

# TERMS AND CONDITIONS OF SALE OF GOODS

## THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 11.

### 1. Interpretation

1.1. **Definitions.** In these Conditions, the following definitions apply:

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** has the meaning given in clause 12.

**Goods:** the goods (or any part of them) set out in the Order.

**Incoterms:** International regulations for the interpretation of the terms used in international trade. The scope of the Incoterms is limited to questions relating to the rights and obligations of the parties to the sales contract with relation to the delivery of the sold goods. More information can be found at <http://www.iccwbo.org/incoterms/id3045/index.html>

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation as the case may be. Supplier: means in respect of Goods invoiced out of Italy, Interpuls S.P.A., company code RE 009360, VAT code IT01259470358 and in respect of Goods invoiced out of the United Kingdom, milkrite | InterPuls Limited doing business as milkrite | InterPuls, registered in England and Wales with Company number 12526716.

### 2. Basis of contract

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4. No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against loss (including loss of profit), costs of the Goods, damages, charges and expenses incurred by the Supplier as a result of the cancellation.

2.5. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.6. Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

### 3. Goods

3.1. The Goods are described in the Supplier's catalogue.

3.2. The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

### 4. Delivery

4.1. The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any); and

(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 4.2. For Goods invoiced out of Italy, the normal delivery terms are ex-works (Albinea –RE). The Customer and Supplier may on each occasion, however, agree the application of different incoterms for the Order. Should different Incoterms be applied, they shall be specified by the Seller in the offer sent to the Customer, in the absence of a written offer, they shall be agreed to by the Customer and by the Supplier at the time of placement of the Order.
- 4.3. For Goods invoiced out of the UK, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Where the Goods are delivered to the Customer's premises the Customer shall be responsible for unloading the Goods and where the Supplier or its employees or agents carry out or assist the Customer, its employees or agents in such unloading the Buyer shall indemnify and keep indemnified the Seller against all liabilities including without limitation all loss, costs, charges and expenses arising from such unloading.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence and while reasonable efforts are made by Supplier to deliver within any time specified, Supplier shall be under no liability whatsoever for any loss suffered by the Customer whether directly or indirectly as a result of delay in delivery whatsoever. The Supplier shall not be liable for damages, whether direct or indirect, suffered by the Customer as a result of the failed delivery of the Goods at a specific time or date.
- 4.5. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6. If the Customer fails to take or accept delivery of the Goods (as appropriate) within three business days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third business day after the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8. Damages and shortages must be endorsed on carrier's copy of the delivery note at time of deliver and notified to Supplier within 8 days of delivery.

## 5. Quality

- 5.1. The Supplier provides the following warranty period for the Goods (Warranty Period):

Liners and tubing	6 months from the date of delivery or 2500 milkings, whichever comes sooner
Claw	12 months from the date of delivery or 5000 milkings, whichever comes sooner
All other Goods	12 months from the date of delivery

- 5.2. During the Warranty Period, the Supplier warrants that the Goods shall:
  - (a) conform in all material respects with their description;
  - (b) be free from material defects in design, material and workmanship;
- 5.3. Subject to clause 5.4, if:
  - (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4. Unless otherwise specifically stated in the Contract, the Supplier does not warrant the design of the Goods or their fitness for any particular purpose. The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
  - (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.



- 5.5. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6. Title and risk**
- 6.1. In respect of Goods invoiced out of Italy, the risk of damage to or loss of the goods and legal title to the Goods shall pass to the Customer when the Goods are collected from Supplier's premises by the nominated carrier.
- 6.2. In respect of Goods invoiced out of the United Kingdom:
- (a) The risk in the Goods shall pass to the Customer on completion of delivery.
- (b) Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods
- (c) Until title to the Goods has passed to the Customer, the Customer shall: hold the Goods on a fiduciary basis as the Supplier's bailee; store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.2; and give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- (d) If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1. The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. All prices stated in any Quotation, but not yet accepted in writing by the Customer, are valid for 30 days only, except where a different validity period is stated, after thirty days or the stated validity period, the quotation has expired and a new quote, potentially with new pricing, may be required and should be requested by the Customer before placing any resulting orders.
- 7.2. The Supplier may, by giving notice to the Customer at any time 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3. Unless otherwise agreed, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4. The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5. Payment for the Goods must be made in advance of delivery to the bank account nominated in writing by the Supplier, unless prior credit terms have been agreed in writing between the Supplier and the Customer.
- 7.6. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 7% per annum. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. Intellectual Property Rights**



8.1. All copyright, patents, trademarks, design rights, know-how and other industrial or intellectual property of any kind whatsoever whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights (“Intellectual Property”) on or subsisting in or in relation to the Goods shall remain (as between Supplier and his subsidiaries and the Customer) the absolute property of Supplier and his subsidiaries and no rights in such property are granted to the Customer save for a non-exclusive license to use or resell the Goods for the purposes contemplated by the Contract.

**9. Data protection and data processing**

Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

**10. Customer’s insolvency or incapacity**

- 10.1. In respect of Goods invoiced out of Italy, in the event that Customer starts winding-up procedures, or is declared bankrupt or is subjected to any other insolvency procedure, or in all events, declares to grant security on the Goods supplied by the Supplier in favor of third parties, the Supplier shall be authorized to cancel any Order, in its entirety or partially, giving written notice without affecting the rights and obligations already acquired by the Supplier.
- 10.2. In respect of Goods invoiced out of the United Kingdom, if the Customer commits any material breach of this Contract or becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due, Supplier shall be entitled (without prejudice to any other right or remedy available to it, immediately to terminate the Contract or suspend any further deliveries of Goods and if any of the Goods have been delivered but not paid for, the price payable by the Customer under the Contract shall become immediately due and payable.
- 10.3. Termination of the Contract, however arising, shall not affect any of the parties’ rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**11. Limitation of liability**

- 11.1. Nothing in these terms of business shall exclude, restrict or limit, or seek to exclude, restrict or limit, any liability which may not lawfully be excluded, restricted or limited or which may not be excluded, restricted or limited under any applicable law or regulation.
- 11.2. Subject to clause 1.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Supplier’s total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

**12. Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**13. General**

13.1. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or



- obligations under the Contract without the prior consent of the Supplier.
- 13.2. If any provision of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
  - 13.3. Failure or delay by the Supplier in enforcing or partially enforcing any of its rights or remedies under the Contract will not be construed as a waiver of any of its rights under the Contract and shall not prevent the Supplier from later reasserting such rights or remedies.
  - 13.4. A person who is not a party to the Contract shall not have any rights under or in connection with it.
  - 13.5. The parties agree to comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
  - 13.6. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
  - 13.7. In respect of Goods invoiced out of the United Kingdom, the Contract shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. In respect of Goods invoiced out of Italy, the Contract shall be governed by, and construed in accordance with, Italian law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Italy.

**Where Customer is also acting as a Dealer in relation to the Goods the following terms will also apply:**

**14. Definitions**

Dealer: shall mean the individual or company appointed as a dealer for the Supplier.

**15. Appointment**

- 15.1. The Dealer is appointed as a non-exclusive Dealer to distribute the Goods.
- 15.2. The Dealer shall purchase the Goods only from Supplier.
- 15.3. The Dealer shall not without Supplier's permission in writing:
  - (a) represent itself as an agent of Supplier; or
  - (b) pledge Supplier's credit; or
  - (c) give any condition or warranty on Supplier's behalf save as set out in Supplier's product literature; or
  - (d) commit Supplier to any contracts; or
  - (e) make any promises or guarantees about the Goods beyond those contained in the promotional material supplied by Supplier.

**16. Dealer's Commitments**

- 16.1. Dealer shall inform Supplier immediately of any changes in ownership or control of the Dealer, and of any change in its organization or method of doing business that might be expected to affect the performance of the Dealer's obligations to Supplier.

**17. Price and Payment**

- 17.1. The difference between Dealer's purchase price and Dealer's selling price to its customers shall be Dealer's sole remuneration for sale of the Goods.

**18. Advertising and Promotion**

- 18.1. The Dealer shall:
  - (a) carry out all marketing activities in accordance with Supplier's marketing guidelines; and
  - (b) be responsible for advertising and promoting the Goods using material supplied or previously approved by Supplier.
- 18.2. Supplier grants the Dealer the non-exclusive right to use the trademarks applying to the Goods in the promotion, advertisement and sale of the Goods for the duration of their term as a dealer.
- 18.3. Dealer is not permitted to apply for a trademark containing 'MILKRITE', 'INTERPULS' or any other of Supplier's marks.

**19. Confidentiality**

- 19.1. Dealer undertakes that it shall not at any time during this agreement and for a period of five years after the date of the Order, disclose to any person any confidential information concerning the Goods, business, affairs, customers, clients or suppliers of Supplier or of any member of the group of companies to which Supplier belongs.
- 19.2. Dealer shall not use Supplier's confidential information for any purpose other than to perform its obligations under this agreement.

**20. Anti-Corruption**

- 20.1. The Dealer shall do all things necessary to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010.
- 20.2. Clauses 14 to 20 are agreed on behalf of the Dealer via their signature on the Account Application Form.



## TERMS AND CONDITIONS

### Placing an order acknowledges these terms and conditions of sale:

**ORDER MINIMUMS:** All orders are subject to approval by milkrite | InterPuls, Inc. A minimum merchandise billing of \$50 applies to each invoice. Shipments are made only to customer's own locations. Prices, terms, and product specifications are subject to change without prior notice.

**TERMS:** Terms are Net 30 Days from Invoice Date to credit approved accounts, EX-WORKS, Johnson Creek, WI or EX-WORKS, Modesto, CA.

Mail payment to: Department #146101, milkrite | InterPuls, Inc., PO Box 67000, Detroit Michigan 48267-1461

**DISCOUNT/ FREIGHT ALLOWANCE:** A 3 percent discount may be deducted from the invoice total if payment is postmarked within 30 days from the invoice date.

**CONDITIONS:** Merchandise will not be shipped to any account that has an unpaid balance beyond the 30-day due date or has exceeded established credit limits. Credit privileges are automatically revoked, and C.O.D. status is applied, when that account has an unpaid invoice of 60 days or more from invoice date. After merchandise leaves vendor's shipping point, any transit time or shipping delay shall not affect the terms of payment. Customer pick-up is permitted, advance notice is required.

**C.O.D.:** Accounts without credit privileges will normally receive orders C.O.D. The discount is automatically earned on C.O.D. orders. Once your credit privileges have been revoked, your account will be placed on COD status for one year. After one year, you may reapply for open account status.

### MERCHANDISE RETURN:

#### Used Merchandise:

It is necessary to obtain permission prior to returning any used merchandise. Representative samples may be requested through issuance of a return authorization number. Upon receipt, a determination will be made as to the validity of the credit request. Customers will then be advised accordingly. Any used merchandise that is returned without prior permission may not qualify for credit.

#### Unused Merchandise:

Unused merchandise that is more than one year past invoice date, vented, or has been obsolete does not qualify for credit. It is necessary to obtain a return authorization number prior to returning any qualifying unused merchandise. This merchandise will be subject to a 10% restocking charge. Any unused merchandise that is returned without prior permission may not qualify for credit.