

**GENERAL TERMS & CONDITIONS OF SALE**  
**For all Business Transactions with Sempertrans USA, LLC ("STUS")**  
**As of May 2020**

**1. General**

- 1.1 These General Terms and Conditions of Sale ("GTC") shall govern the entire business relationship between STUS and the customer for the sale of conveyor belts ("Product") as specified in STUS' confirmation orders. **Any deviating provisions in an order from customers ("Purchase Order") or otherwise presented by a customer shall be ineffective even if STUS does not raise an express objection.**
- 1.2 A Purchase Order from a customer made to STUS is not binding on STUS unless STUS acknowledges such Purchase Order in writing ("Confirmation"). Such Confirmation shall always be subject to this GTC unless the Parties agree otherwise in writing. The Confirmation and this GTC comprises the entire agreement between the parties and supersedes the terms of any prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. **For avoidance of doubt, this GTC prevails over any other terms and conditions regardless of whether or when a customer has submitted its Purchase Order or such terms. Fulfillment of a customer's order does not constitute acceptance of any other terms and conditions and does not serve to modify or amend this GTC.**
- 1.3 Mailing of STUS' price list shall not be construed to be an offer from STUS.
- 1.4 Instructions/information related to the Product, as provided by STUS in communications, instructions for use, or other product information shall be strictly complied with by customers in order to prevent damage. **STUS expressly warns customers against any use or treatment of the products not specifically authorized by STUS. Any such impermissible use could result in serious physical injury or death to personnel operating the Product or damage to the Product.** Customers shall ensure that any third party buying from them or other users will be instructed concerning the above restrictions, at the risk and cost of the customer.
- 1.5 Customers shall have the right to inspect the Product at the plant of production while the Products are being produced so long as reasonable notice is given and written approval from STUS is received. Customers shall have five (5) business days after delivery to reject the Product for cause. Failing a valid rejection, customers are deemed to have accepted the Product five (5) business days after delivery.
- 1.6 Unless expressly agreed otherwise in writing, STUS shall be entitled to assign any agreement between STUS and customer to any other production site that is a member of the Semperit Group without the customer's approval.
- 1.7 Cancellation by a customer of any Purchase Order, once Confirmation is given by STUS, is not allowed.

**2. Terms of delivery**

- 2.1 Deliveries will be made and invoiced in accordance with STUS' Confirmation.
- 2.2 Delivery of Product by STUS shall be in accordance with STUS' Confirmation.
- 2.3 Partial shipments shall be permitted.
- 2.4 Risk shall pass to a customer upon delivery of the Product pursuant to Section 2.2 above.

**3. Packaging**

- 3.1 STUS shall, at its own expense, package the Product in a manner appropriate for their transport, unless the customer has notified STUS of specific packaging requirements before the contract of sale is concluded and such packaging is mutually agreed upon in writing, in which case the additional cost of packaging shall be borne by the customer.
- 3.2 No packaging of any kind will be taken back by STUS unless specifically agreed in writing.
- 3.3 In case STUS has agreed in writing to take back packaging, customer must return such packaging in perfect condition with freight prepaid to the plant of dispatch.

#### **4. Delivery periods**

- 4.1 STUS undertakes to observe the delivery schedule as set forth in the relevant contract of sale or Confirmation, so long as full payment has been received, there is an undisturbed course of production and delivery, and subject to Section 4.3 below.
- 4.2 Subject to the delivery terms set out in STUS' Order Confirmation, if delivery of the Product is delayed for any reason caused by the customer, STUS may request storage, extra handling and caretaking fees of 0.5% of the Product's value or the actual costs, whichever is higher. Should such request be made, payment can be demanded immediately after five (5) business days from the initially confirmed delivery date or from the time such delay of the Product occurs. This remedy shall not be exclusive and the proof of a higher damage and STUS' statutory rights (e.g., reimbursement of extra expenditures, adequate compensation, cancellation) shall not be affected.

#### **5. Passing of Property**

- 5.1 It is the express intention of STUS and the customer that the title to the Product shall pass to the customer only upon receipt of full payment by STUS.
- 5.2 Without prejudice to the transfer of title under Section 5.1 above, pursuant to this GTC, should delay be the fault of the customer, the customer shall continue to bear the risk for the Product immediately upon delivery of the Product (including partial shipment) to the customer in accordance with the agreed delivery terms.

#### **6. Retention of title**

- 6.1 As stipulated in Section 5 above, STUS will retain title to all Product until receipt of full payment of the amounts invoiced.
- 6.2 If the Products, which are the property of STUS, are mixed, blended, or combined with other items, the Customer shall be deemed to assign its ownership rights or co-ownership rights to such other items to STUS and shall hold STUS' Products in custody for STUS (exercising customary commercial care).
- 6.3 The customer may only sell Products, which are the property of STUS, in the ordinary course of business, provided that the customer is not in default of payment to STUS. If full payment has not yet been received by STUS, the customer may only sell the Product if advanced written approval is received from STUS. Should the customer sell the Product before receiving prior written permission from STUS, the following condition applies:
- 6.4 The customer shall: (i) assign to STUS all funds and all rights to funds from the customer's sale of the Product; and (ii) notify the purchaser of the Product of the fact of such assignment. Any consent provided by STUS to the customer for sale of unpaid Product shall automatically expire if bankruptcy or insolvency proceedings are commenced by or against the customer.

#### **7. Rights of STUS**

- 7.1 STUS, as the unpaid seller of Product, has the following rights, among others:
  - (a) Stopping the Product in transit after STUS has parted with the possession of the Product to the extent permissible by applicable law if the customer is in default of payment, bankrupt, or insolvent;
  - (b) A right of resale as permitted by applicable law;
  - (c) A lien on the Product for the price while it is in the customer's possession;
  - (d) All rights granted under the applicable laws.

#### **8. Terms of payment**

- 8.1 Unless otherwise agreed in writing, the selling prices of STUS as well as all offers, and calculations shall be considered net amounts in US Dollars.

- 8.2 In the case of unforeseeable increases in the cost of labor, raw materials, energy, or production, STUS will be entitled to adjust the prices accordingly as of the date of production.
- 8.3 Payment terms shall be subject to the terms of STUS' Confirmation unless otherwise agreed in writing.
- 8.4 Employees and agents of STUS will only be authorized to accept payments if they are expressly authorized to do so. STUS shall not be liable for interest on advance payments and payments on account.
- 8.5 The customer shall not be entitled to any retention or set-off of any claims whatsoever against STUS.
- 8.6 The customer shall transfer payments into the account advised by STUS at the customer's risk and cost.
- 8.7 Acceptance of a promissory note in lieu of payment shall require advanced written consent from STUS.
- 8.8 If the Customer is in default of payment, STUS shall be entitled to charge default interest at the highest rate of interest allowed by the applicable law. In addition, the defaulting customer shall bear any and all collection charges, investigation and information charges incurred in connection with collection of the outstanding accounts receivable from the customer. STUS shall have the right to systematically charge the customer for each collection letter, interest invoice, or any other costs arising from the customer's default in payment.

## 9. Insurance

- 9.1 The Customer shall obtain a suitable insurance coverage in amounts equal to the value of the Product from the time the risk therein passes to it, pursuant to this GTC.

## 10. Taxes & Duties

- 10.1 The Customer shall bear the taxes/duties leviable on the sale of the Product including Value Added Tax, Sales Tax, Use Tax, Import Tax, Custom Duties, etc.

## 11. Warranty

- 11.1 STUS warrants that the material and workmanship of the Product are free of defects ("Warranty") subject to normal course of production. In particular, rubber properties are subject to ageing and depend on storage and operating conditions. State-of-the-art release agents (e.g. Silicon-Paper or spunbond non-woven fabrics) are used when manufacturing the Products. Surface polishing (e.g. by grinding machine) as well as online repairs according to the internal regulations may be carried out for surface enhancement. The Warranty further specifically excludes any damage, deterioration, wear or tear caused by any party other than STUS such as but not limited to:

- (a) ordinary wear and tear (e.g. abrasive wear);
- (b) mechanical damages such as ripping, gouging, tearing, e.g. caused by conveying material, conveyor structure, foreign objects, improper loading conditions or by use of damaged or improper auxiliary devices e.g. scrapers;
- (c) improper maintenance including but not limited to damaged idlers, pulley laggings, mistracking, carry-back material, improper cleaning;
- (d) improper conveyor design, improper conveyor belt selection, or defects in the conveyor installation;
- (e) any misuse, negligent use, or any use that deviates from Sempertrans' General Terms of Use (available [HERE](#));
- (f) incorrect storage or handling, improper installation procedures, damages from the installation, supervision or ineffective maintenance,
- (g) abnormal or unforeseen operating conditions (humidity, temperature, climate, etc.);
- (h) any other improper operation whatsoever, whether of a similar or different nature to the above with respect to the conveyor belt sold to the Customer pursuant to this GTC.
- (i) The Warranty for the Product, subject to the conditions set out in paragraph 11.1, shall be effective for a period of 12 months from the date of delivery of the Product to the customer ("Product Warranty Period").

- (j) STUS warrants that the splicing kits provided with the Product, as well as the material of the splicing kits, shall work with the Product for the specific purpose of splicing the Product so long as the splicing kits are stored, handled, and used in accordance with Sempertrans' General Terms of Use.
- (k) The Warranty for the Splicing Kits, subject to the conditions set out in this Section 11, shall be effective for a period of six (6) months from the date of delivery of the splice kit to the customer ("Splice Kit Warranty Period"). For avoidance of doubt, the Warranty does not cover any consequential damages and is limited solely to the costs of the Splicing Kits themselves.
- (l) In the event the Customer demonstrates within the Product or Splice Kit Warranty Period that failure of the Product was the direct result of defects in the materials or workmanship ("Warranty Claim"), STU shall decide whether to:
  - i. repair the Product; or
  - ii. replace all of the Product or the damaged part of the Product for a net price to the Customer ("P") equal to:

The retail price of the Product or replacement part(s) of the Product at the time of the Warranty Claim ("A") multiplied by the quotient of the number of days of relevant Warranty Period that have expired prior to the customer's Warranty Claim ("N") divided by the total number of days in the relevant Warranty Period (each year equal to 365 days) ("G").  $(P=A(N)/G)$

11.2 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. STUS MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, CAPACITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This warranty allocates the risks of product failure between STUS and the customer. The customer acknowledges that it has read the GTC, understands it, and agrees to and is bound by its terms.

## 12. Limitations of Liability

12.1 NOTWITHSTANDING ANY PROVISION OF THE GTC OR ANY LAW, IT IS EXPRESSLY AGREED THAT STUS' TOTAL LIABILITY FOR ANY DAMAGES, COSTS, OR EXPENSES ARISING OUT OF OR RELATED TO PRODUCTS OR SERVICES OR THE GTC, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT OR SERVICE OR, AT THE OPTION OF STUS, REIMBURSEMENT OF THE VALUE OF THE PRODUCT OR SERVICE PRO RATA. UNDER NO CIRCUMSTANCES WILL STUS, ITS OFFICERS, DIRECTORS, EMPLOYEES OR ASSIGNS BE LIABLE FOR ANY OTHER REMEDY, LOSS, COST, DAMAGE OR EXPENSE WHETHER DIRECT OR INDIRECT, INCLUDING THOSE RELATED TO PERSONAL INJURY OR WRONGFUL DEATH. IN NO EVENT WHATSOEVER SHALL STUS BE LIABLE FOR ANY CONSEQUENTIAL, LIQUIDATED, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT, OR PRODUCTION, INCREASED COST OF OPERATION, SPOILAGE OR DAMAGE TO MATERIAL; OR CHANGE OUT COSTS. THE CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD STUS HARMLESS FROM ANY LOSS, COST, EXPENSE, DAMAGE, OR CAUSE OF ACTION TO OR BY A THIRD PARTY THAT EXCEEDS THESE LIMITATIONS OF LIABILITY. The customer agrees to indemnify and hold harmless STUS from and against all liabilities, claims, or demands of third parties of any kind relating to the Product and their use arising after delivery of the Product to the customer, including, without limitation, damages related to personal injury or wrongful death.

## 13. Force Majeure

13.1 Force Majeure shall include occurrence of any unforeseeable event which is beyond the control of STUS or third parties with whom STUS maintains business relations. The term "Force Majeure" shall include interruptions of operations or traffic, fire, floods, lack of workforce, energy or raw materials, strike, port congestion, lock-out, civil commotion, war (either declared or not), acts of God such as health epidemics,

pandemics, cyclones or tempest or other occurrences, official measures or the like. The consequences of Force Majeure will release STUS from its obligation of timely delivery and grant STUS the right to discontinue further deliveries without having to pay damages and without being obliged to make subsequent deliveries. It will also release STUS from its obligations and any liabilities during the period of Force Majeure and the effected period thereafter.

#### **14. Miscellaneous**

- 14.1 The failure of STUS to insist on any one or more instances, upon the performance of any term or condition of the GTC as set forth herein or the failure of STUS to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such terms, conditions, or rights and shall not affect STUS' right to insist strict performance and compliance with regard to any future performance of the GTC. The GTC shall be governed, construed, enforced and regulated by the substantive laws of the State of Georgia, United States of America, without giving effect to any choice or conflict of law provision or rule (whether the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. The UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements is excluded.
- 14.2 Warranty Claims shall be asserted within the relevant Warranty Period and STUS shall not be liable for any claim made after the relevant Warranty Period has expired.
- 14.3 STUS and all of its affiliated companies will be entitled to offset claims against accounts receivable, whether already due or not, including future accounts receivable to which STUS is entitled vis-à-vis the Customer.
- 14.4 If any provision of the GTC between STUS and the customer is held by any court or other competent authority to be void, illegal, or unenforceable in whole or part, the other provisions of this GTC as well as the remainder of the affected provisions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal, and enforceable provision that comes closest to the business purpose of the replaced provision.
- 14.5 If STUS learns that the customer has: (i) ceased to conduct operations in the normal course of business; (ii) has failed to meet any obligations under these GTC and any other obligations owed to STUS; or (iii) that bankruptcy or insolvency proceedings have been initiated by or against the customer, then STUS, at its option, may (a) demand advance payment or collateral security equal to the value of the Product to be delivered or (b) terminate the contract with immediate effect, without any liability.
- 14.6 All disputes arising out of or in connection with the business relationship between STUS and the customer shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce in force at the date of the Confirmation. There shall be one (1) arbitrator jointly nominated by the parties if the amount in dispute is less than US\$ 2 million and three (3) arbitrators if the amount in dispute is US\$ 2 million or more. If there are three (3) arbitrators, STUS shall nominate an arbitrator, the customer shall nominate an arbitrator, and the co-arbitrators shall jointly nominate the President of the Arbitral Tribunal within 15 days from the date of their confirmation or appointment. The place of arbitration shall be New York City, New York (U.S.A.). The language of the arbitration shall be English.
- 14.7 In the event of any suit, action or proceeding between the parties arising from the sale of the Product pursuant to this GTC, the non-prevailing party shall, upon demand, reimburse the prevailing party for all costs and expenses of prevailing therefrom, including reasonable attorneys' fees at all levels of proceeding.