

T.S.M. S.R.L. - GENERAL TERMS AND CONDITIONS OF SALES

This document contains the general terms and conditions (“**Terms and Conditions**”) at which Technological Systems by Moro s.r.l., with registered office at via Fratelli Zambon no. 9, 33080 Fiume Veneto (Pordenone), Italy, Fiscal Code, VAT and company registration number 01409710934 (“TSM” or the “Seller”) sells to the customer (the “Buyer”) industrial indoor and/or outdoor cleaning machines (the “Product/Products”).

1. CONCLUSION OF THE CONTRACT OF SALE

1.1. The contract of sale (the “**Contract**”) is concluded when the Buyer accepts TSM’s order confirmation (“**Order Confirmation**”), of which these Terms and Conditions and the technical sheet containing the specifications of the Products (“**Technical Sheet**”) make an integral and substantial part.

1.2. The Order Confirmation which is not expressly accepted shall be deemed to have been accepted: i) when the Buyer pays the whole price for the Products or, if provided, the down payment, provided that it is accepted by the Seller; or ii) when the Buyer takes delivery of the Products.

1.3. The Contract is governed by the specific terms and conditions set out in the Order Confirmation and by the present Terms and Conditions.

1.4. The Order Confirmation or rejection shall be sent by the Seller to the Buyer within 10 (ten) working days as of receipt of the Buyer’s purchase order (the “Purchase Order”), otherwise the Purchase Order shall be deemed rejected. The Supplier has no obligation to accept the Buyer’s Purchase Order.

1.5. Save what provided for above, these Terms and Conditions shall apply in any other case where a Contract between TSM and the Buyer can be deemed concluded. General terms and conditions of the Buyer, if any, shall not apply.

2. PRODUCTS, SPECIFICATIONS AND RESALE’S TERRITORIES

2.1. The Products sold will have the specifications set out in the relevant Technical Sheet.

2.2. The images and technical data contained and/or referred to in any marketing or promotional material are always approximate and indicative and, therefore, are not binding or essential.

2.3. TSM reserves the right to make, before delivery, those changes to the Products it deems appropriate to improve the relevant performance, without being the Buyer entitled to any right or claim because of such changes. TSM shall give notice to the Buyer of any such changes as soon as reasonably practicable. Prices for the Products subject of a Contract that has already been concluded shall remain unvaried.

2.4. The Products, the related packaging, and the materials and documents pertaining or connected to the same cannot be altered or modified in any manner by the Buyer.

2.5. The Products shall bear TSM’s trademark and model name and shall be mandatorily marketed and resold by the Buyer as they have been delivered by the Seller, together with the installation, operation and maintenance manual. The Buyer may add its trademark on the Products with the prior and express written consent of the Supplier with reference to shape, colors and position of such trademark.

2.6. The Seller represents and warrants to the Buyer that the Products comply with Italian and European mandatory laws.

2.7. The Buyer represents and warrants to the Seller that it has revised the Products, and that they comply with all laws and regulations affecting the manufacture, sale, packaging and labelling of the Products which are in force within the Country where the Buyer has its place of business at the date of conclusion of the Contract, and within every other Countries where the Buyer is allowed to resell the Products. The Buyer undertakes exclusive liability in this respect.

2.8. The Buyer shall not resell the Products in territories, outside of the Country where it has its place of business, where TSM has reserved or will reserve in the future exclusive rights for itself or where TSM has appointed or will appoint in the future exclusive distributors or other intermediaries.

3. TERMS OF DELIVERY

3.1. Deliveries shall be made according to the Incoterm (Incoterms 2010) specified in the Order Confirmation. Unless otherwise agreed, deliveries shall be made EXW (Incoterms 2010) TSM’s warehouse at Via Fratelli Zambon no. 9, 33080 Fiume Veneto (PN), Italy. The Buyer shall promptly inform the Seller about the successfully completed exportation of the Products and give the Seller written proof thereof.

3.2. Delivery date shall be indicated by the Seller in the Order Confirmation, taking into account the manufacturing/supplying times needed.

3.3. If the Seller cannot meet the delivery date/s set out in the Order Confirmation, it shall give prompt notice to the Buyer and shall deliver the Products within 30 (thirty) days as of the original delivery date’s deadline. If the Products are not delivered by TSM within this 30 (thirty) days’ grace period, the Buyer is entitled to terminate the Contract, in part with reference to those Products not delivered yet, or in whole if no Products have been delivered. In case of partial or full termination by the Buyer, TSM shall, where applicable, reimburse or credit the purchase price paid by the Buyer, if any, however TSM shall not be liable for any damages, except in case of TSM’s gross negligence or willful misconduct.

3.4. The Seller shall deliver the Products ordered provided the Buyer is not in breach with any payment obligations, also relevant to contracts different from the specific Contract pursuant to which supply is to be made.

4. PRICE AND TERMS OF PAYMENT

4.1. The prices for the Products shall be those set out in the Order Confirmation.

4.2. Prices have been quoted and therefore are to be deemed EXW (Incoterms 2010) TSM warehouse at Via Fratelli Zambon no. 9, 33080 Fiume Veneto (Pordenone), Italy. Costs relevant to the different delivery term that may be agreed between the Parties shall be borne by the Buyer and shall be separately specified in the Order Confirmation.

4.3. Prices are and shall be quoted by the Seller and payments shall be made by the Buyer in EUR.

4.4. The Seller can anytime change the prices. The prices of Products which are the subject of Contracts that have already been concluded but not performed yet shall remain unvaried.

4.5. The Buyer shall pay the full amount invoiced to it by the Seller in advance, within a certain number of days as of receipt of the Order Confirmation and/or at the latest before delivery of the Products, as specified in the Order Confirmation.

4.6. Payments shall be made by wire transfer to the bank account details which shall be separately communicated by the Seller to the Buyer.

4.7. The Buyer may not withhold payment of any amount due to the Seller because of any set-off, counter-claim, abatement, or other similar deduction.

4.8. Save what provided for in Article 4.2, the price for the Products is inclusive of any and all costs and expenses incurred by the Seller in fulfilling a Contract, of any connected charges, and of any sales tax or any tax that replaces such sales tax, except value added tax (if applicable) or any other applicable sales tax in the country in which the Buyer is resident. All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase of the Products shall be the responsibility of, and for the account of, the Buyer.

4.9. The Seller may withhold performance of any of its obligations under any Contract if the Buyer is in delay in making any payment of the price for the Products.

4.10. Should the parties agree that payment is to be made, in whole or in part, after delivery, the Products remain the property of TSM until the price has been paid in full, to the largest extent permitted by the law of the Country where the Products are located. The Buyer undertakes to do all what it is necessary to set up a retention of title in the Country where the Products are located to the largest allowable extent.

The Seller shall be entitled to take back possession of the Products sold with retention of title anytime after the expiry of the payment deadline if the Buyer has not paid the price in full; all relevant and connected costs shall be borne by the Buyer and the Seller shall be entitled to keep as liquidated damages the amounts already paid by the Buyer, if any.

If it is not possible for the Seller to take back possession of the Products, e.g. because the Products have been sold by the Buyer or cannot be found at the Buyer’s premises, the Seller shall be entitled to be paid the whole price for the Products.

5. THE SELLER’S WARRANTY

5.1. The Products supplied by the Seller to the Buyer under the Contract shall: a) be conform to the specifications; b) be safe, of satisfactory quality and fit for the purpose held out by the Seller; c) be free from defects in material and workmanship (hereinafter the “**Warranty**”). Each circumstance described in letters (a), (b), and (c) above constitutes a defect (hereinafter a “**Defect**” or “**Defects**”).

5.2. At the time of purchase by its Customer the Buyer shall properly register the Products by filling in the “Product registration form” available online entered the reserved area in the Seller’s website.

5.3. The warranty lasts: a) 12 (twelve) months from the date of purchase of the Products by the Buyer’s Customer indicated in the “Product registration form” which shall correspond to the date of the Buyer’s invoice to its Customer, of which a copy shall be sent to the Seller by the Buyer when asking for the Warranty; in any case, the Warranty shall not exceed 18 (eighteen) months from the date of the Seller’s invoice to the Buyer; b) if the “Product registration form” is missing, the Warranty lasts 12 (twelve) months from the date of Seller’s invoice to the Buyer; (hereinafter the “**Warranty Term**”).

5.4. Notice of Defects shall be given in writing by the Buyer to the Seller: i) in case of Defects which were apparent on reasonable inspection, within 10 (ten) days as of the date of the Supplier’s invoice which shall be issued upon delivery of the Products; ii) in case of latent Defects, within 10 (ten) days as of the date of the Buyer, or its customer if the Product has already been sold by the Buyer and delivered to its customer, discovers or ought to have discovered the Defect; otherwise the Products shall be considered finally accepted.

Notice of Defects that can be found by the carrier designated by the Buyer shall be given immediately before shipment and written reserve shall be made on the transportation document of which a copy shall be promptly sent to TSM.

5.5. Minor Defects, aesthetic Defects and Defects in design shall not entitle the Buyer to any remedy. Moreover, the Products will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties.

5.6. If the Products are found by the Seller to be not materially compliant with the Warranty for a reason solely attributable to the Seller, the Seller shall provide free of charge the Buyer with non defective components for the Products to replace the defective ones. Replacements shall be made by the Buyer.

Deliveries by TSM to the Buyer of such components necessary to remedy the Defects shall be made CPT place of delivery TSM warehouse at Via Fratelli Zambon no. 9, 33080 Pordenone, Italy, place of destination the Buyer’s place of business (Incoterms 2010). Transportation costs within the Buyer’s Country and labour costs and any other cost not contemplated by the above said CPT Incoterm (e.g. customs duties and taxes) shall be borne by the Buyer.

Replacement of the entire Product is expressly excluded. However, if it is objectively impossible to remedy the Defect of the Product by replacing one or more of its components or if a replacement of components is uneconomic for TSM because of the number of components required, or uneconomic for the Buyer because of the labour costs to be borne, the parties may agree upon a replacement of the entire Product or a partial or full reimbursement of the relevant purchase price, without interest, by TSM to the Buyer.

5.7. The Warranty does not operate: for normal wear and tear of the Products; for Products whose serial number has been removed, cancelled, counterfeited, altered or made illegible; if the Products are used for a purpose other than that for which they are designed and intended; if the Products are not correctly installed, used and/or maintained pursuant to the operation and maintenance manual of the Products; if not original components/spare parts are used or changes to the Products are made without the prior express and written authorisation of TSM; in case of faulty or incorrect connection, electrical connection to plant/network of insufficient capacity, negligence use, self-done or not-well-done repairation, sabotage, tampering, alteration by unauthorized personnel, use of not suitable chemicals or cleaning agents, use of electricity not in accordance with standards; for Defects due to forced suspension of use of the Products; for Defects or lack of conformity due to whatever cause not attributable to TSM. The Warranty does not cover consumable parts, batteries, gaskets and wheels. Delay in payments suspends every warranty.

5.8. The terms of this Agreement shall apply to any replacement components supplied by the Supplier, within the Warranty Term.

5.9. Any other Buyer’s right or remedy in case of Defects or lack of conformity not contemplated in this Article 5, including but not limited compensation for any kind of damages, are expressly excluded.

5.10. The Seller does not give any warranty to the Buyer’s customers or end users of the Products, whether they are consumers or not. The Seller has no relationship with such customers and end users. It is the Buyer’s exclusive responsibility to give its customers or end users further warranties which may be mandatorily required by law, without claiming any right towards the Seller in this respect and without recourse of action against the Seller in case of claims of the customers towards the Buyer. The Buyer undertakes and agrees to defend, indemnify and hold harmless the Seller against any claim of customers, end users and consumers and against any loss, liability, damage, costs or expense (including but not limited to legal and professional fees) and in general against all harmful consequences arising out of or connected to Defects or lack of conformity of the Products.

5.11. If the quantity of Products delivered is lower than the agreed quantity as set out in the Order Confirmation notice of shortage shall be given immediately. In this case Article 3.3 shall apply.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. The Buyer acknowledges and agrees that designs, copyrights, patents, utility models, know-how, trademarks, trade names or any other distinctive marks (including but not limited to the trade name and the trade marks “TSM”) and any other intellectual property rights relating to the Products and the Seller are and shall remain the exclusive property of TSM or of the third parties to which they belong.

6.2. The Buyer acknowledges that TSM is the only and exclusive owner and owns all the rights on the trademarks and trade name “TSM” (hereinafter the “**Trademarks**”) and undertakes not to use and not to register or having registered, in any part of the world, and in particular but without limitation in the Country where it has its place of business, any name, trademark or distinctive mark equal or confusingly similar with the Trademarks and with the company name TSM – Technological System by Moro s.r.l. without the prior and express written authorization of TSM. Save any other rights and remedies provided by law, should the Buyer breach this Article 6.2., TSM shall be entitled to obtain from the Buyer the immediate transfer of the exclusive property of such name, trademark or distinctive mark and any and all connected rights free of charge, to which transfer the Buyer gives hereby its consent. The Buyer shall execute all documents and make all acts necessary to the purpose.

6.3. The Buyer shall not use any intellectual property owned by the Seller or the Trademarks as, or as part of, any corporate, domain or business name.

6.4. The Seller makes no representation or warranty as to whether the Trademarks and/or the Products infringe any intellectual property rights of third parties anywhere in the world and undertakes no liability in this respect.

6.5. The Buyer hereby obligates to abstain from filing or having filed any application for patents, utility models, designs or any intellectual property of the Seller anywhere in the world, without the previous express and written consent of the Seller for such purpose. Without prejudice to any other right or remedy provided by the applicable law or otherwise, in case of breach by the Buyer of this Article 6.5 the Seller shall be entitled to obtain from the Buyer the transfer of the exclusive ownership of such patent, utility model, design or other intellectual property right and any and all connected rights free of charge, to which transfer the Buyer gives hereby its consent. The Buyer shall execute all documents and make all acts necessary to the purpose.

6.6. The Buyer undertakes to fully defend, indemnify and hold harmless the Seller against all claims of third parties and against any loss, liability, damage, costs and expenses (including but not limited to legal and professional fees) and in general against all harmful consequences arising out of the use by the Buyer of its trademark or trade name in the Products.

7. APPLICABLE LAW AND DISPUTES RESOLUTION

7.1. The Contract and these Terms and Conditions will be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention 1980 Vienna), as far as it does not conflict with these Terms and Conditions. As far as it is not provided by these Terms and Conditions and the said Convention, the laws of the country where the Seller has its registered office, without reference to its conflict of law provisions, shall apply.

7.2. The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present Agreement in accordance with the International Chamber of Commerce (ICC) Alternative Dispute Resolution (ADR) Rules.

If the Buyer’s registered office is outside the European Union, all disputes arising out of or in connection with the Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. The place of arbitration shall be Milan (Italy). The language of arbitration shall be English.

If the Buyer’s registered office is within the European Union, in Switzerland or in the United Kingdom, all disputes arising out of or in connection with the Contract shall be submitted to the exclusive jurisdiction of the Court of Pordenone, Italy.

The Seller shall always be entitled to start legal proceedings before the State Court where the Buyer has its registered office or another office.

8. MISCELLANEOUS PROVISIONS

8.1. No addition or modification to these Terms and Conditions or Contract shall be valid unless agreed in writing. However, a party may be precluded by its conduct from asserting the invalidity of additions or modifications not made in writing to the extent that the other party has relied on such conduct.

8.2. The parties in carrying out their obligations under the Contract will act in accordance with the principles of good faith and fair dealing and undertake to abstain from taking any unlawful or unfair conduct or suitable to damage the other party, its company and its image.

8.3. TSM does not give any other warranty different from those expressly set out in these Terms and Conditions.

8.4. No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions, under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it precludes or restricts the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

8.5. If any provision of these Terms and Conditions, or part of any provision, is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of these Terms and Conditions, and the validity and enforceability of the other provisions of these Terms and Conditions shall not be affected. The provisions of these Terms and Conditions shall be read always in full compliance with applicable antitrust laws. In case of any discrepancies, applicable antitrust laws shall prevail.

8.6. Save what provided for in these Terms and Conditions, the rights and remedies of each party are cumulative and not exclusive of rights or remedies provided by law.

8.7. The Buyer represents and warrants that these Terms and Conditions fully abide by and are not inconsistent with mandatory laws or regulations in force in the Country where the Buyer has its place of business that may be applicable to these Terms and Conditions and/or the Contract, if any. In case of breach of this representation and warranty, the Buyer shall be liable for all damages suffered and costs and disbursements incurred by the Seller because it relied on the full validity and effectiveness of these Terms and Conditions and the Contract and on the exclusion of application of any applicable mandatory laws inconsistent with what provided for in these Terms and Conditions.

8.8. The Buyer undertakes to fully defend, indemnify and hold harmless the Seller against all claims of third parties and against any loss, liability, damage, costs and expenses (including but not limited to legal and professional fees) and in general against all harmful consequences arising from any infringement of law or breach of the Contract by the Buyer or breach of representations and warranties given by the Buyer.

Buyer signature _____