

## **GENERAL CONDITIONS 2021**

### **For the Supply of Products and Services by TDK Foil Italy**

The present General Conditions shall apply to all purchases made by Purchaser from TDK Foil Italy S.p.A. (hereinafter referred also to as “**TDK Foil Italy**”).

These General Conditions may not be added to, modified, superseded or otherwise altered, except by a written document signed by TDK Foil Italy.

In addition, general terms and conditions used by Purchaser, printed on his purchase order or other purchasing documents are hereby refused and cannot, in whole or in part, apply to any purchase order accepted by TDK Foil Italy.

TDK Foil Italy herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as “**Documents**”). The Documents shall not be made accessible to third parties without TDK Foil Italy’s prior written consent and shall, upon request, be returned without undue delay to TDK Foil Italy if the contract is not awarded to TDK Foil Italy. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser’s Documents; these may, however, be made accessible to those third parties to whom TDK Foil Italy has rightfully subcontracted Supplies.

Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.

#### **1. Order acceptance.**

1.1. Purchase orders shall be binding upon TDK Foil Italy only if and when accepted by TDK Foil Italy in writing, by telefax or by electronic mail.

#### **2. Delivery dates.**

2.1. Times set for Supplies shall only be binding if all Documents to be furnished by Purchaser, necessary permits and approvals are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled; if these conditions are not fulfilled in time, the times set shall be reasonably extended.

2.2. If non-observance of the times set is due to:

- a. Force Majeure (as defined below);
- b. virus attacks or other attacks on TDK Foil Italy’s IT systems occurring despite protective measures were in place that complied with the principles of proper care;
- c. hindrances attributable to Italian or otherwise applicable national, EU or international rules of foreign trade law or other circumstances which TDK Foil Italy is not responsible for; or
- d. the fact that TDK Foil Italy does not receive its own supplies in due time or form such times shall be extended accordingly.

2.3. If TDK Foil Italy is responsible for the delay (hereinafter referred to as “**Delay**”) and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.2 % for every completed week of Delay, but in no case more than a total of 2 % of the price of this part of the Supplies which due to the Delay could not be put to the intended use.

2.4. Purchaser’s claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in section 2.3 above are excluded in all cases of delayed Supplies, even upon expiry of a time set to TDK Foil Italy to effect the Supplies; This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health.

2.5. Rescission of the contract by the Purchaser based on statute is limited to cases where TDK Foil Italy is responsible for the delay.

2.6. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

2.7. At TDK Foil Italy’s request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.

2.8. If dispatch or delivery, due to Purchaser’s request is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged for every additional month commenced, storage costs of 0.2 % of the price of the items of Supplies, but in no case more than a total of 2 %; The parties to the contract may prove that higher, or, as the case may be, lower storage costs have been incurred.

#### **3. Receiving supplies.**

3.1. The Purchaser shall not refuse to receive Supplies due to minor defects.

#### **4. Force majeure.**

4.1. TDK Foil Italy shall not be held responsible for any delay or failure to deliver caused by force majeure including but not limited to fire, strikes, lock-out, embargoes, government requirements, civil or military authorities orders, acts of God or by public enemy, wars, political events, revolutions, terrorism, civil war, major difficulties in raw material procurement, failures

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of carriers or other circumstances beyond TDK Foil Italy's control ("Force Majeure). In the event of delay due to Force Majeure, time for delivery shall be extended by a period of time equal to the Force Majeure situation and Purchaser shall not be entitled to refuse delivery or otherwise be relieved of any contractual obligation except that Purchaser may withdraw from the contract, if the Force Majeure situation lasts more than 3 months and manufacturing of the products has not yet started.

**5. Technical specifications, appearance.**

- 5.1. Products delivered will have the specifications mentioned in TDK Foil Italy's catalogue or in the specification sheets provided by TDK Foil Italy.
- 5.2. Products, i.e. aluminum foils for electrolytic capacitors have a typical appearance due to the characteristics of material and production processes and certain variations of color, small spots, fine stripes, powder of oxides, may be present but do not affect the quality or the performance of the foil delivered.

**6. Warranty.**

- 6.1. TDK Foil Italy warrants that all products sold by it hereunder shall meet or be within the technical specifications of TDK Foil Italy's catalogue or specification sheets provided by TDK Foil Italy.
- 6.2. TDK Foil Italy warrants, for a period of 12 months from the date of shipment to the original Purchaser, that the products supplied shall be free from defects in workmanship or material.
- 6.3. If any product is defective in workmanship or material or fails to meet the technical specifications of TDK Foil Italy referred to in the purchase order, Purchaser shall immediately inform TDK Foil Italy; in such case and if TDK Foil Italy is responsible for the above mentioned defects or the failure to meet the technical specifications of TDK Foil Italy referred to in the purchase order, Purchaser's sole and exclusive remedy under the present warranty shall be, at TDK Foil Italy's sole option, replacement of the defective product within a reasonable period of time or refund to the Purchaser of such part of the invoiced price relating to the defective goods, as already paid by Purchaser.
- 6.4. Unjustified notifications of defect shall entitle TDK Foil Italy to demand reimbursement of its expenses by the Purchaser.
- 6.5. There shall be no claims based on defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract or from non-reproducible software errors, or if the products have not been handled or stored as indicated below (section 12) or otherwise prescribed in TDK Foil Italy's catalogue or technical specification; claims based on defects attributable to improper modifications, repair work carried out by the Purchaser or third parties and the consequences thereof, incorporation of the products in Purchaser's own products or reselling of the products are
- 6.6. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
- 6.7. The warranties set forth in this section are exclusive and in lieu of all other warranties, whether statutory, express or implied and the warranties of merchantability and fitness for a particular purpose and all other warranties arising from course of dealing or usage of trade are hereby excluded.

**7. Remedies.**

- 7.1. The remedies provided above are Purchaser's sole and exclusive remedies for failure of TDK Foil Italy to comply with its contractual obligations.
- 7.2. Correction of the non-conformities in the manner and for the period of time provided herein shall constitute complete fulfillment of TDK Foil Italy's contractual obligations regarding defective products, whether the claims by the Purchaser are based in contract, in tort (including negligence) or any other legal reason.
- 7.3. In no event, shall TDK Foil Italy be liable for any claims when products have been resold or processed.
- 7.4. Except as provided herein, neither party shall be entitled to recover any direct, incidental, special or consequential damages of any kind, as a result of the contract entered into between TDK Foil Italy and purchaser.

**8. Inspection of products.**

- 8.1. Products must be inspected within 7 days after arrival at their destination(s) to determine any damages occurred during transportation.
- 8.2. Regarding products which do not comply with TDK Foil Italy's technical specifications as referred to in the purchase order, any defects must be notified as soon as discovered by the Purchaser, but in no event later than 6 months after the date of shipment.
- 8.3. Purchaser's notice shall be addressed to the TDK Foil Italy company invoicing the products and must state:
  - a. the invoice number;

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- b. the number of the order;
  - c. the shipment number;
  - d. the foil serial number;
  - e. the foil type;
  - f. the reasons of the claim;
  - g. the quantity of defective goods;
  - h. the box number.
- 8.4. Moreover, if requested, Purchaser must send TDK Foil Italy a specimen of the defective product. With such information, TDK Foil Italy will open a separate claim file identified by reference code, which will be communicated to the Purchaser; all further correspondence and other communications between TDK Foil Italy and the Purchaser must always mention the number of said reference code; TDK Foil Italy will review Purchaser's claim in order to determine and evaluate the defects as rapidly as possible; If so requested by TDK Foil Italy, Purchaser will give TDK Foil Italy's representatives the opportunity to inspect the defective products at Purchaser's site; Purchaser shall not return any products before TDK Foil Italy has agreed to the terms of such restitution.

#### **9. Terms of payment.**

- 9.1. Terms of payment shall be as stated in TDK Foil Italy's acceptance of the purchase order.
- 9.2. Unless otherwise agreed in writing by TDK Foil Italy, payment shall be made by irrevocable letter of credit issued by a first-class bank, all charges paid.
- 9.3. Purchaser waives all rights of set-off or retention of any payment due to TDK Foil Italy on the ground that Purchaser may have a claim against TDK Foil Italy.
- 9.4. If Purchaser fails to make payment in accordance with the terms stated in the contract or in the acceptance of the purchase order, TDK Foil Italy shall be entitled to interest on any amount due and unpaid at the rate of LIBOR plus 3% for three months facilities in the payment currency; if Purchaser fails to pay sums owing to TDK Foil Italy when due, because he is insolvent, has been declared in bankruptcy or has a receiver, trustee or similar officer appointed as a custodian of his assets, TDK Foil Italy shall have the right to request that Purchaser provides adequate security for the payment of all sums due in connection with deliveries already made or deliveries to be made; if, within 15 days from such request Purchaser fails to provide said security, TDK Foil Italy shall be entitled to cancel the contract(s) and collect damages for non-performance of the contract.

#### **10. Prices.**

- 10.1. Unless otherwise indicated, prices are according to agreed delivery terms; value added tax shall be added at the then applicable rate.

#### **11. Retention of title.**

- 11.1. All products supplied by TDK Foil Italy hereunder shall remain TDK Foil Italy's property until all the payments have been done.
- 11.2. The Purchaser shall inform TDK Foil Italy forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide TDK Foil Italy with the information and/or Documents necessary to assert the claims it has against its customers.
- 11.3. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations TDK Foil Italy shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by TDK Foil Italy; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that TDK Foil Italy takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless TDK Foil Italy expressly so declares.

#### **12. Storage and handling.**

- 12.1. The products shall be stored in a dry and cool place (indications are below 35° C and relative humidity below 85%).
- 12.2. It is recommended that the products be stored in their original packaging and that they be protected from direct sunlight, oil, humidity, chemical solvents or cleaning agents, as well as dust, ash, etc.; furthermore, the products shall not be touched with bare hands, as this may cause corrosion or other negative effects.
- 12.3. The products shall also be handled carefully to avoid mechanical defects.
- 12.4. Failure to take such precautionary measures may affect technical specifications and performance of electrolytic capacitors.

#### **13. Delivery and passing of risk.**

- 13.1. Unless otherwise specified in the acceptance of the purchase order, the products will be delivered FCA European Port (Free Carrier, Incoterms 2010).
- 13.2. Unless otherwise specified in writing, transport shall be by land or sea; air transportation may be requested by Purchaser who shall bear the additional costs.

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- 13.3. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser at the time when it is shipped or picked up by the carrier.
- 13.4. Upon the Purchaser's request, TDK Foil Italy shall insure the delivery against the usual risks of transport at the Purchaser's expense.

**14. Industrial property rights and copyrights; defects in title.**

- 14.1. Unless otherwise agreed, TDK Foil Italy shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only.
- 14.2. If a third party asserts a justified claim, against TDK Foil Italy based on an infringement of IPR by the Supplies made by TDK Foil Italy and used in conformity with the contract, TDK Foil Italy shall be liable to the Purchaser within the time period stipulated in section 6.1 as follows: TDK Foil Italy shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them.
- 14.3. The above obligations of TDK Foil Italy shall apply only if the Purchaser:
- I. immediately notifies TDK Foil Italy of any such claim asserted by the third party in written form,
  - II. does not concede the existence of an infringement and
  - III. leaves any protective measures and settlement negotiations to TDK Foil Italy's discretion.
- 14.4. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 14.5. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.
- 14.6. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by TDK Foil Italy or by the Supplies being modified by the Purchaser or being used together with products not supplied by TDK Foil Italy.
- 14.7. In addition, with respect to claims by Purchaser pursuant to section 14.1 (a) above, section 6, subsection 6.1 shall apply *mutatis mutandis*.
- 14.8. Where other defects in title occur, section 6 shall apply *mutatis mutandis*.
- 14.9. Any other claims of the Purchaser against TDK Foil Italy or its agents or any such claims exceeding the claims provided for in this section 14, based on a defect in title, shall be excluded.

**15. Conditional performance.**

- 15.1. The performance of this contract is conditional upon that no hindrances attributable to Italian or otherwise applicable national, EU or international rules of foreign trade law or any embargos or sanctions exist.
- 15.2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

**16. Applicable laws and disputes.**

- 16.1. This agreement and all those related to this are governed by and shall be construed with substantive and procedural laws of Italy, excluding international treaties to which Italy is a party and also excluding the rules of Italian International Private Law.
- 16.2. Any disputes in connection with this agreement shall be submitted to the Court of Milano, Italy, that has the exclusively jurisdiction.

**17. Severability clause.**

- 17.1. The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions.
- 17.2. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

**18. Ethic Code and "Organization, Management and Control Model".**

- 18.1. In case the Purchaser do not have an Ethic Code and the General part of the "Organization, Management and Control Model" based on the Italian Law Decree D.Lgs. 231/2001, will be applicable the following clauses.
- 18.2. Purchaser declares to have carefully read the Ethic Code and the General part of the "Organization, Management and Control Model" of TDK FOIL ITALY's based on the Italian Legislative Decree 231/2001, published on its website at the following address "www.TDK Foil Italy.eu", and declares to accept all the principles and the rules set out in those documents.
- 18.3. Purchaser commit itself to comply its activity with the principles and the rules of the TDK FOIL ITALY's Ethic Code, those of the General part of the "Organization, Management and Control Model" and the rules of Law Decree D.Lgs. 231/2001.
- 18.4. Purchaser commit itself to give instructions to its employees and consultant about the principles and the rules of the TDK FOIL ITALY's Ethic Code and the "Organization, Management and Control Model".

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