

## General Terms and Conditions

### 1. Preamble

These General conditions are binding and no other terms and conditions previously or subsequently submitted will apply, or be incorporated, unless specifically agreed in writing by both parties.

### 2. Formation of Contract

2.1 Upon receipt of an order, the contract will only be deemed to have been entered into / accepted after a formal written order acknowledgement and acceptance has been submitted by the Vendor within the time limit (if any) stated by the Purchaser.

2.2 All tenders submitted will have a validity date given and no orders will be accepted unless an order / acceptance of the tender is received in writing by the Vendor, no later than 7 days after the end of the stated tender validity period.

### 3. General

3.1 The weights, dimensions, capacities, prices, performance ratings and other data included within catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide only. The aforementioned data shall not be binding except where they are by reference expressly included within the Contract.

3.2 All variations to the agreed and confirmed scope of supply and services as well as of the terms and conditions shall be advised to the Vendor in writing. Material / Equipment supplied in excess of the agreed and confirmed scope shall remain the exclusive property of the Vendor.

3.3 Built-in equipment is only to be used for temporary purposes only and is not to be construed as an inherent part of a building.

3.4 The Vendor's Installation Conditions are to be considered an integral part of the General Conditions for Delivery of Goods and Services (this document)

### 4. Price and Payment Terms

4.1 Unless otherwise agreed in writing, all equipment offered are ex-works delivery and excluding packing.  
For deliveries within Germany, the valid VAT has to be added to the contract price. Supplies of goods and services within other EU and Third Party Countries are exclusive of VAT.

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Should the Purchaser not submit proof of delivery (POD) within 45 days after the date of delivery, the vendor reserves the right to subsequently charge the current rate of German VAT applicable at that time.

- 4.2 Unless expressly stated otherwise within the contract, all prices quoted are Nett payable to the Vendor's account based on the following staged payments.
- Payment of 30% of the contract value after receipt of a written order acknowledgement.
  - Payment of 60% of the contract value on notice of the readiness of dispatch of the goods.
  - The remaining balance is to be paid within one month after the transfer of risk.
- 4.3 Advanced payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.
- 4.4 Should it become evident after conclusion of the contract that the fulfilment of the Seller's claim for payment is at risk due to the Purchaser's lack of ability to pay, or should the Purchaser be in default of a substantial amount, or should other circumstances arise which indicate a substantial deterioration of the Purchaser's ability to pay, the Vendor shall be entitled to demand immediate payment of all outstanding claims arising from the ongoing business relationship with the Purchaser, including those not yet due for payment, or to demand advance payment or sufficient securities and refuse performance of the contract until his demand is met or, at his own discretion, withdraw from the contract..
- 4.5 If the Purchaser delays making any payment, the Vendor shall, on giving notice in writing to the Purchaser, within a reasonable period of time be entitled to the payment of interest on the sum due, at 8 % over the currently valid base lending rate (<http://basiszinssatz.info>) from the date on which such sum became due. If at the end of notice period the Purchaser has still failed to pay the outstanding sum and interest accrued, the Vendor shall by notice in writing to the Purchaser, and without requiring the consent of any Court, be entitled to terminate the Contract and thereupon recover from the Purchaser the amount due.

## 5. Inspection and Tests

- 5.1 If expressly agreed within the Contract, the Purchaser or his authorized representative shall be entitled to inspect the quality of the materials used and the component parts of the equipment, both during manufacture and when completed. Such inspection(s) shall only be carried out at an agreed date(s) and time(s) with the Vendor at the place of manufacture during normal working hours.
- 5.2 If as a result of such inspection(s) the Purchaser is of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reason therefore.
- 5.3 If the technical requirements of the tests to be undertaken are not detailed within the Contract, the tests are to be carried out in accordance with the general

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appropriate industry standards / practice applicable within the country where the Equipment is manufactured.

- 5.4 The Vendor shall give to the Purchaser sufficient notice of the tests to enable the Purchaser's representatives to attend. If the Purchaser is not present at the tests, the test report will be submitted by the Vendor to the Purchaser and shall be deemed to have been accepted as accurate record of the tests by the Purchaser.
- 5.5 Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out at his works but does not accept any costs or personal expenses of the Purchaser's representatives.

## 6. Passing of Risk

- 6.1 Except for as provided in paragraph 7.4, the time at which the risk shall pass from Vendor to Purchaser shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.
- 6.2 In the case of a sale "delivery ex works", the Vendor will give sufficient notice in writing to the Purchaser of the date on which the Purchaser is to take delivery of the Equipment.

## 7. Delivery

- 7.1 The dates and conditions for delivery shall be agreed between the parties, and confirmed within the formal written order acknowledgement. The delivery date is valid based on the following terms:
- a) all technical and commercial details are agreed between the parties
  - b) by the Vendor's receipt of such payment in advance of manufacture as stipulated in the Contract
  - c) the Purchaser has submitted all certificates / licenses where necessary for the execution of the contract
- Should delay in delivery be caused by a breach of any of these terms, by an act or omission of the Purchaser, or an act of God then the delivery period will be extended appropriately.
- 7.2 The adherence of the delivery date depends on the timely receipt of purchase parts and material.
- 7.3 Unless otherwise agreed in writing, the delivery date shall be deemed to have been observed upon timely dispatch of the goods from the manufacturing plant or alternatively the Vendor gives notice to the Purchaser of readiness for shipment of the goods.
- 7.4 If the Purchaser causes a delay which affects the delivery, due to his behaviour or he fails to accept delivery on the due date, he shall nevertheless make any conditional payment due on delivery as if the equipment had been delivered. The

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Vendor shall arrange for the storage (uninsured unless insurance is requested by the Purchaser) of the equipment which shall be at the risk and cost of the Purchaser.

- 7.5 Unless a delay of acceptance of the contract works is due to circumstances beyond the control of the Purchaser, the Vendor may require the Purchaser by notice in writing for acceptance to be made within a reasonable time period. If the Purchaser fails for any reason whatever to do so within such reasonable time, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract, or in respect of such portion of the contract works as is by reason of the failure of the Purchaser aforesaid no acceptance made, and thereupon to recover from the Purchaser any loss suffered by reason of such failure. The amount shall not exceed the sum of that part of the price payable under the Contract which is still due for payment.
- 7.6 In the case of failure to be able to affect the delivery due to force majeure, industrial disputes or any other circumstances which are outside the Vendors control, the delivery period will be extended accordingly. The Vendor is to keep the Purchaser informed on a regular basis the situation and projected timescales regarding the force majeure event.

## **8. Title retention**

- 8.1 If delivery has been made before payment of the whole sum due under the Contract, then all Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Vendor until such payment has been made. If such law does not permit the Vendor to retain the property of the Plant, the Vendor shall be entitled to the benefit of such other rights, in respect thereof, as such law permits. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as may be applicable.
- 8.2 All plans, calculations, samples, drawings or technical documents, copyright in designs and models, intended for use in the construction of the Plant, or any part thereof, which are submitted to the Purchaser prior or subsequent to the formation of the Contract shall remain the exclusive property of the Vendor. They may not, without the Vendors' consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party without the written permission of the Vendor.
- 8.3 The Vendor is entitled to put in place any insurance required, at the purchasers expense, to enable cover of the plant against theft, vandalism, site damage, water and fire damage and any other items as may be required, should the Purchaser not have the necessary insurance cover in place at time of delivery.
- 8.4 Until transfer of title, the Purchaser has no right to sell or lease or mortgage the plant. In case of execution, or seizure of the plant or other measures by a third party the Purchaser is obliged to inform the Vendor immediately.

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- 8.5 In the case of a breach of the contract by the Purchaser, specifically including the delay of payment, the Vendor is entitled, after giving notice to the Purchaser, to retain the right of ownership to the plant and effect return of the goods to the Vendor. Under this condition the Purchaser is obliged to release the plant immediately and any enforcement of title or retention or seizure of the equipment does not imply the cancellation of the contract.
- 8.6 The application for insolvency proceedings by the Purchaser entitles the Vendor to cancel the contract and to effect return the equipment at any time.

## 9. Guarantee

The Guarantee Period shall commence from the date on which the Purchaser receives notification in writing from the Vendor that the Equipment is ready for dispatch from the Vendors works.

## 10. Defects

- 10.1 The Purchaser is obliged to give notice of any defects immediately in writing to the Vendor, and any parts or items replaced remains the property of the Vendor.
- 10.2 For all necessary amendments and replacement deliveries, the Purchaser shall give the Vendor one month notice, space and time to undertake this task. Failure to provide these to the Vendor will mitigate the Vendor against any liability for any damage which could occur during the work being undertaken.
- 10.3 No variations to the contract will be accepted without prior agreement in writing by the Vendor
- 10.4 The Vendor assumes no liability for the equipment should the following circumstances occur unless it is proven that it is a direct action of the Vendor or his representatives:
- inappropriate usage and / or operation of the Equipment
  - faulty erection or commissioning by the Purchasers staff or by a third party employed or directed by Purchaser
  - excessive wear occurring due to operation of the Equipment which is not in accordance with the O&M Manual
  - faulty or neglected treatment of the Equipment
  - incorrect or insufficient routine maintenance of the equipment being undertaken
  - inappropriate operating materials –incorrect and insufficient construction works being provided
  - inappropriate building grounds
  - Medium (e.g. fluids, water, sludge etc.) and/or environmental conditions fall outside the acceptable limits for the materials used
  - outside chemical, electrochemical and electrical influences not specified to the Vendor

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- 10.5 The Vendor does not assume any liability for subsequent damages caused as a result of inappropriate modifications carried out by Purchasers staff or by a third party instructed by the Purchaser unless agreed in writing by the Vendor.

## 11. Liability

The Vendor will only assume liability for damages which are not directly affecting the equipment, for the following reasons:

- Vendor's premeditation –
- Gross negligence of the Vendor's owner or his executive employees
- Injury or loss of life or limb which is due to the Vendor's gross negligence or faulty design
- Vendor's fraudulent concealment or guaranteed absence of the existence of damages
- Damages of the equipment which are covered by law on product liability for personal injury and material damage

All other claims are excluded.

## 12. Limitation of time

Any Purchaser's claim, irrespective of any legal basis, is to be limited to 12 months from dispatch of the goods. Statutory periods are valid in the case of deliberate intention or fraudulent behaviour and claims on the basis of the law on product liability. Statutory periods are also valid for any building defects and in the cases of delivered items where used accordingly which caused building deficiencies or defects.

## 13. Software Usage Rights

If software is part of the scope of delivery, the purchaser shall have limited usage rights for the delivered software, inclusive of documentation for the respective equipment. Reproduction or copying of a single software package for reuse is not permitted.

The Purchaser's right to duplicate, change, translate software or to change object code into source code is limited to statutory requirements. The Purchaser commits himself to request the Vendor for explicit consent before removing or changing manufacturer's data, especially copyright notes. Any other software rights inclusive documentation and their copies stay with the Vendor, respectively with the software supplier. There is no right to deal with sub-licenses.

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**14. Court of jurisdiction and law applicable**

14.1 Unless otherwise agreed in writing, the Contract shall be governed by the substantive law of Germany, including CISG.

14.2 Court of jurisdiction is the responsible court located within the location of the Vendor's head office. The Vendor reserves the right to commence any legal action within the location of Purchaser head office.

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