

## General Conditions of Supply

### I. General Conditions

1. The scope of the supplies or services (hereinafter called Supplies) shall be defined by the written declarations of both parties to the contract. General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by the supplier or service provider (hereinafter called "Supplier").
  2. For cost estimates, drawings and other documents (hereinafter called "Documents"), the Supplier reserves all rights, right, title and interest in the property and the copyright. Such Documents may not be made available to third parties without the prior consent of the Supplier and they shall, upon request, be immediately returned to the Supplier if he is not awarded the contract. Sentences 1 and 2 shall apply reciprocally to Purchaser's Documents; however, these may be made available to those third parties to whom the Supplier may transfer Supplies.
  3. The Purchaser shall have the non-exclusive right to use standard software in unchanged form with the stipulated performance characteristics for the agreed equipment. The Purchaser is allowed to make two back-up copies without the Supplier's express consent.
  4. Partial Supplies shall be permissible where they can be reasonably expected of the Supplier.
  5. Drawings and descriptive documents
    - 5.1 Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Vendor. They may not, without the Vendor's consent, be utilised by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser:
      - (a) if it is expressly so agreed, or
      - (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.
    - 5.2 The Vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 9, information and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Vendor so stipulates, they shall remain confidential.
3. If the Supplier has undertaken the assembly or erection or supervision of assembly or erection, the Purchaser shall bear all required incidental costs in addition to the agreed contract price unless otherwise agreed.
  4. Payments shall be made free at Supplier's paying office.
  5. The Purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.
  6. If the Purchaser delays in making payment, the Vendor may postpone the fulfillment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause XIV, the Vendor shall not be entitled to any interest on the sum due.

Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest. If at the end of this period of three (3) months, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of this loss.

### III. Retention of Title

1. The items of Supplies (Secured Goods) shall remain the property of the Supplier until each and every claim against the Purchaser which the Supplier is entitled under this business relationship has been duly satisfied. If the value of all security rights of the Supply exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security rights at the Purchaser's request.
2. For the duration of the retention of title, the Purchaser is prohibited from giving the items of Supplies in pledge or as security, and resale shall be permissible only to resellers in the ordinary course of business and only on condition that the reseller receives payment from his customer or retains title so that the property is transferred to the customer only after fulfillment of his obligation to pay.
3. In case of seizure or other acts or interventions by third parties, the Supplier shall be immediately informed thereof in writing by the Purchaser.
4. In cases of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, the Supplier shall be entitled to take back the goods following a demand for payment. The Purchaser shall be obliged to return the purchased goods. The taking back, the assertion of the retention of title or the seizure of the Secured Goods by the Supplier does not mean termination of the contract except if expressly stated by the Supplier.

### IV. Time for Delivery and Delay

1. Prices shall be ex works and shall exclude packing and the sales tax payable under the applicable law.
  2. If the offer or contract expressly states packing costs, these shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.
1. Observance of the stipulated time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as fulfillment of the agreed terms of payment and other obligations by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where the Supplier is responsible for the delay.

2. If the Supplier is responsible for a delay in delivery, the Purchaser who can establish credibly that he suffered a loss from such delay may claim agreed compensation of 0.5 % for every completed week of delay but in no event shall the aggregate of such compensation exceed a total of 5 % of the price of that part of the Supplies which because of the delay, could not be put to the intended use.
3. Purchaser's claims for compensation which exceed the limits specified in paragraph IV.2. shall be excluded in all cases of delayed delivery even after expiry of an extension of time that may have been granted to the Supplier. This exclusion shall not apply where in cases of willful misconduct or gross negligence there is a legally binding liability on the part of the Supplier. No change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected after the expiry of an extension granted to the Supplier that did not result in delivery.
4. If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch, Purchaser may be charged storage costs for each month thereafter to the amount of 0.5 % of the price of the supplied goods but in no event shall the aggregate storage charges exceed a total of 5 % of the price. The parties to the contract are at liberty to furnish proof of higher or lower storage costs.
5. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause XIV and the Vendor is in a Position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.

Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause XIV, the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatever to do so within such time the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure. This amount will not exceed that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

#### **V. Transfer of Risk**

1. Save as provided in paragraph IV No. 5., the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

2. In the case of a sale "ex works", the Vendor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

#### **VI. Assembly and Erection**

Unless otherwise agreed in writing, assembly and erection shall

be subject to the following provisions:

1. The Purchaser shall provide at his own expense and in a timely manner:
  - (a) all earth-moving and construction work and other ancillary services not specific to the Supplier's trade as well as the necessary skilled and unskilled labour, materials and tools,
  - (b) the equipment and materials necessary for assembly, erection and commissioning such as scaffolds, lifting equipment etc., fuels and lubricants,
  - (c) energy and water at the point of use, including connections, heating and lighting,
  - (d) suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts; apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel, including appropriate sanitary facilities. Furthermore, the Purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the Supplier and of the assembly personnel
2. Before the start of assembly or erection, the Purchaser shall make available of his own accord all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as the required data concerning statics and underlying conditions of the site.
3. Before the beginning of assembly or erection, the necessary materials and equipment to start work must be provided at the site and all preparations must have advanced to such a point that the assembly or erection can be started as agreed and carried out without interruption. Access roads and the site itself must be level and clear.
4. If the assembly, erection or commissioning is delayed by circumstances for which the Supplier is not responsible, the Purchaser shall bear an appropriate amount of the costs of waiting periods and of any additional travelling of the Supplier or the assembly personnel that may be necessary.
5. The Purchaser shall attest to the Supplier at weekly intervals the hours worked by the assembly personnel and he shall immediately confirm in writing the completion of assembly, erection or commissioning.
6. If, after completion, the Supplier requests acceptance of the Supplies, it shall be carried out by the Purchaser within two weeks of the Supplier's request, failing which acceptance is deemed to have taken place. Acceptance is also deemed to have taken place if after completion of any agreed test phase the Supplies are put to use.

#### **VII. Taking Delivery**

Deliveries, even with minor defects, have to be accepted by the Purchaser.

#### **VIII. Warranty**

1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.
2. This liability is limited to defects which appear during the period of twelve (12) months (hereinafter called "the Guarantee Period").
3. In fixing this period due account has been taken of the time normally required for transport as contemplated in the Contract.

4. In respect of such parts (whether of the Vendor's own manufacture or not) of the Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.
5. The Guarantee Period shall start from the date on which die Purchaser receives notification in writing from die Vendor that the Plant is ready for dispatch from the works. If dispatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond the control of the Vendor such extension shall not exceed the number of max. six (6) months.
6. A fresh Guarantee Period of six (6) months shall apply, under the same terms and conditions as those applicable to the original Plant, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Plant, the Guarantee Period of which shall be extended only by a period equal to the period during which the Plant is out of action as a result of a defect covered by this Clause.
7. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
8. On receipt of such notification die Vendor shall remedy the defect forthwith and, save as mentioned in paragraph 10 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfillment by the Vendor of his obligations under this paragraph in respect of such defective part.
9. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and one of the following points:
  - (a) the Vendor's works if the Contract is "ex works" or FCA;
  - (b) the port from which the Vendor dispatched the Plant if the Contract is FOB, FAS, CIF or CFR;
  - (c) in all other cases the frontier of die country from which the Vendor dispatched the Plant.
10. Where, in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.
11. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.
12. If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in a reasonable manner.
13. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.
14. The Vendor's liability shall apply only to defects that appear under the conditions of Operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.
15. Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim whatsoever in cases of indirect and/or consequential damages like e.g. in respect of personal injury, or of damage to property not the subject matter of the Contract, or of loss of production and/or of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.
16. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

#### **IX. Industrial Property Rights and Copyright**

1. If a third party, because of an infringement of an industrial property right or copyright (hereinafter called „Property Rights“) by products furnished by the Supplier and used in conformity with the contract, asserts legitimate claims against the Purchaser, the Supplier shall be liable to the Purchaser as follows:
  - (a) At his own option and expense, the Supplier shall either obtain a right to use the product, modify the product so as not to infringe the Property Rights or replace the product. If this is not possible to the Supplier on acceptable terms, he shall have to take back the product and refund the purchase price.
  - (b) Supplier's aforesaid obligations shall exist only on condition that the Purchaser immediately notifies the Supplier in writing of the claims asserted by the third party, that he does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to the Supplier. If the Purchaser stops using the product to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Property Rights.
2. Claims of the Purchaser shall be excluded if he is responsible for an infringement of Property Rights.
3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a use of the product not foreseeable by the Supplier or by the product being altered by the Purchaser or being used together with products not provided by the Supplier.
4. Further claims against the Supplier shall be excluded. However, Clause XI (Further Liability) shall remain unaffected and so shall the Purchaser's right to terminate the contract.

#### **X. Impossibility of Performance, Contract Adaptation**

1. If it is impossible for the Supplier to carry out the Supplies for reasons for which he is responsible, the Purchaser shall be entitled to claim damages but the Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This shall not apply where in cases of willful misconduct, of gross negligence or of initial impossibility, there is a legally binding liability. No change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected.

#### **XI. Further Liability**

Except as provided herein, any other claims for damages of the Purchaser shall be excluded regardless of whether they are based on positive breach of contractual obligations, violation of obligations in contract negotiations, breach of warranty, tort or other legal theory. This exclusion shall not apply where e.g. under the product liability law or in cases of willful misconduct, of gross negligence, of the absence of warranted characteristics or of the fundamental non-performance of contractual obligations, there is a legally binding liability. However, liability for damages arising from the fundamental non-performance of contractual obligations shall be limited to the foreseeable damage normally covered by a contract except in cases of willful misconduct or gross negligence. This limitation does not imply a change in the burden of proof to the detriment of the Purchaser.

#### **XII. Choice of Forum**

1. If the Purchaser is a businessman, the sole forum for all disputes arising directly or indirectly out of the contract shall be the place of the Supplier's head or branch office at the Supplier's Option.
2. All relations arising out of the contract shall be governed by German law not including the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **XIII. Validity of the Contract**

Even in case of legal invalidity of individual items, the remaining parts of the contract shall remain binding save where adherence to the contract would mean an undue hardship on one of the parties.

#### **XIV. Force Majeure**

1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.
2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.
3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clause IV No. 5 if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.
4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of

the Contract shall be determined by agreement between the parties.

5. In default of agreement it shall be determined by an arbitrator which party has been prevented from performing his obligations and that party shall bear the whole of the said expenses. Where the Purchaser is required to bear the whole of the expenses and has before termination of the Contract paid to the Vendor more than the amount of the Vendor's expenses, the Purchaser shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.

6. For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred, after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.