

General conditions for the supply of plant and machinery and other mechanical and electrical equipment

1. General

- 1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order.
- 1.2 These general conditions of supply shall be binding if declared applicable in the offer or in the order acknowledgement.
Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.
- 1.4 Should a provision of these general conditions of supply prove to be wholly or partly invalid, the parties to the contract shall jointly seek a valid arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

2. Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. The supplier shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

3. Drawings and descriptive documents

- 3.1 The weights, dimensions, capacities, prices and other technical and general data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the contract.
- 3.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognises these rights and shall, without previous written consent of the other party, not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Regulations in force in the country of destination and safety devices

- 4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under Clause 4.1. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.
- 4.3 If, by reason of any change in such laws and regulations occurring after the conclusion of the contract, the cost of manufacturing is increased or reduced, the amount of such

increase or reduction shall be added to or deducted from the price, as the case may be.

5. Prices

- 5.1 Unless otherwise agreed upon, all prices shown in price lists and catalogues shall be deemed to be ex works (EXW INCOTERMS 2000), including packing for truck transport.
Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.
Likewise, the customer shall bear any and all taxes, fees, levies, custom duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier is liable for them.
- 5.2 The supplier reserves the right to adjust the prices in case:
 - the delivery time has been subsequently extended due to any reason stated in clause 8.2, or
 - the nature or the scope of the agreed supplies or services has changed, or
 - the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances or were incomplete.

6. Terms of payment

- 6.1 Payment shall be made by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like.
Payments shall be made in the currency stipulated by the contract.
Unless otherwise agreed upon, the price shall be paid in the following instalments:
 - 30% as advance payment on the formation of the contract,
 - 70% shall be payable upon delivery of the goods.Payment by bills of exchange or cheques shall constitute a valid payment only when expressly agreed upon in the contract. The customer shall bear all the cost related to such payment, including, but not limited to, cost of discounting of bills, bill of exchange taxes and collection charges.
- 6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond supplier's control, or if post-delivery work is to be carried out without the supplies being prevented from use.
- 6.3 If a payment has not been made or securities are not provided in accordance with the terms of the contract, the supplier shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.
If the supplier chooses to adhere to the contract, he may postpone the fulfilment of his own obligations until such payment is made or such securities are provided, unless the failure of the customer is due to an act or an omission of the supplier.

- 6.4 If the customer delays in the agreed terms of payment, he shall be liable, without reminder, for interest with the effect from the date on which the payment was due, such interest to exceed the LIBOR (London Interbank Offered Rate) for 12 months by 4% p.a.

7. Reservation of title

The supplier shall remain the owner of all supplies until having received the full payment in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular upon entering into the contract the customer authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that the supplier's title is in no way prejudiced.

8. Delivery

- 8.1 Unless otherwise agreed upon, the delivery time shall run from the latest of the following dates (effective date):

- the date of the formation of the contract, according to clause 1.1;
- the date on which the supplier receives notice of the issue of a valid import license, where such is necessary for the execution of the contract;
- the date of receipt by the supplier of such payment in advance of manufacture as is stipulated in the contract;
- the date of receipt by the supplier of a Letter of Credit, opened and confirmed according to the contract.

The delivery time shall be deemed to be observed if the supplier has sent a notice to the customer 14 days before the delivery date informing that the supplies are ready for dispatch.

- 8.2 The delivery time will be extended:

- if the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of supplies or services;
- if hindrances occur which the supplier cannot prevent despite using the required care, regardless of whether they affect the supplier or the customer or a third party. Such hindrances include, but shall not be limited to epidemics, mobilisation, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes;
- if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.
- if the customer delays in making any payment, or otherwise fails to observe the terms of payment, under any contract whether the current contract or a different contract with the supplier.

- 8.3 The customer shall be entitled to claim liquidated damages for delayed delivery in so far as the customer has proved that the delay has been caused through the fault of the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.

Unless otherwise agreed, the following percentages shall apply to the liquidated damages as mentioned above:

0.5% per week of the part of the agreed purchase price covering the portion of the supplies which, consequently to the delay, cannot be put to the intended use. The liquidated damages shall be calculated for each complete week of delay after a two-week grace period commencing on the due date of delivery. The total amount of liquidated damages shall not exceed 5.0% of the part of the purchase price covering the portion of the supplies which cannot be put to the intended use consequently to the delay.

- 8.4 After reaching the maximum liquidated damages for delayed delivery, the customer shall grant the supplier a reasonable extension in time in writing. If such extension is not observed for reasons within supplier's control, the customer shall have the right to reject the delayed part of the supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

- 8.5 If the customer finds that he will be unable to accept the delivery of the supplies on the due date, or if delay on his part seems likely, he should at the latest 14 days before the agreed delivery date inform the supplier of this in writing, stating the reason for the delay and the date on which it is expected that delivery of the supplies can take place.

If the customer fails to accept the delivery of the supplies on the due date, he shall nevertheless make any payment conditional on delivery as if the supplies had been delivered. The supplier shall arrange for the storage of the supplies at the risk and expense of the customer in a forwarding agent's premises. The customer shall amend the Letter of Credit accordingly, in case of Letter of Credit terms are used. If required by the customer the supplier shall insure the supplies at the expense of the customer.

- 8.6 Unless the failure of the customer as per clause 8.5 is due to any of the circumstances including, but not limited to : epidemics, mobilisation, war, revolution, labour conflicts, serious breakdown in the works, accidents, the supplier may require the customer by notice in writing to accept the delivery of the supplies within 30 days.

If the customer fails for any reason whatsoever to do so within such time, the supplier shall be entitled by notice in writing to the customer to terminate the contract in respect of such portion of the supplies as is by reason of the failure of the customer not delivered and to recover from the customer any loss suffered by reason of the customer's failure to accept delivery. The maximum loss recoverable shall not exceed that part of the purchase price which is attributable to such portion of the supplies.

- 8.7 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the contract if performance of the contract is impeded for more than six months by reason of any of the circumstances mentioned in Articles 8.2.b) or 8.6. Termination shall be given by written notice at least two weeks in advance. Unless performance is resumed during this period, termination will be effective at the end of the two-week period.

If the contract is thus terminated by the customer and the parties cannot agree on the division of the expenses incurred in respect of the contract, the supplier shall be entitled to a lump sum indemnity of 10% of the contract price.

9. Passing of benefit and risk

- 9.1 The benefit and the risk of the supplies shall pass to the customer according to the agreed delivery terms under INCOTERMS 2000.

- 9.2 If dispatch is delayed at the request of the customer or due to reasons beyond supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

10. Forwarding, transport and insurance

The supplier shall be notified of special requirements regarding forwarding, transport and insurance at the latest 30 days before the agreed delivery date.

The transport risk and expense shall be according to the agreed delivery terms under INCOTERMS 2000.

Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be submitted within 48 hours by the customer to the last carrier.

11. Inspection and taking-over of the goods

11.1 As far as being normal practice, the supplier shall inspect the goods before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

11.2 The customer shall inspect the goods, at the latest one week before the agreed delivery date and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the goods shall be deemed to have been taken over.

11.3 Having been notified of the deficiencies according to Clause 11.2 the supplier shall as soon as possible remedy them and the customer shall give the supplier the possibility of doing so. After remedy of such deficiencies, a taking-over test according to Clause 11.4 will be carried out at the request of the customer or of the supplier.

11.4 Subject to Clause 11.3, the carrying out of a taking-over test needs a special agreement. In the absence of an agreement concerning the manner of performing of such taking-over test the following shall apply:

- The supplier shall advise the customer the time of the execution of the taking-over test so that the customer or his representative can attend.
- A taking-over report shall be prepared which shall be signed by both the customer and the supplier or by their representatives. Deficiencies, if any, shall be specified in the report.
- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies and services, the customer shall not be entitled to refuse the acceptance of the supplies and the signature of the taking-over report. The supplier shall remedy such deficiencies without delay.
- In case of important deviations from the contract or of serious deficiencies the customer shall give the supplier the possibility of remedying these within a reasonable time. Thereafter, if the customer so requires, a further test shall be carried out.

If during this further test important deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensation from the supplier, provided this has been agreed before. If, however, the deviations and deficiencies appearing during such test are of such importance that they cannot be remedied within a reasonable time and provided the supplies shall not be used for their specified purpose, or such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part, or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable to reimburse the sums which have been paid to it for the parts affected by the termination.

11.5 Taking-over shall also be deemed completed

- if the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;
- if the customer refuses the acceptance without being entitled to do so;
- as soon as the customer uses the supplies and services.

11.6 Deficiencies of any kind in goods shall not entitle the customer to any rights and claims other than those expressly stipulated in Clause 11.4 and 12.

12. Guarantee, liability for defects

12.1 Guarantee period

The guarantee period is 12 months or 2000 (two thousand) working hours; if the supplies are used more intensively than agreed or than may be considered to have been foreseen in the contract, then the guarantee period shall be reduced accordingly. It starts when the supplies leave the works or at the taking-over of the goods should such taking-over have been agreed upon before, or, if the supplier undertakes the erection, upon completion thereof. If dispatch or taking-over or erection are delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair or taking-over, but not longer than the expiry of a period being double to the guarantee period applicable according to the preceding paragraph.

The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs. If the customer, in case of a defect, does not take immediately appropriate steps to mitigate the damage or does not give to the supplier the possibility of remedying such defect, the supplier's liability shall be reduced accordingly.

12.2 Liability for defects in material, design and workmanship

Upon written request of the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become supplier's property. The supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in supplier's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

12.3 Liability for express warranties

Express warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking over test has been agreed upon, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.

If the express warranties are not or only partially achieved, the customer may first of all require the supplier to carry out the improvements immediately. The customer shall give the supplier the necessary time and possibility of doing so.

If such improvements fail completely or in part, the customer may claim such compensation as has been agreed before for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

12.4 Exclusions from the liability for defects

Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the supplier, or resulting from other reasons beyond supplier's control.

12.5 Supplies and services of subcontractors

For supplies and services of subcontractors requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractor's guarantee and liability obligations.

12.6 Liability for additional obligations

The supplier is only liable in case of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.

13. Exclusion of further liability

Any rights and claims on the part of the customer other than those expressly stipulated in these general conditions of supply are excluded, irrespective on what ground they are based; this in particular refers to claims for damages, reduction of price or termination of the contract unless expressly stipulated therein. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages.

These exclusions do not apply in case of unlawful intent or gross negligence of the supplier, but are entirely applicable with respect to supplies provided by subcontractors of the supplier in all cases.

14. Product liability

The supplier shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of the supplier or others for whom he is responsible.

The supplier shall not be liable for damage to property occurring after the delivery of the supplies according to the agreed delivery term. Nor shall the supplier be liable for damage to products manufactured by the customer, or to the products of which the customer's products form a part. Apart from these limitations, the supplier shall be liable for damage to property on the same conditions as for personal injury.

The supplier shall under no circumstances be liable for loss of production, loss of profit or any other consequential damage or indirect loss.

If the supplier is to be held liable towards any third party, the customer shall indemnify the supplier insofar as the supplier's liability towards the customer is limited by the three preceding paragraphs.

The above limitations in the supplier's liability shall not be applicable in case of unlawful intent or gross negligence of the supplier, but are entirely applicable with respect to supplies provided by subcontractors of the supplier in all cases.

If a claim for damage as described in this Article is made by a third party against one of the parties, this party shall forthwith inform the other party thereof in writing.

15. Right of recourse of the supplier

If through actions or omissions of the customer or of persons employed or appointed by him to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the supplier, then the latter shall be entitled to take recourse against the customer.

16. Jurisdiction and applicable law

16.1 **Any disputes arising in connection with the contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.**

16.2 The contract shall be governed by Swiss law.