



## General conditions of contract for the supply of machinery and spare parts

### 1. General

1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgment stating its 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 acknowledgment. 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 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 supply and services

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

### 3. Technical documents

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.

### 4. Regulations in force in the country of destination and safety devices

4.1 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 supply and services, to the operation of the plant as well as to the health and safety of personnel.

4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under Class 4.1. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

### 5. Prices

5.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss Francs 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 An appropriate price adjustment shall apply in case

- the delivery time has been subsequently extended due to any reason stated in Clause 8.4, 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 supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Payment shall be deemed to be effected as far as the amount in the currency agreed has been made freely available to the supplier at supplier's domicile. In case payment by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges.

6.2 In case an invoice amount is not remitted in full in spite of two reminders for payment, all other open amounts will immediately become payable. The customer is not allowed to withhold payments due to any conflict of titles.

6.3 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, 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 terms prevailing at the customer's domicile, but not less than 4 % over the current discount rate of the Swiss National Bank. 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 authorizes 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. The customer shall further take all measures to ensure that the supplier's title is in no way prejudiced. Tools remain the property of the supplier, even though a partial cost might have been borne by the customer.

## 8. Delivery time

8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits 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 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 If partial deliveries which have been agreed upon or become necessary for the supplier due to technical considerations and one or several part shipments are delayed neither other partial deliveries nor the rights or duties of the buyer attached thereto are affected.

8.4 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, mobilization, war, revolution, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural 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.

## 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 latest 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 transport shall be at customer's expense and risk even then if carriage paid has been agreed upon. Without the availability of instructions by the buyer concerning the transport and insurance the supplier shall undertake these to the best of his judgement without any responsibility.

11.2 Special requirements regarding forwarding and insurance shall be communicated to the vendor in good time. Transport shall be at the purchaser's expense and risk.

11.3 Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

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

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

12.1 As far as being normal practice, the supplier shall inspect the supplies before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

12.2 Claims of any kind can only be recognized if made in writing within 14 days following receipt of goods. For goods which can be proven to have been supplied in defective condition through the fault of the supplier, the supplier at his sole discretion can either repair the goods or replace them.



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

#### 13.1 Guarantee period

The supplier guarantees for products in such manner that at his sole discretion, he either replaces free of charge or repairs any such products which should prove defective within 6 months from invoice date provided that his products are not modified and are used functionally and competently. Any further guarantee or damage claims of whatever nature are excluded. For any products not manufactured by the supplier, his liability is restricted to the assignment of the liability claims to the supplier of these products. Exempt from the guarantee are parts subject of normal wear.

The guarantee is voided immediately 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.

#### 13.2 Limits of supplier liability

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective of basis, are covered without exception 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 any claim. This 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. However, this exclusion of liability 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.

### **14. 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 of 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.

### **15. Jurisdiction and applicable law**

15.1 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.

15.2 The contract shall be governed by Swiss substantive law.

### **16. Data Protection**

Unless agreed otherwise, personal data obtained in connection with the services as set out herein, shall be exclusively used for the performance of such services. For more information on our processing of personal data please see the Graf Privacy Statement on the Graf Website.

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