

General conditions of contract for the supply of equipment and spare parts

1. General

- 1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order. Tenders who do not stipulate an acceptance period shall not be binding.
- 1.3 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. 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.
- 1.4 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.

2. Scope of supplies and services

The supplies and services of the supplier are exhaustively specified in the order acknowledgement and in appendices thereto.

3. Plans and technical documents

- 3.1 Unless otherwise agreed upon, data in brochures and catalogues is not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.
- 3.2 Each party to the contract retains all rights to plans and technical documents provided to the other. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

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 supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed in accordance with Clause 4.1, the 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.

5. Prices

- 5.1 Unless otherwise agreed, all prices shall be deemed to be net ex works, excluding packing, in Swiss francs without any deductions whatsoever.
- 5.2 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 the contractually agreed performance. In such case the adjustment shall be made according to the attached price adjustment clause.

In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reason stated in Clause 8.2, or 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 in Swiss francs at supplier's domicile, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

The provision regarding payment dates refers to the information given in the supplier's acknowledgement of the order.

- 6.2 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 of 4 % over the current 3-month CHF-LIBOR target, but at least 4 %. The right to claim further damages is reserved.
- 6.3 The payment reminder fees are 0.00 Swiss francs for the first payment reminder, 20.00 Swiss francs for the second payment reminder and 50.00 Swiss francs for any third payment reminder.

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 the supplier's title. In particular, upon entering into the contract the customer authorises the supplier to enter the reservation of title in the required form in public registers, and to fulfil 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. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

8. Delivery time

- 8.1 The delivery time shall start as soon as the contract is entered into, all official formalities 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 the end of that time the supplier has sent a notice to the customer informing same that the supplies are ready for dispatch.
- 8.2 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, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
 - 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.
- 8.3 The customer shall be entitled to claim damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of the supplier and that the customer can prove having 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.

Damages for delayed delivery shall not exceed 0,5 % for every full week's delay and shall in no case whatsoever altogether exceed 5 % of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

After reaching the maximum damages for delayed delivery, the customer shall grant the supplier a reasonable extension of time in writing. If such extension is not observed for reasons within supplier's control, the customer shall have the right to reject the

delayed part of the supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

- 8.4 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 8. This limitation does, however, 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.

9 Passing of benefit and risk

- 9.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.
- 9.2 If dispatch is delayed at the request of the customer or due to reasons beyond the 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.

10. Inspection and acceptance of the supplies and services

- 10.1 As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 10.2 The customer shall inspect the supplies and services within 10 days and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been accepted.
- 10.3 Having been notified of the deficiencies according to Clause 10.2, the supplier shall as soon as possible remedy them, and the customer shall give the supplier the possibility of doing so.
- 10.4 The carrying out of an acceptance test as well as laying down the conditions related thereto require a special agreement.
- 10.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 10 and 11 (guarantee, liability for defects).

11. Warranty, liability for defects

- 11.1 The warranty period for equipment is 24 months. It starts when the equipment is delivered to the warranty holder. The original customers who purchased the equipment for their own use are deemed to be the warranty holders. Unless otherwise agreed, proof of the beginning of the warranty period must be provided in form of the warranty certificate made available by the supplier and completed by the delivery person.

The warranty expires prematurely if the warranty holder or a third party undertakes inappropriate modifications or repairs or if, in case of a defect, the warranty holder does not immediately take all appropriate steps to mitigate the damage and does not give the supplier the possibility to remedy such defect.

The warranty also expires prematurely if the warranty holder does not follow the maintenance measures specified and recommended by the supplier and if the warranty holder does not comply with the provisions regarding the operation, handling and care of the equipment as set forth in the operating instructions.

The warranty period for spare parts is 12 months. It starts with the installation of the parts. The same restrictions as for the warranty for equipment shall apply.

The warranty period for parts installed or repaired in order to remedy a defect expires no later than the warranty period of the equipment.

- 11.2 Upon written request of the warranty holder, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, are proved to be defective due to bad material, faulty design or poor

workmanship. The supplier shall determine the place of performance. Any shipping cost shall be borne by the warranty holder. Replaced parts shall become the supplier's property.

- 11.3 Express warranties are only those which have been expressly specified as such in the order acknowledgment or

in the specifications. An express warranty is valid until the expiry of the warranty period at the latest.

If the express warranties are not or only partially achieved, the warranty holder may first of all require the supplier to remedy the defect. The warranty holder shall give the supplier the necessary time and possibility of doing so. If such remedying of defects fails completely or in part, the warranty holder may claim a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the warranty holder shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

- 11.4 Excluded from supplier's warranty and liability is any damage which cannot be proved to have its origin in bad material, faulty design or poor workmanship, e.g., damage resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive use, use of any unsuitable material, influence of chemical or electrolytic action, or resulting from other reasons beyond the supplier's control. Excluded from the warranty are also parts which are subject to wear and tear in normal use and are therefore listed as wear parts in the operating instructions or in the spare parts list.
- 11.5 With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the warranty holder shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 11.1 to 11.4. Specifically, the warranty covers neither claims for replacement, such as making available replacement equipment, nor any claims for damages.

12. Exclusion of further liability on the supplier's part

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered 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 claim damages other than compensation for costs of remedying defects in the supplies. This in 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 damage. This exclusion of liability, however, 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.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

13. 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 Switzerland and abroad for the purpose of performing and maintaining the business relationships between the parties.

14. Software

If the supplies and services 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.

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 office.

15.2 The contract shall be governed by Swiss substantive law.

15.3 Applicability of the United Nations Convention on the International Sale of Goods (Vienna Convention) shall be excluded.

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Remigen, March 2022

Price Adjustment Formula

issued by Swissmem

$$P = P_0 \left(a + b \frac{L_m}{L_0} + c \frac{M_m}{M_0} \right)$$

P = _____ Selling price on date of delivery

₀ P = _____ Selling price by tender

a = _____ Coefficient of fixed part of costs (e.g. = 0.1)¹

b = _____ Coefficient of part varying with wage index (e.g. = 0.6)¹

c = _____ Coefficient of part varying with material index (e.g. = 0.3)¹

L₀ = _____ Wage index ² of Swissmem, Zurich, on date of tender

L_m = _____ Average of all wage indices ²

- from date of order acknowledgement to completion in accordance with contract*

or

- during period of manufacture, i.e. from _____ to _____*

M₀ = _____ Mean of price indices ³ of principal material in category «metals and metal products» required for manufacture, related to their proportion of value of supplies on date of tender

M_m = _____ Average of mean values of all price indices ³ of principal materials in category «metals and metal products» required for manufacture, related to their proportion of value of supplies at time of delivery

- from date of order acknowledgement to completion in accordance with contract * or

- from date of order acknowledgement to date by which supplier had obtained most of these materials, i.e. from _____*

¹ a + b + c must always total 1.

² Since the wage index is only issued by Swissmem quarterly, the index for the past quarter shall be inserted in each case.

³ Fractions of the official producer price index calculated and published monthly. (If the year serving as a basis for de-termination of the index is changed by the authority concerned, the supplier is entitled to re-calculate the changes in prices in accordance with the new index values.)

* Delete where inapplicable.