

## CABCON A/S

### Terms of Sale and Delivery 2011 version

#### **1 Definitions**

- 1.1 **Cabcon A/S** means Cabcon A/S, CVR no. 27466125, Stamholmen 193A, 2650 Hvidovre, Denmark.
- 1.2 The **Customer** means the natural or legal person who orders products from Cabcon A/S, provided that the order is received and accepted by Cabcon A/S.
- 1.3 **(The) Product(s)** mean(s) electromechanical components, connectors, switches, crystal products, relays, acoustic components, cables, power supplies and other goods that Cabcon A/S offers for sale and delivery, including goods to replace defective goods, hardware documentation and also software products to which the Customer is given a right of use.

#### **2 General**

- 2.1 These terms constitute the contractual basis between Cabcon A/S and the Customer for all Cabcon A/S's sales and deliveries of Products.
- 2.2 The Customer is regarded as having accepted these terms unless the parties made any other agreement in writing when the goods were ordered. The Customer's own terms, if any, will have no effect on the agreement unless this has been accepted by Cabcon A/S and has been expressly stated in the acknowledgement of order.
- 2.3 The contents of these terms can at any and all times be changed by Cabcon A/S for future sales and deliveries. An updated version of the terms is available on Cabcon A/S's website.
- 2.4 Cabcon A/S can choose to deliver direct from its suppliers or from branches and/or associates abroad. Irrespective of whether a delivery note or any other acknowledgement in such instances contains terms of sale and delivery that differ from these terms, only these terms apply between the Customer and Cabcon A/S.

#### **3 Offer, acknowledgement of order and price**

- 3.1 All prices contained in offers given by Cabcon A/S are valid for 15 calendar days from the date of the offer, in the absence of any other statement in the offer in question.
- 3.2 Cabcon A/S is always entitled to sell goods offered to others irrespective of whether this is stated in the offer or not.
- 3.3 An agreement for sale and delivery of Products has been made only when Cabcon A/S has acknowledged the Customer's order in writing in the form of an acknowledgement of order.
- 3.4 Information on the design, weight, dimensions and capacity of Products as well as technical and other data set out in catalogues, prospectuses, advertisements, illustrations and price lists are binding on Cabcon A/S only if reference to these is expressly stated in the acknowledgement of order.
- 3.5 Notwithstanding item 3.1 above, Cabcon A/S is entitled to invoice delivery of Products at the prices and taxes and duties applicable on the date of delivery. This applies also in case of changes to exchange rates and commodity quotations, cost prices, customs, freight and insurance rates or to any other matters which are beyond Cabcon A/S's control.
- 3.6 Prices quoted are exclusive of VAT, excise duties and import duty, but including customs duty.
- 3.7 Prices quoted may exclude duties that Cabcon A/S is obliged to collect in pursuance of legislation. In such instances, the duty is added upon invoicing. The Customer accepts Cabcon A/S's right to invoice the amount of duty and pay corresponding additional duties.

#### **4 Delivery and carriage**

- 4.1 Any statement of time of delivery in an acknowledgement of order is estimated and is an approximate statement.
- 4.2 Cabcon A/S's delayed delivery does not entitle the Customer to cancel the agreement or to claim damages. Irrespective of the cause of the delay, Cabcon A/S assumes no liability for any direct or indirect loss incurred by the Customer owing to delayed delivery.
- 4.3 In the absence of any other agreement between the parties, delivery is ex Cabcon A/S's warehouse (EXW; see Incoterms 2000), and the risk passes at the same time from Cabcon A/S to the Customer. If the parties have agreed on any other delivery clause, such clause will be interpreted in accordance with the Incoterms in force.
- 4.4 If the Customer does not himself collect the Products at the warehouse, Cabcon A/S can arrange carriage of the Products to the Customer's address for the Customer's account and risk. Cabcon A/S chooses the form of transport, but does not take out transport insurance. Cabcon A/S assumes no liability for the performance of transport or damage to goods in transit. If Cabcon A/S has undertaken to arrange transport, Cabcon A/S has the right to send the Products prior to the agreed date of delivery and Cabcon A/S has the right to send the goods in one lot or in several lots.
- 4.5 Should the Products not be received and paid for by the Customer in due time, Cabcon A/S may at its own discretion sell the goods for the Customer's account after having advised the Customer of this or store the goods for the Customer's account so that

the Customer must pay the costs related to storage. In the case of storage, the goods are stored for the Customer's account and risk.

- 4.6 For deliveries containing cooling units, Cabcon A/S has the right to deliver up to 10 % above or below the quantity ordered. This applies also in the case of deliveries made on an ongoing basis with regard to the part of the order that has at the time of an adjustment, if any, not yet been delivered. Cabcon A/S reserves the right to deliver other goods in whole, unbroken packages.

## **5 Payment**

- 5.1 All sales are cash sales unless otherwise expressly agreed and stated in the acknowledgement of order and in the invoice.
- 5.2 If the parties have agreed on credit, payment must be made not later than eight calendar days from the invoice date unless otherwise stated by Cabcon A/S in its acknowledgement of order.
- 5.3 In the case of delayed payment on the part of the Customer, Cabcon A/S is entitled to charge interest on the amount owed to it corresponding to 2 % of the amount owed to it for each month or part of a month.
- 5.4 For written reminders and other measures with the purpose of inducing the Customer to pay any amounts due, Cabcon A/S is entitled to a fee of DKK 100.00 per letter.
- 5.5 Cabcon A/S retains title to the Products until the entire amount owed to Cabcon A/S, including interest and costs, has been received by Cabcon A/S.
- 5.6 Should the Customer not observe these provisions concerning payment of the purchase price, Cabcon A/S is not obliged to make any additional (sub)deliveries.
- 5.7 Even though the Customer complains of errors or defects in the Products, the Customer is obliged to pay the purchase price for the part of the Products that is not faulty or defective at the agreed time.
- 5.8 The Customer is not entitled to set off any amount against the purchase price to cover claims against Cabcon A/S, unless this is done in accordance with a separate, written acceptance from Cabcon A/S.

## **6 Complaints, damage, errors and defects**

- 6.1 The Customer is obliged to thoroughly examine all of the Products delivered to detect any damage, errors or defects immediately upon delivery.
- 6.2 If in his examination, the Customer detects any damage to or errors or defects in the Products, the Customer must without undue delay and not later than five working days after receipt of the Products make a written complaint to Cabcon A/S.
- 6.3 If the Customer has not made a complaint within the time limit set out in item 6.2 above, the Customer has accepted the Products and has precluded himself from asserting damage, errors and defects that would have been discovered in an examination of the Products in accordance with item 6.1 above.
- 6.4 If the Customer makes a complaint concerning one or more Products delivered (see item 6.2 above), the Customer is not entitled to have the disposal of the Products or to use, resell or return the Products without a separate, prior agreement with Cabcon A/S.
- 6.5 If a Product is damaged or faulty or defective, Cabcon A/S has a right but not a duty to rectify defects, which means that Cabcon A/S can at its own discretion rectify the defect or deliver substitute goods.
- 6.6 If Cabcon A/S chooses to rectify defects in the Products, the Customer must bear any costs incurred by Cabcon A/S on account of the Products being at a place other than the place of delivery set out in the agreement, including the cost of carriage, if any.
- 6.7 The Customer is not entitled to cancel the agreement and/or claim damages on account of damage, errors or defects. As an alternative to rectification or delivery of substitute goods, Cabcon A/S has the right at its own option to cancel the agreement against repayment of the purchase price to the Customer.
- 6.8 Cabcon A/S assumes no liability for any consequential damage and loss irrespective of whether such damage or loss arises as a result of breach of contract, tort, incorrect information, etc., that may arise upon or in connection with sale and delivery of Products to the Customer.
- 6.9 The Customer is responsible for his choice of Products and for his use of these Products and the result thereby achieved. Cabcon A/S assumes no liability for the Products not being suited for the purpose intended by the Customer.
- 6.10 Cabcon A/S is not liable for damage, errors arisen or defects in the Products that is/are due to circumstances for which the Customer is responsible, including incorrect use of, changes to or interference with the Products, repair, lack of maintenance or incorrect installation.
- 6.11 If the Customer follows directions and instructions given by Cabcon A/S's staff members or vendors concerning storage, application or use of the Product or any other matters that have been given orally only, the Customer acts at his own risk and Cabcon A/S cannot be made liable for any damage or loss as a result of this.
- 6.12 If a third party advances a claim against Cabcon A/S as a result of errors and defects in Products delivered by Cabcon A/S to the Customer, the Customer must indemnify Cabcon A/S from the amount that Cabcon A/S would then have to pay in damages to a third party.
- 6.13 Products delivered by Cabcon A/S are covered by a guarantee only if this is stated specifically by Cabcon A/S in the acknowledgement of order.
- 6.14 Any guarantee that may be printed on the packaging of Products, be enclosed or appear in any other way cannot be regarded as a guarantee given by Cabcon A/S, and the Customer cannot rely on such a guarantee in relation to Cabcon A/S.
- 6.15 Cabcon A/S's liability for damage to or errors and defects in Products delivered is limited to what is set out above and the Customer is not entitled to any other compensation on account of damage, errors and defects.

## **7 Product liability**

In so far as nothing else is provided for by mandatory statutory provisions, the following applies regarding product liability:

- 7.1 Cabcon A/S is liable for personal injury caused by the Product only if it can be proved that the injury is due to errors or omissions committed by Cabcon A/S or others for whom Cabcon A/S is responsible.
- 7.2 Cabcon A/S is not liable for damage to personal or real property caused by the Product which occurs while the Product is in the Customer's possession. If the Product is in Cabcon A/S's possession, Cabcon A/S is liable for such damage if it can be proved that the damage is due to errors or omissions committed by Cabcon A/S or others for whom Cabcon A/S is responsible.
- 7.3 Cabcon A/S is not liable for damage to products manufactured by the Customer or to other products in which products manufactured by the Customer form part.
- 7.4 Cabcon A/S assumes no liability for loss of profit, loss of earnings or any other indirect loss as a result of an injury or damage caused by a defective product.
- 7.5 If a third party advances a claim for damages for an injury or damage caused by a defective product against the Customer and/or Cabcon A/S, the party concerned is obliged to inform the other party of this immediately.
- 7.6 Cabcon A/S and the Customer are under a mutual obligation to submit to the institution of legal proceedings at the court that deals with a claim for damages advanced against Cabcon A/S and/or the Customer owing to an injury or damage caused by a defective product.
- 7.7 In so far as product liability is imposed on Cabcon A/S in relation to a third party, the Customer is obliged to indemnify Cabcon A/S to the same extent as Cabcon A/S's liability in relation to the Customer is limited in pursuance of this item 7.
- 7.8 These limitations in Cabcon A/S's liability do not apply if Cabcon A/S is guilty of gross negligence.

## **8 Force majeure**

- 8.1 Cabcon A/S is not liable if, after the conclusion of the agreement, circumstances occur that prevent the performance of the agreement or make the performance of the agreement unpredictably onerous. Such circumstances include, but are not limited to, labour disputes, war, sabotage, fire, water damage, burglary, regulatory procedures, errors, defects, delay in energy supply, telephone connection or other communication, in transport or in the performance of sub-suppliers or any other matters that are beyond the control of Cabcon A/S or of the sub-supplier.
- 8.2 Both Cabcon A/S and the Customer are entitled to cancel the agreement by written notice to the other party within a reasonable time when performance of the agreement becomes unpredictably onerous or impossible on account of a circumstance mentioned in item 8.1 above.

## **9 Limitation of liability. Statute-barring**

- 9.1 Irrespective of any other terms in these terms of sale and delivery, Cabcon A/S's liability for any reason is limited to the invoice value or DKK 500,000, whichever is the larger.
- 9.2 All claims arising from Cabcon A/S's sale and delivery of Products are statute-barred 12 months after they arose.

## **10 Governing law and jurisdiction**

- 10.1 All legal matters between Cabcon A/S and the Customer are governed by Danish law with the exception of the conflict of laws rules of Danish law. The Convention on Contracts for the International Sale of Goods, CISG, does not apply.
- 10.2 Disputes are to be settled at the Maritime and Commercial Court in Copenhagen. Should the Maritime and Commercial Court reject hearing the case, it is to be settled by the Copenhagen City Court.