

## General Terms and Conditions (GTC)

### 1. Scope of application

- 1.1 These General Terms and Conditions ("GTC") govern the contractual relationship between Clesana AG, Werdenstrasse 72, 9472 Grabs, Switzerland ("Clesana") and the purchasers of Clesana's products (e.g. manufacturers, wholesalers and specialised dealers; "Contractual Partner").
- 1.2 By entering into a contract with Clesana or by placing an order for products or by accepting an offer from Clesana, the Contractual Partner expressly accepts these GTC as a binding part of the contract. Provisions deviating from these GTC shall only apply if they have been agreed in writing between Clesana and the Contractual Partner. Deviating agreements shall only apply to the respective contract or the respective order or the respective offer.
- 1.3 Clesana reserves the right to unilaterally amend the GTC at any time. The current version of the GTC shall apply, which is available on Clesana's homepage at [www.clesana.com/GTC](http://www.clesana.com/GTC).

### 2. Ordering products

- 2.1 The Contractual Partner can order the products from Clesana by e-mail ([order@clesana.com](mailto:order@clesana.com)). The order must specify the number of Products and the desired delivery date. The order is binding for the Contractual Partner, but non-binding for Clesana.
- 2.2 An order is only binding for Clesana and a contract is only concluded between the parties when the order has been confirmed by Clesana by e-mail ([order@clesana.com](mailto:order@clesana.com)) to the Contractual Partner. The order confirmation shall state the number of Products, the expected delivery date, place of delivery and invoice amount.
- 2.3 If Clesana submits an offer for the delivery of products to the Contractual Partner, this offer shall not be binding for Clesana. In this case, a contract will only be concluded upon acceptance of the offer by the Contractual Partner within the offer period.

### 3. Product delivery

- 3.1 Deliveries are EXW Diepoldsau, Switzerland (Incoterms 2020).
- 3.2 The benefit and risk of the products shall pass to the Contractual Partner upon delivery of the products. After delivery, the Contractual Partner shall be responsible for the products and all associated costs, including the loading of the products, all transport, insurance of the products, all customs duties, their import and export, the storage of the products and the delivery of the products to its (end-)customers.
- 3.3 Clesana shall deliver the Products to the Contractual Partner in the ordered quantity and on the agreed delivery date. If, in exceptional cases, no delivery date is defined, the Products shall be delivered within a period of 45 days.
- 3.4 If a delivery date cannot be met, Clesana shall notify the Contractual Partner of this regardless of the reason for the delay in delivery and the Contractual Partner shall grant Clesana a reasonable period for subsequent fulfilment. Clesana shall inform the Contractual Partner of the new delivery date.
- 3.5 Clesana shall not be responsible for delays in delivery caused by availability or delivery bottlenecks by Clesana's own suppliers. In this case, Clesana shall be entitled to cancel the respective order in whole or in part without compensation and shall immediately inform the Contractual Partner that the agreed delivery cannot be made.
- 3.6 The occurrence of a delay in delivery always requires a binding delivery date and a prior written reminder from the Contractual Partner.
- 3.7 Damages for delay and/or any kind of compensation due to delays in delivery and/or non-compliance with a delivery date are excluded.

### 4. Obligations of the Contractual Partner

- 4.1 The Contractual Partner may not modify the products in any way.
- 4.2 The Contractual Partner is obliged to ensure that the installation of the products at the end customer's premises is carried out by professionally trained persons and is therefore obliged to ensure

that its employees and any other persons who carry out the installation of the products at the end customer's premises are professionally trained in the products in accordance with the current state of the art. The Contractual Partner shall contact Clesana for the purpose of organising training courses.

- 4.3 Furthermore, the Contractual Partner shall ensure that any person involved in the assembly and installation has access to the necessary documents in Clesana's manufacturer/dealer area (e.g. various technical documentation for the installation of the products) and shall ensure that such persons are granted access to the manufacturer/dealer area.

### 5. Defects

- 5.1 The Contractual Partner shall inspect the delivered Products for completeness and defects and confirm receipt of the Products to Clesana. Any discrepancies must be reported to Clesana in writing or by e-mail to [service@clesana.com](mailto:service@clesana.com) immediately upon receipt of the products, at the latest within five working days after delivery, in the case of transport damage including a meaningful photo. Otherwise, the Contractual Partner recognises the delivery as flawless and in accordance with the contract.
  - 5.2 Defective Products that could not be discovered during such inspection but are discovered later ("Hidden Defects") must be reported to Clesana in writing or by e-mail to [service@clesana.com](mailto:service@clesana.com) within three working days of their discovery.
  - 5.3 To the extent that a defect in the Product is discovered during its operation at the end customer's premises, the Contractual Partner shall ensure that such defect is reported to Clesana in accordance with the applicable requirements.
  - 5.4 Clesana shall provide warranty for defects at its discretion by repair free of charge, replacement delivery, cancellation of the individual contract or credit note after receipt of the returned product. In any case, claims for defects of the contractual partner presuppose that the Contractual Partner has complied with its obligations to inspect and give notice of defects in accordance with this clause 5 and, to the extent applicable, that the "Service Case Process" has been respected.
  - 5.5 In the event that products have to be returned due to a defect covered by the warranty, the contractual partner shall bear the costs for the return transport of the affected products to Clesana. The contracting party shall be obliged to organise the return transport in a way that protects the products from further damage and ensures that they arrive at Clesana in a condition suitable for inspection and/or repair. The need for return and the method of transport must be agreed with Clesana in advance. Any costs arising from a non-coordinated or non-compliant return transport shall not be the responsibility of Clesana and cannot be claimed by the contracting party.
  - 5.6 Each party shall bear its own costs in connection with the assertion of claims for defects; costs of third parties may not be passed on by one party to the other party.
- ### 6. Product prices
- 6.1 Unless otherwise agreed by the parties in individual cases, the product prices shall apply in accordance with Clesana's price list valid at the time of the order. The Contractual Partner may request the current price list from Clesana at any time.
  - 6.2 Any product prices granted shall be subject to any cost increases that may occur over which Clesana has no influence. These include, in particular, increases in manufacturing costs, increases in the costs of electrical components, increases in costs due to inflationary developments, changes in energy prices and/or operating costs, economic crises and other factors beyond Clesana's control as well as force majeure. In this respect, Clesana reserves the right at any time, even after the Contractual Partner has placed an order, to adjust the product prices in proportion to the cost increase.
  - 6.3 All product prices are net, excluding all taxes (e.g. VAT) and duties. Taxes and duties shall be shown separately on the invoice at the statutory rate on the day the invoice is issued.

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### 7. Payment terms

- 7.1 All payments are due within 30 days of the invoice date. In individual cases, Clesana reserves the right to make deliveries subject to advance payment only.
- 7.2 The Contractual Partner may raise justified objections to the invoice within five days of its delivery. If he fails to do so, the invoice shall be deemed accepted. Invoices are due and payable within the specified payment period. In the event of late payment and following a prior written reminder, default interest of 5% shall be charged and, at Clesana's discretion, the customer account of the Contractual Partner shall be blocked until at least the outstanding amount (including interest) has been paid in full.
- 7.3 The Contractual Partner shall bear all costs arising from the delay in payment, such as administrative and reminder fees, interest on arrears as well as legal fees and court costs.
- 7.4 The sale of the Products is subject to retention of title, which extends to all components, including accessories of the Products. Clesana shall remain the owner of the Products until full payment of the purchase price including interest and any further costs. Clesana shall be entitled to have the retention of title entered in the relevant retention of title register at the expense of the Contractual Partner. The Contractual Partner must inform Clesana immediately of any seizure or other confiscation of the products; in addition, the Contractual Partner must inform the competent debt collection register office of the existing retention of title.
- 7.5 The Contractual Partner shall not be entitled to set off its own claims against Clesana's claims.

### 8. Liability and warranty

- 8.1 Clesana shall only be liable for damages caused to the Contractual Partner by intentional or grossly negligent behavior. Any further liability is excluded to the extent permitted by law.
- 8.2 The Contractual Partner shall be liable for any damage resulting from a breach of its obligations under the contract or from its acts or omissions after delivery of the Products pursuant to clause 3.1 (e.g. damage caused by defects of the Products resulting from the transport or storage of the Products by the Contractual Partner or damage in connection with the defective installation or faulty installation of the Products at the end customer's premises). To the extent that claims for damages or otherwise are asserted against Clesana by third parties in this context, the Contractual Partner shall indemnify Clesana against such claims for damages and other damages, claims, losses and further costs (including court and attorney's fees incurred in the defence of such claims). Clesana shall inform the Contractual Partner of such claims without undue delay.
- 8.3 Subject to provisions to the contrary, to the extent permitted by law, neither party shall be liable for indirect damages (e.g. loss of profit) and consequential damages.
- 8.4 Clesana warrants that the delivered Products are fit for their intended use. The warranty period is two years from delivery of the Products to the Contractual Partner. This period shall not apply if a longer limitation period is prescribed by law, in which case the longer limitation period shall apply.

### 9. Confidentiality and data protection

- 9.1 The parties undertake to treat as absolutely confidential all data and other information (including, in particular, business and trade secrets and know-how) of which they become aware in connection with the fulfilment of the contract and which are not generally accessible or publicly known, and not to make them accessible to third parties, either in whole or in part, or to publish or disclose them in any other way. The parties are responsible for ensuring that their employees and authorised subcontractors comply with the confidentiality regulations.

- 9.2 The parties confirm that they are aware of and comply with the relevant data protection regulations and guarantee that all data will be lawfully processed at all times by their employees and authorized subcontractors, including any personal data that is particularly worthy of protection. The parties also confirm that they will not use the data for any purpose other than the fulfilment of the contract and will only process it to the extent that is absolutely necessary for the execution of the contract.

- 9.3 No limitations of liability apply to breaches of this clause 9.

### 10. Product recalls

Products may not be recalled by the Contractual Partner on its own authority, but only after prior information and written confirmation by Clesana. Any claims of the Contractual Partner against Clesana in connection with a recall of products (damages, etc.) shall be excluded.

### 11. Intellectual property

- 11.1 All intellectual property in the products and any documents (e.g. product catalogues, technical drawings, manuals for the installation of the products) which Clesana supplies or hands over to the Contractual Partner or which the Contractual Partner obtains from Clesana (e.g. via the manufacturer/dealer sector), including trademark rights, company rights or know-how, shall remain the sole and exclusive property of Clesana.
- 11.2 Clesana grants the Contractual Partner a non-exclusive, non-transferable, non-sublicensable and free licence to use such Intellectual Property under clause 11.1 during the term of the Agreement and as long as necessary for the performance of the obligations under the Agreement.
- 11.3 The Contractual Partner is not entitled and shall refrain from any attempt to have trademarks or other intellectual property rights that are identical or confusingly similar to Clesana's trademarks or other intellectual property rights owned by Clesana protected for itself or for third parties over which it has an influence.

- 11.4 No limitations of liability apply to breaches of this clause 11.

### 12. Insurance

- 12.1 The Contractual Partner is obliged to take out and maintain appropriate insurance covering all risks in connection with the contract at all times during the contractual relationship between the parties.
- 12.2 The Contractual Partner shall maintain at least comprehensive liability and product liability insurance with cover of at least CHF 1,000,000 per event, including cover for property damage and personal injury.

### 13. Involvement of subcontractors

The Contractual Partner is not authorised to engage subcontractors without prior written consent. In the event of the authorised involvement of subcontractors, the Contractual Partner shall be liable to Clesana for its subcontractors as for its own conduct.

### 14. Exclusion of exclusivity

The direct delivery of products by Clesana, whether to the contractual partner or to third parties on the contractual partner's instructions, shall not create any exclusivity relationship between the contractual partner and Clesana or between Clesana and a third party. It is recognised that such deliveries are only made on the basis of the respective individual order and may not be understood as granting an exclusive distribution or purchase right. Clesana reserves the right to supply its products and services to other business partners without restrictions. The contractual partner acknowledges that no exclusivity rights, special conditions or similar claims can be derived from the direct delivery.

### 15. General compliance

The parties undertake to comply with all applicable laws within the framework of the execution of the contract.

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### 16. Force majeure

16.1 Except as otherwise provided, neither party shall acquire any right of termination or incur any liability whatsoever to the other party solely as a result of any omission, delay or non-performance of any provision of the Contract which is directly or indirectly due to procurement problems or production delays through no fault of the other party (e.g. in connection with Covid-19), an official order or restriction, impairment of public infrastructure such as electricity and communication networks, (imminent) war, sanctions, riots, embargoes, confiscations, strikes, fire, flooding, explosions or other causes or circumstances beyond the control of the parties or caused thereby.

16.2 In the event of force majeure, the contractual obligations shall be suspended for the duration of the force majeure. After the end of the force majeure, the obligations shall automatically be revived. Any omission or non-fulfilment or delay caused by force majeure must be reported immediately by the affected party to the other party. If the omission, delay or non-fulfilment of a provision of the contract continues for three months or longer, the party not in default or not in breach of contract shall be entitled to terminate the contract in writing without compensation.

### 17. Prohibition of assignment

The Contractual Partner may not assign or otherwise transfer any rights, claims or obligations under the contract or the contract as a whole to third parties without Clesana's prior written consent.

### 18. Severability clause

Should individual provisions of the contract be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision that comes closest to the economic purpose of the original provisions. The same applies in the event of a loophole.

### 19. Applicable law and place of jurisdiction

19.1 The legal transactions between Clesana and the Contractual Partner and all disputes arising in connection therewith shall be governed exclusively by Swiss substantive law, to the exclusion of international conflict of laws rules, in particular the United Nations Convention on Contracts for the International Sale of Goods.

19.2 The exclusive place of jurisdiction is St. Gallen.