

# General Terms and Conditions for Sale and Delivery

June, 2019

## Section I. General terms and validity

1. These general terms and conditions for sale and delivery (hereinafter referred to as TERMS) and particularly the specific obligations of the customer according to Section II, shall form part of and govern all deliveries, services and offers of REFLOMAX Co., Ltd. (hereinafter referred to as REFLOMAX)
2. The TERMS shall form part of all contracts which REFLOMAX enters into with its customers for the sale and delivery of REFLOMAX products.
3. The TERMS in their current version shall also be applicable to all future contracts which REFLOMAX may enter into with its customers regarding the sale and delivery of REFLOMAX products, without REFLOMAX having to refer to them in each individual case. Any amendments to the TERMS shall be communicated by REFLOMAX to its customers without delay.
4. Diverging, conflicting or supplementary General Conditions or General Purchasing Conditions on the part of the customer or third parties shall not apply, even if REFLOMAX does not expressly object to their validity in any individual case, unless REFLOMAX expressly agrees to them in writing. Even if REFLOMAX refers to correspondence which contains the General Conditions or General Purchasing Conditions on the part of the customer or third parties or which refers to such conditions, or if REFLOMAX, being aware of the customer's conditions conflicting with or diverging from its TERMS, performs delivery to the customer without reservations, this shall not constitute any agreement to such General Conditions or General Purchasing Conditions.
5. Where reference is subsequently made to the applicability of statutory provisions, this solely serves the purpose of clarification. Should in individual cases no reference be made to statutory provisions, they shall nevertheless apply, in so far and as long as they are not amended or excluded by these TERMS.

## Section II. Specific obligations by the customer

1. In addition to the agreements pursuant to these TERMS, the parties shall particularly agree on the specific obligations of the customer as described in paragraphs 2 to 6 set forth below.
2. The customer shall be responsible to ensure that REFLOMAX's products are properly stored until they are used. The storage conditions are specified in the relevant data sheets and practical information for each specific product. Current versions of data sheets and practical information such as the processing and handling instructions can be accessed on [www.reflomap.com](http://www.reflomap.com) under the heading "Products".
3. Where processing REFLOMAX products, the customer undertakes to observe and comply with current practical information.
4. Where processing REFLOMAX products, the customer undertakes to inform the final customer – if there is one for the purchased product – of the current care and use instructions and/or by mentioning the ability to download such instructions. Their latest version can be found on [www.reflomap.com](http://www.reflomap.com) under the heading "Products".
5. Where not processing the REFLOMAX products purchased from REFLOMAX, the customer undertakes to oblige its intermediary and/or the processing company to comply with paragraphs. 1 to 4 above.

6. The customer shall not resell REFLOMAX products without reference to the technical data sheets, and the application instruction – if available for the purchased product. In addition, he shall mention the ability to download the above documents from the “Applicaiton” section of [www.reflomap.com](http://www.reflomap.com).

### **Section III. Offer and conclusion of contract**

1. The offers made by REFLOMAX are subject to change and shall not be binding. This shall apply even if REFLOMAX has made available to or placed at the disposal of the customer catalogues, technical documentation (such as drawings, plans, calculations, cost estimates), other product descriptions or documents – including in electronic form – in which REFLOMAX reserves ownership rights or rights of use and exploitation.

2. An order for REFLOMAX products placed by the customer shall be deemed a binding offer of a contract. Unless otherwise specifically stipulated in the order, REFLOMAX shall have the right to accept this offer within three days by written declaration or declaration in text form (such as email). REFLOMAX expressly reserves the right to withdraw from the contract and reject the customer’s offer of a contract, without giving reasons, within three days of receipt of an order.

3. The legal relationship between REFLOMAX and its customer shall be governed by a written contract, including these TERMS, which fully reflects all agreements between REFLOMAX and its customer. Any oral commitment made by REFLOMAX prior to the conclusion of a contract shall not be binding. Unless oral agreements clearly imply that they shall continue to be effective and binding, they shall be replaced by a written contract.

4. Separately made individual agreements between the customer and REFLOMAX which deviate from or supplement the TERMS shall be agreed in writing. Legally relevant declarations submitted to REFLOMAX by the customer (such as notices of defects, deadlines) shall also be made in writing. To meet the requirement of the written form, transmission by fax or email shall be deemed sufficient. Sales employees of REFLOMAX – apart from a managing director or a holder of commercial power of attorney) - shall not be authorized to make oral ancillary agreements or to give oral assurances which go beyond the content of the written contract.

5. Details provided by REFLOMAX about the supply of goods or services (such as drawings, illustrations, use value, carrying capacity, tolerances, dimensions, weights and all other specifications and technical data) shall only be approximate, except where usability for the contractual purpose requires full conformity. Such details do not constitute guaranteed characteristics, but only serve to describe or characterize goods and services on the basis of the knowledge gained by REFLOMAX from practical experience. Customary commercial deviations and deviations due to legal requirements and technical improvements as well as the replacement of parts and components by equivalent parts and components shall be permissible as long as they do not impair the usability for the contractually stipulated purpose.

### **Section IV. Prices and conditions of payment**

1. In each case, the prices negotiated individually at the time of the conclusion of the contract shall apply, together with the Incoterms (Incoterms 2010) upon which these agreed prices are based.

2. Any payment shall only be deemed effected when it has been received by REFLOMAX. Once the period of payment has expired, the customer shall be deemed to be in default even without a reminder.

3. Even in the event of claims due to defects or counterclaims, the customer shall only be entitled to set-off, retain or reduce outstanding debt, if these counterclaims are recognized by declaratory judgement, are undisputed or recognized by REFLOMAX. The customer shall only be entitled to exercise its right of retention, if the counterclaim is based on the same contract.

### **Section V. Period of delivery and performance, passage of risk, place of performance, delay in delivery and default in acceptance**

1. Delivery dates and deadlines shall be agreed individually and in writing. Should this not be the case, the expected date of delivery shall be specified in the respective order confirmation. As a rule, the

delivery date quoted by REFLOMAX in the order confirmation indicates the anticipated date of delivery which REFLOMAX shall endeavor to meet. Delivery dates and deadlines shall refer to the time of transfer of the goods to the forwarder, carrier or third party assigned to transport the goods.

2. Where REFLOMAX is unable to meet binding delivery deadlines for reasons that REFLOMAX cannot be held responsible for (unavailability of goods or services), REFLOMAX shall notify the customer without delay and specify a new estimated delivery deadline. Where the goods or services are not available by the new delivery deadline either, REFLOMAX shall be entitled to withdraw from the contract in whole or in part; the customer shall be immediately reimbursed by REFLOMAX for any counter-performance already rendered. Such a case of unavailability of goods or services within the meaning of this clause shall, in particular, be the failure of REFLOMAX's suppliers to deliver on time, where REFLOMAX has entered into a congruent covering transaction, where neither REFLOMAX nor its suppliers are at fault, or where, in individual cases, REFLOMAX is not obliged to provide supplies.

3. A delay in delivery on the part of REFLOMAX shall be governed by the relevant statutory provisions. In any case, a reminder by the customer shall be deemed necessary. Should REFLOMAX cause a delay in delivery, the customer may claim damages in accordance with Section VII.

4. This shall not affect the rights of the customer pursuant to Section VII of these TERMS and the statutory rights of REFLOMAX, particularly in the event of an exclusion of the obligation to perform (for instance due to an impossibility or unreasonableness of performance and/or subsequent performance).

5. REFLOMAX shall be entitled to make partial deliveries and provide partial services if these can be used by the customer, the delivery of the remaining goods is guaranteed, and the customer does not incur any significant additional expense.

6. Unless otherwise agreed, delivery shall be FOB Korea, which shall be deemed the place of performance. At the request and the expense of the customer the goods shall be delivered to a different destination (sales shipment). Unless otherwise agreed, REFLOMAX shall be entitled to specify the delivery method (especially carriers, transport route, packaging).

7. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer no later than when they are transferred to the customer. However, in the case of sales shipments the risk of accidental loss or accidental deterioration of the goods as well as the risk of delay shall pass when the goods are transferred to the forwarder, carrier or person or entity assigned to transport the goods. If an acceptance procedure has been agreed, this is authoritative for the passing of risk. In all other respects, the statutory provisions governing contracts for works and services shall apply to agreed acceptance procedures accordingly. Delayed acceptance by the customer shall be equivalent to delivery or acceptance. In the case of an export transaction, the risk of accidental loss or accidental deterioration of the goods shall be subject to the separately agreed Incoterms (Incoterms 2010).

8. If the customer defaults in accepting the deliveries or services, fails to cooperate, or if the delivery is delayed for other reasons for which the customer is to be held responsible, REFLOMAX shall be entitled to request compensation for any loss suffered, including possible additional expenses (such as storage costs). The extent of the damage shall be governed by the relevant statutory provisions.

## **Section VI. Warranty**

Unless otherwise agreed, the rights of the customer concerning material and legal defects shall be governed by the Reflomap's official Warranty Policy & RMA Procedure. Their latest version can be found on [www.reflomap.com](http://www.reflomap.com). under the heading "Warranty and RMA".

## **Section VII. Liability**

Unless otherwise stipulated in these TERMS and the provisions below, REFLOMAX shall be liable, in accordance with official Warranty Policy & RMA Procedure. Their latest version can be found on [www.reflomap.com](http://www.reflomap.com). under the heading "Warranty and RMA".

## **Section VIII. Retention of title**

1. Title to sold REFLOMAX products shall remain the property of REFLOMAX until fulfilment of any claims to which REFLOMAX may be entitled now or in the future for any legal reason.

2. REFLOMAX products subject to retention of title may neither be pledged to third parties nor assigned as collateral before the full payment of the secured claims. As long as title to products supplied by REFLOMAX has not passed pursuant to this Section VIII, the customer shall notify REFLOMAX immediately of any seizure or other intervention by a third party with regard to REFLOMAX products that are subject to retention of title. Furthermore, the customer shall notify such third parties without delay that REFLOMAX products subject to retention of title are owned by REFLOMAX. The customer shall also be obliged to provide REFLOMAX with any information and documents.

3. If the customer is in breach of the contract, particularly in the event of non-payment of the purchase price, REFLOMAX shall have the right to withdraw from the contract in accordance with statutory provisions and/or demand the surrender of the REFLOMAX products subject to retention of title on the basis of such retention of title. A demand for the surrender of the products shall not constitute a withdrawal from the contract; rather, REFLOMAX shall have the right to only demand the surrender of the REFLOMAX products and reserve the right to withdraw from the contract. In the event that the customer does not pay the due purchase price, REFLOMAX may only assert such rights after having unsuccessfully set a reasonable deadline for the payment or if the setting of such a deadline is not required under the applicable law.

4. The customer shall be entitled to sell and/or process the REFLOMAX products subject to retention of title in the ordinary course of business. In this case, the following additional provisions shall apply:

4-a) The retention of title extends to the full value of any product resulting from the processing, mixing or combination with REFLOMAX products, with REFLOMAX being deemed the manufacturer. Where after the processing, mixing or combination with goods of a third party, the title remains with such third party, REFLOMAX shall acquire co-ownership in the processed, mixed or combined product in proportion to its invoiced value. Otherwise, the resultant goods shall be subject to the same terms and conditions applicable to REFLOMAX products delivered under retention of title.

4-b) By way of security, the customer shall hereby assign to REFLOMAX, either in full or to the extent of any co-ownership of REFLOMAX in accordance with indent 4-a) above, any claims against third parties resulting from the resale of REFLOMAX products subject to retention of title or of the resultant goods. REFLOMAX shall accept such assignment. The obligations of the customer mentioned in paragraph 2 above shall also apply in respect of the assigned claims.

4-c) The customer shall, in addition to REFLOMAX, remain entitled to collect such claims. REFLOMAX undertakes not to collect any claims, provided the customer meets his payment obligations towards REFLOMAX, does not default on payment, no application for the opening of insolvency proceedings have been filed, and his performance capacity is not impaired in any other way. In any such case, REFLOMAX may require the customer to inform REFLOMAX of any claims assigned and the names of their debtors, to provide all information necessary for their collection, to submit all relevant documents and to notify the debtors (third parties) of the assignment.

#### **Section IX. Custom-made designs**

Any custom-made designs in connection with REFLOMAX products which are not covered by REFLOMAX's standard product range shall be subject to a contract to be agreed separately between REFLOMAX and the customer.

#### **Section X. Governing Law, Jurisdiction, Severability Clause**

1. These terms and conditions and the entire legal relationship between REFLOMAX and the customer shall be governed by the law of the Republic of Korea; the application of the UN Sales Convention shall be excluded. The conditions and effects of the retention of title in accordance with Section VIII shall be subject to the law applicable at the location of the goods, if according to that law the choice of Korean law would be inadmissible or ineffective.

2. If any provision of these TERMS or of other agreements is or becomes unenforceable or invalid, such unenforceability or invalidity shall not affect the validity of the other provisions or agreements. If any provision has been inadvertently omitted from the contract or TERMS, the resulting gap shall be filled with such valid provisions as most closely reflect what the parties would, in consideration of the commercial intent and purpose of the contract and the purpose of these TERMS, have agreed upon, had they been aware of the omitted provision from the outset.

**Reflomax Co., Ltd.**

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