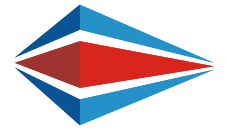


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# General Conditions of Contract

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# General conditions of contract for the supply of parts and systems

### 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. Tenders, which do not stipulate an acceptance period shall not be binding.
- 1.2. These general conditions of contract shall be binding if declared applicable in the quotation 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. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.
- 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 an 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. Technical documents

- 3.1. Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.
- 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. Deliveries and performances comply with the safety stipulations and regulations for preventing diseases and accidents at the seat of the manufacturer. Where regulations in the destination country differ, the client shall, at the latest at the time of placing the order, inform the supplier of the regulations and standards

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relating to the implementation of deliveries and performances, the operation and the prevention of diseases and accidents.

- 4.2. If not otherwise agreed, the deliveries and performances correspond to the regulations and standards applicable at the seat of the manufacturer of which the supplier was informed in accordance with section 4.1. The supplier does not accept any further regulations with regard to the compliance with these regulations.

### 5. Prices

- 5.1. Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing, in the currency stated on the sales documents without any deduction whatsoever.  
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, customs 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 wage rates, the currency ratio or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made according to, the attached price adjustment clause.  
In addition, an appropriate price adjustment shall apply in case
- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, 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. Payments shall be made by the customer at suppliers domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Unless otherwise agreed upon payment terms are 30 days net after invoicing. If another payment term is agreed such as prepayment, letter of credit, side draft or others, all bank charges are on customer's duty.
- 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 suppliers control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.
- 6.3. If the advance payment or the contractually agreed 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

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claim damages.

If the customer, for any reason whatsoever, is in delay with a further payment, or if the supplier is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, the supplier, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until the supplier will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case the supplier does not receive adequate securities, the supplier shall be entitled to terminate the contract and to claim damages.

- 6.4. If the customer delays in the agreed terms of payment, the supplier may, without reminder, ask for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

### 7. Reservation of title

The supplier shall remain the owner of all supplies until having received the full payments 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 it 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 fulfill all corresponding formalities, at customer's cost.

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

### 8. Delivery time

- 8.1. The delivery time shall start as soon as the contract is entered into (order of customer), payments due with the order have been made, any agreed securities given and the main technical points are settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.
- 8.2. Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligations.
- 8.3. The delivery time is reasonably extended:
- a) 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 the supplies or services;
  - b) 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, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural

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catastrophes, acts of God;

c) if the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

- 8.4. The customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be 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. Damages for delayed delivery shall not exceed 112 per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay. After reaching the maximum liquidated damages for delayed delivery, the customer shall grant the supplier a reasonable extension of 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. In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.
- 8.6. Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

### **9. Packing**

Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as supplier's property it shall be returned by the customer, carriage paid, to the place of dispatch.

### **10. Passing of benefit and risk**

- 10.1. The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.
- 10.2. 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.

### **11. Forwarding, transport and insurance**

- 11.1. The supplier shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the supplies or

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of the shipping documents be immediately submitted by the customer to the last carrier.

- 11.2. The customer shall be responsible for taking insurance against risks of any kind.

### **12. Inspection and taking-over of the supplies and services**

- 12.1. As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 12.2. The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.
- 12.3. Having been notified of deficiencies according to Clause 12.2, the supplier shall as soon as possible remedy them, and the customer shall give the supplier the possibility of doing so.
- 12.4. Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 13 (warranty, liability for defects).

### **13. Warranty, liability for defects**

- 13.1. *Warranty period*  
The warranty period is 12 months from the date of commissioning or 18 month from the date of dispatch, if not otherwise agreed.

For replaced or repaired parts the warranty period starts anew and lasts 8 months from the date of dispatch.

Upon detection, the client shall inform the supplier immediately of any hidden defects in writing. In case of non-compliance with this provision, all guarantee claims shall become null and void.

- 13.2. *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 warranty 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.
- 13.3. *Liability for assured features*  
Assured features are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An assured feature is valid until the expiry of the warranty period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.  
If the assured features are not or only partially achieved, the customer may first

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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.

13.4. *Exclusions from the liability for defects*

Excluded from supplier's warranty 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.

13.5. *Supplies and services of subcontractors*

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

13.6. *Exclusivity of warranty claims*

With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.

13.7. *Liability for additional obligations*

The supplier is only liable to the extent 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.

## 14. Non-performance, bad performance and their consequences

- 14.1. In all cases of bad performance or non-performance not expressly covered by these general conditions of supply in particular if the supplier, without valid reasons, starts execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to supplier's fault -, then the customer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to supplier's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

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- 14.2. In such case Clause 16 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.

### **15. Termination of the contract by the supplier**

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the supplier, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, the supplier shall be entitled to terminate the contract or the parts affected thereby.

If the supplier wishes to terminate the contract it shall after having recognised the consequences of the event immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract the supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

### **16. Exclusion of further liability on the supplier's part**

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination of, or withdrawal from the contract are excluded. 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 damage. This exclusion of liability; however, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law.

### **17. Right of recourse of the supplier**

If, through actions or omissions of the customer or of persons employed or appointed by it 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.

### **18. Jurisdiction and applicable law**

- 18.1. The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier.  
The supplier shall, however, be entitled to sue the customer at the latter's registered address.
- 18.2. The contract shall be governed by Swiss substantive law "under exclusion of the purchase law of Vienna (Wiener-Kaufrecht)".