

# Terms and Conditions

## **1. General:**

These General Terms and Conditions apply to all orders and are an integral part of Boreasa offers (quotations) and order confirmations. Quotations and order confirmations refer to the current version of the General Terms and Conditions on the Internet ([www.boreasa.com](http://www.boreasa.com)) or will be supplied to the customer together with the above mentioned documents and are considered accepted if not rejected immediately.

Deviations from these General Terms and Conditions and/or any supplementary and ancillary agreements are only valid if explicitly confirmed by us in writing (mail, fax or e-mail). The remaining unchanged General Terms and Conditions are not invalidated by such modifications. Any general conditions of the customer are not binding on us even if we do not expressly reject them.

No person is authorized to make any changes or alterations in the "Terms and Conditions" and any attached specifications, without Seller's prior written approval, given at its principal office, or without the prior written approval of Seller's designated sales engineer. No person is authorized to assume for Seller any liability, express or implied, except as set forth herein.

## **2. Prices:**

Unless otherwise agreed by Boreasa in writing, all prices for the Products are in US Dollars and subject to change without prior notice; provided that once an Order is accepted by Boreasa the price set forth in the Order may not be changed except by mutual agreement of both parties in writing. Prices in catalogs or brochures are not binding until confirmed in writing by Boreasa. Unless otherwise agreed in writing between the parties, all prices are net, ("ExWorks" per Incoterms 2010) and exclusive of packaging, transport, delivery, assembly, installation, and other costs.

## **3. Orders/Contract:**

**3.1.** Orders for standard products may be cancelled by Buyer, either in whole or part, only with Seller's prior written consent and upon such terms and conditions that will indemnify and protect Seller against all loss, including without limitation cancellation charge comprising all costs and expenses incurred by Seller in processing the order to the date of cancellation. Seller may permit Buyer to reschedule date of delivery, but only in the event Seller has received a written requirement for such change 90 days prior to the originally scheduled delivery date.

**3.2.** If any goods sold hereunder must be manufactured especially for Buyer to meet Buyer's particular specifications or requirements, and such order is suspended or

cancelled by Buyer, Buyer will take delivery of and make payment for such goods as have either been completed or are in the process of manufacture on the date notice of suspension or cancellation is received by Seller: provided, however, that if Buyer for any reason cannot accept delivery of such goods, Buyer will make payment therefor as if delivery had been made and Seller shall store such goods for Buyer's account and at Buyer's sole risk and expense. With respect to any such goods, Buyer shall defend, protect and hold harmless Seller against all suits and from all damages, claims and demands for actual or alleged infringement or any United States or foreign patent or trademark resulting from the manufacture or sale of such goods.

**3.3.** This contract is not assignable without written permission from Seller; any attempt to assign by rights, duties or obligations which arise under this contract without such permission will be void and of no effect.

**3.4.** The following special conditions apply for staged orders. i) Staged orders are non-cancellable. ii) The total quantity must be released within 12 months of first delivery. Maximum time between shipments: 60 calendar days. iii) Delivery dates must be specified on Purchase Order. Delivery dates must be confirmed 3 months in advance, or the preliminary date from the Purchase Order will be used. iv) Minimum lead-time is 4 weeks if delivery dates are pulled in. v) Minimum shipment: The larger of: one twelfth (1/12) of Purchase Order total quantity or 25 units. If more than 12 shipment per year are scheduled, additional packing and handling will be charged. vi) Staged orders are only available for international order if a deposit of 30% of total order is made with PO. This deposit will be counted against the last 30% parts delivered. vii) If the Buyer delays shipments past 12 months after first delivery, the Seller is entitled to invoice the difference between the price of the goods at the quantity delivered, and the price already invoiced. Such invoice is due immediately. The remainder of the Purchase Order is still valid and expected to be delivered within 1 year thereof, at the price corresponding the remainder of the Purchase Order quantity. No further postponement will be accepted.

**3.5.** Stenographic and clerical errors are subject to correction by Seller, but the contract shall not otherwise be modified or rescinded except by a writing signed by both Buyer and Seller or in accordance with the terms set forth herein.

#### **4. Delivery:**

**4.1.** Customer understands that all shipping and delivery dates are tentative. Nevertheless, Boreasa shall at all time use reasonable commercial efforts to meet all shipping and delivery dates. For our compliance with these dates, the customer must timely provide us with all necessary documents, customer supplied parts etc. All dates are valid subject to adequate time extension due to unforeseeable circumstances which are beyond our control such as force majeure, strike, or total or partial destruction of the manufacturing facility. Any liability as a result of exceeding the

delivery date is waived by the customer. Exceeding the delivery date does not authorize the customer to cancel his order.

**4.2.** The illustrations and drawings in Seller's catalogues and specification sheets are intended to show the general features of the goods therein described, but Seller reserves the right to furnish goods of the latest design and construction. Such illustrations and drawings shall not give rise to any warranty, and normal tolerances and specifications shall be accepted by Buyer.

**4.3.** Except as otherwise specified in these Terms, the Products shall be sold and delivered EXWORKS (per Incoterms 2010), Boreasa's facility in Tianjin, China or any of Boreasa representatives if the delivery is made from their facilities. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to any common carrier at such facility.

**4.4.** In no event shall any loss, damage, injury or destruction operate in any manner to release Customer from the obligation to make payments required herein. Boreasa shall not be liable for any delay or failure to perform in whole or in part, caused by any "Force Majeure." Force Majeure, as used herein, shall include but not be limited to governmental prohibition, restriction or other action, fire, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies and raw materials from third-party suppliers or subcontractors (for any reason), delays in transportation, civil unrest, hostilities or war or other causes beyond Boreasa's control whether or not similar to those mentioned herein.

**4.5.** If Customer fails to accept delivery due to reasons beyond Boreasa's control, Customer shall nonetheless make payment to Boreasa. If Customer wrongfully rejects or revokes acceptance of the Products or fails to make payment due on or before delivery, or repudiates all or part of the contract for the Products shipped, Boreasa may withhold delivery, or stop delivery of the Products, cancel any or all contracts with Customer and/or sue for damages at Boreasa's exclusive option. If Customer causes a delay in the delivery of the Products or any part thereof, Boreasa, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes Boreasa substantial inconvenience, Boreasa has the right to stop delivery of the Products whose delivery is delayed, cancel any or all contracts with Customer and/or sue for damages at Boreasa's exclusive option. In addition, Boreasa reserves the right to recoup any expenses incurred by Boreasa as a result of such delays.

**4.6.** If the goods have been manufactured or purchased prior to receipt of a hold notice from Buyer, or if Buyer has failed to provide timely shipping instructions or for any reason cannot accept delivery of the goods, the goods shall be held in storage and, at Seller's option, storage charges will be borne by Buyer. In such circumstances, the order will be invoiced as of the date to goods are placed in storage, and storage charges will be at the rate of 2% per month of the total invoice amount.

**4.7.** Boreasa shall have the right to make partial deliveries as necessary. Partial deliveries are considered as stand-alone deliveries with respect to the duty of payment, the transfer of risk as well as representations and warranties.

**4.8.** Boreasa reserves the right to make changes and modifications to the Products at any time. Delivery of such changed or modified Products shall be permitted to the extent that the changes and modifications have no material impact on the nature and use of the Products.

## **5. Customer Supplied Parts:**

We examine parts supplied by the customer only with respect to the dimensions which are of importance for the correct operation of our products. Otherwise, the customer assumes the responsibility for the dimensional accuracy and the functionality of the parts supplied. If we recognize any defects, we will immediately inform the customer.

## **6. Tools:**

Tools and devices for which we charge costs remain our property. We undertake to use these tools and devices exclusively for the orders of the customer. If the customer does not place repeat orders within five years after the last delivery, we are authorized to dispose of the tools and devices or to destroy them unless there is a specific agreement to the contrary.

## **7. Assumption of Risk / Transport:**

The risk passes to the customer after the products have been taken from stock and prepared for delivery at our facility In Tianjin, China, or any of our representative if shipped though them. Transportation shall be at Customer's expense. At the customers request we organize transport. If the customer does not timely notify us of any specific instructions, we determine the manner, way, carrier and carrier insurance for transport at our absolute discretion. Boreasa shall not be liable for any costs of transportation including without limitation, charges incurred at the point of destination such as spotting, storage, switching, drayage, demurrage, pier loading charges, etc. Insurance for the Products during transport shall be the sole responsibility of the Customer. The customer must address any complaints with respect to transport immediately to the last carrier.

## **8. Taxes:**

The amount of any sales, use or other tax or duty, however designated and whether Federal, state or municipal, levied or based on the price of the Products and payable or required to be collected by Boreasa shall be added to the price quoted and billed to and paid by Customer as if originally included herein. Irrespective of whether such

tax or duty has been added to the Price Customer shall reimburse Boreasa therefore. If Customer claims an exemption from such tax or duty Customer shall provide Boreasa with appropriate exemption certificates or other documents acceptable to Boreasa in its sole discretion.

## **9. Terms of Payment:**

**9.1.** Unless otherwise agreed to in writing between Boreasa and Customer, payment is due at time of shipment. For international customer (customers ordering from or when shipment is to be International), payment is due by Wire before shipment. For customers on a 30 day open account, the payment is due within thirty (30) days from date of invoice. Payment must be made by Customer when due without offset, deduction or counterclaim regardless of any claim by Customer.

**9.2.** If Buyer fails to fulfill the terms of payment of any invoice or if the financial responsibility of Buyer shall become impaired or unsatisfactory to Seller, or if necessitated by any acts or requirements of any governmental authority, Seller reserves the right to change the terms of payment, to require full payment in cash before making shipment, and/or to defer or discontinue further shipments, without prejudice to any other lawful remedy, until any past due payments are made and satisfactory assurances of Buyer's credit standing are received by Seller, or until such acts or requirements of such governmental authority shall have been complied with. Seller also reserves the right in the case of any of the foregoing events to cancel the contract, in which event Buyer shall compensate Seller for any commitments, obligations, expenditures, expenses and costs Seller may have incurred in connection with the contract. Seller may charge Buyer interest at 1-1/2% per month (18% per annum) on any past due payments from the due date until paid or collected, together with all costs and expenses of collection including attorneys' fees. The foregoing rights are without prejudice to any other lawful remedy, including, without limitation, the right to reclaim any material received by Buyer on credit while insolvent. Each shipment by Seller shall be considered a separate transaction and if payment is not received therefor within the period specified herein, Seller may bring a separate suit to recover the contract price of each such shipment.

## **10. Credit:**

Each delivery to be made to Customer shall be subject to receipt of cash or availability of credit arrangements made by Customer with Boreasa. If payment is not made in accordance with these Terms, or if at any time in Boreasa's sole and absolute judgment Customer's credit standing has been impaired, Boreasa may withhold or defer delivery of any Products to be sold hereunder until satisfactory cash or credit arrangements have been made. If Customer fails, neglects or refuses to pay or provide Boreasa with credit arrangements satisfactory to Boreasa in its sole and absolute discretion, or to comply with these Terms or the terms of any credit arrangement, then

Boreasa may, without waiving any other remedies it may have against Customer, terminate any agreement then in place without further liability on Boreasa's part.

## **11. Security Interest:**

**11.1.** As security for the timely payment and performance of all amounts due by Customer to Boreasa, Customer hereby grants to Boreasa a first priority security interest (the "Security Interest") in the Products following delivery thereof to Customer (the "Collateral"). The Security Interest shall remain in force until payment in full of the entire purchase price for the Products and any other amounts due to Boreasa by Customer.

**11.2.** If requested by Boreasa, Customer shall deliver to Boreasa, in form and substance satisfactory to Boreasa, and duly executed as required by Boreasa, financing statements and other security interest perfection documentation in form and substance satisfactory to Boreasa, duly filed under the UCC in all jurisdictions as may be necessary, or in Boreasa's opinion, desirable, to perfect Boreasa's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect Boreasa's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Boreasa's security interest.

## **12. Inspection and Testing:**

Customer shall perform a visual inspection of the Products **within eight (8) days of delivery** to verify there has been no obvious external damage during shipment and that all ordered units have been delivered. In the event Customer's visual inspection reveals any external damage or that the products delivered do not match the type or quantity ordered, Customer shall notify Boreasa within eight (8) days of delivery. Prior to any application of any Product, Customer shall test the suitability of such Product for the application.

## **13. Product Warranty:**

**13.1.** Seller warrants to the original Buyer that the goods identified on the quotation hereof will be free from defects in materials and workmanship for a period of one year from the date of shipment from plant, and that Seller will repair or, at Seller's option, replace, without charge (except for shipping and insurance costs), any part it has manufactured or supplied which upon Seller's examination proves to have been defective. Seller reserves the right to charge Buyer a handling and examination fee equal to 20% of the total product invoice amount with respect to goods which, upon testing, are found to be non-defective.

**13.2.** Some products have a limited life due to the technology employed. The Average life of these products is indicated on their respective spec sheets as MTTF (Mean Time To Failure), and the warranty is limited to the length of the average life.

**13.3.** The foregoing warranty is subject to the proper storage, transportation, installation, use, and absence of any modification, or alteration of the Products. This warranty shall not apply to any component upon which any serial number has been altered, defaced or removed. All warranty claims must be made by Customer to Boreasa in writing no later than ten (10) days after the discovery of the defect giving rise to the claim. Warranty claims may be brought after the end of the Warranty Period only if the defect giving rise to the claim was discovered prior to the end of the Warranty Period.

**13.4.** This warranty may not be assigned or transferred and no allegedly defective part may be returned to Seller without its prior written authorization.

**13.5.** Unless expressly warranted in Boreasa's order confirmation, Boreasa makes no warranty that the Products comply with applicable law, regulations or specifications in any jurisdiction in which the Products may be sold or marketed in any jurisdiction. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Products shall be the sole responsibility of the Customer.

**13.6.** The warranties herein above set forth are in lieu of all other warranties, express or implied, and all other obligations or liabilities on the part of the Seller, and Seller neither assumes nor authorizes any person to assume for it any other obligation or liability in connection with the warranted goods or any part thereof, Seller does not warrant the fitness of such goods or any part thereof for any specific purpose or the merchantability thereof.

#### **14. Returns:**

Goods may not be returned to Seller without Seller's prior written authorization, and all returns must be shipped pre-paid. Non-defective goods which have been returned to Seller for credit (with Seller's prior written authorization) shall be subject to a restocking charge. Such charge shall be equal to 20% of the total product invoice amount with respect to such goods.

#### **15. Indemnification**

**15.1.** Subject to the limitations set forth in these Terms, Customer agrees to diligently defend, and to hold harmless and indemnify, Boreasa and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "Boreasa Indemnitees") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs,

expert's fees and costs, and court costs, and in each case as such costs are incurred (the "Losses") (i) due to any use of the Products, whether authorized or unauthorized, and irrespective of whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery, except to the extent such Losses have been incurred as a direct result of a breach of Boreasa's warranty, Boreasa's willful and knowing infringement of the intellectual property rights of any third party, or Boreasa's gross negligence or willful misconduct, or (ii) arising out of any breach or misrepresentation of any of Customer's representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated, or (iii) arising out of the improper storage, handling, transportation, modification or alteration of the Products by the Customer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of the Customer; provided that Customer shall not be required to indemnify any Boreasa Indemnitee to the extent Boreasa shall be required to indemnify any Customer Indemnitee pursuant to Section 15.2.

**15.2.** Subject to the limitations set forth in these Terms, Boreasa agrees to diligently defend, and to hold harmless and indemnify, Customer and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "Customer Indemnitees" and together with the "Boreasa Indemnities," each an "Indemnitee" and, collectively, the "Indemnitees") from and against any and all Losses arising out of (i) Boreasa's strict liability, negligence or willful misconduct, or (ii) any breach or misrepresentation of any of Boreasa's representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated; provided that Boreasa shall not be required to indemnify any Customer Indemnitee to the extent Customer shall be required to indemnify any Boreasa Indemnitee pursuant to Section 15.1.

**15.3.** Each Indemnitee shall promptly notify a party that may have indemnification obligations under this Section (the "Indemnitor") of any claim, suit or proceeding; provided, however, that any failure by such Indemnitee to provide prompt written notice hereunder shall excuse the Indemnitor only to the extent that the Indemnitor is prejudiced by such failure to give notice. The Indemnitee shall cooperate with the Indemnitor with regard to the defense of any suit or threatened suit. The Indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the Indemnitor shall obtain the Indemnitee's prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by the Indemnitor, its insurers, and parties other than any Indemnitees.

**15.4.** The Indemnitor shall notify an Indemnitee in writing within [10] days of the Indemnitor's receipt of knowledge of any accident or safety incident involving the Products which results in personal injury or damage to property, or any government or



similar investigation, claim or inquiry involving the Products. The Indemnitor shall fully cooperate with each Indemnitee in the investigation and determination of the cause of any such accident or incident, and shall make available to each Indemnitee all statements, reports and tests made by the Indemnitor or made available to the Indemnitor by others. The furnishing of such information to an Indemnitee and any investigation by an Indemnitee of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by an Indemnitee, nor shall it affect the indemnification obligations above.

**15.5.** Customer represents and warrants that it has in place customary insurance and liability waivers to cover the use and operation of the Products by Customer's personnel, customers, and third party users, and Boreasa represents and warrants that it has in place the necessary insurance to cover product liability. In addition, each of Boreasa and Customer represents and warrants to the other that it maintains customary insurance to support the indemnification obligations assumed by it in these Terms.

## **16. Limitation of Liability:**

**16.1.** Except as otherwise expressly set forth herein, Customer's exclusive remedy for defective or non-conforming Products shall be, at Boreasa's sole and exclusive option, the repair or replacement of the Products.

**16.2.** To obtain repairs under warranty, Products or components must be shipped, freight paid, to Boreasa, according to instructions given by Boreasa. Upon repair or replacement of the defective or non-conforming Products, Boreasa shall have no further obligation to Customer with respect to such defect or nonconformity. Transportation charges for the return of Products shall not be paid unless authorized in advance by Boreasa.

**16.3.** Boreasa shall not be liable for, and Customer assumes responsibility and holds Boreasa harmless for, all personal injury and property damage resulting from the handling, possession, use or resale of the Products by Customer, whether the Products are used alone or in combination with other products or equipment.

**16.4. Absent its gross negligence or willful misconduct, Boreasa shall not be liable for damages arising out of or in connection with any Products that exceed the purchase price of such Products.** It is agreed and acknowledged that the provisions of these Terms allocate the risks between Boreasa and the Customer in a fair and equitable manner, Boreasa's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Boreasa would not have entered into these Terms.

**16.5.** In no event shall either party be liable to any person for indirect, incidental, consequential, punitive or other non-compensatory damages (including but not limited

to loss of profits or goodwill, or additional expenses incurred), whether pursuant to a claim in contract, tort or otherwise and whether in an action for breach of warranty or otherwise.

**16.6.** In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.

### **17. Proprietary Information:**

All estimate of costs, layouts, models, designs, sketches drawing blueprints and patterns incorporated in the Products or otherwise provided to Customer are the proprietary information of Boreasa. They are considered as personally entrusted to the customer. All our rights (inclusive copyrights) remain fully valid and enforceable. The customer is not authorized to distribute any parts of such documents to any third party or to copy or use them beyond the scope of the delivery to the customer. All such documents must be returned immediately to us if so requested. If the customer does not place an order, the documents must be returned immediately without further request. Customer agrees not to disclose or utilize any such information nor to manufacture or have manufactured any products which are the same as or similar to any Products.

### **18. Miscellaneous:**

**18.1.** This contract shall be governed by the laws in effect in the People's Republic of China. Any litigation arising from a dispute hereunder shall be instituted and maintained only in a state or federal court located in the People's Republic of China, and Buyer hereby agrees to submit to the jurisdiction of said court. All disputes and/or legal proceedings related to these Terms shall be maintained in the courts located in Tianjin, People's Republic of China. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.

**18.2.** If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or

unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

**18.3.** In the event of a violation or threatened violation of Boreasa's proprietary rights, Boreasa shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Boreasa would suffer irreparable harm.

**18.4.** Customer may not assign its order or any right or interest therein or any other obligation arising hereunder without the prior written consent of Boreasa.

**18.5.** The waiver by Boreasa of any breach or violation of these Terms by Customer shall not be construed as a waiver of any other existing or future breach or breaches by Customer.

**18.6.** The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.

**18.7.** These Terms shall apply to all sales of Products to Customer and shall survive the termination or cancellation of any other agreements, including but not limited to development or supply agreements, between Boreasa and Customer.