

## 1 General

- 1.1 The contract shall be deemed to have been entered into upon receipt of the supplier's written acknowledgement stating acceptance of the order. Tenders which do not stipulate an acceptance period shall not be binding.
- 1.2 These general conditions of supply shall be binding if declared applicable in the tender 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 contracting parties 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.

## 2 Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto.

## 3 Plans and technical documents

- 3.1 Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding if they have been expressly stipulated as such.
- 3.2 Each party retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes 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 Prices

- 4.1 Unless otherwise agreed, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deductions whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for permits certifications, taxes, fees, levies and customs duties shall be borne by the customer.
- 4.2 In case of shifting wage rates or raw material prices in the time period between the date of submission of the tender and the contractually agreed performance date, the supplier shall be entitled to adjust the prices without the customer's prior written approval. In such case the adjustment shall be made on the basis of to the price adjustment clause attached hereto.

In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reason stated in Clause 7.2, or any documents furnished by the customer were not in conformity with the actual

circumstances, or were incomplete, or an amendment has been made to laws, regulations or the principles of interpretation or application.

## 5 Terms of payment

Payments shall be made by the customer at the supplier's 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, the price shall become due and payable within 30 days after receipt of the order acknowledgement by the customer. The supplier shall however in all cases, and notwithstanding the rule established in the previous sentence, be free to request up-front payment, in advance of delivery.

## 6 Reservation of title

The supplier shall remain the owner of all supplies until he has received the full payments in accordance with the contract. 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 or similar records and to fulfil all corresponding formalities, at the customer's expense. 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 compromised or rescinded.

## 7 Delivery time

- 7.1 The delivery time shall start as soon as the contract is entered into, all official formalities have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing him that the supplies are ready for dispatch.
- 7.2 The delivery time shall be reasonably extended:
- a) if the information required by the supplier for the 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 exercising the required care, regardless of whether they affect the supplier, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, 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, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;

c) 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.

7.3 The customer shall not be entitled to claim damages or any other form of compensation in case of delayed delivery. In case the supplier is more than 14 weeks late with delivery, the customer shall grant the supplier a reasonable grace period in writing. If delivery does, for reasons within the supplier's control, still not occur within the grace period so granted, the customer shall have the right to terminate the contract and to claim back the amount already paid, against return of the deliveries already supplied.

7.4 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 7. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to persons employed or appointed by the supplier to perform any of his obligations.

## **8 Passing of benefit and risk**

8.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works at the latest.

8.2 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.

## **9 Inspection and taking-over of the supplies and services**

9.1 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.

9.2 The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify the supplier in writing of any deficiencies. If the customer fails to do so, the supplies and services shall be deemed to have been taken over.

9.3 The execution of a taking-over test as well as the stipulation of the conditions related thereto require a special agreement.

9.4 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 9 and Clause 10 (guarantee, liability for defects).

## **10 Guarantee, liability for defects**

10.1 The guarantee period is 12 months, or 6 months in case of a multi-shift system. It shall start to run when the supplies leave the supplier's premises or, in case separate inspection and approval proceedings have been agreed among the parties, with the completion of such proceedings, or, if the supplier undertakes the installation, upon completion thereof. If dispatch or installation 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 from the replacement or completion of the repair, but not longer than the expiry of a period double the guarantee period stipulated in the preceding paragraph.

The guarantee expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the possibility to remedy the defect.

10.2 Upon the written request of the customer, the supplier may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become the supplier's property if he does not explicitly renounce this. The supplier shall bear the reasonable and proportional costs of remedying the defective parts at the supplier's premises, but not any costs of transportation, manpower, travelling, accommodation or the costs of dismantling and reassembling the defective parts at the customer's premises.

10.3 Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. The same legal remedies as generally available under these general conditions of contract with regard to the supplier's contractual performance shall also be available with regard to express warranties (no extension of normal warranty rights for express warranties).

10.4 All deficiencies which cannot be proven 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 installation work not

undertaken by the supplier, or resulting from other reasons beyond supplier's control are excluded from the supplier's guarantee and liability for defects.

10.5 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 10.1 to 10.4.

10.6 In case the customer has given notice of defects and no defect which would give rise to a legal remedy under these general conditions of contract has been detected, the supplier shall be entitled to receive an adequate compensation, on the basis of time spent, for the examination of the supplies and any other related costs incurred by him in this context.

## 11 Export control

The customer recognises that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

## 12 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 the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer. 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 the 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, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights.

This exclusion of further liability on the supplier's part does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to persons employed or appointed by the supplier to perform any of his obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law.

## 13 Indemnification of supplier

The customer shall hold the supplier fully harmless from any and all claims brought by third parties and fully indemnify him for any and all costs incurred as a consequence of acts and/or omissions of the customer or any of its employees, officers, agents or ancillary persons which lead to injuries or the death of persons or physical damage or loss of property or assets.

## 14 Jurisdiction and applicable law

14.1 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.

14.2 The contract and the legal relationship of the parties shall be governed by **Swiss substantive law**.