

ASTEELFLASH GENERAL TERMS AND CONDITIONS OF SALE

- 1. SCOPE** - These general terms and conditions of sale (hereinafter referred to as « T&Cs ») apply to all sales and other services of ASTEELFLASH. All orders placed with ASTEELFLASH shall imply acceptance by the buyer of these T&Cs and waiver by the buyer of its own general conditions of purchase. Any provision included in the buyer's documentation subsequent to ASTEELFLASH's commercial offer or purchase order which modifies these T&Cs shall be considered null and void, unless otherwise agreed in writing by ASTEELFLASH.
- 2. BROCHURES** - All descriptions, illustrations and information contained in ASTEELFLASH's catalogues, brochures and other printed material are illustrations only; they form no part of the contract between ASTEELFLASH and the buyer, and are not binding on ASTEELFLASH. Such information is subject to alteration by ASTEELFLASH without notice.
- 3. OFFERS** - The commercial offers of ASTEELFLASH expire one (1) month after their date of issuance, unless otherwise provided in the offer. Any amendment to a commercial offer made by the buyer shall not be valid unless expressly accepted by ASTEELFLASH in writing.
- 4. ORDERS** - No order submitted by the buyer shall be deemed to be accepted by ASTEELFLASH unless and until confirmed in writing by ASTEELFLASH. The acknowledgement of receipt of an order shall not be considered as an acceptance of the same. No order accepted by ASTEELFLASH may be cancelled or modified by the buyer except with the written agreement of ASTEELFLASH and provided that the buyer shall indemnify ASTEELFLASH in full against any and all losses (including, without limitation, loss of profit), costs (including, without limitation, materials and labor costs) incurred by ASTEELFLASH, damages, charges and expenses incurred by ASTEELFLASH as a result of the aforesaid cancellation or modification.
- 5. PRICE & TERMS OF PAYMENT** - Unless otherwise stated in writing by ASTEELFLASH, the prices of the products: (i) are exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the products, which the buyer shall be additionally liable to pay to ASTEELFLASH; (ii) include discounts and rebates, if any, that ASTEELFLASH would grant to the buyer; and (iii) shall be paid by wire transfer, immediately at the delivery date under clause 6 below. The time of payment of the price shall be of the essence of this contract. Any delay in payment will entitle ASTEELFLASH to suspend or cancel the delivery of the ongoing orders, or to suspend the performance of ASTEELFLASH's obligations. Besides, interests will be charged automatically, without any reminder and without prejudice to any other damages, on all amounts still outstanding after the due date until payment in full is received by ASTEELFLASH. The interest rate will be equal to the rate applied by the European Central Bank to its most recent refinancing operation plus ten (10) percentage points. In addition, pursuant to the relevant European Directive on combating late payment in commercial transactions, a lump-sum for collection costs equal to forty (40) euros for 2016 or its amount possibly adjusted for the following years (Art. L441-6 of the French Commercial code), as well as any additional costs of the recovery of the original invoice (to the extent reasonably incurred) shall be paid to ASTEELFLASH in case of late payment. In case of substantial decrease of the buyer's solvency ratio, ASTEELFLASH shall be entitled to require payment guarantees or, to terminate any ongoing orders. The buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim. Early payment by the buyer will not give rise to any discount. Where the products sold by ASTEELFLASH are priced in a foreign currency, or the price of the products invoiced by ASTEELFLASH is in a currency other than the currency in force in the country of ASTEELFLASH registered office then, ASTEELFLASH reserves the right to amend the aforesaid price based upon the fluctuation of the relevant currency of more than +/- 2.5 % against the currency in force in ASTEELFLASH registered office country. The exchange rate which shall serve as a reference for the calculation of the aforesaid fluctuation of +/- 2.5 % is the one in force at the date of the relevant ASTEELFLASH's offer.
- 6. DELIVERY** - Delivery takes place by delivering the products to or, as the case maybe, by making them available for collection by or on behalf of the buyer at the place specified in the ASTEELFLASH's purchase order confirmation (where issued), otherwise in the delivery order. The delivery date is approximate only and shall not be of the essence of this contract; late delivery not exceeding 15 days does not give the buyer any right to cancel the order, to reject the products, or to claim any damages. The buyer can only cancel the order, to the extent affected by the aforesaid delay, if ASTEELFLASH does not deliver the products within the 15 days and, in that case, ASTEELFLASH will refund to the buyer deposits already paid in connection with the order for the part so affected by the aforesaid delay. In any case, ASTEELFLASH shall not be liable should the delivery delay be attributable to the buyer or due to a force majeure event. The products may be delivered by ASTEELFLASH in advance of the delivery date upon giving reasonable notice to the buyer. The acceptance by ASTEELFLASH of a modification of an order releases ASTEELFLASH from meeting the originally agreed delivery dates. The buyer shall inspect the products upon delivery and notify the carrier in case of missing and/or damaged products; any product that is not the subject to reservations expressed in a registered letter within three (3) days of receipt, addressed to the carrier company in accordance with article L133.3 of the French Commercial code, with a copy addressed simultaneously to ASTEELFLASH, shall be deemed not to be missing, free from any damage and accepted by the buyer.
- 7. TRANSFER OF RISKS** - The risk of damage to or loss of the products shall not pass to the buyer until delivery to the buyer in accordance with the Incoterm (under the International Chamber of Commerce's International Rules, edition in force at the date of the sales order confirmation (where issued) otherwise at the date of the delivery note) agreed in writing by ASTEELFLASH.
- 8. RESERVATION OF TITLE** - Notwithstanding delivery and the passing of risk in the product, the property in the product shall not pass to the buyer until the corresponding price and all its accessories are fully paid to ASTEELFLASH. Products delivered to the buyer while the title to such products has not yet passed to the buyer shall be referred to herein as the « Reserved Products ». The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Reserved Products. Should the buyer be in breach of the contract, in particular in case of default of payment, ASTEELFLASH shall have the immediate right to retake possession of and permanently retain any of the Reserved Products and shall be entitled to take all necessary steps for the purpose of repossession. All costs incurred by ASTEELFLASH in such possession shall be borne by the buyer. In the event that the buyer processes or assembles Reserved Products with other products, ASTEELFLASH will then have co-ownership title and rights on the end-product in proportion of the value of the Reserved Products processed or assembled in relation to the end-product. In the event the Reserved Products were resold or lost, the amounts received by the buyer in consideration of such resale or loss are to be transferred to ASTEELFLASH.
- 9. PACKAGING** - Non-returnable packages are always payable by the buyer and returns are not accepted by ASTEELFLASH. In the absence of any special instructions in this regard, the package is prepared by ASTEELFLASH acting in the best interests of the buyer. Reusable packages shall remain the property of ASTEELFLASH. They are provided to the buyer under its own responsibility. A consignment and/or rental invoice is prepared for such packages. If the package is not returned within the customary period in the trade, an asset transfer invoice will be sent to the buyer.
- 10. INTELLECTUAL PROPERTY** - ASTEELFLASH shall retain any and all intellectual and industrial property rights over its projects, studies and documents which communication or execution is forbidden without its prior written consent. Any technology and know-how, whether or not patented, incorporated into the products or services, as well as all intellectual or industrial property rights relating to products or services provided by ASTEELFLASH shall remain the exclusive property of ASTEELFLASH. The buyer shall indemnify ASTEELFLASH against all costs, claims, losses, expenses and damages incurred by ASTEELFLASH or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade-marks, copyright, design right or other intellectual property right caused by the use by ASTEELFLASH of product specification, design or standard in manufacturing the product, or arising out of the products being incorporated by or at the request of buyer into another product or system which infringe upon any patent, trademark, trade secret, copyright or other third party's proprietary right.
- 11. WARRANTY** -
- 11.1 ASTEELFLASH warrants that the products supplied are free from defect in workmanship and compliant with their specifications. The warranty applies for twelve (12) months from the date of delivery of the products to the buyer.
- 11.2 ASTEELFLASH also warrants the products against hidden defects (*garantie des vices cachés*) in accordance with the provisions of articles 1641 and seq. of the French Civil code. However, should the buyer be a professional working in the same field as ASTEELFLASH, the buyer hereby expressly accepts the exclusion of the aforesaid guarantee against hidden defects.
- 11.3 ASTEELFLASH will pass on to buyer all vendors' components warranties to the extent that they are transferable, but will not independently warrant any component.
- 11.4 Where the products are built by the buyer or a third party into a piece of equipment, a construction or other product then only the buyer or the relevant third party (as the case maybe), as professionals and notwithstanding article 1386-8 of the French Civil code, shall be liable in respect of property and persons, for the choice and suitability of the aforesaid products for the function and use to which they put them into that equipment or construction.
- 11.5 To the extent stated in this clause 11, ASTEELFLASH shall, at its option and as a sole and exclusive remedy, either repair or replace the product found defective. Replacement parts or parts replaced are guaranteed for the remaining term of the warranty period.
- 11.6 ASTEELFLASH makes no representations or warranties whatsoever with respect to defects arising or resulting from the materials or components provided or imposed by buyer or from a design of the product imposed by buyer. The warranty shall also not apply to defects arising or resulting from normal wear and tear in the products, incorrect or inadequate storage conditions of the products, improper handling or use of the products for abnormal purposes or not in compliance with ASTEELFLASH's instructions, or negligence by buyer, its agents or customers. Any technical advice provided by ASTEELFLASH, before and/or during the use of the products, whether provided verbally or in writing, is given in good faith but without any warranty from ASTEELFLASH.
- 11.7 Apart from the warranties herein provided, ASTEELFLASH makes no representation and no other warranties, express implied, in connection with the delivered products or any part thereof, to the fullest extent permitted by law. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby expressly excluded. Claims do not release the buyer from his obligation to pay the price of the delivered goods. Failure to do so shall be considered as a default in payment.
- 11.8 In accordance with article 1386-15 paragraph 2 of the French Civil code, relating to liability in respect of defective products, ASTEELFLASH does not incur any other liability in respect of the goods than the one defined in the warranty stated in the present clause.
- 12. LIABILITY** -
- 12.1 In no event shall ASTEELFLASH be held liable for any damages other than direct proven material damages attributable to ASTEELFLASH, subject to the limits stated in these T&Cs.
- 12.2 Besides, in no event shall ASTEELFLASH be held liable for any consequential, indirect, special, punitive or incidental damages or lost profits, whether foreseeable or unforeseeable (including, but not limited to, material and moral damages, loss of profits, loss of clients, reduction or interruption of activity), based on the buyer's claims or those of a third party and arising out of the delivered products, their use or the impossibility to use it, or to breach or failure of express or implied warranty.
- 12.3 Any claims, actions and/or proceedings against ASTEELFLASH shall become time-barred one (1) year after delivery of the products.
- 12.4 In no event shall ASTEELFLASH's aggregate liability exceed the value of fees actually paid by the buyer to ASTEELFLASH for the products or services that directly caused the damage at the time the claim is made.
- 12.5 The exclusion and limitation of liability herein provided will apply to the maximum extent permitted by applicable law regardless the legal theory whether in contract, tort, breach of warranty, breach of statutory duty or under any other cause. Notwithstanding the foregoing, nothing in these T&Cs shall exclude or limit ASTEELFLASH's liability in respect of death or personal injury caused by ASTEELFLASH, or for its gross negligence (*faute lourde*) or willful misconduct (*faute dolosive*).
- 12.6 The buyer shall procure that its insurers or any third parties it entered into contractual relations waive all rights of claim against ASTEELFLASH or its insurers beyond the limits and in respect of the exemptions set forth above.
- 13. FORCE MAJEURE** - Neither party shall be liable for its failure to perform hereunder if said performance is made impracticable due to any circumstances beyond the reasonable control of the party affected, including but not limited to, acts of God, fires, natural disaster, floods, wars, acts of terrorism, machinery breakdown or factory stoppage, explosion, fire, strike or lock-out, riot, labor dispute, equipment failure, voluntary or involuntary compliance with any law, order, delays or negligence by suppliers or carriers of raw materials, semi-finished products or replacement parts required, legislative or administrative measures and any kind of intervention by the public authorities preventing or delaying manufacture or delivery. The present clause of Force Majeure shall not apply to buyer's obligation to pay for the products delivered.
- 14. LAW & JURISDICTION** - These T&Cs and any dispute or claim arising out of or in connection with it shall be governed by the law of France, without regard to conflict of laws rules or principles. Any dispute arising under these T&Cs shall be submitted to the same jurisdiction notwithstanding any plurality of defenders. The Vienna Convention on the International Sale of Goods (CISG - 11 April 1980) is hereby specifically excluded. Article 1195 of the French Civil code (established by the ordinance No. 2016-131 of 10 February 2016) is also hereby specifically excluded.
- 15. MISCELLANEOUS** - If any provision of these T&Cs is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these T&Cs and the remainder of the provision in question shall not be affected thereby. The waiver from either party of any breach, or failure to enforce any of the terms and conditions of these T&Cs, at any time, shall not in any way affect, limit or waive said party's right thereafter to enforce and compel strict compliance with every term and condition hereof. This English version of these T&Cs shall always prevail if in conflict with ASTEELFLASH's T&Cs available in other language. The French version of these T&Cs shall always prevail if in conflict with ASTEELFLASH's T&Cs available in other language.