

Terms and Conditions of Sale



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1. APPLICABILITY

These terms and conditions of sale (hereinafter referred to as “Terms of Sale”) apply to and govern every sale or licensing (hereinafter referred to as “Sale”) of product, item or equipment (hereinafter referred to as “Goods”) made between the purchaser of the Goods (hereinafter referred to as the “Buyer”) and **G.M. International S.r.l.** and/or any of its subsidiaries, branches or rep-offices world-wide (hereinafter referred to as the “Seller”).

2. GENERAL TERMS

- a. Acceptance:** All Sale of Goods are subject to and expressly conditioned upon the Terms of Sale contained herein. No variation of these Terms of Sale will be binding for the Seller unless, the Seller itself, agree in writing and signing every variation. This agreement may not be waived, changed, modified, or discharged orally, but only by a written agreement, signed by the parties or an officer or an authorized representative of the Seller. All terms and conditions contained in any prior oral or written communication - including, without limitation, Buyer's Purchase Order, which are different from, or in addition, to the Terms of Sale herein contained - are hereby rejected and shall not be binding on the Seller. All prior proposals, negotiations, and representations, if there are any, are superseded by these Terms of Sale. Buyer will be deemed to have assented to all terms and conditions contained herein, if any part of the Goods is shipped or an invoice is presented in conjunction with the Sale.
- b. Entire Agreement:** The Seller and the Buyer agree that the Terms of Sale contained herein constitute the entire Agreement between the parties in relation to the supply of Goods and that there are no other understandings, representations, or warranties of any kind (express or implied) forming part of contract for the Sale between the parties.
- c. Binding Contract:** The Sale does not become a binding contract until the Seller receives the Buyer's unqualified acceptance of the Seller's Proposal/Quotation, these Terms of Sale and the Seller confirms the Purchaser Order in writing.
- d. Contract Validity:** These Terms of Sales are the only terms and conditions on which the Seller contracts for the supply of Goods and they are incorporated in all contracts entered by the Seller. Any other terms and conditions are hereby specifically rejected and shall not be binding on Seller.
- e. Cancellation:** Buyer may not cancel the Purchase Order unless such cancellation is expressly agreed in writing by Seller. In such event, Seller will advise Buyer if there will be some charges for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of the Purchase Order by Buyer. All the above costs will be borne by the Buyer, none excluded, and will be charged to the Buyer if anticipated by the Seller.
- f. Documentation:** All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Seller or otherwise contained in Seller's publications such as price lists, brochures, catalogues, electronic media and other advertising material of the Seller are approximate only and are intended to show the general style, arrangement, approximate dimensions and weight of the Goods and shall not form part of the Sale between the Seller and the Buyer. The Seller reserves the right to make such changes of design, construction, or arrangement as it deems necessary. All specifications are subject to change without notice.

3. CONFIDENTIAL INFORMATION

- a. Proprietary and Confidential Information:** All information such as proposal, quotations, drawings, specifications, software and other information, data, and material (whether orally disclosed, printed, handwritten, typed, numerically or computer generated, computer stored, or otherwise) furnished to Buyer by either Seller or any of its sub-contractors or sub-suppliers shall remain property of the Seller and confidential or property of the subcontractor or sub-supplier, respectively. Moreover, all the information above mentioned, shall be used by the Buyer only in conjunction with the Sale governed by this Terms of Sale and shall not be used by Buyer in connection with any other project or scope. Such proprietary and confidential information and data shall not be shown or otherwise made available to any third party at any time without Seller's prior written consent. Neither Buyer itself shall, nor shall Buyer permit any third party to, reverse engineer, measure or otherwise technically examine the Seller's Goods, or the software incorporate within, without Seller's prior written consent. Any such proprietary and confidential information which Buyer determines must be disclosed to its employees and shall only be disclosed to them on a need-to-know basis for the operation and maintenance of the Goods.
- b. Intellectual property:** Intellectual property or patent rights which may be obtained by the Buyer based on the information given or made available to Buyer in conjunction with the Sale or with respect to Seller's Goods, shall remain the exclusive property of Seller.
- c. Trademark:** Trademarks and Copyrights are property of their respective owners.

4. PRICES

- a. Prices:** Prices shown in any of Seller's publications, such as price lists, brochures, catalogues, electronic media, and other advertising material, are selling prices only suggested and there is no obligation for the Seller or for any of its reseller to maintain the same prices.
- b. Changes:** All prices are subject to change without prior notice.
- c. Errors:** All price lists and quotations indicated in any Seller's official publications, except for the base prices, can contain mistakes and omissions. Therefore, the Seller may correct any mistake or omission on counting, quotations, invoices, if necessary, without the possibility for the Buyer to advance any type of legal action against that.

5. VALIDITY

- a. **Validity of Quotation:** All Quotations, are valid for a period of 60 days from the date of quotation for supply within 90 days from date of acceptance, unless stated differently by the parties in the quotation. Quotations and contractual delivery dates are subject to confirmation before acceptance.
- b. **Validity of Pricing:** The prices quoted by the Seller are fixed and valid only for the supply of those Goods specified in the quotation and those prices cannot be applied to any lesser quantities or to any additional Goods to be supplied.

6. PAYMENT

- a. **Terms of sale:** Payment is 100% advanced, unless stated differently in Seller's quotation, order confirmation or invoice and agreed to.
- b. **Change:** If the financial condition of Buyer results in the insecurity of Seller, in its sole discretion, as to the ultimate collectability of the purchase price, Seller may, without notice to Buyer, delay, or postpone the delivery of the products; and Seller is authorized to change the terms of payment.
- c. **Default:** In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other Sale, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery or cancel the Sale and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the Terms and Conditions hereof.
- d. **Taxes and other charges:** Any sales tax, use tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on the Goods supplied shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall promptly reimburse Seller on Seller's demand. Buyer shall, at its discretion, provide Seller, at the time of the Purchase Order, an exemption certificate, or any other document acceptable by the authority imposing the tax or fee.

7. MINIMUM ORDER VALUE

- a. **Minimum Value:** A minimum purchase order value of 500,00 Euro (or equivalent currency), excluding any VAT or other tax, applies to all Sale and to all shipments. An order handling fee of 50,00 Euro (or equivalent currency) will be added to any invoice with a net value, excluding VAT or other tax, of less than 500,00 Euro (or equivalent currency).

8. DELIVERY

- a. **Delivery:** All Sales are made Ex-Works. The agreed place of the delivery is Seller's shipping point, unless stated differently in Seller's quotation, order confirmation or invoice, and the parties agree to it. If Shipping and Handling charges are quoted or invoiced, they might include charges in addition to actual freight costs. Delivery of the Goods to the carrier at Seller's shipping point shall constitute delivery to Buyer and Buyer shall bear all risk of loss or damage in transit.
- b. **Claims:** Immediately upon Buyer's receipt of any Goods shipped hereunder, Buyer shall inspect them, shall notify Seller in a written form of any claims for shortages, defects, or damages and, shall hold the Goods according to Seller's written instructions. If the Buyer does not notify the Seller of any claims for shortages, defects, or damages, within 10 working days after the receipt of Goods, such Goods shall, conclusively, be deemed to have been irrevocably accepted by the Buyer.
- c. **Liability:** Under no circumstances Seller shall be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether caused by the negligence of Seller, its employees, or agents or otherwise) arising directly or indirectly from delays in delivering the Goods or failure to give notice of delay.
- d. **Incoterms:** These Terms of Sale are referred to INCOTERMS 2010® as defined by the International Chamber of Commerce, for any delivery terms not herein specified

9. PACKING

- a. **Packing:** Unless stated otherwise in the quotation, the price quoted includes packing in accordance with the Seller's standard practice. Any other specific packing and marking requirements not otherwise included in the price of the Goods and requested by the Buyer and/or deemed necessary by the Seller, will be charged in addition to the quoted price.

10. DOCUMENTATION

- a. **Included Documents:** The documents that will be provided to Buyer, free of charge, in reference to the Sale of Goods are the following:
 - i. For shipments outside EU:
 1. Invoice: Five originals.
 2. Packing List: One original.
 3. Dual Use Declaration: One original.
 4. AWB or Bill of Lading: One original (if available).
 - ii. For shipments inside EU:
 1. Delivery Note: One original.
 2. AWB or Bill of Lading: One original (if available).
 - iii. For ALL shipments:
 1. Data Sheet/s: In electronic format.
 2. Instruction Manual/s: In electronic format.

3. Dimensional Drawings: In electronic format.
4. EU Declaration/s, when applicable: In electronic format.
5. IECEx Declaration/s, when applicable: In electronic format.
6. HSE Declaration: In electronic format.
7. REACH and RoHS Declarations, in electronic format.
8. G3 Coating Declaration, when applicable: In electronic format.
9. Applicable third-party Certification/s: In electronic format.
10. Safety Manual, when applicable: In electronic format.
11. EX Safety Instruction, when applicable: One printed copy.

b. Optional Documents: The documents that can be provided to Buyer in addition to the above, at an extra cost to be agreed upon, are the following:

- i. Type Test Certificate.
- ii. Individual Test Certificate.
- iii. Chamber of Commerce Certificate of Origin.
- iv. Legalized Chamber of Commerce Certificate of Origin.
- v. Additional copies of any of the above documentation.
- vi. Legalized copies of any of the above documentation.

11. INSPECTION

- a. Inspection:** The Seller gives to the Buyer the right to inspect the Goods during any stage of the manufacturing process asking the Buyer to give notice of inspection at least 20 days before the requested inspection date. The Seller reserves the exclusive right to confirm the exact date for such inspection to take place; in all cases no longer than 30 days after having received notice of inspection by the Buyer. If the Buyer decides to inspect the goods according to Seller's instruction described, the Seller will not be liable in any case.
- b. FAT:** When agreed upon the parties a Factory Acceptance Test can be conducted at the Seller manufacturing location/s or at Seller's sub supplier assembly location.
- c. Cost:** Any and all costs incurred by the Buyer in conjunction with an Inspection or a FAT, in example but not limited to: travelling, lodging, man hour costs, have to be borne entirely by the Buyer. The Seller will make available his facilities and personnel for conducting such test and inspection, free of charge for a reasonable amount of time.
- d. Third Party Inspection:** All costs that will become due to third parties for inspection and/or for testing the Goods, when and if required by the Buyer, must be borne entirely by the Buyer. When requested the Seller will provide an estimate of such costs, including them in the Quotation and/or in the Purchase Order Confirmation.

12. TRAINING AND ASSISTANCE

- a. Training:** If training is requested by Buyer, such training will be separately charged at a daily rate to be agreed upon for a specified number of trainees. If training is to be carried out outside of the Seller's location, in addition to the basic daily training fee, a forfait cost covering travelling time, traveling, lodging, meals and out of pocket expenses for the trainer/s will be quoted and separately charged for.
- b. Engineering assistance:** Any engineering or technical assistance provided by the Seller, in conjunction with the Sale will be charged at the Seller's gross labor rate, multiplied by 2, applying at the time assistance is provided for; in addition to a forfait cost covering travelling time, traveling, lodging, meals and out of pocket expenses for the traveling Seller's employee/s to be quoted and charged separately.

13. WARRANTY

- a. Warranty:** Subject to the conditions set out below, Seller warrants that the Goods supplied are new, free from material defects and correspond to Seller's published specifications at time of the shipment. Warranty is given by the Seller subject to the following conditions:
 - i. Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by Buyer.
 - ii. Seller shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Seller instructions, misuse, alteration, or repair of the Goods.
 - iii. Seller shall be under no liability if the price of the Goods has not been paid for by the due date in accordance with the agreed payment terms.
 - iv. Warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as it is given by the original manufacturer to Seller.
 - v. Seller shall be under no liability in respect of any repair made by unauthorized personnel as this may completely invalidate the safety characteristics of the Goods; Goods supplied under this Terms and Conditions cannot be repaired by Buyer or third parties.
 - vi. All terms, conditions, and warranties (whether implied or made expressly) by the Seller (other than those express warranties set out in the current edition of the Seller specification) relating to the quality and/or fitness for purpose of the Goods or any of the Instruments supplied are excluded. The Buyer shall satisfy itself that the Goods are suitable for any product or application for which they are to be used before they are so used.

- vii. Any claim by the Buyer which is based on any defect in quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 60 days from the date of delivery; delivery certified by the serial number recorded by the Seller at time of shipment.
- viii. When a claim based on any defect in the quality or condition of the Goods is notified in 60 days, the Seller can be requested by the Buyer for a free of charge repair, replacement of the Goods (or part thereof) or in Seller's sole discretion, a refund of the price paid by the Buyer for the Goods (or a proportionate part of such price). The request, mentioned above, must be done by the Buyer within 5 years from the notification to the Seller of any defects in the quality or condition of the Goods whose sales status is listed as "ACTIVE" at time of purchase. The Seller shall have no further liability to the Buyer. The Goods claim to be in default must be returned to Seller's factory at Buyer cost, cost for return transport prepaid. **G.M. International S.r.l.** guarantees the Goods whose sales status is listed as "ACTIVE" at time of order placed in the original package for a period of five (5) years from the delivery, against factory and materials defects in condition of use conformal to instructions and to technical specification. The seller will repair or replace the products covered by these terms of warranties. The guarantee period is five (5) years from the delivery for all product listed as "Active" at time of purchase order placement.
- ix. The Warranty period is limited to two (2) years for Goods whose sales status is listed as "PHASE-OUT" at time of order and one (1) year for Goods whose sales status is listed as "SPARE ONLY" at time of order. Time of order is determined by the purchase order issue date. All other terms and conditions remain unchanged.
- x. The quantity of the Goods stated on Seller's shipping note or other notification of dispatch shall be final unless the Buyer has given notice of any discrepancy in quantity within ten days after receipt of the Goods and has thereafter given to the Seller a reasonable opportunity to re-count the Goods prior to having been used, sold, or processed.
- xi. If requested, an estimate of repair charges will be provided for those Goods or parts thereof which are not covered under the terms of this warranty.
- xii. Buyer is aware of and accept that the Seller doesn't grant others forms of warranties, express or implied, except for the warranties mentioned above. In particular, the Seller will be exempt from any responsibility connected to damages, direct or indirect, caused by a non-conformal use of the Goods.
- xiii. These warranties are exclusive, and seller makes no other warranties; expressed or implied; including any implied warranties of fitness for any particular purpose of the goods supplied or for any indirect, consequential, financial, or environmental losses.

14. PRODUCT INDEMNITY & LIABILITY

- a. **Indemnity:** The Seller will not be liable towards the Buyer, Buyer's clients, or successor in title and third parties with which the Buyer gets involved, for declaration information and/or warranties, express or implied, released by the Buyer itself to them. In particular, the seller will not be liable, in any way, for the case the Buyer re-sell the Goods bought from **GM International S.r.l.**, for indirect, special, consequential, financial, or environmental losses or damages. The seller will not be liable for loss of profit, adding costs or other compensations suffered by the Buyer, its clients or successor in title. Moreover, the Seller will not be liable toward the Buyer, its employees, its agents, its clients, or successor in title for indirect, special, consequential, financial, or environmental losses or damages even though different declaration, implied warranties, conditions, or other terms of Sale. The Buyer is exempt from liability arising from the direct consequence of a failure or defect of the Seller products".
- b. **Conformity:** Buyer assumes full responsibility for the conformity of the goods to all applicable laws and for any formality required by the competent authorities for the delivery, use and installation of the Goods. Buyer must advise Seller no later than at the time of the Purchase Order of any country-specific regulations and standards that apply to the Goods supplied by the Seller. Unless stated differently in Seller's quotation, order confirmation or invoice and agreed to, the goods delivered by Seller shall conform to EU regulations.
- c. **Improper Use:** Seller shall not be liable to Buyer, its clients and any other person for any loss or damage resulting from improper installation or misapplication of the Goods.
- d. **Attribution:** Buyer expressly recognizes that for any attribution of responsibility to the Seller for damages arising from the use of the Goods undeniable proof must be given of the following:
 - i. the existence of the damage and/or defect.
 - ii. the defective nature of the Goods.
 - iii. the cause-and-effect relationship between damage and defect.
- e. **Limit of Liability:** The eventual Seller's aggregate responsibility and liability, with the Buyer, is limited to the price of sale of the Goods. The efficacy of this limitation prevails on any other different agreement eventually established between the parties, notwithstanding with any other indication contained in these Terms and Conditions of Sale.

15. FITNESS OF PURPOSE

- a. **Fitness of Purpose:** The Buyer agrees that it does not rely on the skill and judgment of the Seller in relation to the suitability of any of the Goods provided under these Terms of Sale for a particular purpose or application for which the Goods are required by the Buyer and the Seller is under no liability whatsoever if such Goods are not suitable and fit for the purpose.

16. SPARE PARTS

- a. **Spare Parts Policy:** The seller guarantees the availability of spare parts for a minimum of 2 years from the end of the PHASE-OUT period (10 years); Refer to Product Lifecycle Policy available on Seller website: www.gminternational.com.
- b. Seller guarantees availability of same or equivalent Goods.

- c. Spare parts policy does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of warranty as is given by the manufacturer to the Seller.

17. RMA

- a. **RMA:** Buyer must obtain a written consent from the Seller in the form of a Return Merchandise Authorization number (RMA) before attempting to return any Goods to Seller for any reason. Issuance of an RMA number does not constitute assumption of any liability or implies that the product will be covered by the warranty or that a credit note will be issued for such material.
- b. **RMA Issuance:** RMA shall be obtained solely using the RMA form available on Seller web site: www.gminternational.com.

18. RETURNS FOR WARRANTY CLAIM

- a. **Seller Evaluation:** All product returned under a warranty claim will be evaluated on an individual basis to verify if the product is found to be defective according to these Terms and Conditions; should the product found not to be defective according to these Terms and Conditions, for any means or reasons such as for damages inflicted by the buyer misuse or otherwise, or found in proper working condition, the Buyer shall be liable to pay all costs incurred by the Seller in the evaluation plus the eventual repair costs.
- b. **Early Replacement:** If the buyer is in urgent need to obtain a replacement unit, the buyer can request an early replacement by so doing in the RMA form; at Seller's sole discretion the early replacement parts will be sent according to Buyer specifications.
- c. **Returns in case of Early Replacement:** If an early replacement product has been sent, the buyer shall return, within 60 days of receipt of the early replacement product, to Seller the product for which he initially requested the RMA. Should the product not be returned within 60 days of receipt of the early replacement product, or should the product found not to be covered by the warranty, by any means or reasons, the early replacement product will be invoiced to the Buyer at the price list in vigor at time of invoicing, in addition to all costs incurred by the Seller in the process.

19. RETURNS FOR CREDIT NOTE

- a. **Returns:** Buyer may return within 30 days from date of delivery any product which Seller stocks if it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts; and it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered, or damaged.
- b. **Seller Evaluation:** All returned material will be evaluated on an individual basis and a credit note will be issued for authorized returns that are found to be in as new condition as stated above and re-stock able at Seller's sole discretion.
- c. **Deductions:** Any credit due to Buyer for the returned Goods shall be subject to the following deductions:
 - i. Eventual costs of putting Goods in sellable condition; In example, re-test / re-calibration of the modules.
 - ii. Transportation charges, duties and taxes paid by the Seller in conjunction with the return of the Goods.
 - iii. Handling and restocking fees equal to a minimum of 15% of the net value originally paid for the Goods.
- d. **Credit Note:** A credit note equal to the net value originally paid for the Goods returned and found to be conforming by the Seller, decreased by all deductions stated above will be issued by Seller in favor of Buyer within 60 days from receipt of the returned Goods.
- e. **Customized Goods:** Special order and customized products, not stock items and all those products marked as **NCNR** by the Seller will not be accepted for return in all cases.
- f. **Non-Conforming Goods:** Credit will not be issued for Goods found to be non-conforming or non-stock able at Seller's sole discretion; non-conforming Goods will be made available to Buyer for pick-up at his cost and discretion. The Seller reserves the right to charge-back to Buyer all costs incurred in the verification of the non-conforming Goods.

20. CODE OF ETHICS

- a. **Code of Ethic:** Sales incorporating these Terms of Sale adhere and fully conform to the Seller's Code of Ethics which is made an integral part of these Terms of Sales and is available for download from Seller's website (www.gminternational.com).

21. FORCE MAJEURE

- a. **Force Majeure:** Seller shall not be liable for any loss, damage, or penalty due to any cause beyond Seller's reasonable control. Only for making an example, the following events are considered Force Majeure events: unsuccessful reaction to Seller's requests, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of the Seller's, fire, explosion, accident, theft, vandalism, riots, act of war, strike or other labor disputes, lightning, flood, windstorm, earthquake or any other act of nature, delay in transportation, inability to obtain materials, delay of contractors or suppliers.

22. ASSIGNMENT

- a. **Assignment:** Buyer has no right to assign the contract hereunder to any third party without first obtaining the written consent of the Seller.

23. SEVERABILITY

- a. **Severability:** Any provision in these Terms of Sale which is invalid or un-enforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise must be severed to the extent of

the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

24. WAIVER

- a. Waiver:** No waiver of any rights or breach of any provision of this Terms of Sale will constitute a waiver of any other right or breach of any other provisions, nor will it be deemed to be a general waiver of such right or provision by the waiving party or to sanction any subsequent breach by the other party. Waiver of any right, power, authority, discretion, or remedy arising on a breach of or default under the Agreement in force between the Seller and the Buyer on these Terms of Sale must be in writing and signed by the party granting the waiver.

25. PARTNERSHIP

- a. No Partnership:** Nothing contained in this Terms of Sale will be interpreted as to create a partnership or joint venture among the parties or to have a party an agent of another party for any purpose.

26. LANGUAGE

- a. Language:** All documents pertaining to the Sale including this Terms of Sale, correspondence, operating and maintenance manuals/instructions, schedules, reports, certifications, and any other submittals by either party to the other shall be in the English language.

27. JURISDICTION

- a. Jurisdiction:** Any dispute related to the implementation, execution, interpretation, and breach of the contract for this Sale shall be settled according to the Italian law. Any dispute between the parties related to this Sale shall be settled by the Court of Monza (MB).

28. NOTICE

- a. Notice:** Any notice given by one party to the other party pursuant to the Sale shall be sent in writing via Registered Mail and anticipated via e-mail to the address listed in the Purchase Order for the Buyer and to the address listed in the Purchase Order Confirmation for the Seller.

For acknowledgment and acceptance of the foregoing general Terms and Conditions of Sale by the Buyer:

[Insert corporate name of the client]

Name:

Title:

Date:

Sign:

Stamp:

For specific approval and acceptance by the Buyer, including for purposes of articles 1341 and 1342 of the Italian Civil Code, of the provisions under sections 5, 7, 12, 13, 14, 17, 18, 20 and 26 of the foregoing general Terms and Conditions of Sale:

[Insert corporate name of the client]

Name:

Title:

Date:

Sign:

Stamp: