

### 1. Purview

- 1.1. These General Terms and Conditions shall govern the delivery of Products to the Customer by the Supplier. Any written agreement between the parties regarding terms and conditions that differ from these terms and conditions shall apply in such regard between the parties.
- 1.2. In these General Terms and Conditions, "Products" means the products identified in detail and specified in each individual Agreement.
- 1.3. In these General Terms and Conditions, " (the) Agreement" means every individual agreement regarding the delivery of Products. These General Terms and Conditions constitute an integral part of each such individual Agreement.

### 2. Drawings, descriptions and other documents

- 2.1. Information regarding the Product shall be binding where the Agreement makes express reference thereto. The information provided in catalogues, prospectuses, etc. is approximate. Technical data is provided subject to a proviso with respect to design modifications.
- 2.2. Sole title to all intellectual property rights related to the Product shall remain vested in the Supplier. Drawings, descriptions, software, and other technical data provided by one party to the other may not be used for purposes other than those for which the information was provided. Nor may the material be copied or in any other manner reproduced without the consent of the party that provided the material.
- 2.3. Not later than the date of delivery, the Supplier shall provide the Customer, free of charge, with a copy or larger agreed number of drawings and/or other technical documents required to enable the Customer to attend to the installation, entry into operation, operation, and maintenance (which term includes regular repairs) of all parts of the Product. Other documents, such as measurement records and certificates, shall be provided subject to agreement in exchange for payment. The Supplier shall not be obligated to provide drawings and documents regarding the manufacture of the Product or spare parts.

### 3. Delivery tests

- 3.1. Agreed delivery tests shall be carried out at the Customer and at the Customer's cost, however not insofar as relates to the Supplier's participation.
- 3.2. Where the parties have not agreed in detail regarding the technical requirements and the manner in which the delivery test shall be carried out, the delivery test shall be carried out in accordance with normal practice within the relevant industry in the country of the Supplier. The Supplier shall prepare a delivery test report, which shall be received by the Customer. In the event the Product does not comply with the agreement the Supplier shall, as soon as possible, ensure that necessary corrections are carried out insofar as the deviation is no immaterial for use of the Product. Thereafter, the Customer shall be entitled to a new delivery test.
- 3.3. The Customer shall give notice whether the delivery test has been approved within five days of performance of the test. A delivery test shall be approved in the delivery report. The test shall be deemed approved upon the occurrence of any of the following circumstances:
  - a) the Customer approves the delivery test;
  - b) the Customer should reasonably have approved the test;
  - c) five days have elapsed since performance of the test and the Customer has not raised any justified objections to the test; or
  - d) the Product may be used as intended.
- 3.4. The Customer shall at all times be deemed to have approved the delivery test where a deviation from the agreed condition exists but the deviation is irrelevant to the intended use.
- 3.5. The Customer's payment obligations shall not be affected by his approval or otherwise of the delivery test.

### 4. Price and payment

- 4.1. Sales shall take place at the prices applied by the Supplier at the time of execution of the Agreement. All prices are exclusive of value added tax and other public charges. Where an exchange rate changes by more than 2% after the Customer has received the Supplier's bid or equivalent, the Supplier shall be entitled to adjust the price. The aforesaid shall apply irrespective of whether a particular price has been specifically agreed upon between the parties.
- 4.2. Payment shall be made against invoice. Under no circumstances, such as in the event of delay or defect, shall the Customer be entitled to withhold payment. In the event of delay in payment, penalty interest shall accrue commencing on the due date. Penalty interest shall be charged at the rate of interest in force from time to time in accordance with the main refinancing facility of the European Central Bank plus eight percentage points.
- 4.3. Where, after the purchase, the Customer's actions or economic circumstances are such that it may reasonably be assumed that he will fail to make payment in full, the Supplier shall be entitled to suspend performance and withhold delivery. Where the Supplier has already shipped the Product and circumstances as referred to in the preceding sentence exist with respect to the Customer, the Supplier shall be entitled to prevent the Product from being delivered to the Customer. The Supplier shall immediately notify the Customer in writing regarding a decision to suspend performance.
- 4.4. The Supplier shall be entitled to terminate the Agreement in writing in the event all or any part of the purchase price has not been paid within three months of the due date. In such case, the Supplier shall be entitled to compensation for the damage incurred. However, the compensation shall not exceed the purchase price for the Product/Products pursuant to this Agreement.

### 5. Delivery and delivery date

- 5.1. Delivery terms shall be interpreted in accordance with INCOTERMS as worded at the time of execution of this Agreement. Where no delivery terms have been agreed upon, delivery shall be Ex Works.
- 5.2. Where delivery is to take place within a specific period of time, such time shall be calculated commencing on the date of execution of the Agreement. However, calculation of the period shall not commence before the Supplier has received either payment, where such is to be paid prior to the commencement of manufacture, necessary notices regarding licences and permits, or necessary technical data and instructions.
- 5.3. Where delivery is delayed due to any of the circumstances constituting force majeure in accordance with 11.1 or due to any act or omission by the Customer, the delivery period shall be extended by such a period as is reasonable in light of the circumstances. The delivery period shall also be extended where the cause of the delay arises after the expiry of the originally agreed delivery period.
- 5.4. Where the Supplier fails to deliver the Product in due time, the Customer shall be entitled, through written notice to the Supplier, to demand delivery by a final reasonable deadline. Where the Supplier fails to deliver by the deadline, the Customers shall be entitled to terminate the Agreement through written notice to the Supplier.
- 5.5. Where the Customer terminates the Agreement in accordance with 5.4, he shall be entitled to compensation from the Supplier for direct additional costs incurred in acquiring an equivalent product from another source, however limited to 7.5% of the price of the Product. In the event the Customer does not terminate the Agreement, he shall not be entitled to any compensation as a consequence of the Supplier's delay.
- 5.6. Where the Customer fails to accept the Product on an agreed day, payment shall nevertheless be made as if delivery had taken place in accordance with the Agreement and the Customer shall compensate the Supplier for the latter's direct additional costs occasioned by the Customer's failure.

### 6. Liability for defects

- 6.1. Where the Product deviates from the specification agreed upon between the parties, it shall be deemed defective unless the deviation is immaterial to the intended use. The Supplier shall be liable for defects due to deficiencies in design, materials or manufacture.
- 6.2. Information regarding the area of use or application of the Product which does not constitute part of the specification and which is provided by the Supplier in any form whatsoever shall solely constitute a recommendation. The Supplier shall not be liable for such information or for the application of the Product.
- 6.3. The Supplier shall not be liable for defects resulting from erroneous, ambiguous, or incomplete information provided by the Customer. Liability shall not cover defects due to circumstances arising after the risk for the Product has passed to the Customer such as, however not limited to, defects due to normal wear and tear or deterioration. The Supplier's liability shall relate solely to defects which become apparent during a period of one year calculated from the day on which the risk for the Product passed to the Customer, however a maximum of 1,760 hours of operational time or, where the expected life of the Product is shorter than the aforementioned, the number of hours of the Product's expected lifetime (warranty period). The warranty period shall not apply to consumable parts, the normal durability of which is less than one year.
- 6.4. The Supplier undertakes, during the warranty period, either to deliver new Products free of charge as a replacement for defective Products, or to rectify defects, depending on which is deemed most appropriate by the Supplier. The Supplier's obligations do not include an obligation to bear the cost of replacement agents or replacement liquids e.g. cooling agents. Rectification may take place either at the Supplier or at the Customer, depending on which is deemed most appropriate by the Supplier. Replacement Products or replacement parts provided by the Supplier to the Customer shall be subject to the warranty period set forth in 6.3. Where the Supplier demands title to replace parts or replace Products, title thereto shall vest in the Supplier. Any destruction costs shall be borne by the Customer.
- 6.5. The Customer shall bear the cost and the risk of shipment of defective parts or Products to the Supplier, and the Supplier shall bear the cost and the risk of shipment of replacement or repaired parts of Products to the place of delivery. Where the Supplier carries out rectification at the Customer, the latter shall pay travel costs and per diem expenses with respect to travel and work times for the Supplier's personnel. The Customer shall bear the additional costs incurred as a consequence of the Product being located other than at the place of delivery.
- 6.6. Where the Supplier fails to deliver replacement Products or to rectify the defect within a reasonable time following written notice of complaint by the Customer regarding the defect, the Customer shall be entitled, through written notice to the Supplier, to terminate the Agreement insofar as it relates to the defective Product. Where the Customer terminates the Agreement, he shall be entitled to compensation from the Supplier for the direct additional costs incurred in acquiring an equivalent product from a different source, however limited to 7.5% of the price of the Product.
- 6.7. Through delivery to the Customer of the repaired or replaced part or Product in question, the Supplier shall be deemed to have performed its obligations in accordance with this section. Where any installation or dismantling results in interference other than with the Product, the Customer shall be liable for the work and costs occasioned thereby.
- 6.8. The Customer shall investigate the Product immediately upon delivery in accordance with generally accepted business practice.



6.9. The Customer shall not be entitled to invoke defects where the Customer fails to provide the Supplier with written notice of a defect within 15 days of the date on which the defect was or should have been discovered, however not later than one year from the agreed delivery date or such later date on which the Supplier performed his obligations in accordance with the agreed delivery terms. Where the Customer submits a notice of complaint in respect of a defect and it transpires that the Supplier is not liable for the defect, the Supplier shall be entitled to compensation for costs incurred as a consequence of the complaint.

6.10. The Supplier shall be entitled to refund the purchase price in lieu of rectification or redelivery. The Customer shall thereupon return the Product in an essentially unchanged condition. Where such is not possible, when calculating the purchase price the Supplier shall be credited with an amount equal to the value of that which is retained.

### 7. Liability for personal injury and property damage

7.1. The Customer shall indemnify the Supplier to the extent the Supplier is held liable to any third party for such damage or losses in respect of which the Supplier is not liable to the Customer in accordance with 7.2, 7.3 and 8.2.

7.2. The Supplier shall not be liable for damage caused by the Product to real or personal property which occurs whilst the Product is in the Customer's possession, or to goods manufactured by the Customer or goods in which the Customer's goods are incorporated, or for damage to real or personal property caused by such goods as a consequence of the Product.

7.3. The Supplier's liability for injury or damage caused by the Product to persons or real or personal property belonging to the Customer or any third party shall under no circumstances exceed EUR 500.000 per occasion of loss. The Customer shall indemnify the Supplier for all liability exceeding the aforementioned amount.

7.4. Where a third party brings a claim against the Supplier or the Customer for compensation for damage or loss as referred to in 7.2 or 7.3, the other party shall be immediately notified thereof.

7.5. The Supplier and the Customer shall be obligated to submit to the jurisdiction of the court or arbitration tribunal adjudicating a claim for damages against any of them where the claim is based on damage or loss allegedly caused by the delivered Product. The relationship between the Customer and the Supplier inter se shall, however, at all times be determined in accordance with the provisions of this Agreement.

### 8. Liability in damages and limitation of liability

8.1. In the event of delay or defect, the Customer shall be entitled to damages in accordance with the provisions of 5.5 and 6.6. In addition thereto, the Customer shall be entitled to damages subject to the limitations set forth in 8.2 and 8.3 below where, in lieu of rectification of the defect, the Supplier elects to refund the purchase price in accordance with 6.10. Where the Supplier has developed the Product at its own cost in collaboration with the Customer pursuant to an agreement between the parties, under no circumstances shall the Supplier be liable for delays in delivery or defects in the Product. The aforesaid shall apply to Products that the Supplier has transferred or lent to the Customer free of charge.

8.2. Under no circumstances shall the Supplier be liable for loss of production, loss of profits, or other economic consequential loss.

8.3. Unless otherwise prescribed in the Agreement, the Customer's entitlement to damages shall at all times be limited to an amount equal to 7.5% of the purchase price for the Product. Irrespective of whether or not the Agreement is terminated, the Supplier's liability shall be limited in accordance with this Agreement.

8.4. Other than the sanctions provided for in this Agreement, each and every claim by the Customer as a consequence of defect or delay is excluded. However, this limitation on the Supplier's liability shall not apply in the event of gross negligence by the Supplier.

### 9. Retention of title

9.1. The Supplier shall retain title in the Product until such time as payment therefor has been made in full.

### 10. Confidentiality

10.1. A party may not disclose documents to a third party without the other party's consent, nor in any other manner disclose information of a confidential nature regarding the Agreement or regarding the other party, other than to the extent required for the performance of the Agreement. A party shall ensure that confidentiality is observed by means of confidentiality undertakings with personnel or in any other appropriate manner. The confidentiality obligation shall not apply to information that a party can demonstrate has duly come to the attention of such party other than as a consequence of the Agreement or information, which is in the public domain. The duty of confidentiality shall survive the termination of this Agreement.

### 11. Force majeure

11.1. Circumstances that prevent or render significantly more onerous the performance of any of the parties' undertakings pursuant to this Agreement and which are beyond the control of a party including, however not limited to, lightning, fire, earthquakes, flooding, war or mobilisation or large-scale military conscription, riot or revolt, requisition, seizure, currency restrictions, decisions of governmental authorities, restrictions on fuel, general shortages of transport, goods, or power or strikes, blockades, lockouts or other labour conflicts, irrespective of whether the contracting parties are parties to the conflict, as well as defects or delays in delivery by subcontractors due to the aforementioned circumstances, shall constitute force majeure and entitle a party to an extension of time and release from liquidated damages and other sanctions. The other party must be given written notice of such force majeure immediately upon a party becoming aware, or where it should have been aware, of the existence of the force majeure.

11.2. Where the performance of the Agreement is prevented for a period in excess of six months due to circumstances as referred to in either party shall be entitled to terminate this Agreement without incurring liability to compensate for damage or otherwise.

### 12. Export and import licences, certification, etc.

12.1. The Supplier's obligation to deliver the Product is conditional on the latter receiving and maintaining necessary export, import and re-export licences. Where such licences are not held, or where granted licences are revoked other than as a consequence of the Supplier's negligence, the Supplier shall be discharged from the obligation to deliver the Product and, in such case, the Customer shall not be entitled to raise any claims for liability against the Supplier.

12.2. The Customer undertakes, to the extent necessary, to assist in the acquisition of export or import licences for the purchased Product and, in the event of any re-export of the Product or other products in which the purchased product is included, in whole or in part, to obtain the necessary licences and comply with applicable provisions.

12.3. The costs for any certification of the Products shall be borne by the Customer.

### 13. Applicable law and disputes

13.1. This Agreement shall be governed by Austrian law with the exception of its choice of law provisions. The language to be used in arbitral proceedings shall be that chosen by the Supplier.

13.2. If the payment deadline is exceeded, default interest will be charged according to credit costs of the Supplier, but at least 4% above the discount rate of the Austrian National Bank. The Customer is not entitled to assert a right of retention against Suppliers' due payment claims for whatever legal reason; the Customer can only offset against Suppliers' claims with undisputed or legally established claims. The Supplier is entitled to terminate the contract in writing if the purchase price is not paid in whole or in part within three months of the due date. In such a case, the Supplier is entitled to compensation for the damage incurred. The amount of the compensation is limited to the purchase price for the goods.

### 14. Limitations

14.1. Claims against the Supplier shall be forfeited in the event the litigation or arbitration procedure in accordance with 13.2 is not commenced within two years of the date of delivery of the Product.

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