



ERQ105 ed02

1. Acceptance of terms

1.1. The Terms and Conditions of Sale (collectively "Terms of Sale") contained herein constitute the agreement between Oxxius S.A, including its subsidiaries, (collectively "Oxxius") and you ("Customer").

1.2. Except where these conditions are varied under section 2 thereof, and apart from existing non-disclosure agreements, these Terms of Sale shall be the exclusive and complete statement of the terms of agreement between Customer and Oxxius. Oxxius will not be bound by any terms of Customer's order that are inconsistent with the terms herein.

1.3. Customer's failure to dissent to the Terms of Sale in writing within five (5) days of receipt of these, or Customer's acceptance of the Product shall constitute acceptance by Customer of the Terms of Sale.

2. Variations

No variation of, or additions to the Terms of Sale shall be effective unless in writing and signed for and on behalf of Oxxius. Such written variations shall take precedence over any conflicting terms contained herein.

3. Products

3.1. "Products" shall mean any products identified on any of Oxxius proposals or quotations or any of Oxxius invoices.

3.2. Alterations to any Product which Oxxius deems necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by Oxxius without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.

4. Quotation and prices

4.1. All quoted prices are valid for fifteen (15) days from the date of quotation.

4.2. Delivery conditions are EXW (Incoterms 2000) Oxxius factory in Lannion, France.

4.3. Unless stated in a variation, all prices are exclusive of taxes and all handling and other charges including without limitation insurance, brokerage fees, custom duties, license fees, transportation or special packaging. If Oxxius, in its sole discretion, decides to pay such expenses, they shall be charged to Customer as a separate invoiced item.

4.4. Title to Products shall pass from Oxxius to Customer upon delivery to the shipping carrier.

4.5. Any tax or other charge which Oxxius is liable to collect on behalf of any governmental authority ("Taxes") as a result of the sale, use or delivery of Products, including without limitation, duties, value added and withholding taxes, is the responsibility of the Customer, and if paid by Oxxius shall be reimbursed in full by Customer.

4.6. Prices quoted are for the Products and services described on the face hereof only and do not include technical data, qualification tests, environmental tests or other than Oxxius' standard tests unless expressly agreed to in writing by Oxxius.

5. Orders

5.1. Customer shall purchase Products by issuing a written purchase order signed by an authorized representative, indicating specific Products reference, quantity, price, total purchase price, shipping instructions, requested delivery date, bill-to and ship-to addresses, tax exempt certifications if applicable, and any other special instructions.

5.2. All orders are subject to acceptance by Oxxius, who will accept or reject orders according to its processes. No form of acceptance except Oxxius' written acknowledgment sent to Customer or Oxxius' commencement of performance shall constitute a valid acceptance of Customer's order.

6. Shipping

6.1. Oxxius will attempt to meet shipment schedules. However, shipment and delivery dates are estimates only. Oxxius will not assume liability, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason, including its active or passive negligence.

6.2. Delivery shall be deemed made upon transfer of possession to the carrier at the EXW point. Risk of loss or damage to the Products shall therefore pass to Customer at said transfer point, and any loss, confiscation or damage thereafter shall not relieve Customer from any payment obligation.

6.3. If Oxxius organizes the transportation of Products as per section 4.3, unless given explicit instructions in writing, Oxxius shall select the means of transportation, routing and carrier. The carrier shall not be deemed an agent of Oxxius.

6.4. If requested so under section 4.3 and unless otherwise advised, Oxxius may insure to full value of the Products or declare full value thereof to the transportation company at the time of delivery.

7. Payment Terms

7.1. Upon credit approval by Oxxius, payment terms shall be net thirty (30) days from the date of the invoice.

7.2. Oxxius reserves the right to require alternative payment terms including, without limitation, letter of credit or payment in advance.

7.3. Except as otherwise specified, all payments shall be made by wire transfer in Euros.

7.4. Partial shipments shall be treated as a separate transaction and payment thereof shall be made accordingly. However, in the event Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, Oxxius may decline to make further shipments without in any way affecting its rights under any order.

7.5. Payments not received when due may be subject to an additional charge of the lesser of one and a half percent (1.5%) per month or the maximum rate permitted by law, computed from the payment's due date to the date of effective payment.

7.6. Oxxius reserves a purchase money security interest in the Products sold hereunder and the proceeds thereof (including insurance proceeds), in the amount of the purchase price, until Customer has paid said purchase price in full. Customer shall cooperate fully with Oxxius to execute such documents and to accomplish such filings and/or recordings thereof as Oxxius may deem necessary to protect and perfect Oxxius' security interest.

7.7. Customer, at its expense, shall fully insure Products against all loss or damage until Oxxius has been paid in full thereof, or the Products have been returned, for whatever reason, to Oxxius.

7.8. In the event of default by Customer on any of its obligations to Oxxius, Oxxius will have the right to repossess the goods sold hereunder without liability to Customer. In such event, Customer agrees to make the Products available to Oxxius so that Oxxius can repossess them without a breach of the peace.

8. Inspection and acceptance

8.1. Failure of the Customer to inspect the Products and give written notice to Oxxius of any alleged defect or nonconformity to specifications within ten (10) days after receipt of Products at Customer's "ship-to" address shall constitute an irrevocable acceptance by Customer of the Products delivered to him

8.2. Notwithstanding any defect or nonconformity, or any other matter, risk of loss and damage shall remain in Customer until the Products are returned to such places as Oxxius may designate in writing. Customer shall at its expense fully insure Products against all loss or damage until the Products have been returned.

8.3. Notwithstanding the foregoing, use of the Products by Customer, its agents, employees or licensees, for any purpose after delivery thereof, shall constitute acceptance of the Products by Customer.

9. Terminations

9.1. Termination of any Customer's order shall be subject to a written acceptance by Oxxius.

9.2. Any order for a Product accepted by Oxxius and terminated by Customer prior to shipment, may be subject to a termination charge of not less than ten percent (10%) of the order value to cover all costs incurred by Oxxius, including the cost of all labor and material used, expenses and charges and a reasonable allocation of general and administrative expenses.

9.3. If the financial conditions of the Customer at any time is such as to give Oxxius, in its judgment, reasonable grounds for insecurity concerning Customer's ability to perform its obligations under these Terms of Sale, Oxxius may cancel, by written notification to Customer, the Customer's orders, without judicial intervention or declaration of default of Customer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Oxxius.

10. Returns

10.1. Oxxius will only accept Products returned under the Oxxius Return Material Authorization process ("RMA"). Prior to returning any Product, Customer shall obtain a RMA number from Oxxius, which Oxxius shall provide promptly upon request, by providing in writing an itemized statement of claimed defects. Customer shall be responsible for freight and insurance for returned Products, unless agreed otherwise in writing. Customer shall take steps to ensure a suitable packaging is used to return said Product under RMA.

10.2. Any Product which has been returned to Oxxius but which is found to meet the applicable specifications for the Products and not defective in workmanship and material, shall be subject to Oxxius' standard examination charge in effect at the time which shall be charged to the Customer.

11. Limited Warranty

11.1. Notwithstanding any provision to the contrary, Oxxius' sole and exclusive obligations to the Customer for any Product made by Oxxius and sold hereunder are to repair returned Product or provide a replacement Product, at Oxxius' sole option, for any Product which has been returned to Oxxius under the RMA procedure as per section 10.1 and which in the reasonable opinion of Oxxius is determined to be defective in workmanship, material or not in compliance with the mutually agreed written applicable specifications and has in fact failed under normal use on or before one (1) year from the date of original shipment of the Product.

11.2. All third parties' Products (including software) sold by Oxxius carry only the original manufacturer's warranty applicable to Customer. Oxxius will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party.

11.3. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product.

11.4. Oxxius reserves the right, at its sole option, to issue a credit note for the purchase price of any defective Product, as an alternative to repair or replacement.

11.5. The warranty provided herein shall extend to any Product which has failed through normal use, but excludes and does not cover any Product or parts thereof which has been accidentally damaged, misused, used in applications which exceed the Product specifications or ratings, neglected, operated in violation of the operating instructions (as specified in the applicable manuals), improperly installed or maintained or otherwise abused or is used in hazardous activities. The warranty does not apply to any Product that has been disassembled, altered or modified.

11.6. All claims must be made under the name of Customer; no claim will be accepted from any third party.

11.7. The foregoing warranty is exclusive and in lieu of all other warranties whether written, oral or implied, including any warranty of fitness for a particular purpose, and shall be the Customer's sole remedy and Oxxius' sole liability on contract or warranty or otherwise for the product.

12. Limitation of liability

EXCEPT FOR THE WARRANTIES STATED HEREIN FOR THE CUSTOMER, NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESS, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION:

(A) THAT THE PRODUCTS WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, OF THIRD PARTIES; OR

(B) THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF OXXIUS IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT. OXXIUS SHALL NOT BE LIABLE TO THE CUSTOMER, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, LOSS OF DATA, PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. FOR PURPOSES OF THIS PROVISION, OXXIUS INCLUDES OXXIUS' DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS. IN NO EVENT SHALL THE TOTAL COLLECTIVE CUMULATIVE LIABILITY OF OXXIUS, ITS EMPLOYEES, OFFICERS, AGENTS AND DIRECTORS EXCEED THE AMOUNT PAID TO OXXIUS FOR PRODUCTS FROM WHICH SUCH LIABILITY AROSE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE MOST RECENT CLAIM.

13. Export controls

13.1. Customer shall obtain all licenses, permits and approvals required by any government and other competent authorities relating to the sale and destination of the Products, and comply with all applicable laws, rules, policies and procedures applicable to such sale.

13.2. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products to territories and countries prohibited by applicable laws of applicable government and authorities, including without limitation the United States Government

13.3. Customer will defend, indemnify and hold Oxxius harmless for any damages or costs to Oxxius arising from Customer's failure to comply with these terms.

14. Intellectual property rights

14.1. All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works, or other forms of intellectual property, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Oxxius solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, whether or not invoiced, shall belong to and be the sole and exclusive property of Oxxius.

14.2. Customer shall not infringe nor make any unauthorized use of any intellectual property rights owned by or licensed to Oxxius, including but not limited to, patent rights and trademarks. In particular, the Customer shall not reverse-engineer, manufacture (directly or indirectly) and/or copy or replicate any Product.



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14.3. Customer agrees not to remove, alter, erase, deface or cover over any markings on the Product or its packaging.

15. General terms

15.1. The validity, interpretation and performance of these terms of sales shall be governed by and construed under the applicable laws of France. Any dispute arising under this Agreement arising from, or in connection with this Agreement and its implementation shall be settled by the Tribunal de Grande Instance of Guingamp.

15.2. Oxxius shall not be liable for any delay or failure in performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, explosion, epidemics, or other occurrences beyond Oxxius' reasonable control or due to unforeseen circumstances.

15.3. Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of Oxxius. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

15.4. In the event that any of the terms of these terms of sales, apart from payment, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these terms of sales shall remain in full force and effect.

15.5. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.