

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

### **1. Scope**

These General Terms and Conditions of Sale and Delivery (the "General Terms and Conditions") of The Swatch Group (U.S.) Inc., renata division (hereinafter referred to as "Renata U.S.") apply to all sales, deliveries and services on the part of Renata U.S. pertaining to the Customer insofar as they are not amended or supplemented by way of a written and mutual agreement. The Customer hereby expressly relinquishes any of its own "General Terms and Conditions" (or similar instrument) that might otherwise apply. In the event of any conflict or inconsistency between these Terms and Conditions and the terms and conditions contained in the Customer's order or in any other form issued by the Customer, whether or not any such form has been acknowledged or accepted by Renata U.S., these Terms and Conditions shall govern. No waiver or modification of these Terms and Conditions shall be binding upon Renata U.S. unless made in writing and signed by a duly authorized representative of Renata U.S.

### **2. Offers**

The terms of Renata U.S.'s offers are subject to change without notice.

### **3. Orders**

Orders are to contain clear specifications regarding all implementation details. The Customer is responsible for the clarity and wording of its order. Orders accepted by Renata U.S. are not subject to change or cancellation by the Customer, except with Renata U.S.'s written consent in such cases where Renata U.S. authorizes changes or cancellations. With regard to changes or cancellations consented to by Renata U.S. as provided herein, Renata U.S. reserves the right to charge the Customer with reasonable costs based upon expenses already incurred and commitments made by Renata U.S., including, without limitation, labor costs, material purchased, Renata U.S.'s usual overhead, reasonable profit, and cancellation charges from Renata U.S.'s suppliers.

### **4. Acceptance of Orders.**

Purchase orders are deemed accepted upon written confirmation of the order by Renata U.S. Any services to be provided by Renata U.S. must be additionally agreed upon in writing and will be invoiced. Equipment, undocumented qualities and dimensions and weights of ordered products may fluctuate slightly. Such variations are deemed to be accepted by the Customer provided that such variations on the ordered products do not have a material adverse impact on functional features of the products.

### **5. Delivery dates**

Stated delivery dates are non-binding approximate dates. Such dates refer to the time at which the product leaves Renata U.S.'s warehouse. Non-compliance with the delivery dates shall neither entitle the Customer to a claim for damages nor to withdraw from the purchase order; non-compliance with delivery dates could be caused, among other things, by the following:

- a) Renata U.S. does not receive purchase order details in sufficient time to enable Renata U.S. to fulfill the purchase order, or the Customer subsequently amends such details (with Renata U.S.'s written consent) and in doing so causes an extension of the manufacturing process;
- b) unforeseeable difficulties arise which are beyond the reasonable control of Renata U.S., including, without limitation, operational breakdowns, accidents, labor conflicts, delayed or faulty deliveries of necessary raw materials, semi-finished and finished products, acts of God, war, invasion, insurrection,

riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdowns, sabotage, lock-outs, strikes or labor disputes, and other cases of force majeure ("Force Majeure");

c) the Customer or a third party is behind schedule with the work that they are to perform or they are in arrears with regard to honoring their contractual obligations, including if the Customer does not comply with the terms and conditions of payment.

## **6. Prices and deliveries**

Renata U.S. expressly reserves the right to adjust at any time the prices stated in the offers and order confirmations in line with alterations to production costs and/or market conditions. Prices and deliveries are f.o.b. Renata U.S.'s warehouse. Customary methods of transportation shall be selected by Renata U.S. and such transportation will be at the Customer's expense. Prices shall not include transport, packaging, sales and other taxes, insurance, levies, customs duties, fees for licenses or certificates and disposal fees, all of which shall be borne by the Customer.

## **7. Terms and conditions of payment**

Payments are to be made to the payments office stated in the invoice without any kind of deductions or offsets and in U.S. dollars. The payment obligation shall be deemed met as soon as Renata U.S. can freely dispose of the respective amount. If no special terms and conditions of payment have been agreed upon between Renata U.S. and the Customer, invoices shall be delivered at the time of product delivery and the term of payment shall be ten (10) days from the date of invoice. Penalties for default shall apply automatically upon the Customer's failure to make timely payment. From the date on which payment was to be made, the Customer shall be charged interest on payments in arrears at the rate of 10% per annum, and Renata U.S. shall have the additional rights set forth in paragraph 8 below. Renata U.S. expressly reserves the right to claim for damages as a result of further damages, and to withdraw from the purchase order. Bank charges for international payment transactions shall be borne by the Customer. In the event that the Customer's account is placed for collection, the Customer will be liable for and will repay on demand all costs and expenses incurred by Renata U.S. arising therefrom, including, but not limited to, reasonable attorneys' fees and expenses.

## **8. Title**

Renata U.S. shall retain ownership of all delivered products until payment in full of the purchase price as provided above. During the period of reservation of title the Customer shall accept delivery of the products and maintain the delivered products at its cost and in favor of Renata U.S., and insure the products against theft, breakage, fire, water and other risks. The Customer shall further undertake all measures so that Renata U.S.'s ownership claim is not jeopardized. In the event that the products are amalgamated, Renata U.S. shall acquire part-ownership in accordance with the proportion of the value of the components. If the Customer does not honor its obligation to accept delivery, or it does not honor its payment obligations (including, without limitation, the obligation to pay interest on late payments), Renata U.S. shall be entitled, for the duration of the period in which such acceptance or payment is delayed, to (a) withhold further shipments under the applicable purchase order and/or other purchase orders, and (b) freely sell to third parties without restrictions the products ordered by the Customer, and in furtherance of such right to sell, Customer hereby grants to Renata U.S. a non-exclusive, non-transferable, worldwide, royalty-free license to the Customer's intellectual property pertaining to such products (such as patents, trademarks, and other rights pertaining to firms, brands, samples, models and copyrights).

### **9. Partial deliveries**

Unless agreed upon otherwise in writing, Renata U.S. reserves the right to make partial shipments and to submit invoices for partial shipments. The Customer is obligated to accept partial deliveries, which shall not be deemed to be shortages.

### **10. Risk of loss**

Except for obligations stated under "Warranty" herein, Renata U.S.'s responsibility for goods ceases upon delivery to the carrier. The risk of damages and loss pertaining to the products that are to be delivered shall pass to the Customer when the products leave Renata U.S.'s warehouse. In the event of loss or damage during shipment, the Customer's claim shall be against the carrier only. If the agreed delivery date is postponed at the request of the Customer, or for reasons which are not the responsibility of Renata U.S., the risk shall nevertheless pass to the Customer at the time that was initially agreed upon. As from this time the products shall be stored and insured on the account and at the risk of the Customer. The products that are to be delivered shall be insured against all transport risks by Renata U.S. at the Customer's cost.

### **11. Inspection of products and notification of defects or shortages**

Prior to delivery to the carrier, Renata U.S. shall check products and services in accordance with its customary procedures. If the Customer requests further-reaching inspections, these are to be agreed upon separately and paid for by the Customer.

The Customer shall inspect the products and services within five (5) business days after delivery with regard to the condition and full content of the products and inform Renata U.S. in writing within such five (5) business days of possible defects or shortages. In the absence of such action within such five-day period products and services shall be deemed accepted, it shall be conclusively presumed that the products were delivered in their entirety, and the Customer shall have no claims under the warranty provided herein with regard to defects that would have been discoverable upon inspection. In the event that a shortage is verified by Renata U.S., as the Customer's sole remedy Renata U.S. shall, in its discretion, deliver the balance of the order, or grant the Customer a credit.

The implementation of different inspection terms and stipulation of conditions that apply in this respect will be subject to a separate agreement.

### **12. Installation**

The products shall be installed by and at the risk and expense of the Customer.

### **13. Compliance with law**

The Customer shall comply with all applicable laws and regulations, including, without limitation, (a) all export and import laws and regulations of all countries regarding the sale of the Customer's products that incorporate Renata U.S.'s products, and (b) all laws and regulations regarding the sale, to governmental agencies and authorities, of the Customer's products that incorporate Renata U.S.'s products.

### **14. Returned Goods**

No products may be returned to Renata U.S. without Renata U.S.'s prior written permission. Renata U.S. reserves the right to decline all returns or to accept them subject to a handling/restocking charge. Even after Renata U.S. has authorized the return of products for credit, Renata U.S. reserves the right to adjust the amount of any credit given to the Customer on return of the products based on the conditions of the products on arrival in Renata U.S.'s warehouse. Credit for returned products will be issued to the Customer only where such products are returned by the Customer and not by any subsequent owner of the products. Products will be considered for return only if they are in their original condition and packaging.

### **15. Unauthorized Use**

Without the specific prior written approval of Renata U.S., products are neither designed nor authorized for use as components in (a) safety and life supporting devices and systems, where malfunction of such products might result in damage to and/or injury or death of persons; (b) military, armament, nuclear or aerospace applications or environments; or (c) automotive applications unless specifically designated by Renata U.S. as automotive-grade. The unauthorized use of products in such systems/applications/equipment is solely at the risk of the Customer and the Customer agrees to indemnify, defend and hold Renata U.S. and its authorized distributors (which, together with their officers, directors, shareholders, employees and affiliates, are third-party beneficiaries of Renata SA's and Renata US's 's General Terms and Conditions) harmless from and against any and all claims, suits, damages, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses) resulting from any unauthorized use of products.

### **16. Warranty and liability for defects**

Renata U.S.'s warranty period commences upon receipt of the delivery by the Customer and runs for six (6) months. It applies to the features warranted in the confirmation of order, or the specifications on Renata U.S.'s website. It covers all defects that are proven to be attributable to defective material or manufacturing defects. Warranted characteristics are deemed to be those that are expressly described as warranted characteristics in the confirmation of order or in the specifications. The warranty expires at the end of the warranty period. If an acceptance test is agreed upon the warranty is deemed satisfied if proof of the respective characteristics is furnished on the basis of such a test.

The warranty is limited, at Renata U.S.'s discretion, to the replacement or the repair of the faulty products or defective parts or repayment of the invoice amount paid by the Customer for products or parts that have not been replaced. If such defects apply the Customer is to undertake all measures to keep possible damage to a bare minimum. The Customer shall have no rights or claims as a result of defects pertaining to material or manufacturing, or specifications, not expressly agreed to by Renata U.S. in these General Terms and Conditions or the purchase order.

Renata U.S. shall not assume any liability for costs that may be incurred for dismantling or assembling or for damages caused directly or indirectly by the products, application of such products or by possible defects. Excluded from Renata U.S.'s warranty are all damage which is not proven to have been caused as a result of defective material or manufacturing defects, such exclusions to include, without limitation, normal wear and tear, faulty maintenance, non-observance of operating instructions, excessive use, unsuitable machines and equipment, chemical or electrolytic influences, or any Force Majeure event.

RENATA U.S. DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (B) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

### **17. Limitation of Liability**

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY RENATA U.S., RENATA U.S. SHALL NOT BE LIABLE TO THE CUSTOMER, THE CUSTOMER'S CUSTOMERS OR ANY OTHER THIRD PARTY, IN CONTRACT, TORT, INDEMNITY OR OTHERWISE, FOR ANY LIABILITY, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF ANY CLAIM FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE RELATED TO THE PRODUCTS. IN NO EVENT SHALL RENATA U.S. BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST OPPORTUNITIES OR INTERRUPTION OF

BUSINESS) OR PUNITIVE DAMAGES DUE TO ANY CAUSE WHATSOEVER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS CONTRACT FAIL THEIR ESSENTIAL PURPOSE. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST RENATA U.S. MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS ACCRUED.

IN NO EVENT SHALL THE TOTAL LIABILITY OF RENATA U.S. TO THE CUSTOMER OR ANY THIRD PARTY FOR ALL LOSSES OR TYPES OF DAMAGES, WHETHER FROM ANY LAWSUIT, CLAIM, WARRANTY OR OTHER DISPUTED MATTER EXCEED THE AGGREGATE SUM PAID TO RENATA U.S. BY THE CUSTOMER UNDER THE PURCHASE ORDER THAT GIVES RISE TO SUCH LOSS OR DAMAGE.

### **18. Invalidity**

In the event that individual provisions of these General Terms and Conditions are determined by a court of competent jurisdiction or an arbitration panel to be invalid, illegal or unenforceable in any jurisdiction, this shall not invalidate or render unenforceable such provisions in any other jurisdiction, or affect the validity, legality or enforceability of the other provisions. In the jurisdiction in which such provision is invalid, illegal or unenforceable, the court or arbitration panel making such determination is authorized to replace such provision, if possible, with a valid, legal and enforceable provision, whose economic content comes closest to that of the invalid, illegal or unenforceable provision.

### **19. Entire Agreement**

These General Terms and Conditions, and any purchase order accepted by Renata U.S. as provided herein, constitute the entire agreement between Renata U.S. and the Customer and supersede all previous communications, whether oral or written.

### **20. Governing law; submission to jurisdiction; arbitration**

All matters arising out of or relating to these General Terms and Conditions or a purchase order are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. The Customer and Renata U.S. agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these General Terms and Conditions. Any and all disputes of any kind between the parties arising out of these General Terms and Conditions or a purchase order, that cannot be resolved by the parties, shall be resolved exclusively by binding arbitration under the rules of the American Arbitration Association ("AAA"). Any arbitration conducted hereunder shall be conducted by three (3) arbitrators. The site of any arbitration conducted hereunder shall be exclusively in the City of Miami, Florida. Each party shall bear its own legal fees and expenses, and each party shall bear 50% of the AAA's and the arbitrators' fees and expenses, provided that the arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees of the arbitration, including, without limitation, the arbitrators' fees, AAA fees, and all out-of-pocket expenses, including, without limitation, reasonable legal fees and expenses. The decision of the arbitrators shall be final, binding and conclusive upon the parties and judgement thereon may be entered in any court of competent jurisdiction.

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