

## General Terms and Conditions of Sale and Delivery

### 1. Conclusion of Contract

1.1. A contract of purchase and sale shall be deemed to have been entered into either if the buyer has agreed in writing upon the offer of the supplier, or if the buyer has sent back to the supplier the confirmation of order countersigned by the buyer.

In any event, the confirmation of order shall be deemed to have been fully agreed upon by the buyer, if the buyer has begun to fulfil his obligations under the contract.

1.2. No agreement or other legally binding declaration of the parties to the contract, in particular amendments to or alterations of any provision of the contract, shall be valid unless confirmed in writing and signed by both parties.

1.3. Offers which are not declared to be binding for a certain period may be revoked at any time.

### 2. Scope and Execution of Delivery

2.1. The goods to be delivered and the services to be rendered by the supplier under the contract shall be defined by the confirmation of order and the specifications and attachments referred to expressly therein and the exhibits thereof. Items which are not listed therein shall be charged separately.

2.2. The goods to be delivered and the services to be rendered by the supplier under the contract shall be subject to any modifications the supplier under the contract shall be subject to any modifications the supplier may deem necessary or adopt according to further experience gained in the meantime. The supplier shall inform the buyer about any important changes.

### 3. Technical Documentation

3.1. Documents supplied by the supplier, such as drawings, specifications, illustrations etc. as well as all weight data are not binding, unless the supplier has expressly accepted the same as binding obligations.

3.2. All documents which the supplier has declared in writing to be confidential or whose disclosure to third parties has been expressly prohibited, are and remain the property of the supplier. They may not be copied or reproduced or handed over to third parties, nor be used for purposes of manufacturing of machines or parts thereof, without the prior written consent of the supplier. They may be used for maintenance and operating purposes, provided that they have been marked accordingly by the supplier.

### 4. Regulations at the Destination

4.1. The buyer shall advise the supplier at the latest at the time the order is placed of any legal, governmental, technical or other regulations at the destination which have to be complied with in performing the contract, including but not limited to import restrictions, foreign exchange rules and safety requirements relating to the specification, performance and operation of the goods supplied, as well as to health and safety regulations.

4.2. The buyer shall indemnify the supplier for all expenses caused by the buyer's non-compliance with his duty to advise the supplier of any rules and regulations to be met

with at the destination, or by incorrect, inaccurate or incomplete advice on such rules and regulations. The buyer shall bear all additional costs caused by any adjustments which have been made by the supplier to meet such requirements. If the buyer has had any adjustments carried out by third party suppliers, all product warranty and liability of the supplier is expressly disclaimed.

### 5. Price

5.1. Unless otherwise agreed upon, all prices are net ex works without packaging, payable in freely available Swiss Francs with no deductions whatsoever. All additional costs, including but not limited to charges for packing, carriage, insurance premiums, fees for export, transit, import and other permits and certifications shall be borne by the buyer.

The buyer shall also bear all the costs arising from taxes, fees, dues, customs duties and the like and shall refund the supplier against adequate evidence that the supplier has been subject to such charges.

If the supplier has included the costs of packing, carriage, insurance and other additional costs in the prices offered or invoiced or if such costs are itemised in the offer or in the confirmation of order, the supplier reserves the right to adjust prices in accordance with any change in these costs which may occur.

5.2. The supplier may adjust the price even after the contract has been entered into, in the event that

- the production costs, in particular material and labour costs, as well as the labour costs have increased during the period between the date of fulfilment of the contract;
- adjustable prices have been agreed upon by the parties;
- the term of delivery has been extended according to the reasons set out in para. 8.3. below;
- the goods to be delivered and the and the services to be rendered by the supplier under the contract have been modified subsequently;
- the material or the performance of the contract have been changed because the information submitted by the buyer to the supplier was incomplete or did not correspond with the actual conditions.

### 6. Terms of Payment

6.1. Payments shall be made by the buyer in full to the principal place of business of the supplier, without making any deductions for cash discount, expenses, taxes, charges, levies, customs duties and the like, in accordance with the agreed terms of payment.

6.2. No interest shall be paid on down payments. In the event of breach of the contract by the buyer, the supplier shall retain all down payments received as partial liquidated damages. The supplier shall also be entitled to such actual damages as may exceed the actual liquidated damages and may freely choose the item of damages which is compensated first by such payments.

6.3. The buyer shall comply with the payment dates, even in the event that shipment, delivery, erection, start-up or

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acceptance of the delivery is delayed or prevented by circumstances beyond the supplier's control. The buyer shall not withhold or reduce payments because of complaints, claims or counterclaims which have not been acknowledged by the supplier. Payments shall be due in full even if non-essential components should be missing, which do not affect the use of the goods, or if post-delivery work has to be carried out.

6.4. In case of default of the buyer in paying the amounts due at the payments dates, he shall be liable without any formal notice by the supplier, to pay default interest on overdue amounts from the due date at a rate of at least 4 points above the then prevailing 12 months Libor rate as applied by the Swiss National Bank.

Payment of default interest shall not release the buyer from his obligation to effect payments in accordance with the terms of the contract. The supplier reserves all rights to be indemnified for any further damage.

6.5. If the down payment or the securities to be delivered are not executed by the buyer according to the terms of the contract, the supplier may either uphold or terminate the contract at his sole discretion and shall in both cases be entitled to claim damages.

In case of default of the buyer in paying further instalments when due, or in case that the supplier has good reasons to believe, because of circumstances occurring after conclusion of the contract, that the buyer will not effect payments in full or in due time, the supplier may suspend performance under the contract and withhold further delivery, even of goods ready for despatch, until the parties have agreed upon new terms and conditions of payment and delivery and until the supplier has received satisfactory guarantees. Such remedies are additional to and do not constitute a waiver of the legal remedies of the supplier. If such an agreement has not been entered upon within a reasonable time, or in case the supplier does not receive satisfactory guarantees, the supplier may terminate the contract at his sole discretion and claim damages.

6.6. Should the goods be damaged or destroyed for any reason whatsoever, the buyer shall not be released from his obligation to pay the outstanding instalments.

### 7. Retention of Title

7.1. Title to the delivery goods shall not transfer to the buyer, until payment has been made in full according to the terms of the contract.

7.2. The buyer shall assist the supplier in taking any action necessary for maintaining and protecting the supplier's title. By signing the contract, the buyer authorises the supplier to enter the retention of title at the buyer's expense in the public registers, books or similar records according to the laws of the jurisdiction concerned and in conformity with the legal formalities required under such laws.

The buyer shall at his own expense provide for the maintenance of the goods delivered under retention of title and maintain adequate insurance for the benefit of the supplier against theft, breakage, fire, water and other risks. The buyer shall take any further action necessary to prevent the supplier's title being impaired or invalidated. In particular, the buyer shall not pledge, sell or otherwise dispose of the goods so delivered.

7.3. The buyer shall advise the supplier in writing immediately of any action taken by authorities or third parties, such as seizures, attachments or the like. The buyer shall indemnify the supplier for all damages caused by delaying such notice.

### 8. Delivery Period

8.1. The delivery period shall begin as soon as:

- the contract has been concluded (viz. Section 1); and

- all official formalities, such as obtaining import, export, transfer and payment licences, if any, have been completed; and

- the supplier is in possession of all data and documents to be provided by the buyer being necessary for the supplier's performance under the contract (e.g. technical specifications of the machinery or of the goods to be delivered, information on power supplies etc.), and these data and documents have been verified.

The buyer has no right or waiver deriving from supplier's non-compliance with the delivery period, until all the obligations and duties have been met in full by the buyer.

8.2. The delivery period and scheduled delivery dates, if any are met when the goods are ready for despatch in due time at the supplier's manufacturing facilities. Unless specifically agreed in writing by the supplier, the delivery period does not include shipment to the buyer's plant, erection, start-up, or the like.

8.3. The delivery period shall be reasonably extended, if

- the supplier does not receive in due time the data and documents to be provided by the buyer necessary for the supplier's performance under the contract, or if subsequent changes are made by the buyer which delay the manufacturing process and delivery by the supplier; or

- any hindrances occur which the supplier despite due care cannot prevent, such as but not limited to epidemics, mobilisation, war, riots, boycott, strikes, picketing, lock-outs, breakdowns, accidents, labour conflicts, delayed or deficient delivery of necessary raw materials, or of semi-manufactured or of manufactured products, the need to scrap important components, actions of any kind taken by authorities or other persons, transport difficulties, acts of God, natural catastrophes, regardless of whether the supplier, a subcontractor, the buyer or a third party be affected; or

- the buyer or a third parties fall behind with any work they are required to do, or fail to comply with their contractual obligations, in particular if they fail to meet the terms of payment.

8.4. In the event of the delivery being delayed the buyer shall have no claim for compensation and no right to rescind the contract.

### 9. Testing and Acceptance of Deliveries

9.1. The supplier will inspect the goods prior to shipment, using his usual testing procedures, at no charge to the buyer. Any additional testing will be performed by the supplier only by written agreement, and the cost incurred shall be borne by the buyer.

9.2. Within a reasonable time the buyer shall inspect the goods as well as the documents which accompany the shipment (such as operating manuals, safety instructions and the like) and shall immediately notify the supplier in writing of any defect or nonconformity of the goods. Failing to do so, the buyer shall be deemed to have accepted the goods delivered.

9.3. Acceptance tests requested by the buyer shall be agreed upon writing. Circumstances permitting, such tests shall be carried out in the works of the supplier.

9.4. Should the goods not pass agreed acceptance tests, the supplier shall be given by the buyer immediately an opportunity to remedy the defects as soon as possible.

9.5. The buyer shall have no other remedies and rights than those set forth in Section 13. Any further claims with respect to defective or non-conforming goods, in particular to liquidated damages or to rescission of the contract, are waived.

### 10. Transfer of Use and Passing of Risks

10.1. The right of use and the risk of loss with respect to the goods shall be transferred to the buyer upon leaving the

supplier's plant, regardless of whether the delivery is carriage paid or clauses including but not limited to cif, fob, and the like

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are agreed upon or the erection is borne by the supplier or the shipment of the goods is managed or supervised by the supplier.

10.2. Should shipment of the goods be delayed at the request of the buyer or delayed or prevented for any reasons beyond the supplier's control, the risk of loss shall be transferred to the buyer at the time originally agreed upon for their leaving the supplier's plant. The goods will be stored and insured at the buyer's expense and risk.

### 11. Transport, Storage and Insurance

11.1. The buyer shall advise the supplier in good time of any special requirements regarding shipment and insurance of the goods. Transportation shall be effected at the expense and risk of the buyer.

The buyer shall submit any complaints regarding the transportation to the last carrier immediately on receipt of the goods or of the shipping documents.

11.2. The buyer shall be responsible for ensuring that the consignments are carefully conveyed, transferred and unloaded. The buyer shall in particular be responsible that handling, storage and unpacking are carried out by qualified personnel which have both the necessary specialised knowledge and skills, and that the relevant safety and security precautions are applied.

The buyer shall in all cases, even where seaworthy packing has been provided, store the goods in a dry and enclosed place. The supplier shall not be responsible for any damage resulting from the buyer's failure to conform to this requirement.

11.3. If the supplier has to carry out the erection, the buyer shall not unpack the machinery and other goods delivered, unless the supplier has given express permission.

11.4. The buyer shall provide insurance against damage of any kind for the goods. Even when procured by the supplier, such insurance is carried on behalf, for the account and at the expense of the buyer.

11.5. If according to a specific agreement the goods are shipped for the account and at the risk of the supplier, the buyer shall inspect the packing and the contents of the consignments after reception at destination and immediately notify the supplier of any apparent defect, Failing to do so, the buyer shall be deemed to have accepted the goods regarding their condition and completeness.

11.6. If the packing of the consignment is damaged, the buyer shall take any action necessary to prevent any further damage to the goods and to limit the effects of damage which has already occurred.

11.7. Should shipment of the goods be delayed for any reasons beyond the supplier's control, the supplier may store such goods and may invoice to the buyer the costs and expenses of storage. The invoice shall cover all storage and handling costs as well as the transportation costs related thereto.

### 12. Erection

12.1. Unless it is provided that the supplier shall erect and put the goods into operation, all warranties are disclaimed, including the warranties set forth under Section 13.

12.2. The costs of erection, of test run and start-up are not included in the price. The erection and putting into operation shall be governed by the General Conditions of Erection of the supplier.

### 13. Warranties

13.1. Upon written notification of non-conformity during the warranty period, the supplier shall, at his sole expense,

replace or repair as quickly as possible any parts whose failure to conform has been proven to be due to poor materials, faulty design or poor workmanship. It is the sole

discretion of the supplier whether such parts shall be replaced or repaired, and any parts so replaced shall become the property of the supplier.

The buyer shall advise the supplier in writing immediately of any defect or non-conformity in the goods delivered which are covered by the warranty of the supplier. The supplier shall be given the opportunity to remedy such defects and nonconformities. The buyer shall put his personnel at the disposal of the supplier free of charge.

13.2. Suitability for a particular purpose shall be warranted only where an undertaking to this effect has been expressly included in the confirmation of order or the specifications. Such special warranty period, as set forth below.

If the goods delivered by the supplier do not conform as a whole or in part with the warranted quality under such special warranty agreement, the supplier's liability shall be limited to repairing the deficiencies without delay, and the buyer shall not be entitled to any other claims of any kind whatsoever. The buyer shall give the supplier adequate time and opportunity to remedy the deficiencies.

13.3. The repair or replacement of defective parts shall be done at the supplier's expense in the supplier's own workshops or in a workshop designated by the supplier, and no other costs and expenses shall be borne by the supplier, except the costs of transporting the parts between the workshop and the place of destination.

If repair or replacement cannot be done in the supplier's works for reasons which are not the responsibility of the supplier, any additional costs resulting are to be borne by the buyer.

13.4. The buyer shall not be entitled to any other claims of any kind whatsoever, including incidental and consequential damages and/or rescission of the contract.

13.5. The limited warranty, as set forth above, shall remain in effect not longer than for a period of 12 months, in case of multiple shift operation for a period of 6 months. The warranty period shall start at the time the goods are shipped ex works or at the time of passing the acceptance tests, if any, or if the supplier is responsible for erection, at the time the erection by the supplier is completed. In the event that shipment, acceptance or erection are delayed due to any reason beyond the supplier's control, the limited warranty shall expire not later than 18 months after the goods are ready for dispatch at the supplier's plant.

13.6. The limited warranty, as set forth above, shall apply to replaced or repaired parts and be renewed starting from replacement or the completion of the repair, but in no event shall extend beyond 18 months after the beginning of the warranty period for the main goods or, if shipment or erection beyond the supplier's control, no later than 24 months after the main goods ready for dispatch at the supplier's plant.

13.7. In case of conversion of machinery the limited warranty, as set forth above, shall only apply to the parts replaced or repaired and shall extend for a period of 6 months, in case of multiple shift operation for a period of 3 months, following the completion of the reconstruction are delayed due to any expire no later than 12 months after the goods are ready for dispatch at the supplier's plant.

13.8. The limited warranty set forth herein shall not apply to normal use and wear and tear or to other causes for which the supplier is not responsible, including but not limited to use of other than original spare parts of the supplier, use of accessories produced by third parties and considered unsuitable by the supplier, improper operation, maintenance and servicing, disregard of operating instructions, abuse and overloading, use of unsuitable lubricants, chemical or electrolytic effects, corrosion, vibrating floors, improper design and construction of

foundations and buildings not carried out according to the supplier's instructions, or erection work not carried out by the supplier.

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13.9. The limited warranty set forth herein shall immediately terminate if the buyer or any third party in any way alters or repairs the goods without prior written permission of the supplier, or if the buyer, when any deficiency occurs, fails to immediately mitigate the damages and give the supplier an opportunity to remedy the defects.

13.10. As a condition precedent to the buyer asserting any claims under the limited warranty set forth herein, the buyer must meet all contractual obligations to the supplier including, but not limited to, making all payments when due.

13.11. Any claims under the terms of the warranty must be made by the buyer to the supplier in writing before the expiry of the warranty period and be sufficiently specified. Failing that, the supplier shall be deemed to be fully discharged.

13.12. For goods supplied by subcontractors, the remedy of the buyer against the supplier shall be limited to that remedy which the supplier has against the subcontractor. Any further warranty is expressly disclaimed.

13.13. With respect to any defective material, design or workmanship as well as to breach of any non-essential obligations under the contract, the buyer shall have no other remedies and claims than those expressly stated under para. 13.1. to 13.12. as set forth above.

### 14. Operational Safety

14.1. The buyer shall abide by all operating and safety instruction delivered with the machinery, and shall instruct his personnel accordingly, in order to ensure the safe operation of the equipment. The buyer has to delegate one or more technicians to instruction courses recommended by the supplier. As far as available, the technicians have to attend such instruction courses at the supplier's works. Any alterations to the operating and safety instructions shall be accepted and adhered to by the buyer upon the supplier's request. The buyer shall acknowledge receipt of the operating and safety instructions in writing.

14.2. The safety instructions and danger warnings attached to the goods shall not be removed and shall be kept properly. Should they be defaced or obliterated in any way, they shall be immediately replaced by the buyer.

14.3. No technical alteration shall be performed on the goods without written authorisation of the supplier. In the event that any claim shall be brought against the supplier, for any accidents or other damages, resulting from any technical alteration or addition made by the buyer without written authorisation of the supplier, the buyer shall immediately indemnify the supplier for any such claim. The buyer shall immediately inform the supplier in writing of any accident occurring in connection with any equipment or machine delivered by the supplier.

### 15. Software

15.1. The supplier shall grant a non-exclusive licence to the buyer for the use of the data processing program needed for the operation of the machinery and other devices. The licence fees are included in the price. The buyer may not request that the software be further developed, nor is the buyer entitled to receive updates if further releases have been developed.

15.2. In the event that the buyer has inadvertently damaged or cancelled the software, the supplier shall provide replacement upon request of the buyer, as far as such replacement is feasible and practical. The buyer shall pay the actual replacement costs as well as a premium for the updated version of the software, if any.

15.3. The warranty with respect to the software is governed by the provisions of Section 13, which shall be interpreted accordingly. No warranty is given if the version as delivered by the supplier has been modified or altered in any way by

the buyer or any third party. The limited warranty as set forth herein shall terminate if the buyer fails to notify the supplier in writing of any deficiencies in the software immediately after appearance.

15.4. No alteration or further development of the software may be performed, nor any interference of third parties be accepted, without previous written authorisation of the supplier. Otherwise all warranties of the supplier are expressly disclaimed.

15.5. All information, ideas, concepts, processing systems and the like, which are governed by the terms of the software licence, shall be kept secret by the buyer, unless released in writing from this obligation by the supplier.

### 16. Patent Rights

16.1. The supplier shall be liable to the buyer for any claims resulting from the infringement of third party patent rights in the country of the buyer by the purchase and use of the goods delivered by the supplier. The supplier shall be authorised to take all protective measures of any kind against the alleged claims of third parties, including but not limited to amicable settlement and litigation in court. The buyer shall confer to the supplier a comprehensive power of attorney to this effect.

16.2. The liability as set forth in para. 16.1. shall not apply if the goods have been manufactured in full or in part at the specific request of the buyer, or if the goods are fully or partly operated in connection with other equipment not delivered by the supplier, and the buyer shall indemnify the supplier in such event for any patent infringement claim of third parties.

### 17. Liability

17.1. The supplier shall be liable to perform the contract according to its terms and to fulfil the warranty as set forth herein.

The supplier shall not be liable to the buyer for any claim whatsoever, except as expressly set forth herein, regardless of how such claims are legally construed, such as but not limited to incidental and consequential damages, abatement of purchase price, and/or rescission of the contract. In no event shall the supplier be liable for claims related to damages which have not occurred on the delivered goods as such, in particular loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages.

17.2. The above disclaimer of liability does not apply to wilful or reckless misconduct of the supplier, but in no event shall the supplier be liable for wilful or reckless misconduct of auxiliary personnel.

### 18. Place of Performance

The place of performance for both parties is Arbon, Switzerland, even if delivery is made free of charge, cif fob or similar. If the supplier has also undertaken the erection, the place of erection shall be deemed the place of performance only in respect of the erection obligations of the supplier.

### 19. Validity

19.1. These general conditions shall be fully binding between the parties, except with respect to specific provisions otherwise agreed upon in writing. Separate conditions of the buyer which are inconsistent with these general conditions are not valid and binding, unless expressly approved in writing by the supplier.

19.2. If any provisions of these General Terms and Conditions of Sale and Delivery prove to be fully or partially invalid, the remaining provisions shall remain in full force and effect and fully binding upon the parties. The invalid provisions shall be

replaced by the parties by another agreement which will maintain as fully as possible the legal effects and business goals as originally intended.

### 20. Jurisdiction, Applicable Law

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**20.1. The parties specifically submit to the jurisdiction of the courts in Arbon, Switzerland,** any dispute which may arise hereunder. The supplier reserves the right to institute any action arising from the contract in any court of competent jurisdiction.

20.2. The contract shall be governed by the laws of Switzerland, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, of April 11<sup>th</sup>, 1980.