



## TERMS AND CONDITIONS OF SALE OF THE COMPANY ZICLACITIES, S.L. (hereafter "ZICLA")

Your execution of a purchase order ("Order") offered by Ziclacities S.L. (hereinafter referred to as "ZICLA" or "us") is subject to these Terms and Conditions ("Terms"). The agreement consisting of the Order and these Terms will be effective as of the date set forth on the Order (the "Effective Date"). Please read these Terms carefully before executing an Order. By executing an Order, you are hereby accepting these Terms, and agree and acknowledge as follows:

### 1. Proposals and Estimates.

- i. ZICLA's proposals and estimates ("Proposals") are being offered for your convenience and benefit and, therefore, are not binding. The Proposals are subject to modification by you or ZICLA at any time prior to written confirmation of the same.
- ii. A Proposal will only become binding once ZICLA sends you written confirmation approving the same. At that time, ZICLA will issue an Order with the final applicable specifications and terms.

### 2. Information contained in catalogs, technical files, usage guides, installation manuals on the website and advice offered to the Customer in the form of proposed solutions, configurations and customizations.

- i. The descriptions, drawings and, in general, information contained in catalogs, technical files and usage guides, installation manuals ("Installation Manuals") and on the ZICLA website, contains important information about ZICLA and its products and services. However, the same is offered for information purposes only and thus, is not binding on Zicla, as it may be modified at any time. Therefore, ZICLA shall not be liable for any inaccuracies or modifications to said information.
- ii. Additionally, the advice that ZICLA provides to the customer, in the form of proposals for solutions, configurations and customizations of the products marketed, is merely consultative and is carried out with the sole purpose of assisting the customer to make decisions. It is the sole responsibility of the customer to adopt the final solutions, configurations and/or customizations and to ensure that they comply with all urban planning, traffic, safety and any other regulations applicable and in force at the location at hand. As such, the customer shall be solely and exclusively responsible for any damages or losses that may arise from its actions, omissions and/or non-compliance with any applicable regulations.

### 3. Price.

- i. The sale price of the products and services offered by ZICLA will be fixed in the Order, as submitted by ZICLA to you.
- ii. Unless expressly agreed, the price will be payable in Euros. All prices are net and subject to state and/or local sales or similar taxes levied upon the products. You are exclusively responsible for the payment of such tax(es).
- iii. You agree to reexamine the Order's price and to mutually determine whether an increase of the Order's price is necessary to reflect any change [in the market price or in the cost of raw materials used to produce ZICLA's Products].

### 4. Payment Method.

- i. You must pay the Order's price, in the manner indicated by ZICLA (wire transfer, promissory note, confirming, etc.) in the Order, within thirty (30) calendar days from the date of receipt of the products, except when advanced payment has been requested.
- ii. In the event ZICLA offers you a discounted rate, discounted rates are subject to (i) delivery of confirmation of payment (promissory note or bank confirmation) within thirty (30) calendar days from when you receive ZICLA's products and (ii) complete and timely payment of all amounts owed under the Order, as specified therein. ZICLA reserves the right to void any discounts should you fail to comply with these requirements.
- iii. Also, ZICLA reserves the right to initiate collection efforts should you fail to timely pay the Order's price and you shall pay to ZICLA its reasonable attorneys' fees and all court costs and other expenses incurred in connection therewith, regardless of whether a lawsuit is ever commenced or whether, if commenced, the same proceeds to judgment or not.

### 5. Delivery.

- i. ZICLA will provide a delivery schedule in its Order.
- ii. ZICLA will use commercially reasonable efforts to deliver the products and services in a timely manner, in accordance to the Order. Notwithstanding, the time specified in an Order for delivery of products is not of the essence and if such products are not delivered within the time specified, you have no right to cancel the Order and/or reject any products delivered after the time specified.
- iii. ZICLA's obligation to fulfill an Order in a timely manner shall at all times be conditional upon obtaining the goods and raw material from ZICLA's suppliers in order to adequately meet the delivery schedule, as agreed in the Order.
- iv. ZICLA shall not be deemed to have defaulted under or breached these Terms or an Order for failure or delay in fulfilling or delivering the products when such failure or delay is caused by any of the following and not by ZICLA: fire; flood; accident; explosion; ZICLA's equipment or machinery breakdown; sabotage; strike or any labor disturbance (regardless of the reasonableness of the demands of labor); civil commotions; riots; invasions; wars (present or future); acts, restraints, requisitions, regulations or directions of any governmental entity; shortage of labor, fuel, power or raw materials; inability to obtain supplies; failures of normal sources of supplies; inability to obtain or delays of transportation facilities; or any act of God. If any such disability delays any shipment hereunder, ZICLA may either extend the delivery schedule or cancel the Order.
- v. Unless expressly agreed to and in writing by ZICLA, returns will not be accepted. In the event ZICLA agrees in writing to accept a return, you must return the products in their original condition with all packaging material and paperwork included. When shipping products back, you should purchase insurance and prepay any freight charges.
- vi. In the event that ZICLA, at its sole discretion is forced, by the reluctance/unwillingness of the customer to comply with the sales conditions previously agreed in the Proposal, to retain and/or maintain the Products in a storage facility, you will be responsible for any and all costs related to keeping the Products in the storage facility, including but not limited to, payment of any storage charges and insurance of the same.

### 6. Title and Risk of Loss.

ZICLA, in order to ensure timely and complete shipment of products under the Order, shall arrange for and pay for all shipping charges, insurance, taxes, customs charges and any fees and duties in connection with such shipment. ZICLA shall hold title to and risk of loss of the products under the Order, as specified in the Proposal, at which time title and risk of loss and damage to the products shall transfer to you.



## **7. Defective Products.**

If you believe that any products delivered to you are defective, you shall give immediate written notice to ZICLA within four (4) business days after the delivery thereof and make such products available for inspection by ZICLA or, if ZICLA so requests, return (at ZICLA's expense) such products to ZICLA for inspection. If, pursuant to such inspection, ZICLA finds that any such products are defective, ZICLA shall have the option either to replace or repair such defective product at ZICLA's expense or to reimburse you for the cost thereof. If ZICLA directs you to destroy the defective products, you shall do so and provide ZICLA with a certificate, in form reasonably satisfactory to ZICLA, certifying that such defective products were so destroyed. All communications and any other information related to the defective products shall remain confidential between ZICLA and you. Notwithstanding anything to the contrary contained herein, your failure to give notice of any claim within four (4) business days after delivery of the products shall constitute an unqualified waiver by you of all claims with respect to such products.

## **8. Warranty.**

- i. ZICLA warrants that all products, at the time of shipment: (a) will be free of defects in material, workmanship, and design, and (b) will comply with all applicable laws and regulations. ZICLA's sole liability, and your remedies, for any breach of the foregoing warranties are (a) replacement of the non-conforming products at no cost to you, (b) amendment to the order, or (c) price reduction.
- ii. The period for each of the foregoing warranties will commence upon delivery of the Products by ZICLA and expire five (5) years thereafter. Only you can exercise any rights arising under these warranties. Assignments of rights under the warranties to any third parties are strictly prohibited.
- iii. ZICLA shall not be responsible for the assembly or installation of the products, which shall be done by you or your designee. ZICLA shall assume no liability in the event that the defect in a product is due to an incorrect assembly or installation.

## **9. Product Liability Indemnification.**

You acknowledge and agree that ZICLA has provided you with all the necessary documentation and instructions with regards to the proper installation and use of the products in the Order. Further you acknowledge and agree to defend ZICLA, its agents, directors, officers and employees, at your sole expense, and will indemnify and hold harmless ZICLA, its agents, directors, officers and employees, from and against any and all product liability losses, costs, damages, fees or expenses arising out of or in connection with your use or installation of the products, including, but not limited to, any actual or alleged injury, damage, death or other consequence occurring to any person as a result, directly or indirectly, of the possession, use or installation of any products, whether claimed by reason of breach of warranty, negligence, product defect or otherwise, and regardless of the form in which any such claim is made. In the event of any such claim against ZICLA or any agent, director, officer or employee, ZICLA shall promptly notify you, in writing, of the claim and you shall manage and control, at your sole expense, the defense of the claim and its settlement. ZICLA shall cooperate with you and may, at its option and expense, be represented in any such action or proceeding. You shall not be liable for any litigation costs or expenses incurred by ZICLA without your written authorization.

## **10. Limitation of Liability.**

- i. ZICLA shall not be liable to the customer for damages and losses, under any circumstances or in any event whatsoever, including impossibility to tender or supply, delays, defective products, or breach of contract, in the absence of gross negligence, bad faith or willful misconduct.
- ii. The Customer shall not assign or transfer any claims against ZICLA, arising out of this Agreement, or any portion of or interest in any such claims, to any other individual, firm, or other entity.

## **11. Damages.**

- i. In no event shall ZICLA be liable in contract or in tort, including negligence and strict liability, for any special, punitive, indirect, incidental or consequential damages of any kind or character, including, but not limited to, loss of use of facilities or equipment, loss of revenues or profits or loss under purchases or contracts made in reliance on the performance or non-performance of the ZICLA Products or services provided hereunder, whether suffered by the Customer or any third party, or for any loss or damage arising out of the sole or contributory negligence of the Customer, its employees or agents or any third party.
- ii. Notwithstanding any other provision of these Terms to the contrary, ZICLA's aggregate responsibility and liability, whether arising out of contract or tort, including negligence and strict liability, including, but not limited to, all claims for breach, failure of performance or delay in performance by ZICLA or performance or non-performance of the Products or services shall not exceed the contract price for the Products and services offered to the Customer

## **11. General Indemnity.**

The Customer agrees to indemnify and hold ZICLA harmless from any claim, liability or obligation (including the costs and attorneys' fees of any suit or claims related thereto) arising out of, connected with or resulting from the use of the Products, including but not limited to, any claims arising from: (a) the failure to follow or deviation by the Customer or its contractors, agents or subcontractors or any property owners from any Installation Manuals; (b) the failure of the Customer or its contractors, agents or subcontractors or any property owners to maintain or any improper handling, use or installation of the Products; (c) the negligent installation of the Products with equipment, chemicals or material not advised in the Installation Manuals or approved by ZICLA, in writing; or (d) any negligence of the Customer or any of its contractors, agents or subcontractors or any property owners to follow any applicable laws, rules, regulations, codes and standards relating to the installation or use of the Products and/or the maintenance of the same. The Customer hereby specifically agrees that the provisions of this clause take precedence and priority over any other indemnification or hold harmless provisions that may be a part of any other document issued or forming a part of this transaction. In the event such provisions are contained in any such other documents, the within clause shall be paramount and supplant such other provisions and render such other provisions null and void regardless of the date when such other documents were issued, signed, acknowledged, or accepted. ZICLA shall have no duty to object or reject the indemnification or hold harmless provisions in any such document, the same being rendered null and void by this clause

## **12. Insurance.**

The Customer must take out a civil liability insurance policy sufficient to cover any losses, damages and personal injuries it may cause to third parties due to: (i) improper installation of the Products, (ii) negligent acts or omissions by the Customer's employees, contractors, agents, handling and installing the ZICLA products, (iii) breach by the Customer of these Terms and/or any applicable laws and regulations



**13. Miscellaneous.**

- i. These Terms supersede all prior or written agreements, if any, between the parties and constitute the entire agreement between the parties. The Terms cannot be changed or modified orally. Any change or modification must be in writing and agreed to by both parties. If any provision of these Terms is found to be unenforceable for any reason, such provision shall be construed by limiting it to make it enforceable to the maximum extent permitted by law, and the remainder of these Terms shall continue in full force and effect.
- ii. These Terms shall be construed in accordance with the laws of the State of New York.
- iii. Any legal action or proceeding with respect to this Agreement may be brought in the state or federal courts of the State of New York. The Parties hereby accept for themselves and in respect to their property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. You irrevocably waive any objection which you may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to above and hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.