

# Stadler Form Aktiengesellschaft - Standard Terms and Conditions of Sale

## **Stadler Form Aktiengesellschaft Standard Terms and Conditions of Sale**

### **1. Scope of application**

The following standard terms and conditions of sale ("Standard Terms and Conditions of Sale") shall apply exclusively to the entire current and future legal relationship between Stadler Form Aktiengesellschaft ("Stadler") and the authorized dealer / distributor ("Distributor") regarding the purchase of Stadler's products ("Products"). The Distributor, upon placing an order and at the latest upon taking receipt of the delivery of the Products ordered, acknowledges and agrees that these Standard Terms and Conditions of Sale are binding upon it. The German version shall be binding regardless of any translation of these Standard Terms and Conditions of Sale into other languages.

### **2. Conclusion of contract**

Any statements made in catalogues, Stadler's website or other advertising material provided by Stadler shall not constitute a binding offer. The Distributor submits a binding offer by placing an order. A contract will come about only by Stadler confirming (including via email) the order in writing (which, as the case may be, could be directly in the form of the invoice) and each contract shall be exclusively governed by the content of the confirmation of order and/or these Standard Terms and Conditions of Sale.

### **3. Delivery periods/dates**

3.1 Delivery periods stated by Stadler shall be deemed approximate target dates. Delays in delivery may occur in particular as a result of bottlenecks in production. Stadler uses its best efforts to observe a delivery period of one week (for deliveries EXW Switzerland) or two months (for deliveries FOB China).

3.2 The Products shall be loaded and shipped uninsured at the risk of the Distributor. The risk of accidental deterioration and the accidental loss of the Products shall pass to the Distributor as soon as the Products are handed over to the Distributor, in case of a shipment of the Products at the time when the Products are handed over to the freight forwarder or any other person who is in charge of the shipment. This applies also in case the cost in relation to shipment is paid by Stadler.

### **4. Payment terms**

4.1 All invoices of Stadler are generally issued in Swiss Francs or in the currency determined in the confirmation of order.

4.2 All prices are exclusive of taxes, customs duties and charges, flat charges for packaging and shipping, pre-paid disposal fee and any other charges.

4.3 For deliveries EXW Switzerland, the payment term is thirty (30) days after receipt of invoice without any deduction by the Distributor.

4.4 For deliveries FOB China, 20% of the invoice amount are due upon placing the order, 80% of the invoice amount are due upon the delivery of the shipping documents. Should these payments due dates lapse without the payment obligation being satisfied, default shall be deemed to have occurred without a reminder.

4.5 The Distributor shall not be entitled to offset any counterclaims, unless its counterclaim is uncontested or has been established as final and binding and no longer subject to ordinary legal remedies.

### **5. Quality and warranty**

5.1 Stadler warrants solely that the Products are of the agreed-upon quality upon the passing of risk.

5.2 Defects shall be remedied by Stadler at its option by rectification of the defect free of charge to the Distributor, delivery of replacement free from defects, or by a credit for the reduced value due to the defect. All other warranty claims are excluded. Stadler shall be liable to compensate the Distributor only in case of damage caused intentionally or by gross negligence on the part of Stadler. Any other compensation for damages (including, but not limited to, any and all claims for consequential damages and loss of profit) is excluded.

5.3 Warranty claims become time-barred after two years after delivery.

5.4 Limitations to the liability of Stadler shall also apply to any personal liability of employees, representatives and auxiliary persons.

### **6. Product liability/product safety**

6.1 The Distributor shall indemnify and hold Stadler harmless from and against any product liability claims to the extent the Distributor is responsible for the malfunction triggering the liability.

6.2 The Distributor is obligated to forward to Stadler without delay (but no later than within 5 business days) any feedback, complaints or claims from customers to the extent they relate to a manufacturing defect or the safety of the Products.

6.3 The Distributor is obligated, where possible, to register each purchaser of Products on the basis of the serial number (which includes obtaining any required privacy statement for the processing of data by the Distributor and Stadler) in order to transfer the contact data (in particular for a potential recall) to Stadler. The Distributor shall

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receive a separately defined compensation for this service from Stadler. In performing the contract, the Distributor shall strictly comply with all applicable data protection laws and regulations and the Distributor shall immediately inform Stadler in case of any breach of such laws regarding the Products.

6.4 The Distributor is obligated to notify Stadler in writing without delay of any potential manufacturing defects or safety risks determined as part of inspections.

6.5 The Distributor shall inform Stadler in advance of any communication with any authority, and after having been informed of measures taken by such authority and changes of rules and regulations governing product safety and liability.

6.6 The Distributor is obligated to fully cooperate with Stadler for any measures taken by Stadler in the area of product safety (e.g. recall) and to participate in any of those measures.

### 7. Obligations regarding distribution

7.1 The Distributor warrants to provide expert advice to customers by specifically trained personnel, high quality product presentation, and professional service in respect of sales and repairs.

7.2 Small repairs not exceeding 3% of the value of the item shall be performed by the Distributor on its own account. Stadler shall assume the costs for larger-scale repairs if Stadler is under a warranty obligation pursuant to Clause 5 hereof and the relevant statutory provisions.

7.3 The Distributor may be assigned a territory for exclusive distribution under a separate agreement ("Territory"). The Distributor undertakes that it will not actively engage in sales outside the Territory. Stadler reserves all other territories to itself or has assigned or will assign them to other distributors, respectively. The Distributor is therefore obligated to refrain from soliciting customers for the Products and from establishing branch offices or distribution centers outside the Territory.

7.4 Stadler shall support the Distributor's marketing efforts by making product information and digital images of Products available and relating information about distribution experience in other countries.

7.5 The Distributor shall treat any and all information received orally or in writing from Stadler as confidential and shall use such information for contractual purposes only.

7.6 Stadler expressly reserves all proprietary rights and copyrights as well as any other intellectual property rights in and to all technical documentation as well as any means of sales support. These items shall be returned to Stadler upon its request. Any and all intellectual property rights (including, but not limited to, trademark and domain rights) in connection with "Stadler Form" shall directly accrue to

Stadler or shall be transferred by the Distributor to Stadler upon first request, as applicable.

### 8. Obligation of transfer

In the event that the Distributor sells Products to other distributors, it must impose the obligations of the Distributor in accordance with these Standard Terms and Conditions of Sale to the purchasing distributor. This shall include, but is not limited to, the obligations regarding product liability, product safety (Clause 6) and the sales obligations (Clause 7; including the prohibition of active sale outside the Territory pursuant to Clause 7.3). The obligation regarding repairs pursuant to Clause 7.2 shall be exempt from such transfer. The Distributor shall assume this obligation to carry out repairs exclusively, even in cases where it sells Products to other distributors.

### 9. Miscellaneous

9.1 Any assignment of rights or obligations the Distributor has vis-à-vis or to Stadler shall be subject to the prior written consent of Stadler. In the event of non-compliance with this provision, Stadler reserves the right to rescind the contract and/or claim damages by notifying the Distributor thereof in writing.

9.2 Any amendments of and supplements to the contract and/or these Standard Terms and Conditions of Sale, as well as any side agreements, must be made in writing. This shall also apply to any alteration of this written form requirement.

9.3 Should any of the provisions of the contract and/or these Standard Terms and Conditions of Sale be entirely or partially invalid, the remainder of the provisions shall not be affected thereby. The parties agree that in such case they will replace the invalid provision by a valid one that matches the economic purpose of the invalid provision to the closest possible extent.

9.4 **Exclusive place of jurisdiction** for all disputes arising from or in connection with the contractual relationship if **Zug, Switzerland**. Stadler shall also be entitled to use the Distributor's place of business as an alternative place of jurisdiction.

9.5 **Swiss substantive law** shall apply without regard to conflict of laws rules, including, but not limited to, the United Nations Convention on Contracts for the International Sale of Goods (CISG).