

## 1. General

1.1 These General Conditions of Contract for the Supply of Machinery and/or Spare parts are valid for all Contracts of the Supplier for Machinery and/or Spare Parts.

1.2 The Contract shall be deemed to have been entered into upon receipt of Supplier's written acknowledgement stating its acceptance of the order.

1.3 The Supplier's tender shall remain open for acceptance by the period stated in the tender unless it is previously withdrawn but no longer unless a further period is expressly agreed between the parties in writing.

1.4 Tenders which do not stipulate an acceptance period shall not be binding.

1.5 These General Conditions supersedes all previous negotiations, representations and/or contractual commitments between the parties. Supplier hereby gives notice of its objection to and rejection of any different or additional terms, and Customer agrees that the terms in these General Conditions shall apply and govern to the exclusion of all others.

1.6 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.

1.7 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

The Supplies 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, technical documents such as drawings, designs, brochures, catalogues descriptions, illustrations and the like are not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

3.2 Technical documents furnished by Supplier to Customer shall be deemed provided to Customer on a confidential basis, shall remain Supplier's exclusive property and shall be neither copied nor reproduced nor communicated to a third party in any way whatever nor used by Customer for any purpose other than operation and maintenance of the Supplies under the Contract.

3.3 Any documents submitted by the Supplier to the Customer shall be reviewed within five (5) working days failing of which the documents shall be deemed to be approved.

## 4. Contract Prices

4.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding special packing (seaworthy, long-term), in the currency as specified in the tender 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 within thirty (30) days after date of invoice.

4.2 The tender price of the Supplier excludes Value Added Tax which must be paid to the Supplier by the Customer at the appropriate rate applicable to the goods provided.

4.3 Any item which is supplied from a country that is different from the country of the tender currency is based upon the current rate of exchange between the tender currency and the currency of the different country. Any increase or reduction in price consequent upon variation of the rate of exchange at the times of payments will be charged or credited to the Customer.

4.4 The Supplier reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and when the Contract comes into force. In addition, an appropriate price adjustment shall apply after the Contract has come into force in case:

☐ The delivery time has been subsequently extended due to any reason stated in Clause 8,

or

☐ The nature or the scope of the agreed Supplies 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,

or

☐ In case the Contract has been suspended for reasons attributable to the Customer.

## 5. Terms of Payment

5.1 Payments 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.

5.2 Unless otherwise agreed upon the terms of payment for the Contract supplies and services shall be in accordance with the Contract as acknowledged in writing by the Supplier.

5.3 If the Customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the normal interest conditions at Customer's domicile, but not less than five (5%) percentage points above the three months' LIBOR (London Interbank Offered Rate) applicable at the due date of the delayed payment.

## 6. Variations and Claims

6.1. The Customer has the right at any time to request a change to the Contract ("Variation Request").

6.2. Depending on the nature and extent of such Variation Request, the Supplier shall, within thirty (30) days or any longer reasonable period after receipt, propose to the Customer in writing the effects of such a variation with respect to the time schedule and/or the Contract Price ("Variation Proposal").

6.3. The Customer shall, within twenty (20) days after receipt of a Variation Proposal, provide written reply to the Variation Proposal, failing of which the Variation Proposal shall be deemed to be accepted. In the event of rejection, the Parties shall without any delay agree on the action to be taken. If an agreement cannot be reached within twenty (20) days after the Supplier's receipt of the notice of rejection, Supplier shall be free to proceed with the works as described prior to the Variation Request with an extension of time for completion equal to the delay resulting from the Variation Request.

6.4. The Supplier, at his own discretion, shall be entitled to make minor changes to the Contract, which do not impact the Contract Price and/or delivery time.

6.5. Any changes to the Contract necessitated by changes in law or required by authorities after the effective date of the Contract shall be treated as a Variation Request. The Supplier shall, within

thirty (30) days after learning of it submit a Variation Proposal to the Customer.

6.6. If the Customer considers himself to be entitled to any claim arising out of a clause of the Contract, or otherwise in connection with the Contract ("Claim"), the Customer shall give notice to the Supplier not later than thirty (30) days after the Customer became aware, or should have become aware of the event or circumstance giving rise to the Claim describing in detail the event(s) or circumstance(s) giving rise to the Claim and if requested provide further evidence. If the Customer fails to give notice of a Claim within said period, the Supplier shall be discharged from all liabilities in connection with the Claim. Customer waives any right to raise a Claim for late delivery, back-charges and any other Contract Price reduction six (6) months after delivery or completion of services.

## **7. Transfer of Title and Risk**

7.1 Unless otherwise required by the applicable compulsory law title to the Supplies shall be transferred to Customer after Supplier has received payment in full of the Contract Price. During the reservation of title, the Customer shall, at its costs maintain the Supplies and insure them adequately. It shall further take all measures to ensure that the Supplier's title is in no way prejudiced.

7.2 Risk of loss or damage to the Supplies shall pass to Customer from the Supplier after delivery according to applicable Incoterms. If the delivery of the supplies is delayed at the request of the Customer or due other reasons beyond Supplier's control, the risk of loss and damage on said Supplies shall pass to Customer on the original date of delivery. From this time forward the Supplies shall be stored and insured for the account of and at the risk of the Customer. Furthermore, the customer has to reimburse Supplier in case of non-collection of the Supplies after ten (10) working days. The following rates shall apply: five (5%) percent of the Purchase Order value under fifteen thousand (15'000) CHF or one (1%) percent over fifteen thousand (15'000) CHF each full month or pro rata, but not less than two hundred and fifty (250) CHF per month.

## **8. Delivery time**

8.1 Supplier shall make commercially reasonable efforts to deliver the Supplies on the delivery date.

8.2 In no event shall any period of time specified to calculate the delivery date commence earlier than the latest of the below dates:

8.2.1 the date when the Contract has been accepted by the Supplier in writing, or, in case the Contract documents are signed by both Parties, the date of the latest signing, or

8.2.2 date of receipt of approval of engineering submittals by Supplier, or

8.2.3 date which is five (5) days after receipt of Letter of Credit or advanced payment, if such Letter of Credit is required according to the Contract.

8.3 The delivery time is reasonably extended:

8.3.1 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;

8.3.2 In the event of Force Majeure;

8.3.3 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 only 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.

8.5 Notwithstanding anything to the contrary, damages for delayed delivery shall in no case exceed 0.5% of the delayed part for every full week of delay and shall in no case whatsoever exceed five (5%) percent of the total Contract Price.

8.6 The payment of liquidated damages shall be the sole and exclusive remedy of Customer for late delivery.

## **9. Force Majeure**

9.1 Supplier shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labour difficulties, epidemics, pandemics governmental acts such as, but not limited to trade restrictions including embargoes, acts of God, acts and/or force majeure events of the Customer, its Customer or the end-user or sub supplier, delays in transportation, inability to obtain necessary labour or material from usual sources, or other causes beyond the reasonable control of Supplier even if known and/or foreseeable at the time of purchase order/contract acceptance.

9.2 In the event of delay in performance due to any such cause, the delivery date or time for completion of services will be extended to reflect the length of time lost by reason of such delay. Payment obligations shall not be affected by Force Majeure events. If the grounds for Force Majeure continue for more than six (6) months, either Supplier or Customer may terminate the Contract upon seven (7) days written notice to the other Party.

9.3 Supplier shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination, and the expenses for non-cancellable procurements. Customer shall be entitled to receive the work for which it has paid.

## **10. Inspection and Acceptance**

10.1 The Supplies shall be subject to Customer's final inspection upon receipt at the delivery site. Claims for damage, storage, errors in shipping or rejection of the Supplies or in portion thereof, must be made by Customer in writing within fourteen (14) days following the date of receipt at the delivery site, or such other time period as agreed in the Contract or provided by applicable law, or such claims are waived and the Supplies is deemed to be irrevocable accepted by Customer. Customer's sole remedy for such claims is repair or replacement of the Supplies by Supplier. After the expiration of the aforesaid fourteen (14) day period, all claims for defects shall be remedied in accordance with Clause 10, Warranty herein.

10.2 Unless otherwise agreed in the Contract, costs related to inspections or tests of the Supplies shall be borne by the Customer.

## **11. Warranty**

### **11.1 Warranty period**

11.1.1 The warranty period is 12 months. It starts when the Supplies have been delivery according to applicable Incoterms. If dispatch or taking over or erection is delayed due to reasons beyond Supplier's control, the warranty period shall end not later than 18 months after Supplier's notification that the Supplies are ready for dispatch.

11.1.2 For replaced or repaired parts the warranty period starts newly and lasts 12 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 stipulated in the preceding paragraph.

11.1.3 The warranty expires prematurely if the Customer or a third party undertakes inappropriate 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 of remedying such defect.

#### 11.2 Supplier warrants that:

11.2.1 the Supplies will be of the kind and quality as describe in the Contract, and

11.2.2 will be free in defects in workmanship and material, and

11.2.3 to the extent required for the functioning of the Supplies, will be free of defects in design, provided however that Supplier shall not be liable for the design of the Supplies (including but not limited to the selection of material) to the extent that the design and/or the selection has been undertaken or provided by Customer, end-user or a third party not being a sub-supplier appointed by Supplier.

11.3 If, during the warranty period, the Supplies fail to meet the requirements set out in the Clause 10.1 above, then Customer shall give written notification to Supplier stating the reasons therefore. Within seven (7) days (or such longer period that is reasonable under the circumstances) of receipt of Customer's notification, Supplier shall commence at its choice the repair, modification or replacement of the defective part. Customer shall make the Supplies, or the defective part thereof, available for correction. Supplier shall make available repaired, modified or replaced parts under the same Incoterms for the Supplies as per original agreed Purchase Order, except for all Supplies within the European Union, Incoterm DAP (Incoterms 2020) shall be applied. Customer shall be liable for all return transportation costs resulting from any warranty claim. Furthermore, Supplier shall be liable for Supplier's own cost incurred as a result of such action only. In no event shall Supplier be responsible for the cost of providing access to the Supplies, or cost of disassembly, removal or reinstallation of any items.

11.4 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 and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection and commissioning work not undertaken by the Supplier, or resulting from other reasons beyond Supplier's control. Supplier explicitly excludes any warranty for erosion, corrosion and cavitation.

11.5 Correction of nonconformities in the manner and for the period of time provided in this Clause 10 shall constitute fulfilment of all liabilities of Supplier to Customer (which liabilities shall be subject to the limitations of liability contained elsewhere in the Contract, whether based on Contract, negligence or otherwise), with respect to Supplies including any services performed. Supplier makes no other warranty or representation to the Supplies including any services performed other than specified in this Clause 10. All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed to the extent permitted by law.

#### 12. Limitation of Liability

12.1 Notwithstanding anything to the contrary in the Contract, including all documents making part thereof, and to the maximum extent permitted by law, in no event shall Supplier be liable to the Customer by way of indemnity, or by reason of any breach of Contract or of statutory duty or by reason of tort (including but not limited to negligence) for any direct financial loss, loss of profit, loss of Contracts or earnings, delay damages, interruption or loss of production, loss of use or loss of opportunity or business, indirect, punitive, special or consequential damages whatsoever that may be suffered by Customer. Customer further agrees to defend, indemnify and

hold harmless Supplier from any claim made by end-user or Customer's clients for such losses.

12.2 The remedies of the Customer set forth in the Contract are exclusive, and Supplier's liability with respect to any Contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed 100% of the Contract Price, unless claims arise from gross negligence or wilful misconduct of the Supplier or from Supplier's legal liability for personal injuries.

#### 13. Erection, Commissioning and Maintenance

13.1 If the Supplier undertakes the erection and commissioning or the supervision of the erection and commissioning or carry out the fitting of replacement or repaired parts the Supplier's latest edition of the General Conditions of Contract for Erection and Maintenance Service shall apply.

#### 14. Jurisdiction and Applicable Law

14.1 The Contract is construed and shall be interpreted in accordance with the laws of Switzerland with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG).

14.2 In case of a dispute, the parties shall make their best effort to solve such dispute amicably. If such dispute has not been settled between the Parties within sixty (60) days from the date of the relevant Party's written notification of a claim to the other Party, the courts at the registered office of the Supplier shall have exclusive jurisdiction. Supplier reserves the right to claim against Customer at Customer's registered office.

#### 15. Regulations in Force in the Country of Destination and Safety Devices

15.1 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.

15.2 Unless otherwise agreed Supplies and services shall comply with the regulations and standards at the supplier's place of business. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

#### 16. 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. If such an 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 he shall – after having recognized the consequences of the event – immediately inform the Customer; this applies even if an extension of the delivery time has been agreed beforehand. In case of termination of the Contract, the Supplier shall be entitled to 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.

#### 17. Export Control

The Supplier confirms to comply with all applicable export and re-export control laws and regulations and sanctions measures in force during the validity of this Contract, including but not limited to Swiss State Secretariat for Economic Affairs (SECO) regulations on Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Act). The Customer will not export, directly or indirectly, any of the Supplies to a location or

in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with applicable law.

**18. Data Protection**

The Supplier is entitled to process the personal data of the Customer in order to perform the contract. Furthermore, the Customer consents in particular to the supplier transmitting such data to third parties in for the purpose of performing and maintaining the business relationships between the Parties.

**19. Software**

If the Supplies delivered by the Supplier include software, the Customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The Customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the Supplier. In case of infringement, the Supplier may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as the Supplier, may also assert a claim in the event of infringement.