected by way of random sampling on a scale in accordance with industry standards. The cost of more ample checks on Purchaser's demand shall be borne by Purchaser.

- 13.3. If the Parties agree that the Deliverables are inspected after the shipment of goods, as far as being normal practice, Sitomeca shall itself inspect the Deliverables before dispatch. More ample testing may be requested by Purchaser and will be carried out by Sitomeca at Purchaser's cost.

Upon receipt of the Deliverables the Purchaser shall immediately inspect the Deliverables. Clause 13.2, first paragraph shall apply, taking into account that the term of eight (8) days shall commence on the date of the receipt of the Deliverables.

- 13.4. In case of visible Defects discovered within the term indicated in article 13.2 or 13.3 and in case of discovery of hidden Defects, if Sitomeca accepts liability, Sitomeca shall have the right to remedy the Defect within a reasonable term, after which a taking-over test shall be performed in accordance with Clause 13.5 at the request of a Party.

- 13.5. The terms and conditions of the taking-over test shall be subject to a case-by-case agreement between the Parties, failing which the following shall apply

13.5.1. Sitomeca shall advise Purchaser in due time of the date of the taking-over test in order to allow Purchaser to attend.

13.5.2. After inspection of the Deliverables by the Parties, the Parties shall draw up a report to be signed by them which shall state either that the test is completed and the Deliverables are thus fully accepted, or that the Deliverables are accepted under reservations or are refused. In the latter two cases, the report shall detail the Defects alleged by the Purchaser.

13.5.3. If during the test serious Defects attributable to Sitomeca are found, Purchaser shall be entitled to claim either a price reduction or an indemnity

or other compensation from the Sitomeca, provided this has been agreed before. If the Defects are of such importance that they cannot be remedied within a reasonable time, Purchaser shall be entitled to refuse acceptance of the part of the Deliverables with Defect or, if partial acceptance is economically unjustified, to terminate the Contract. Purchaser shall however not have the right to terminate the Contract if Sitomeca supplied substitute goods and these goods were damaged or destroyed by Purchaser or not kept in good condition with the type of care that the Purchaser customarily applies with regard to its own property.

13.5.4. The test shall be deemed completed and the Deliverables accepted, under reservation of hidden Defects:

- if the test was not carried out on the agreed date for reasons attributable to Purchaser or for reasons beyond Sitomeca's control;
- if Purchaser refuses the acceptance without legitimate grounds;
- if Purchaser refuses to sign the report duly prepared in accordance with Clause 13.5.
- as soon as Purchaser uses the Deliverables.

13.6. All deficiencies with regard to Deliverables are governed by Clauses 13 and 14 and Purchaser shall not be entitled to any claim or compensation other than those provided by those Clauses.

### **Warranties and liability**

- 14.1. Sitomeca provides no other warranty than the warranty that the Deliverables shall be manufactured and delivered in accordance with the agreed specifications, and, supplementary, Sitomeca's standard specifications and guidelines, and with the normal industry standards. Unless expressly agreed in the Contract, Sitomeca does not provide any warranty with regard to the suitability of the Deliverables for a particular purpose.
- 14.2. Sitomeca does not undertake any obligation with regard to the verification whether any information provided by Purchaser under the Contract or any Deliverables ordered by Purchaser may constitute or contain an infringement of third party rights, including intellectual property rights in the broadest sense of this term and Purchaser shall indemnify and hold Sitomeca harmless for all damage, losses, costs and claims arising out such infringements.
- 14.3. In cases where Sitomeca is acting as an intermediary for or as a reseller of goods delivered by third parties, Sitomeca does not provide any warranty beyond the warranty provided by such parties.
- 14.4. Sitomeca provides no warranty and assumes no liability for services rendered or goods provided by third parties, including subcontractors, that are involved in the performance of the Contract upon Purchaser's request and Purchaser shall indemnify and hold Sitomeca harmless against any and all losses, damages and costs incurred by Sitomeca pursuant to such involvement.
- 14.5. Sitomeca shall not be liable towards Purchaser for breach of Contract or for breach of obligations outside of Contract unless such liability is provided for by the Terms and Conditions and shall in no event be liable for any damage, loss or cost incurred by Purchaser or any third party as a result of Purchaser's breach of Contract or any other obligation. Purchaser shall be liable towards Sitomeca and shall hold Sitomeca harmless for all damages, losses, costs and claims, including claims for personal injury or for damage to property, arising

out of actions or omissions by Purchaser, or by persons employed or appointed by it, which constitute a breach of the Contract or of the applicable law.

- 14.6. To the extent permitted by the applicable law, Sitomeca shall not be liable towards Purchaser unless such liability is due to Sitomeca's unlawful intent or gross negligence, with the exclusion of unlawful intent or gross negligence of persons employed or appointed by the Sitomeca.
- 14.7. To the extent permitted by the applicable law, Sitomeca shall in no event be liable for any indirect or consequential damage, such as loss of production, loss of use, loss of orders or loss of profit or revenue. Claims for compensation of other damages, claims for reductions of price, for (partial) termination of the Contract are excluded unless they are provided for by the Terms and Conditions.
- 14.8. Without detriment to other provisions of the Terms and Conditions, in any event the financial liability of Sitomeca for breach of Contract is limited to the Price paid to Sitomeca by Purchaser for the Deliverables affected by the breach and, in case such claim is made together with the termination of the Contract by Purchaser, to the refund of the Price paid for Deliverables affected by termination and to 10% of the said Price for any additional damages, losses and costs.
- 14.9. Sitomeca's provides no warranty with regard to defects in Deliverables
- if the Deliverables were not used or handled in accordance with the agreed intended use, or failing such agreement, for the purposes for which they were designed;
  - if the Deliverables were processed or changed;
  - if Sitomeca acted according to Purchaser's instructions;
  - unless Purchases demonstrates that the Deliverables were used or handled in accordance to Sitomeca's handling guidelines, which Purchaser can obtain from Sitomeca at all times, and regardless if these guidelines were specifically requested;
  - if the Defect is due to transport, unless according to the Contract such transport is Sitomeca's responsibility.

### **Non-performance unspecified in these Terms and Conditions of Sale**

- 15.1. In a case of breach of the Contract by Sitomeca that is not expressly covered by the General Terms and Conditions, Purchaser may not terminate the Contract unless Sitomeca fails to cure the breach after being requested to do so by the Supplier by a registered letter specifying the nature of the breach and announcing Purchaser's intention to terminate the Contract. Purchaser may not terminate the Contract sooner than after the expiry of the term specified in the said registered letter which term must be reasonable taking into account the nature of the invoked breach. Purchaser's right to terminate the Contract is limited to the part of the contract affected by the breach or with respect of the Deliverables affected by the breach.
- 15.2. In a case of breach of the Contract by Purchaser that is not expressly covered by the General Terms and Conditions Sitomeca may terminate the Contract in part or in whole at any time by a written notice sent to Purchaser, provided that such breach continues for a period of thirty (30) days after a formal notice of default was sent to Purchaser specifying the nature of the breach and requesting to cure it.



15.3. If an unforeseen event results in Sitomeca's performance of the Contract becoming impossible or results in the change in the economic balance of the Contract which renders the performance thereof considerably more burdensome for Sitomeca, Sitomeca shall be entitled to partially or fully terminate the Contract, without compensation of any nature being due to Purchaser, provided that Sitomeca immediately informs Purchaser of such event after obtaining knowledge thereof. In case of such termination the Purchaser will only be entitled to payment of that part of the Price that corresponds with the Deliverables effectively supplied to Purchaser.

#### **Jurisdiction and applicable law**

16.1. The place of jurisdiction for both Purchaser and Sitomeca shall be at the registered office of Sitomeca. Sitomeca shall, however, be entitled to sue Purchaser at the latter's registered address.

16.2. The contract shall be governed by Belgian substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980 and the Hague Conventions relating to a Uniform Law on the International Sale of Goods dated June 15, 1955.