



# TERMS AND CONDITIONS OF SALE

## 1. General definitions

Unless otherwise agreed in writing by Geoclima International SRL Unipersonale ("Geoclima"), the terms and conditions contained herein with respect to the purchase and sale of goods and services hereunder constitute the entire agreement between Geoclima and Purchaser with respect to the subject matter hereof, and supersede all prior communications and agreements between the parties. Geoclima shall not be bound by any additional or different terms whether printed in Purchaser's purchase orders or otherwise, or in any other communications from Purchaser to Geoclima unless specifically agreed to by Geoclima in writing. For the avoidance of doubt, any and all provisions contained in Purchaser's terms and conditions are expressly rejected, including, without limitation, any "Pay when Paid" or "Pay if Paid" or like provisions and any indemnification requirements sought to be imposed on Geoclima. Acceptance by Geoclima of any purchase order for Geoclima's goods or services, and Purchaser's acceptance of any quotation or proposal by Geoclima is expressly limited to and conditioned upon Geoclima's Standard Terms and Conditions of Sale, which may not be changed or waived except in writing signed by both parties.

As used herein: (a) "Purchaser" means the person or entity that accepts a proposal or quotation from Geoclima for the sale of Products or whose order for Products is accepted by Geoclima; (b) "Conditions" means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between Purchaser and Geoclima; (c) "Order" means an order for Products placed by Purchaser with Geoclima, and accepted by Geoclima; and (d) "Products" means the products and any related services ordered by Purchaser and furnished by Geoclima and shall include all products, equipment, parts, materials, accessories and any related services furnished to Purchaser by Geoclima.

## 2. Approval documentation

Before Geoclima commences work, Geoclima must be in receipt of an Order and Purchaser must have approved in writing all drawings submitted by Geoclima, if any. Purchaser's failure, refusal or omission to furnish all necessary information, documents and drawings requested by Geoclima, or to approve all drawings or specifications as requested by Geoclima, or to promptly respond to inquiries of Geoclima shall cause an automatic extension of the delivery, and/or completion date equal to at least the number of business days caused to be lost by the Purchaser's action or non-action and a corresponding increase in price to compensate for such conditions.

## 3. Shipment and delivery

Unless otherwise specifically agreed to in writing, Products shall be delivered EXW - F.O.B. point of origin. Partial shipments of Products may be made. Unless otherwise agreed to by Geoclima, all shipping dates are approximate and are contingent upon prompt receipt by Geoclima of all necessary information. Geoclima assumes no responsibility for delays, breakage or damage after having made delivery of Products to a



carrier, at which time all risk of loss for any cause passes to Purchaser. Notwithstanding any language to the contrary set forth herein, upon the mutual agreement of the parties, the Purchaser may take possession of the Products directly from Geoclima' facilities and Purchaser shall retain title and risk of loss as of the date that such Products are made available by Geoclima for pick up by the Purchaser. Unless otherwise provided in the Order, once an Order has been released to manufacturing and a ship date has been communicated to Purchaser, any request by Purchaser to change the date of shipment shall constitute a change order. To delay a shipment, Purchaser must deliver a signed delayed shipment form, in a form reasonably acceptable to Geoclima, to Geoclima before the original ship date. At that time, Purchaser shall pay the full invoice amount and title and risk of loss shall pass to Purchaser as of the original ship date. In addition, storage fees, which shall be quoted separately, will apply.

If the agreed delivery date of the Goods is not observed the Seller has to pay to the Buyer liquidated damages at the rate of 1% of the value of the relevant units which were delivered late per week of delay. However, with a cap not to exceed 5% of the value of units which were delivered late. The liquidated damages provided for in this section shall be the Buyer's sole and exclusive remedy for late delivery

#### **4. Claims for shortages and shipping damage**

No claim for shortages in Orders shall be considered by Geoclima unless presented to Geoclima in writing within seven (7) days after receipt of Product(s). All claims for breakage or other damage due to shipment or handling shall be made to the common carrier by Purchaser within seven (7) days after receipt of Product(s).

#### **5. Price**

The price for Products shall be the price expressly quoted by Geoclima to Purchaser (the "Purchase Price"). Unless otherwise agreed to in writing, pricing includes standard packaging for domestic shipment, labels and raw material and production costs, but does not include the following, which shall be separately itemized and which Purchaser shall also pay: handling charges; freight charges; special packaging; and any insurance requested by Purchaser. Foreign shipments placed with Geoclima may require additional charges for documentation and overseas packaging. Such charges shall be clearly identified on Geoclima' invoices. In the event that Purchaser causes or requests changes to be made that affect delivery, installation, specifications, completion dates or otherwise, Purchaser shall reimburse Geoclima for any expense incurred by Geoclima as a result of each such charge or delay upon presentation by Geoclima of a simple invoice.

The Purchase Price is firm if Product is shipped within one hundred and eighty (180) days of the Order date. Thereafter, the Purchase Price is subject to a one percent (1%) increase for each month or part thereof that shipment is delayed beyond the initial one hundred and eighty (180) day period. Any Order not released for immediate manufacture and shipment by Purchaser within such one hundred and eighty (180) day period, may, at Geoclima' option, be subject to a new price quotation or cancelled by Geoclima and subject to the cancellation charges provided in section 8 of these standard terms and conditions of sale. Geoclima shall exercise its right to adjust the Purchase Price or cancel the Order by providing Purchaser with written notice.



No payment due Geoclima shall be withheld or subject to retainage for any reason without Geoclima' prior written consent, including back charges. Any back charges made by Purchaser prior to Geoclima' written approval shall be the sole responsibility of Purchaser.

## **6. Payment, invoicing and credit**

Unless otherwise provided in the Order, payment shall be due thirty (30) days from date of invoice. If partial shipments are made, payments for such partial shipments shall become due as shipments are made and invoices rendered. In addition, Geoclima may require progress payments unless otherwise agreed to by the parties in writing. Geoclima may, at any time and in its sole discretion, modify the terms of payment originally specified to include payment in advance.

Geoclima' acceptance of an Order is subject to Geoclima' credit review of Purchaser. Any delay resulting from a credit review may result in a delay in shipping, which delay shall not subject Geoclima to any liability. If Purchaser prepays the full Order price or makes a deposit equivalent to the full price of that Order in some other form acceptable and approved by Geoclima at the time it places the Order, Geoclima may determine not to conduct a credit review of Purchaser.

Geoclima reserves the right to add a late charge of 1½% of the principal amount due at the end of each month, or the maximum allowable legal interest rate, if a lesser amount, to any account outstanding beyond the due date. If Geoclima must resort to legal action to collect amounts due, all reasonable costs and expenses, including attorneys' fees and interest, shall be added to the Purchase Price.

Unless Otherwise agreed to in the order invoicing shall occur based on the following schedule:

1. 30 % percent of order value due upon Purchase order
2. 60 % percent of order value due upon shipment
3. 10 % percent of order value due upon commissioning, limiting it to max 60days from shipment

## **7. Taxes**

The Purchase Price does not include, except as expressly stated in the quotation, any present or future sales, use, excise, value added or similar taxes or any increase in such taxes. Consequently, in addition to the Purchase Price specified herein, the amount of any present or future sales, use, excise, value added or similar taxes or increase in such taxes applicable to the sale or use of Product(s) hereunder shall be paid by Purchaser, or in lieu thereof and if acceptable to Geoclima in its sole discretion.

## **8. Cancellation charges**

An Order is not subject to cancellation or change except on terms acceptable and satisfactory to Geoclima. If Purchaser cancels without obtaining Geoclima consent, such cancellation will be treated as a repudiation making Purchaser immediately liable for loss, expense and other damages, and in that case, it is understood that a cancellation charge shall also be due from Purchaser to Geoclima, as liquidated damages, and not as a penalty for such cancellation. The cancellation charge shall be at maximum, computed as follows: (a) if Purchaser or Geoclima cancels the Order after it is placed by Purchaser with Geoclima but prior to the date



that Geoclima purchases any materials to fill the Order, Purchaser shall pay thirty percent (30%) of the total Purchase Price, (b) if Purchaser or Geoclima cancels the Order after the date that Geoclima purchases materials to produce the Product(s) ordered, Purchaser shall pay seventy percent (70%) of the total Purchase Price, and (c) if Purchaser or Geoclima cancels the Order after Geoclima commences production of the Product(s) ordered, Purchaser shall pay one hundred percent (100%) of the Purchase Price. The cancellation charge shall be due and payable at the time of receipt of Purchaser's written notice of cancellation at Geoclima's office or Munter's written notice of cancellation as provided in section 5 of these standard terms and conditions of sale.

## 9. Warranty

Geoclima warrants that the Products (other than services and labor) shall be free from defects in workmanship and materials for the lesser of (i) fifteen (15) months from the date of shipment of the Product by Geoclima; or (ii) twelve (12) months from the date that such Product becomes operational (collectively, the "Warranty"). For purposes of this section 9 of these standard terms and conditions of sale, including for the purpose of defining and describing Purchaser's remedy as provided below in this section 9, the term "Products" shall not include related services or labor or refrigerant. Any extended warranties or warranties for services or labor shall be subject to Geoclima's "Additional Terms and Conditions – Service Plans," which shall be provided by Geoclima to Purchaser if applicable.

The Warranty applies only to Products that are properly installed, maintained and operated under normal conditions with competent supervision in accordance with the instruction manual, good maintenance practice and Geoclima recommendations, if any, made by Geoclima in writing. Without limiting the foregoing, the Warranty shall be void, and Geoclima shall have no liability for, in the case of any Products that: (a) have been disassembled, repaired or tampered with in any way, except when such work has been done with Geoclima's prior written approval, (b) have been damaged by use or operation in excess of any maximum pressures, temperatures or rated capacities as specified by Geoclima in writing, (c) have been damaged by corrosion, or have degradation in performance as a result of dirt, dust, or other foreign material, or (d) are considered consumable.

Geoclima's obligation, and Purchaser's sole and exclusive remedy, under the Warranty is limited to repair or replacement at Geoclima's facility, at Geoclima's option, of any Products (or parts thereof) determined to be defective in workmanship or material during the applicable warranty period. The Warranty is a parts only warranty, and except as may be provided in "Additional Terms and Conditions – Service Plans," if these Additional Terms are applicable, the Purchaser's remedy under the Warranty does not include services or labor. The warranty period shall not be extended by the performance of warranty repairs or replacements.

The Warranty shall be voided if payment is not made in accordance with the terms set forth in section (5) of these standard terms and conditions of sale.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, WITH RESPECT TO THE PRODUCTS, ANY RELATED SERVICES OR LABOR OR THEIR CHARACTERISTICS, QUALITY OR PERFORMANCE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, AND ANY AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. No agent, representative, or dealer, or any other person or



entity, is authorized to give on Geoclima' behalf any representation or warranty as to Product(s) or to assume for Geoclima any liability pertinent to Product(s) under any circumstances.

## **10. Disclaimer of damages and limitation of liability**

In no event shall geoclima be liable for any indirect, special, incidental or consequential damages of any kind arising from the use of or failure to use the Product(s), whether in contract, warranty, tort, negligence, strict liability or otherwise, including but not limited to loss of profits or revenue, loss of use of products, delays, or claims of customers of purchaser or other third parties for such or other damages. Geoclima' liability on all claims, whether in contract, negligence, tort, strict liability, or otherwise for any loss or damage arising out of, or connected with an order, or from the design or manufacture of products, shall in no case exceed the purchase price.

## **11. Ownership**

All sketches, drawings, designs, patterns, tools, dies, jigs, fixtures or any other special appliance relating an Order that is prepared by Geoclima shall remain Geoclima' sole and exclusive property and all rights therein, including but not limited to patent, copyright and trademark, are owned by Geoclima. Drawings, data and documents submitted to Purchaser by Geoclima are intended only to describe the scope of the Products and provide information for installation, use and maintenance of the Products supplied. As such, these documents are instruments of the services provided by Geoclima. They are neither intended or represented to be suitable for any party other than the Purchaser. Any reuse of any such drawings, data and documents without specific written authorization of Geoclima will subject the user to any and all remedies and proceedings as are available by law and in equity to protect Geoclima' rights under Federal, state and common law (including, but not limited to, copyright, patent, unfair competition and trade secrets and other reserved rights).

## **12. Supplier IP**

Both parties recognize that the manufacture and use of the Products requires use of Supplier's intellectual and proprietary property (the "Supplier's IP"). Purchaser acknowledges Supplier's ownership of Supplier's IP. To the extent the Supplier incorporates any Supplier's IP into the Products or the manufacture thereof, the Supplier hereby grants Purchaser a limited, non-exclusive license to use the Supplier's IP only for the purposes contemplated by these Terms and Conditions. Any enhancements to the Supplier's IP that may occur during the term of these Terms and Conditions and may be incorporated into the Products, shall remain the property of the Supplier, and Purchasers limited license shall be deemed to include such enhancements. Nothing in these Terms and Conditions shall provide for the transfer of ownership of Supplier's IP to Switch. Suppliers license is limited to use of the Products, but not as a general license to use Supplier's IP for purposes unrelated to the use of the Product.



### **13. Nonconformity and defects**

Geoclima shall not be responsible for any nonconformity or defect in or failure of a Product that: (a) is created after such Product is delivered by Geoclima, including any nonconformity, defect or damage resulting from shipment or handling by the common carrier or from Purchaser's handling, maintenance or storage of such Product; (b) results from materials, specifications or designs provided by Purchaser; or (c) results from modifications to such Product by Purchaser or others.

### **14. Compliance with trade sanction laws**

Purchaser shall at all times act in a manner that complies with all trade sanctions laws and regulations, export restrictions, embargoes or prohibitions, imposed from time to time by any relevant governmental authority, including under EU and/or US laws and regulations, and shall not directly or indirectly use, transfer or make available any Products hereunder or any software, data or technical information provided to Purchaser, in violation of such laws and regulations. Geoclima shall not be required to supply any Products hereunder if such supply might directly or indirectly constitute a violation of any trade sanctions laws or regulations applicable to Geoclima or any of their respective officers or employees.

### **15. Force majeure**

Geoclima shall not be liable for delays in delivery or failure to manufacture or deliver due to causes beyond its reasonable control, including, but not limited to, acts of God or nature, acts of Purchaser, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, embargoes, compliance with import or export regulations, delays in transportation or car shortages, defects or delays in the performance of its suppliers or subcontractors, or inability to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a time period reasonably necessary to compensate for the delay.

### **16. Default**

In the event that at any time Purchaser is in default under any terms of any Order arising out of this proposal or any other Order, Geoclima reserves the right to withhold manufacture or delivery and to cancel and terminate any or all Orders and to hold Purchaser liable for any damages and expense incurred by Geoclima. Geoclima also reserves the right to declare all charges and accounts to be immediately due and payable.

### **17. Clerical errors**

Geoclima reserves the right to correct clerical, arithmetical or stenographic errors or omissions in quotations, Order acknowledgements, invoices, or other documents.



## **18. Choice of law / dispute resolution**

The validity and interpretation of these Conditions shall be governed by the laws of the Sweden, without reference to its choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

Any dispute controversy or claim arising out of or in connection with this AGREEMENT, or breach, termination or invalidity thereof shall be finally settled by arbitration in accordance with the Stockholm Chamber of Commerce. The proceedings shall be conducted in the English language. The place of arbitration shall be Stockholm, Sweden.

## **19. Savings clause**

In the event any clause contained in these Conditions is declared invalid or unenforceable by any court of competent jurisdiction, all other clauses or parts contained in these Conditions shall remain in full force and effect and shall not be thereby affected.