

# GENERAL TERMS AND CONDITIONS OF SALE

General Sale Conditions applicable to 1<sup>st</sup> September 2020  
Please consult our General Sale Conditions on [www.fsh-welding.com](http://www.fsh-welding.com)

## 1. APPLICABILITY

**1.1.** These General Terms and Conditions of Sale ("*Terms & Conditions*") govern the terms applicable to all sales of all products ("*the Products*") of SELECTARC and all subsidiaries of the group to a third party ("*the Customer*"). These Terms and Conditions are the basis for the commercial relations. These Terms & Conditions take precedence over all prior correspondence, negotiations and agreements, whether written or verbal, and over the Customer's general terms of purchase. Except in the event of a prior, written agreement between SELECTARC and the Customer, only these Terms & Conditions shall apply to all orders and/or sales, whatever they may be, of SELECTARC to the Customer.

SELECTARC reserves the right to alter these general terms and conditions subject to notifying the Customer one (1) month prior to their application. The contract consists of the following documents by order of importance:

- the order confirmation ;
- the special terms and conditions of sale ;
- the general terms and conditions of sale ;
- the specifications.

Any additions, changes or modifications by the Customer shall be deemed unwritten, unless there is a prior written consent.

**1.2.** Prices and information contained in the catalogues, brochures and price lists are only provided for informational purposes, and SELECTARC reserves the right to make changes to the forms, shape, sizes and material of its Products, instruments, machines and machine parts, of which illustrations and descriptions appear in its printed material for publicity purposes.

**1.3.** These Terms & Conditions apply to every order placed on SELECTARC by the Customer from 1<sup>st</sup> September 2020 ("*the Effective Date*"), which the Customer irrevocably acknowledges and accepts. Acceptance of quotations and order acknowledgments by the Customer from that date implies the full and entire application of these terms and conditions.

## 2. ORDER

### 2.1. Validity of the order

To validly place an order after the Effective Date of these Terms & Conditions, the Customer must previously have sent SELECTARC these Terms & Conditions duly signed by it. Failing which, any order by the Customer after the Effective Date of these Terms & Conditions cannot be accepted unless and until the Customer irrevocably acknowledges and accepts them. By its signature to these Terms & Conditions the Customer irrevocably acknowledges and accepts that these Terms & Conditions shall apply to all orders placed after the Effective Date of the Terms & Conditions. In addition, to be valid any order from the Customer to SELECTARC must be in writing (including e-mail and fax). Similarly, any telephone order by the Customer, in order to be valid, must be confirmed to SELECTARC in writing, under the same terms at the latest the working day following the said telephone order.

Any order placed or confirmed in writing shall be valid only if it includes the following information:

- name and address of Customer;
- billing address;
- Product(s) ordered;
- quantity per Product(s) ordered;
- collection or full delivery address;
- collection date or delivery date.

Every order must be confirmed:

- by email sent to: [info@selectarc.com](mailto:info@selectarc.com) ; or
- by fax sent to: +33 (0) 3 84 23 57 90 ; or
- by mail sent to:  
SELECTARC  
12 Rue Juvénal Viellard  
90600 GRANDVILLARS (France).

### 2.2. Irrevocable order

Any order complying with the provisions of clause 2.1 sent to SELECTARC shall be firm and definitive unless within three (3) working days from the day following receipt of the said order, SELECTARC :

- requests from the Customer additional information (to that stipulated in clause 2.1 above) that SELECTARC deems necessary for the performance of the said order; and/or
- informs the Customer that its order cannot be fulfilled in whole or in part.

Failing provision by the Customer in writing (e-mail or fax) to SELECTARC within eight (8) days of its request for all the additional information sought by SELECTARC, the Customer irrevocably acknowledges and accepts that SELECTARC can cancel the order in writing (including by e-mail or fax) without the Customer being able to claim any form of compensation.

Any order that has become firm and definitive can only be altered following written agreement between both parties concerning the new terms, in particular in respect of prices and delivery times.

### 2.3. Tolerance regarding the delivered quantities

The invoicing unit of the electrodes, solid wires, cored wires and brazing consumables is the kilogramme (Kg), thousand pieces (MI) or box (ET).

The Customer nevertheless acknowledges that on account of the methods of determining the quantity of the Products, which is by weight, and since the delivered finished Product varies in weight, SELECTARC employs a tolerance between the weight shown on the packaging and the actual weight delivered of + or - 10%.

Whether the delivery is agreed in weight or number of items, the Customer also acknowledges that on account of the constraints of production, SELECTARC reserves the right to deliver an amount that is markedly different from what is stated in the order. This tolerance, which could be + or - 10% of the quantity, will accordingly vary the total amount to pay.

## 3. FINANCIAL CONDITIONS

### 3.1. Price

The prices of Products are set by the effective price list at date of order and are always shown exclusive of VAT and freight charges and without discount. The effective price list of the Products is provided upon request of the Customer.

## 3.2. Invoicing

The Customer acknowledges and accepts that the total price shall be set as a function of the cost of the raw materials included in the Products. This cost may vary during performance of the contract. The final price shall accordingly be fixed at time of invoicing the Customer, which is on date of dispatch.

If the total amount of the order is below a certain limit defined in an addendum to this document, a minimum invoicing surcharge shall be applied. The invoices issued by SELECTARC are sent to the customer by postal mail or electronically.

In case of e-mailing, the invoice and the present Terms and Conditions are attached to the email and sent to the email address communicated by the customer to SELECTARC.

### 3.3. Payment

Unless previously agreed between the parties, any invoice issued by SELECTARC must be paid in full within 45 (forty-five) days of end of month OR 60 (sixty) calendar days from date of invoice.

Any clause or request that seeks to set a payment date that is later than this maximum time, which represents best practice in this profession, shall be deemed a violation of Article L.442-6-1-7 of the Commercial Code and may be subject to a fine of up to EUR 2 million. In accordance with Article L.441-3 of the Commercial Code, payment has not been made until actual availability of the monies.

Unless otherwise expressly agreed by the parties, payment dates cannot be delayed for any reason, including in the event of a dispute. In addition, in accordance with law no. 2012-387 of 22 March 2012, applicable from 1 January 2013, any late payment automatically provides from the first date following the payment date stated on the invoice, for:

- 1/ Lateness penalties.  
Lateness penalties shall be set by applying the refinancing rate of the European Central Bank plus ten points.
- 2/ A fixed compensation for recovery charges, of EUR 40 (Article D 441-5 of the Commercial Code).

Under the same article of the Commercial Code, when the recovery charges incurred are greater than this fixed compensation, the supplier is justified in demanding supplementary compensation.

### 3.4. Late payment

The Customer irrevocably acknowledges and accepts that failure to pay in full an invoice that has come due implies:

- the immediate payment of all amounts remaining due by the Customer to SELECTARC, irrespective of the payment method at due date;
- application of lateness penalties in accordance with Law no. 2008-776 of 4 August 2008 until full payment, without any final demand being required to activate payment, at the most recent refinancing rate of the European Central Bank plus ten (10) points with a minimum of three (3) times the legal interest rate, with said lateness penalties becoming effective on the day following the payment date of the invoice. These lateness penalties shall have invoices raised for them pro-rata to the period of delay;
- application of damages for compensation equal to ten percent (10%) of the unpaid amount in the event of legal proceedings following a final demand sent to the Customer that remains unanswered after eight (8) days following date of first presentation;
- the option for SELECTARC to suspend any current or future delivery.

## 4. DELIVERY

Unless there are previously agreed contrary contractual provisions between the Customer and SELECTARC, the Products are made available to the Customer for collection by the latter by its own means from the premises of SELECTARC.

Delivery times are shown for informational purposes only and cannot justify the cancellation of the order by the Customer or provide the grounds for a withholding, penalty, compensation or damages.

Unless by prior agreement, deliveries are made Ex-Works, a place defined in the special terms and conditions, in accordance with the Incoterms published by the International Chamber of Commerce, 2010 edition. Delivery is deemed to have been made upon availability at the factories or stores of SELECTARC, with all transportation, insurance, customs clearance, handling and preparation for being put into work at the responsibility, cost and risks of the Customer.

It is the responsibility of the Customer to check the deliveries upon arrival, and if applicable to take steps against the transporters, even if the shipping was pre-paid (franco). No Products can be returned by the Customer without the prior written agreement of SELECTARC concerning the return and the terms of the return of said Products. Any Product for which complaints have not been made by registered mail together with notice of receipt within two (2) days of receipt by the transporter, with a copy sent at the same time to SELECTARC under the same conditions, shall be deemed to have been definitively accepted by the Customer, it being stipulated that damaged or missing Products must be the subject of an immediate complaint by the Customer to the transporter.

## 5. TRANSFER OF OWNERSHIP AND RISKS

Transfer of ownership of the Products takes place upon customisation of the Products at the warehouses of SELECTARC or of its subcontractors. Transfer of risks takes place when they leave the warehouses / stores of SELECTARC or of its subcontractors.

## 6. WARRANTIES

Without derogation from any provision of the special terms and conditions of sale, Products that have been ordered are warranted against any design fault that affects them during a minimum period of twelve (12) months from date of receipt by the Customer. No warranty shall be offered in the event of an external cause not the responsibility of SELECTARC such as wrong use or storage of the Products, or normal wear and tear.

## 7. COMPLIANCE

Products delivered are in compliance with the quality and the quantity stipulated in the specification and the Customer order, considering information described in clause 2.3. In the event of non-compliance claimed by the Customer, it must issue a notice of non-compliance upon receipt of the Products, and make available the non-compliant Products for inspection. In the event of agreement between SELECTARC and the Customer concerning the dispute, the Customer is entitled to demand replacement of the non-compliant Products, delivery of the missing quantities or the issue of a credit note.

## 8. RESERVE OF OWNERSHIP

Transfer of ownership of the Products is suspended until payment in full of their price has been made by the Customer, of the principal and incidental costs, even in the event of a grant by SELECTARC of payment terms. SELECTARC may activate the rights it enjoys under this clause of withholding of ownership for any of its debts receivable, for all the Products in the Customer's possession, which for contractual purposes are deemed to be unpaid. SELECTARC may take them back or claim them as compensation for any of its unpaid invoices, without derogating from its right of cancellation of current sales.

## 9. INTELLECTUAL PROPERTY

Performance of an order does not imply any transfer of intellectual property rights held by SELECTARC to the Customer and in particular of any trademark of its Products.

## 10. FORCE MAJEURE

The following are deemed cases of force majeure or acts of God: events independent of the wishes of the parties, that they cannot reasonably have been expected to foresee, avoid or overcome, insofar as their occurrence makes the fulfilment of the obligations completely impossible.

The following are contractually deemed to be cases of force majeure or acts of God that release SELECTARC from its obligation to deliver the Products within the times stated or agreed: a strike by all or part of SELECTARC's personnel, fire, flood, war, sabotage, attack, road blocks, strike or interruption in the supply of energy, threats, acts of government, faults in the telecommunications systems. In this case SELECTARC shall advise the Customer in writing (including fax or e-mail) within forty-eight (48) working hours from date of occurrence of such an event that the sales contract is automatically suspended, without compensation, from the date of occurrence of the event.

If the event lasts longer than thirty (30) days from date of occurrence, the sales contract between SELECTARC and the Customer can be terminated by either party, without any claim to damages or compensation. Such termination shall take place at the date of first presentation of the registered letter terminating the said sales contract.

## 11. WAIVER

The fact that SELECTARC at any given time does not make use of any of the provisions of these Terms & Conditions shall not be deemed a waiver of making use of them in the future.

## 12. TERMINATION

This contract may be automatically terminated for non-performance by the Customer of one of its contractual obligations within thirty (30) calendar days, without derogating from the right to damages and to the suspension of any current or future delivery. This contract may be terminated by the Customer after a final demand has remained unanswered for thirty (30) calendar days for non-performance by SELECTARC of one of its contractual obligations.

## 13. DISCLAIMER

The responsibility of SELECTARC is strictly limited to its obligation of warranty as defined. It is limited, in all cases with the exception of bodily harm and gross negligence, to direct physical damage and in all circumstances to the amounts charged under the contract.

There shall be no compensation, including for intangible or indirect damage including in particular loss of profits, operating losses, loss of productivity, loss of revenues, third-party claims etc.

The Products delivered comply with the regulations that apply to them and with the technical standards for which SELECTARC has explicitly declared conformity.

The Customer is responsible for making use of the Product under the normal conditions of use and in compliance with current safety and environmental legislation at the place of use as well as with engineering rules and supplier's recommendations.

In particular, it is the Customer's responsibility to select Product suited for its technical requirements, and if necessary to check with SELECTARC as to the suitability of the Product for the planned application.

## 14. APPLICABLE LAW & JURISDICTION

These Terms & Conditions are governed and interpreted in accordance with French law, in application of the Vienna Convention dated 11 April 1980 concerning the international sale of goods.

In the absence of an out of court settlement between the parties within thirty (30) days, any dispute arising out of the inception, interpretation, performance and/or termination of this document, for whatsoever reason, shall be subject to the exclusive jurisdiction of the Commercial Court of the head office or to the arbitration court of the International Chamber of Commerce, Paris, notwithstanding any contrary contractual provision of the Customer, which irrevocably acknowledges and accepts such. The arbitration ruling shall be final and its performance shall be immediately binding on the parties. Only French law shall be applicable to the contract.