

**TECNA<sup>®</sup>**  
Advanced Resistance Welding Systems



# GENERAL CONDITIONS OF SALES

## **GENERAL CONDITIONS OF SALE (international sales)**

### **1. DEFINITIONS**

The following words shall have the following meanings:

“Agreement(s)” shall mean an agreement for the sale of Products from Tecna S.p.A (the “Supplier”) to the Customer;

“Products” shall mean the products in the Supplier’s Catalogues;

“Working Day” shall mean any day from Monday to Friday (inclusive) that is not a public holiday;

“Order” shall mean the document of the Customer addressed to the Supplier specifying in details the Products to be provided;

“Order Confirmation” shall mean confirmation of the Order by the Supplier.

### **2. GENERAL TERMS**

**2.1** In the event of any contradiction between these general conditions of sale (“Conditions”) and an Order Confirmation and/or any other agreement in force between the Supplier and the Customer, the provisions of an Order Confirmation and/or of any agreement in force between by the Supplier and the Customer shall prevail.

**2.2** The minimum amount of each Order shall be Euro 250,00 (excluding spare parts).

**2.3** Each Order shall not be binding on the Supplier unless accepted in writing by the Supplier.

**2.4** In the event that payment, be it in whole or in part, is to be made after delivery, then the Products delivered (including any possible equipment and spare parts) shall remain the property of the Supplier until full payment of the price.

Should the Customer fail to pay even one installment, which is greater than an amount equal to one eighth of the total purchase price of the Products or should the Customer fail to pay two instalments or more, in accordance with the terms hereof, then the Supplier shall be entitled either to terminate the contract of sale of the Products in question with effect as of such time as notice has been given to the Customer or to declare that the Customer has lost its right to pay on an instalment basis and demand the immediate payment of all or part of the amounts outstanding. In the case of termination of the contract of sale for reasons attributable to the Customer, the Supplier shall be entitled to obtain the immediate return of the Products sold and shall also be entitled to retain any instalments received from the Customer by way of compensation for the use of the Products, without prejudice to the Supplier’s rights to claim compensation for any further damages suffered.

The Customer hereby undertakes to take all steps necessary in order to create a valid retention of title in favour of the Supplier, which retention of title is in the widest form permitted and is duly enforceable.

Any possible waiver by the Supplier of the terms of this article must be in writing.

### **3. PRICE AND PAYMENT**

**3.1** The price due by the Customer for the Products shall be the price specified in the Order Confirmation.

**3.2** In relation to payment terms time shall be of the essence of each Agreement.

**3.3** Should the Customer fail to comply with the payment conditions specified in the Order Confirmation, and without prejudice to the right of termination and to any other right to which the Supplier shall be entitled by law or by these Conditions, the Supplier, without incurring any liability, shall have right to withhold deliveries of the Products to the Customer, even if related to

Agreement(s) different from the one(s) to which the Customer's breach(es) refers to.

**3.4** The Supplier shall be entitled to terminate each Agreement in the event that the Customer fails to duly fulfil its obligations to pay the price in accordance with the terms set out in the Order Confirmation.

**3.5** Either party may terminate or suspend performance of each Agreement in the event that the other party is put into liquidation or becomes subjected to any other form of insolvency proceedings, or in the event that the assets of said other party change substantially so as to clearly endanger the ability of said other party to carry out its obligations hereunder.

**3.6** Any sums unpaid after the expiry of the time limit for payment shall be subject to overdue interest in the amount and under the terms specified by Italian legislative decree no.231 dated 23<sup>rd</sup> October 2002.

**3.7** Unless otherwise specified in the Order Confirmation, the prices are not inclusive of packaging.

#### **4. PRODUCT CHARACTERISTICS**

**4.1** In addition to what is specified in the catalogues of the Supplier, the Supplier shall not guarantee the conformity of the Products to particular specifications and/or standards, even if requested by the Customer, if not specifically accepted in writing by the Supplier.

**4.2** Any possible modifications to the Products which the Supplier may regard as being necessary or which may be deemed advantageous as they amount to technical and/or technological improvements, shall be allowed provided that the Customer is duly informed thereof and does not have to bear any further costs for said modifications. If on the other hand said modifications do give rise to additional costs,

then they may be carried out with the Customer's approval and at the latter's expense.

#### **5. DELIVERY**

**5.1** Any reference to commercial terms of delivery, for example "EX WORKS", "FOB", "CIF", etc. shall be deemed to have the meanings ascribed to them in the version in force as at the date the Agreement is entered into of the "Incoterms" of the International Chamber of Commerce.

**5.2** The delivery terms specified in the Order Confirmation must be deemed purely indicative based on the delivery forecast made at the time of drafting the Order Confirmation; any delays in delivery of the Products shall not entail any liability on the part of the Supplier.

**5.3** The delivery terms shall always refer to Working Days.

**5.4** Any delay by the Customer in providing any information (including, without limitation, drawings, data, and specifications) or in carrying out any tasks which are necessary in order for one or more Agreements to be performed, shall entitle the Supplier to postpone delivery of the Products (any possible equipment and spare parts), for a period corresponding to the length of the delay on the part of the Customer, without prejudice to any other right of the Supplier hereunder.

**5.5** Any complaints relating to packaging, quantity or exterior features of the Products (apparent defects) must be notified to the Supplier in written form within 30 (thirty) days from delivery of the Products to the Customer; failing such notification within the said term any claims shall be precluded and forfeited. Any complaints related to defects which cannot be discovered on the basis of a careful inspection upon delivery of the Products to the Customer (hidden defects) must be notified to the Supplier in written form within 30 (thirty) days from

discovery of the defects; failing such notification within the said term any claims shall be precluded and forfeited.

**5.6** It is understood that all risks shall pass to the Customer in accordance with the agreed delivery term (Incoterm).

## **6. WARRANTY**

**6.1** Except as otherwise provided herein or in special conditions, if any, the Supplier warrants that the Products shall be free from defects in materials and workmanship for a period of 12 (twelve) months from the date of delivery to the end user or for a period of 18 (eighteen) months from the date of delivery to the Customer, whichever comes first. Only with respect to TECNA's Professional Line Products the Supplier warrants that the Products shall be free from defects in materials and workmanship for a period of 24 (twenty four) months from the date of delivery to the end user or for a period of 30 (thirty) months from the date of delivery to the Customer, whichever comes first.

In any event, power semiconductor devices are warranted to be free from defects in material and workmanship for a period of 12 (twelve) months from the date of delivery to the Customer.

**6.2** The Supplier shall not be under any liability, and the warranty shall not be effective, in respect of any defect or failure arising out of: i) improper use, negligence or accidents, ii) use of the Products not in compliance with the technical documentation supplied by the Supplier, iii) use of non-original spare parts. The Supplier shall not be under any liability, and the warranty shall not be effective, for damages to the Products occurred during the carriage or due to incorrect unpacking and, in general, for damages to the Products, defects and failures due to causes beyond the Supplier's control or to causes other than ordinary use. Normal wear and tear are not covered by the warranty. Moreover, the warranty does not apply also to: a. consumable

parts; b. batteries and c. flexible hydraulic, electrical and pneumatic connections.

**6.3** Repair or replacement of the Products or of their parts shall neither extend nor decrease the original warranty period as set forth under clause 6.1 hereinabove.

**6.4** Provided that the defects have been timely notified in accordance with article 5.5 hereof, and are covered by the warranty, the Supplier shall either repair or replace, at its sole discretion and at its expense, the defective part(s) of the Products or the defective Products, as the case may be.

Repair or replacement shall be carried out either at the Supplier's factory, at present in Castel San Pietro Terme (BO), Italy or, at the Supplier's sole discretion, at a Supplier's authorized repair facility in the Customer or end-user country.

**6.5** Delivery to the Supplier, or to its authorized repair facility, of the defective Products or part(s) of the defective Products to be repaired or replaced shall be made DDP to the Supplier's factory or its authorized repair facility's factory. Under special circumstances the Supplier, at its discretion, may authorize in writing the Customer/end user not to send to it or to its authorized repair facility, the Products/parts to be replaced.

Delivery to the Customer or to the end user, as the case may be, of the repaired/replaced Products or part(s) the Products and/or of parts of the Products or Products needed to replace the defective ones shall be made FCA the Supplier's factory or its authorized repair facility's factory.

In the event that the Supplier ascertains that such parts or Products are not defective and/or are not covered by the warranty the Customer/end user shall have to pay for the part of the Products or Products supplied and/or to pay for the repair/replacement services.

**6.6** Except for wilful misconduct and gross

negligence, the Supplier's only obligation in the event of defects of the Products will be that of repairing or replacing the defective Products or their parts, as specified above. It is agreed that the above mentioned warranty is in lieu of any other warranty or liability, express or implied, with the exclusion of any other liability of the Supplier (whether contractual or non-contractual) which may anyhow arise out of or be in relation with the Products supplied, for the damages of any kind suffered by the Customer or by any other person or entity.

**6.7** The Customer shall be responsible for any repairs and modifications to the Products made by the same or by its service organisation and shall defend, indemnify and hold the Supplier harmless against any claims, damage, loss or expense (including for example attorney's fees) which the Supplier may sustain or incur as a result of such repairs and/or modifications.

## **7. PRODUCT RETURNS**

**7.1** Products may be returned only after the prior written authorization of the Supplier.

**7.2** Unless otherwise agreed in writing between the parties, for the Products returned to the Supplier, the Supplier shall pay the Customer an amount of money equal to the one paid by the Customer for the Products in question less a deduction of 50%. The cost of transport to return the Products to the Supplier shall be to the charge of the Customer.

**7.3** Returned Products must be new, unused and currently in manufacture.

**7.4** Products returned to the Supplier that are defective beyond repair and that are subject to the WEEE Directive, will be held by the Supplier for disposal in accordance with the applicable regulations.

## **8. CONFIDENTIALITY - INTELLECTUAL PROPERTY RIGHTS**

Any drawing, catalogue or technical document sent/delivered/made available to the Customer before or after entering into any Agreement is strictly confidential, shall remain the sole property of the Supplier and cannot be copied, reproduced, transmitted or communicated to third parties without the prior written consent of the Supplier. Infringement of this obligation shall entitle the Supplier to terminate each Agreement and to claim compensation for the damages suffered.

## **9. LIMITATION OF LIABILITY**

Without prejudice to other provisions contained herein and/or to mandatory provisions, the Supplier's liability for failure to fulfil any Agreement and/or for damages caused shall not exceed the sum equal to the amount paid by the Customer for the purchase of the Products which gave rise to the claim. In no case shall the Supplier be liable for loss of earnings and/or indirect and/or consequential damages such as, for example, loss of use and/or loss of production incurred by the Customer and/or third parties. The above provision shall not be applicable in the event of gross negligence and/or wilful misconduct.

## **10. FORCE MAJEURE**

**10.1** Force majeure shall mean any act or event which is unforeseeable, beyond the parties' will or control and in respect of which a remedy may not be found in a timely manner (such as, for example, acts of war, even if undeclared, embargo, riot, insurrection, fire, sabotage, natural disaster, acts or provisions of government authorities, strikes, inability to procure raw materials, equipment, fuel, energy, components, labour or transport).

**10.2** Upon the occurrence of any event of force majeure which is such as to prevent either party hereto from fulfilling its obligations hereunder, then the time for the party so affected to fulfil its obligations shall be automatically extended for a period corresponding to the duration of the event of force majeure, without any damages (including liquidated damages) being payable by said party.

**10.3** In any event, the parties shall take all measures within their power to ensure the reinstatement, within the shortest possible time, of the performance of the obligations which have been delayed as a result of the event of force majeure. The parties are also obliged to give each other notice, within no more than 15 days, of the beginning of and of the end of any event of force majeure. If this obligation is not met, then the party in default shall lose its right to rely upon the event of force majeure.

**10.4** Should the parties be unable to carry out their obligations for a period of 6 months or more as a result of an event of force majeure, then each party shall be entitled to terminate each Agreement(s) affected by the force majeure event.

## **11. APPLICABLE LAW**

**11.1** These Conditions and the Agreements will be governed by Italian Laws. The Vienna Convention of 1980 on the international sale of goods shall apply.