

General Conditions of Sales - Trelleborg Kenitra SARL

1. General

1.1 "Company" means Trelleborg Kenitra SARL (company registration number 54449); "Buyer" means any person, firm or company which orders or buys goods from the Company; and "Goods" means the goods which are the subject of the Buyer's order.

1.2 These Conditions govern all sales of goods by the Company to the exclusion of any other terms and conditions other than as may be agreed between the Company and the Buyer in writing. No variation of these Conditions will be binding unless made in writing by the Company. No binding contract shall arise until the Company has notified its acceptance of the Buyer's order in writing. The Company's written confirmation of an order and these Conditions, together with any other documentation agreed by the Buyer and the Company in writing to form part of the sale contract, are hereinafter together referred to as a sale contract. The Buyer may not cancel orders, which have been accepted by the Company.

1.3 The sale contract supersedes all previous oral and/or written representations, undertakings and agreements relating to the Goods. All information contained in the Company's sales literature or correspondence is intended as a general guide only and does not form part of the sale contract. The Goods are not sold by sample unless agreed otherwise in writing.

1.4 No delay or failure by the Company in enforcing its rights under these Conditions shall operate as a waiver of any default or subsequent breach unless confirmed in writing by the Company.

2. Delivery

2.1 Delivery shall be made to the place(s) and by the method(s) specified in the Company's written confirmation. The Buyer is responsible for unloading. The Buyer's or its carrier's receipt shall be conclusive evidence of delivery.

2.2 All delivery dates (requested or agreed) are estimates only. Time of delivery is not of the essence and the Company shall not be liable for any delay in delivery. The Company may deliver the Goods in instalments and invoice for each instalment separately. Each delivery shall constitute a separate sale contract and any claim relating to specific instalments shall not entitle the Buyer to any right or remedy in respect of any other instalment.

3. Price and Payment

3.1 Unless the Company states otherwise in writing, the price of the Goods shall be the Company's list price for the Goods current at the date of acceptance of the Buyer's order.

3.2 Written quotations by the Company remain valid for sixty days after their date of issue. The Company may vary the price quoted if the Buyer orders a different quantity of Goods from that stated in the quotation.

3.3 Notwithstanding Conditions 3.1 and 3.2, the Company may at any time, including in respect of confirmed orders, amend the price of the Goods in the event the Company's business is affected by high currency fluctuation or/and increases in raw material prices.

3.4 The price of the Goods includes standard packaging, but excludes the cost of delivery, loading, unloading, transit insurance, special inspection requirements, production of special tools, duties and value added tax, unless the Company states otherwise in writing.

3.5 The Company may impose such terms relating to payment, credit, security and/or guarantees as it thinks fit. Unless the Company states otherwise in writing, the Buyer shall pay the Company's invoices in full in the currency of the relevant invoice without any deduction, abatement or legal or equitable set-off by way of electronic payment (cleared funds) within thirty days after the end of the month in which the invoice is issued. Time of payment is of the essence.

3.6 Without prejudice to any other remedy, if the Buyer fails to pay any invoice in full on the due date, the Company may charge interest on the unpaid amount and fixed compensation for recovery costs in accordance with French law. The Buyer shall indemnify the Company fully against all fees, costs and expenses incurred in seeking to recover sums payable by the Buyer and repossessing Goods belonging to the Company.

4 Risk and title

4.1 Risk in the Goods shall pass to the Buyer upon delivery pursuant to Condition 2.1.

4.2 Property in the Goods shall pass to the Buyer when the Company receives payment in full by way of electronic payment in cleared funds of the price of the Goods and all other sums due owing to it from the Buyer on any account. This shall not prevent the Company from suing for the price of the Goods.

4.3 Until property in the Goods passes to the Buyer:

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(a) the Buyer shall hold the Goods as the Company's bailee, keep them secure, insured, separate from any other goods and identifiable as the Company's property;

(b) the Buyer may use or resell the Goods in the ordinary course of its business, but shall not otherwise deal with them, charge or pledge them or allow any lien or other interest to arise over them;

(c) if the Buyer resells the Goods pursuant to Condition 4.3(b), the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and

(d) if the Buyer fails to pay any sum due to the Company on the due date or is subject to any of the events referred to in Condition 10.1(b) or the sale contract is terminated for any reason, then the Company may immediately repossess the Goods and the Buyer shall immediately cease using or dealing with them and shall make them available for collection at the Company's request.

4.4 The Buyer irrevocably authorizes the Company and its representatives to enter any premises or vehicles where Goods belonging to the Company may be held in order to inspect and repossess such Goods in accordance with these Conditions.

5. Acceptance

5.1 The Buyer shall inspect the Goods upon delivery pursuant to Condition 2.1, and shall be deemed to have accepted them unless it informs the Company and, if applicable, the Company's carrier, in writing of any loss, shortage, excess or visible damage or non-conformity within seven days after the date of delivery pursuant to Condition 2.1. The Buyer shall notify any failure to deliver within seven days after the date of the Company's invoice. The Buyer may not reject short or excess deliveries which are within a margin of 10% of the quantity ordered. In such cases, the Company will adjust the price proportionately.

6. Warranty

6.1 The Company warrants that the Goods will be reasonably free from defects in workmanship and materials and will conform to the Company's specification and any specification from the Buyer, if and to the extent such specification has been agreed by the Company during the development phase of the Goods, for a period of twenty-four months after the date of delivery pursuant to Condition 2.1. The Buyer's sole remedy for any proven breach of this warranty shall be (at the Company's option) the repair of the Goods or replacement of the Goods or a refund of the price paid for the Goods, in each case subject to the Buyer returning the Goods carriage paid to the Company within the twenty-four-month warranty period. This warranty does not apply to damage or defects resulting from wear and tear, overloading, misuse, faulty installation of the Goods or Buyer's design alterations or material and the Buyer should request the Company's advice relating to any non-standard use of the Goods.

6.2 The Company does not warrant that the Goods are suitable for the Buyer's particular requirements other than as set out in Condition 6.1 and all representations, warranties, terms and conditions, whether express or implied, other than those set out in Condition 6.1, are excluded to the fullest extent permitted by law.

6.3 Where the Goods are to be delivered by instalments, any defect in any instalment shall not entitle the Buyer to cancel the remainder of the instalments.

7 Limitation of Liability

7.1 The total and aggregate liability of the Company, its employees and agents to the Buyer under and/or in connection with the sale contract shall be limited to the lower of: (i) 15% of the aggregate contract value of the relevant sale contract; (ii) the amount of purchases by the Buyer from the Company over the course of the 12-month period preceding the date of the Buyer's claim for compensation; and (iii) EUR 1,000,000. This limitation of liability shall apply notwithstanding anything to the contrary set forth elsewhere in these Conditions or otherwise in the sale contract and irrespective of how any liability arises or is claimed, whether in contract, tort (including without limitation negligence) or otherwise at law. Notwithstanding the foregoing, nothing in these Conditions or otherwise the sale contract shall operate so as to exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence, for fraudulent misrepresentation or to the extent such exclusion or limitation is not permitted by law.

7.2 Notwithstanding anything to the contrary set forth elsewhere herein, the Company shall not be liable for any indirect, incidental, special or consequential loss or damage such as: (i) loss of profit, loss of production, loss of use, loss of revenues, loss of use of assets, loss of contracts and pure economic losses; and (ii) any indirect, incidental, special or consequential loss or damage of any kind that is not included in (i).

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7.3 Subject to Condition 6, the Company will under no circumstances be liable for any claim relating to the Goods or the sale contract which is notified to the Company more than twelve months after the date of the Company's invoice.

8. Force Majeure

8.1 The Company will not be liable for any failure or delay in performing its obligations caused by any event which is beyond its reasonable control, including without limitation any act of God, fire, flood, pandemic, epidemic, plant breakdown, malicious damage, theft, non-availability of power, water, supplies or materials, industrial action, act of government or other public authority, civil disturbance, terrorism or war.

9. Confidentiality

9.1 The Buyer undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Company or of any member of the group to which the Company belongs, except as permitted by Condition 9.2. For the purposes of this Condition, "group" means the Company, any direct or indirect subsidiary or holding company from time to time of the Company, and any direct or indirect subsidiary from time to time of a direct or indirect holding company of the Company.

9.2 The Buyer may disclose the Company's confidential information:

9.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Buyer's rights or carrying out its obligations under or in connection with the sale contract. The Buyer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Company's confidential information comply with this Condition 9; and

9.2.2 as may be required by law, stock exchange rules, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 The Buyer shall not use the Company's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the sale contract.

10 Termination

10.1 Without prejudice to any other remedy, the Company may immediately withhold deliveries, repossess Goods which remain its property and/or terminate the sale contract (and any other contract with the Buyer) if the Buyer;

(a) breaches any of these Conditions or any other provision of the sale contract or fails to pay any sum due to the Company on any account on the due date; or

(b) ceases trading or is unable to pay its debts, or has a receiver, administrative receiver or liquidator appointed over all or any of its business or assets, or passes a resolution for winding-up, or is the subject of any application, petition or order for administration, winding-up, dissolution or bankruptcy, or enters into any composition or voluntary arrangement with its creditors, or is subject to any similar event of insolvency in any other jurisdiction, or if the Company reasonably suspects that the Buyer is likely to be subject to any of such actions or events.

11 Miscellaneous

11.1 The Buyer shall store and use the Goods in accordance with any instructions from the Company, which will not be liable for any damage, loss, claim or expense arising from any failure to comply with such instructions.

11.2 The Company may sub-contract all or any of its obligations under the sale contract.

11.3 The Buyer may not assign, novate, license or sub-contract all or any of its rights or obligations under the sale contract without the Company's prior written consent.

11.4 If any provision or part-provision of the sale contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the sale contract.

11.5 All communications between the parties about the sale contract must be in writing and sent by pre-paid first class post or registered mail, courier or electronic mail to the registered office of the relevant party (and, as regards the Company, for the attention of the Regional Sales Manager of Trelleborg Boots) or

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such other electronic or physical address as shall be notified by a party to the other party pursuant to Conditions 11.5 and 11.6.

11.6 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post or registered mail, the second day (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

(b) if delivered by hand, on the day of delivery if delivered on a day which is not a Saturday, Sunday or bank or public holiday and otherwise on the next working day;

(c) if sent by electronic mail on a day which is not a Saturday, Sunday or bank or public holiday prior to 4:00pm, at the time of transmission and otherwise on the next working day.

11.7 All materials supplied by the Buyer to the Company shall be at the Buyer's risk while they are in the possession of the Company or in transit to or from the Buyer and the Buyer shall insure them accordingly. The Company shall not be liable for defects resulting from materials or designs supplied or specified by the Buyer.

11.8 The Buyer warrants that it has authority to supply any materials, designs and specifications provided by it to the Company and that any Goods produced using or based on the same will not infringe any third-party rights. The Buyer shall indemnify the Company in full against any loss, claim, cost and expense arising from any breach of this warranty.

11.9 The Company reserves all intellectual property rights in the Goods and any tools used to produce them, including but not limited to copyright, design rights, patents and patent applications, trademarks and confidential know-how, in each case whether or not registered. The Buyer may not use any such rights without the Company's express written consent.

11.10 If the Goods are exported outside France, the Buyer shall be responsible for complying with all laws and regulations governing their exportation, importation, handling, use and re-sale in the country destination. Unless agreed otherwise in writing, the Buyer shall bear all risks in export Goods after they leave the Company's premises.

11.11 The Buyer agrees and undertakes that:

(a) it will not use the Goods for any purpose connected with chemical, biological or nuclear weapons, missiles capable of delivering such weapons, nuclear explosive activity or in any way that would cause the Company to be in breach of financial or trade sanctions imposed against Iran or any other destination;

(b) it will not export, re-export, re-sell, supply or transfer the Goods to any destination or party subject to UN, EU, or US trade embargos, or to any destination or party if it is known or suspected that the Goods are likely to be used for the purposes set out in lit. a.) above;

(c) it will comply with all applicable export and sanctions laws;

(d) it will include the same terms in its dealings with its customers; and

(e) it agrees to fully indemnify the Company for all costs, expenses, liabilities, losses, damages, claims, proceedings, (including without limitation legal fees) incurred or awarded against the Company arising out of or in connection with any breach of this section whether such breach occurs directly or indirectly, with or without the knowledge of the Company.

11.12 At the Buyer's request, the Company will supply the Buyer's order in instalments over a period of up to twelve months, according to an agreed written delivery timetable. If any Goods ordered by the Buyer remain undelivered at the end of that period the Company may deliver them without further notice and invoice for their price.

11.13 These Conditions of sale are governed by French law and the parties submit to the exclusive jurisdiction of the French courts.