



TDK-LAMBDA SWITZERLAND Sales Terms and Conditions for NEXTYS branded products

1. DEFINITIONS

“Seller” means TDK-LAMBDA SWITZERLAND SA, CH-Quartino. “Buyer” means the person, firm or company who buys or agrees to buy the goods from the Seller. “Conditions” means the terms and conditions of sale set out of this document and any other special terms and conditions agreed in writing by the Seller. “Delivery Date” means the date specified by the Seller when goods will be delivered ex-works TDK-LAMBDA SWITZERLAND SA. “Goods” means the products which the Buyer agrees to buy from the Seller. “Price” means the price for the goods in CHF, USD or EURO, packed in standard cardboard packing and ex-works TDK-LAMBDA SWITZERLAND SA.

These terms and conditions do not apply to services offered by Seller to Buyer.

2. GENERAL

These Terms and Conditions of Sale and any attached exhibits shall constitute the entire understanding and agreement between the parties relating to the products to be purchased hereunder and shall supersede any communication representation or agreement previously made by either party whether orally or in writing. The Buyer's different or additional terms and conditions shall not apply. Acceptance of deliveries hereunder by the Buyer, his agent or employee shall constitute acceptance by the Buyer of these Terms and Conditions of Sale. These terms and conditions may not be varied other than in writing by an authorized representative of each party.

3. PRICE AND TERM OF VALIDITY

All quotations are valid for thirty (30) days from the date of the quotation unless otherwise agreed in writing by the Seller. All prices quoted are valid for three (3) months provided the Buyer's requested delivery date (including any change orders), is within three (3) months of the date of Buyers original order. Unless otherwise agreed in writing by the Seller all prices quoted are net, ex-works, exclusive of VAT and any other taxes.

The Seller reserves the right, by giving notice to Buyer at any time before delivery, to adjust the price of the goods due to delays caused by an instruction of Buyer or failure of Buyer to give Seller adequate information or instructions.



4. PAYMENT

Unless otherwise agreed in writing by the Seller, Buyer shall pay all goods by means of confirmed and irrevocable Letter of Credit or by prepayment. The Seller shall have the right at his sole discretion to change the payment terms provided herein at any time. Seller shall be entitled to interest on any overdue amount at the rate of 2% per month or part thereof, calculated from the date due, and to recover its expenses including legal fees and costs of collection from Buyer. Should any sum due to the Seller remain unpaid after ten (10) days from the date of written notice to the Buyer, the Seller shall not be obliged to continue performance under any agreement with the Buyer.

5. DELIVERY OF GOODS

Programmed orders/ deliveries by suitable planning from Buyer are the preferred method of operating the business. Otherwise specific L/Ts (Lead Time) will be acknowledged by each order confirmation. Deliveries of any goods purchased shall be subject to availability. Seller shall make all reasonable efforts to meet any delivery date(s) quoted or acknowledged, but shall not be liable for failure to meet such date(s).

6. DELAYS IN PERFORMANCE

Seller shall not be liable for delays in performance or non-performance due to circumstances beyond its control. In the event of such circumstances continuing for more than three (3) months with respect to the confirmed delivery date, either party may terminate the contract with regard to products not yet delivered.

7. RISK OF LOSS

Risk of loss and damage shall pass from the Seller upon delivery ex-works of goods to the Buyer or his shipping agent. Goods shall be deemed to have been delivered to Buyer complete and undamaged unless claim is received in writing from Buyer within 7 days after delivery date.

8. PROPERTY AND RISK

Notwithstanding that the risk in the goods shall pass to the Buyer on delivery in accordance with Clause 7 above, property in the goods shall pass only on the terms of this clause.

- a. The goods shall remain the property of the Seller until all outstanding amounts due to the Seller from the Buyer have been paid in full and until such payment the Buyer shall hold the goods in a fiduciary capacity as bailee on behalf of the Seller.
- b. Until the goods are paid for in full the Buyer shall ensure that the goods are stored separately and in such a way as to be readily identifiable as the property of the Seller.
- c. Should the products or any part of them be sold before the property in them has passed from the Seller the proceeds of such sale shall be placed in an account of the Buyer in such a way as to be readily recognizable as such.
- d. In the event of non-payment by the Buyer by the due date the Seller shall have the right in addition to all other rights and remedies to enter upon any land or premises where the goods are held.



9. CHANGES AND CANCELLATIONS

If, less than fifteen (15) days before the scheduled delivery date Buyer either issues a change order causing a delivery delay or cancels goods, Buyer shall be subject to an increase of price of ten (10%), of the affected goods as determined by the Seller. All delivery date changes by the Buyer which cause a delivery date shift greater than ninety (90) days from the date of the Buyer's original order shall constitute a new order for the affected goods in determining the sale price of the said goods. Buyer may be subject to additional charges for cancellation of special goods or services which are not included in the Seller's current price list.

10. ACCEPTANCE OF PRODUCTS

The Buyer shall be deemed to have accepted the goods unless Buyer demonstrates within fourteen (14) days of delivery that the goods do not perform to the Seller's specification.

11. INSOLVENCY

In the event of either party suffering bankruptcy, insolvency or the appointment of an administrator, receiver or assignee for the benefit of creditors or winding-up proceedings, the other party shall have the right to terminate this agreement and in any such event and in the event that payment is in arrears in whole or in part, Buyer's right to possession of the goods not then paid for in full shall cease and Seller may recover or resell any of its products. Buyer expressly agrees that Seller may for the purposes of recovery of its products enter onto the Buyer's premises unhindered for the purposes of recovering the said goods.

12. SET-OFFS AND COUNTERCLAIMS

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off counterclaim which the Buyer may have or allege to have or for any reason whatsoever.

13. WARRANTY

Seller warrants its goods against defects in materials, workmanship and design. If Seller receives notice of such defects during the specified warranty period for the goods, Seller shall replace the failed parts of the goods, provided that the goods prove to be defective, free of charge. The return of the claimed goods has to be done under the Seller's RMA (Return Merchandise Authorization) procedure.

Warranty repair (labour and traveling and accommodation cost to the site) will be performed by the Buyer. Buyer shall be responsible for the cost of transportation and insurance of the replaced material or goods to the Seller's premises.



a. Limitation of Warranty

The foregoing does not apply to defects resulting from

- (i) Improper or inadequate maintenance of the goods by the Buyer
- (ii) Unauthorized modification or misuse
- (iii) Operation outside of environmental specification for the goods
- (iv) Inadequate or incorrect maintenance of the site
- (v) Incorrect installation.

b. Commencement and Duration of Warranty Period

Unless otherwise agreed in writing by the Seller, the warranty period for all goods is 12 (twelve) months from date of commissioning or 18 (eighteen) months from the manufacturing date as stated by the S/N.

c. Seller's Liability

Seller's liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods.

14. INSTALLATION

Installation of all goods must be carried out in accordance with the Seller's specified procedures.

15. LIMITATION OF REMEDIES AND LIABILITY

Seller's liability for loss or damage to property resulting from Seller's negligence shall not exceed the purchase price of the associated goods for each event or series of events arising from the same cause. The remedies provided herein shall be the Buyer's sole and exclusive remedies. The Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liable to third parties incurred by the Buyer. The Seller shall be under no liability for any injury or death caused by inadequate or incorrect installation, manipulation or commissioning. If the goods are not in accordance with the Buyer's purchase order for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such goods or if the Seller shall elect by refunding a proportionate part of the price.

16. TECHNICAL CHANGES

Seller shall have the right to make technical, design or specification changes to the goods mentioned herein at any time, providing that the changes made shall not adversely affect the performance of the goods.



17. MISCELLANEOUS

- a. Neither party may assign or transfer any of the rights duties or obligations under this agreement without the written consent of the other. Any purported assignment shall be null and void.
- b. Seller's failure to exercise any of its rights hereunder shall not constitute nor be deemed a waiver of such rights.
- c. This Agreement shall be in all respects governed by and construed in accordance with the laws of Switzerland. The courts of Justice in Switzerland shall have jurisdiction in all matters pertaining to or arising out of this Agreement.