

# GENERAL COMMERCIAL CONDITIONS

**for the Purchase of  
Plants, Plant Components and Services**

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## 1. DEFINITION OF TERMS

### 1.1 The following terms apply in these General Commercial Terms:

PU	=	Purchaser (name of company and address in order)
CO	=	Contractor who is the legal entity responsible for the of deliveries and services in accordance with the order fulfilment
FC	=	Final Customer to whom the plant is supplied
total plant	=	the entire system or plant technically or contractually intended for the Final Customer and for which the supplier is responsible for deliveries and services
customer contract	=	contract between the Final Customer and the Purchaser for the supply of the plant
order	=	contract between the Purchaser and the Contractor with regard to the supplies and services to be provided by the Contractor.
supplies/services	=	all supplies and services to be performed by the Contractor in accordance with the order. The term services shall also be understood to refer to supplies (deliveries) and services.

### 1.2 The following definitions shall apply with reference to the step-by-step acceptance of a plant or parts thereof:

Completion of Erection = Completion of the entire plant, including the no-load test.

The no-load test shall be deemed to be completed at the time the entire facility has been tested without utilities in individual and in full interlocking operation, etc., and all systems, plant components as well as controls and safety installations, etc., have been functionally tested and appropriately adjusted to their respective nominal ratings. Furthermore, all control circuits shall be functionally tested and pre-adjusted.

Start of trial run = start up = beginning of hot tests = runup of the entire plant under operating conditions.

Performance test = operation of the plant under continuous full load for a time period specified in the customer contract.

Positive performance test = achievement of all specified performance parameters of the entire plant and confirmation of plant operation in accordance with the requirements of the Final Customer contract under the supposition that the supplies/services comply with the requirements of the contract and are free of defects.

Acceptance = the Final Customer's written confirmation that the entire plant comprised of the Contractor's supplies and services has been completed in accordance with the Final Customer contract and is free of defects. This includes proof that all performance data (e.g. capacity, quality of the product, consumption, emissions) have been achieved in a performance test.

## 2. GENERAL

### 2.1 Order

The date of the order shall be the date the order is sent.

The order shall be either confirmed or rejected in writing within 10 days. In the event the Contractor does not confirm the order within 10 days by means of an unconditional order confirmation or commences with the execution of the order, the order shall be deemed as unconditionally confirmed.

### 2.2 Significance of Supplies and Services of the Contractor

The supplies and services of the Contractor shall become an integral part of the complex plant to be erected. Difficulties in individual services generally cause disturbances to the organisation of the entire project, thus resulting in additional costs, for example in connection with delays that affect the project schedule, claims of third parties, disturbance of logistics, delayed acceptance of the plant by the customer, idle time, etc. The financial consequences are particularly serious for plants erected overseas. For this reason the Contractor shall exercise utmost care in the fulfilment of the contract in order to properly deal with such circumstances. This includes, but is not limited to, the responsibility for collecting all information required to ensure due completion of the order, in particular with regard to transport and conditions at the site and to the integration of supplies and services in the plant.

### 2.3 Quality Assurance

The Contractor and all subcontractors shall undertake to apply the principles of quality assurance pursuant to the applicable standards in executing the scope of supplies and services.

The Purchaser and the Final Customer shall reserve the right to audit the quality-assurance systems, the applicable quality-assurance regulations and the quality-assurance plan of the Contractor and subcontractors at any time.

### 2.4 Validity of the General Commercial Conditions

The subject General Commercial Conditions shall govern the relationship between the Contractor and the Purchaser to the extent that the order does not stipulate any deviations for individual cases.

The conditions of the Contractor (such as offers, conditions of sale) shall apply only in the event that they have been expressly recognised in written form by the Purchaser. Reference made in the order placed by the Purchaser to offers from the Contractor does not automatically entail recognition of the commercial conditions of the Contractor. The subject General Commercial Conditions shall be considered accepted with the commencement of the execution of the order by the Contractor.

### 2.5 Validity of Statements

Any statement made by the Purchaser regarding orders or amendments or additions thereto shall be legally binding on the Purchaser only to the extent that they have been issued in writing or by telefax by the responsible purchasing department. The Contractor shall have the right to refer to declarations of other persons only in the event he immediately informs the responsible purchasing department and the purchasing department issues a confirmation of the same.

The only exceptions are

- the selection of options concerning packing and transport by issuing definite shipping instructions
- individual calls on general orders

## 2.6 Clarification of Inconsistencies

The following order of precedence shall apply in the event of inconsistencies in the terms of the contract between the Contractor and the Purchaser:

- the written order (in form of a letter, telefax)
- the annexes mentioned in the written order, particularly the minutes of meetings
- the subject General Commercial Conditions.

To the extent this order of precedence does not give clarification, the best suitability of the Contractor's supplies and services for the purpose intended shall be decisive as pertaining to the scope of supplies and services.

In the event the Contractor does not clearly understand his scope of commitments, he shall immediately inform the Purchaser. The Purchaser and Contractor shall mutually determine a solution. The Contractor shall undertake to immediately inform the Purchaser of any inconsistencies in the specification.

Headings exclusively serve the purpose of orientation and shall have no bearing on the interpretation of respective articles.

## 2.7 Contract Language

In the event the contract language is not specifically mentioned, the contract language shall be German.

The Contractor shall ensure that its managerial staff speak and write this language fluently.

## 2.8. Statutory Claims

Nothing contained in the subject General Commercial Conditions shall diminish the Purchaser's statutory (legal) claims.

# 3. PRICES

## 3.1 Definition of Prices

The prices in the order are understood to be fixed prices that do not include value-added tax and that cover all expenditures of the Contractor as they relate to the fulfilment of his supplies and services. This particularly includes all costs for transport, insurance, packing, taxes, customs fees and other charges in connection with the fulfilment of the supplies and services in those countries in which these services are actually rendered. The Purchaser shall be held liable exclusively for costs that are specified in the order as the express responsibility of the Purchaser. The conditions of the main order shall apply to any amendments and additions to the order as well as orders for spare and wear parts.

## 3.2 Basis of Prices

Unless stipulated otherwise in the order, the prices shall be quoted "Delivered duty paid" (DDP), place of destination to be specified by the Purchaser (in most cases the site) in accordance with Incoterms 2010. The price shall include all costs for related documentation, technical inspection, painting, corrosion protection, marking, etc. The costs and responsibilities for export customs clearance (with the Contractor's own documentation) for supplies to foreign countries shall also be borne by the Contractor.

## 4. TERMS OF PAYMENT

### 4.1 Invoicing

Invoices shall be submitted to the Purchaser (company name and address as on the order) together with all necessary documentation for identification, such as the order number, etc, in a single copy.

In addition to providing the legally required information, Contractors from member states of the European Union shall indicate the following information on all invoices:

- the applicable tax rate or reference to tax-exemption status and the movement of goods
- date of issue
- number of invoice
- the UID (unique identification number) of the Contractor

Incomplete or otherwise non-auditable invoices may be rejected.

The rejection of invoices shall imply that respective payment periods are not effective and shall not become effective until the respective invoice has been resubmitted.

### 4.2 Payment

Unless otherwise agreed, payment shall be made in accordance with the agreed payment terms upon receipt of an auditable invoice and after all requirements have been fulfilled, including but not limited to the due delivery of documentation, within 21 days of receipt of invoice with 3 % discount or within 30 days with 2% discount or within 60 days net at the discretion of the Purchaser.

Money transfers shall be conducted such that the fees of the commissioning bank shall be paid by the Purchaser and those of the receiving bank shall be paid by the Contractor (receiver).

Payment shall not be understood as recognition of orderly fulfilment of the supplies and services and does not represent a waiver of the rights of the Purchaser to demand fulfilment, warranty, claims to damages, contractual penalties, etc.

### 4.3 Retention

The Purchaser shall be entitled to retain agreed monies as a non-interest bearing security to cover any claims for the proper fulfilment of the contract, guarantee or warranty claims as well as claims to damages for up to 45 days after termination of the guarantee period. The same shall apply in the event of insolvency proceedings against the Contractor.

### 4.4 Final Invoice

The final payment shall not be effected prior to the Contractor's presentation of a final invoice for the performed supplies and services as well as the related claims.

By presenting the final invoice the Contractor declares that any and all claims in connection with the respective contract have been settled and that no further claims will be raised.

#### 4.5 Retention of Payment

Furthermore, the Purchaser shall reserve the right to retain payment at any time in the event the Contractor does not fulfil his contractual obligations (such as pertaining to quality, schedule, function, etc.) or as long as the Contractor does not remedy errors. The retention of payment shall not authorise the Contractor to interrupt or cease execution of the order.

### 5. SUBCONTRACTS

#### 5.1 Approval

The Contractor shall provide timely information to the Purchaser of any planned subcontracting and shall seek prior written approval for the same. At the request of the Purchaser, the Contractor shall provide the Purchaser with a copy of the respective order.

In the event of non-compliance with these obligations, the Contractor shall fully indemnify the Purchaser of all consequences which may arise. Such consequences may directly result from

- quality
- deadline risks
- compensation requirements
- technical cross-standardisation
- subcontracting requirements set by the Final Customer
- customs regulations concerning temporary admission, transit, import and transportation

In the event a subcontract has not been approved by the Purchaser, the Purchaser shall, irrespective of any other rights, be entitled to terminate the contract in whole or in part.

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Approval of a subcontract by the Purchaser shall not limit the obligations of the Contractor in any way. Even in the event that subcontracts have been assigned, the Contractor shall remain fully responsible to the Purchaser for fulfilment of the entire order. The Contractor shall be held liable for the actions and omissions of his subcontractors as well as his own actions or omissions.

The Purchaser has the right to fulfil claims of subcontractors or of suppliers of the Contractor directly and – without having to renounce other rights – may retain these claims on payments due to the Contractor. In such cases, the Purchaser shall inform the Contractor.

## 6. DOCUMENTATION

### 6.1 Significance of Documentation

Documentation includes all written, drawn or otherwise created documents relating to the Contractor's supplies and services and serving to assist the Contractor and the Purchaser in fulfilling their obligations toward their respective contracting partners and the involved authorities in due time and in the most economical manner. Such documentation may be related to manufacture, quality control, potential risks, safety instructions, dispatch, transport, export, transit, import, customs clearance, excise, identification of parts, logistics, storing, erection, commissioning, training, accounting, invoicing, operation, repair, maintenance, procurement of spare parts, etc.

Should the Purchaser make an electronic platform (e.g. Microsoft Sharepoint) available for storing documents, it is obligatory to use it. Any violation or non-observance of this obligation shall be deemed to be a material breach of this agreement.

The preparation and delivery of the documentation shall form an essential part of the Contractor's supplies and services.

The Purchaser shall be granted the right to use the documentation and, shall be entitled to pass on any documentation received from the Contractor or subcontractors to other contracting partners of the Purchaser and/or to the Final Customer.

### 6.2 Scope

The documentation shall be submitted to the Purchaser as specified in the order. To the extent not specified in detail, the documentation shall be adequate for the respective case regarding volume, standard and due availability and shall be in the prescribed language. All documentation shall be "Delivered duty paid" (DDP) to the Purchaser in accordance with Incoterms 2010, unless agreed otherwise.

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### 6.3 Shipping Documents

Shipping documents shall be in accordance with the Purchaser's shipping and packing instructions. The documents shall clearly state the correct and complete order number, identification number, position and item number as well as the designation of the goods for clear identification of the applicable customs tariffs. The designations of individual items shall be maintained throughout the documentation. In particular, the designations used in the drawings, part lists, packing lists and shipping documents shall be exactly the same.

#### 6.4.1 Documentation of Origin

The Contractor shall enclose, free of charge, valid evidence of entitlement to preferential tariff treatment (movement certificate, preferential certificate of origin, certificate of origin, confirmation of origin, declaration of origin, etc.) with the goods supplied across frontiers, as necessary for preferential clearance for import in the country of destination of the goods.

In particular, the certificate shall also include the order number and project number of the Purchaser. The value of goods shall not be indicated.

Unless agreed otherwise, the country of the Contractor shall be the country of origin.



**Certificate of Origin:**

At the request of the Purchaser, the Contractor shall provide at his own cost a certificate of origin certified by the competent chamber of commerce and the competent consulate or embassy, respectively.

**Confirmation of Origin:**

In the event the certificate of origin is made out by the Purchaser, the Contractor shall provide at the request of the Purchaser a confirmation of origin for each single part of his supplies and shall specify the manufacturer (including the exact address) and/or the country of origin.

All fees, duties and extra charges resulting from failure to submit such documents, or from incorrect statements, shall be borne by the Contractor.

**6.4.2 Origin of Supplies/Services**

The minimum value of supplies/services from a certain country and the relevant regulations pertaining to certificates of origin required under the regulations of the *ÖSTERREICHISCHE KONTROLLBANK* (ÖKB) or other financial or insurance institutions, as stated in the order, shall be strictly adhered to and proven to the Purchaser.

The Purchaser, ÖKB or the respective financial or insurance institution shall be entitled to request verification from the Contractor, which verification shall be provided free of charge. In addition to the transfer of the exporter's liability to the Contractor by way of a back guarantee to the Purchaser (if agreed upon), the latter shall in case of a breach of the above obligation be fully indemnified by the Contractor with respect to

- additional cost caused by loss of a government-backed export credit for the entire financing period
- the consequences arising from withdrawal of the insurance coverage for the commercial or political non-payment risk.

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**6.5 Inspection Documents**

To the extent required in each individual case, the inspection documents to be provided by the Contractor shall consist of reports on quality control, test certificates, etc., as well as time schedules and progress reports.

**6.6 Erection Documents**

In order to ensure orderly and economical erection, the required documents shall be provided in accordance with the time schedule and the actual progress of the erection activities.

**6.7 CE Labelling**

The Contractor shall be obligated to mark with a CE label all supplies and services which require or permit a CE label and/or a declaration of conformity and submit to the Purchaser all necessary declarations of conformity in the language prescribed for the documentation.

## **7. INSPECTION, TEST, EXPEDITING**

### **7.1 Tests and Inspections**

The Contractor shall allow personnel authorised by the Purchaser or by the Final Customer to carry out inspections on items/activities in connection with the order and at any time. This includes inspection of planning, production insofar as quality and time schedule are concerned, taking of samples, packing regarding its quality and conformity of the packing list with the contents of the various packages, loading, etc.

For this purpose the Contractor shall admit representatives of the Purchaser or of the Final Customer to offices and workshops of the Contractor and subcontractors, make available all records in connection with the contract and shall keep the Purchaser informed of the progress in the work activities. Possible changes in the time schedule are to be advised immediately.

The Contractor shall carry out a complete inspection program on his own and make available a detailed list of test results (test certificates, dimensional check reports, etc.) before final inspection by the Purchaser's inspection team. At the request of the Purchaser, the Contractor shall be present at the final inspection. The Contractor shall provide free of charge services, material, labour, interpreters, energy, suitable test equipment, testing media, skilled and unskilled workers for moving packages, opening and closing of cases/crates, etc., in order to ensure orderly and efficient inspection.

The Contractor shall ensure that all equipment/components are easily accessible and shall take adequate safety precautions. The equipment and components thereof presented for inspection shall be unpainted and pre-assembled, unless specifically requested otherwise.

An inspection, whether carried out or waived by the Purchaser, shall not limit the Contractor's obligations and shall in no case be construed as a waiver of any of the Purchaser's rights, including but not limited to penalties, damages, guarantees/warranties, etc., even if a respective reservation has not been asserted.

Defects determined in the course of an inspection or test shall be immediately rectified by the Contractor at his own cost.

### **7.2 Documentation**

For inspection the required inspection documents and for inspection of packing the relevant packing lists shall be provided by the Contractor. Incomplete or incorrect documents may necessitate repeated inspections.

All inspection documents shall be handed over to the Purchaser's inspector or the requested number of copies sent within an agreed period. In the event an inspection is waived, all documents shall be sent to the Purchaser immediately or within the agreed time limit or at the latest before dispatch of the respective equipment/components.

The inspection documents shall be divided according to position numbers in a clear and logical order with a corresponding index and shall be placed in a file.

### **7.3 Costs**

The Contractor and the Purchaser/final customer shall each bear the respective costs for their own personnel and inspection teams.

Should an inspection not be satisfactorily completed for reasons attributable to the Contractor, the Contractor shall bear all costs incurred by repeated inspection.

## 8. DISPATCH

### 8.1 Shipping Instructions

The Contractor shall adhere to the Purchaser's shipping and packing instructions.

The Purchaser shall reserve the right to revise the shipping instructions if deemed necessary during implementation of the project. All cost arising from non-compliance with the Purchaser's instructions or from delays, such as costs for special transportation, air freight, extra packing, etc., shall be borne entirely by the Contractor.

### 8.2 Export Clearance

Export clearance shall be carried out by the Contractor with his own documents. The incurred costs and fees shall be borne by the Contractor.

### 8.3 Part Deliveries

Unless otherwise agreed, the Contractor shall deliver or prepare for collection the supplies ordered in complete loads. Incomplete part deliveries are only to be executed or planned respectively after prior agreement with and written approval of the Purchaser. All additional costs/expenses (e.g. transportation and packaging costs, obstructions to assembly, handling fees, etc.) arising due to part deliveries which were neither agreed upon nor approved by the Purchaser shall be borne by the Contractor.

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## 9. DEADLINES

### 9.1 Delivery Date

For documentation purposes, the date of delivery shall be the date shown in the "received" stamp of the Purchaser or the date of an individual receipt in the event all documents have been completely and correctly presented in accordance with the contract.

For supplies and services, the date of delivery shall be the date on which all of the Contractor's respective obligations pursuant to the contract (including those regarding documentation) have been completely fulfilled and are free of defect.

### 9.2 Delays

The Contractor shall immediately advise the Purchaser in the event it becomes known that the agreed deadlines cannot be met. A full written report of the reasons and extent of such delays shall be sent immediately to the Purchaser.

In the event the contract requires the Purchaser to take action by a certain date in order to meet a delivery date, the Contractor shall notify the Purchaser in due time. In the event the Contractor does not request compliance by the Purchaser and comes into delinquency as a result, the Contractor may not hold the Purchaser responsible for default. In the event the Contractor is hindered in duly fulfilling his commitments under the contract as a result of the Purchaser's late delivery despite due notification, the agreed dates and periods shall be extended by no more than the number of days of delay caused by the Purchaser. The Purchaser shall not be held liable for any additional cost. The original contractual dates/periods extended by such delays shall be the new due dates, e.g., for calculation of penalties, etc.

In the event of possible or actual delays, the Contractor shall be required to minimise such delays by taking all constructive measures, regardless of the cause of such delays.

### 9.3 Storage

In the event the delivery dates set out in the contract be changed for reasons not attributable to the Contractor, the Contractor shall provide adequate storage of the goods at his own risk and his own cost for a period of up to 3 months.

Due payments incurred by such storage may be made against a warehouse certificate or certificate of transfer of property and/or bank guarantee, etc.

In case of storage, shipments in whole or in part shall only be carried out in the event the release has been confirmed in writing by the Purchaser.

### 9.4 Premature Fulfilment

Deliveries/services prior to the due date shall only be accepted where approved in writing by the Purchaser and shall not advance agreed payment dates.

## 10. CONTRACTOR'S LIABILITY

### 10.1 Penalties for Delay

In the event the Contractor does not comply with the agreed time periods, nor meet the intermediate or final deadlines set forth in the contract, the following penalties, in each case to be calculated from the total contract value, shall apply for the time that passes until the actual date of delivery. Such penalties may also be deducted from the Contractor's account receivable or any open invoices.

- Supplies and Services  
1 % per week or part thereof for delay, up to a maximum of 10 % of the total order value.
- Documentation  
0.5 % per week or part thereof for delay, up to a maximum of 5 % of the total order value.

The obligation to pay a contractual penalty shall commence for the Contractor at the time delinquency first occurs, in which case any fault of the Contractor shall not apply.

The contractual penalty shall be due in the event the Contractor defaults with a partial service or only minute or unimportant defects hinder acceptance of the entire facility. The basis for calculation of the penalty shall be the respective total order value.

The Purchaser shall reserve the right to assert claims to actual damages above and beyond the contractual penalty.

In the event of a defective delivery or supply, the time between taking over and the official complaint by the Purchaser shall not be subject to a contractual penalty. Reservations of the Purchaser upon acceptance of the delivery shall not be required to maintain a claim for contractual penalty.

The payment of a contractual penalty shall not relieve the Contractor from his obligation of fulfilment and any related liabilities.

## 11. GUARANTEE

### 11.1 General

The Contractor is liable not only for the conditions/qualities expressly specified or promised in any other way or to be reasonably expected but also for completeness of his supplies and services and their best suitability for the specific purpose intended. This guarantee particularly covers the suitability of the Contractor's supplies/services for continuous operation of the plant under the operating conditions prevailing at the site, conformity with all standards and regulations applicable at the site (such as safety, environmental protection), uninterrupted availability with adequate performance and consumption data, easy erection, maintenance and repair. The design and manufacture shall represent the most modern state of the art at the time of contractual execution by the Contractor.

Each advertising statement made by the Contractor about his product/services shall be understood as a guaranteed expression of the characteristics of the respective product/service.

### 11.2 Guarantee Period, Remedy of Defects

The guarantee period ends 24 months after the date of acceptance of the entire plant, however 36 months at the latest from the date of final delivery in accordance with the order. For corrosion protection, the guarantee period ends 60 months from the date of acceptance of the entire plant.

The guarantee period shall be extended by any downtimes caused by defects. In the event of replacement or repair of a part, a new guarantee period equal to the one for the original supply shall apply and shall commence on the date of installation of the new part or completion of the repair.

The Contractor shall not be released from guarantee and warranty obligations by reason of the Purchaser refraining to issue a notification of defects. A notification of defects can be issued by the Purchaser while maintaining full guarantee and warranty obligations of the Contractor up until one month following the end of the guarantee period. The limitation period pursuant to the contract or provided by law for instituting legal proceedings against the Contractor with respect to guarantee claims shall commence upon expiry of the guarantee period.

The Purchaser shall have no obligation whatsoever to inspect the supplies and services of the Contractor before the agreed functional and performance tests are carried out.

In the event of any defects, including serial defects, even in the event a defect has not yet occurred in all supplies of the same kind, that arise before or within the guarantee period, the Contractor shall carry out all necessary repair on site within the shortest possible time or shall replace the defective item on site in accordance with the Purchaser's instructions. All related services and any additional costs, such as for transportation, customs, dismantling and erection shall be carried out by the Contractor or at the Contractor's expense.

In the event of minor defects (up to approximately EUR 10,000.00 for each individual case) or if immediate repair is imperative (in critical stages such as trial runs), the Purchaser shall be entitled to remedy or have remedied any such defects immediately and without prior notification to the Contractor. Such work shall be carried out at the expense of the Contractor and shall not affect the Purchaser's rights or other claims. The same shall apply in the event the Contractor fails to remedy defects in time, despite having been requested to do so.

### 11.3 Non-compliance with Guaranteed Characteristics

Even in the event the order includes contractual penalties for defects, non-fulfilled guaranteed characteristics or other guarantees (such as performance penalties), the Contractor shall be obligated to ensure that his deliveries and services meet the respective intended requirements.

#### 11.4 Liability for Documentation

The Contractor declares that he is aware of the special significance of meeting his obligations with respect to the documentation and that for this reason he is held liable for the consequences of any defaults and defects.

#### 11.5 Liability for Engineering

The Contractor shall guarantee correctness and completeness with respect to engineering services, consultations and documentation.

Information regarding the design of the Purchaser are not binding and shall be monitored by the Contractor accordingly. Information regarding the design of the Purchaser shall not release the Contractor in any way from his obligations to perform his respective services. The Contractor is particularly obligated to inform himself about the actual conditions on site and to consider these accordingly in scheduling his respective activities.

The Contractor shall take special note that the information regarding the design of the Purchaser relates solely to unbinding concepts geared toward project completion and have not been structurally nor statically nor technically evaluated as to their implementation. The Contractor shall be held fully responsible for his own activities in spite of the information regarding the design of the Purchaser.

#### 11.6 Product Liability

In case of any claim against the Purchaser in connection with the violation of safety regulations or on the basis of product liability laws/regulations the Contractor shall indemnify and save the Purchaser harmless and shall be fully liable for all losses and damages incurred by the Purchaser as a result of such claim provided such claim is based on or ascribable to defects or failures in the supplies and services of the Contractor, or unsafe products of the Contractor as per the applicable product liability laws/regulations.

The Contractor shall be obligated to insure himself sufficiently against all risks arising from product liability and, upon request, shall present the Purchaser with the respective insurance policy.

The purchase of this insurance shall in no way limit the obligations and liability of the Contractor, even in the event the Purchaser makes no objection to the presented insurance policy.

#### 11.7 Spare Parts

In the event not otherwise agreed, the Contractor guarantees that the mutually selected spare-, wear- and exchange parts completely suffice in non-stop operation for a period of 2 years from the time the plant is started up. In the event of any shortages of parts during this period, the Contractor shall supply additional parts "Delivered duty paid" (DDP), place of destination to be specified by the Purchaser (in most cases the site) in accordance with Incoterms 2010, free of charge, including packaging. The guarantee period ends 24 months from the date of installation and startup of these parts. The Contractor guarantees availability of spare-, wear- and exchange parts for a period of 10 years from the end of the guarantee period.

## 12. ACCEPTANCE

### 12.1 Performance Test

Generally the supplies/services shall be tested as to their conformity with the contract during the performance test of the plant. However, the Purchaser shall be entitled to additional specific tests in order to examine the respective supplies/services.

### 12.2 Delay of Acceptance caused by to the Contractor

In the event a Performance Test fails or acceptance is hindered by other defects, the Purchaser shall grant the Contractor adequate time (under due consideration of the consequences for the entire plant) to carry out the necessary repairs/improvements. All costs for labour, material, media, etc. incurred by the Purchaser as a result of the Contractor's unsuccessful performance test shall be borne by the Contractor.

In the event the plant is not accepted within a reasonable time as a result of causes attributable to the Contractor, the Purchaser in his sole discretion shall be entitled to the penalties stipulated in the order and/or to a price reduction or to terminate the contract while reserving the right to claim damages.

## 13. EXPORT LICENCE

The Contractor shall obtain at his own expense all export licences required for the export of the supplies and services, in particular for export to the Final Customer's country.

The Contractor guarantees that, at the time the order is placed, the complete performance of all supplies and services is ensured and not inhibited by any administrative or other restrictions. The Contractor shall indemnify the Purchaser and/or the Final Customer against any damage or loss resulting from any such inhibition or restriction. After the order is placed, the Contractor shall inform the Purchaser as soon as possible of any new export restrictions which may arise and submit details of alternative solutions free of charge.

The Contractor shall be obligated to obtain at his own cost the export licence in due time from the responsible agency at the time that goods/products/manufacturing documentation subject to community export legislation for dual-use goods are transported to a country.

## 14. INDUSTRIAL PROPERTY RIGHTS

### 14.1 Third Parties' Rights

The Contractor shall ensure that the use of its supplies and services is not affected in any way by claims of third parties regarding trademarks, copyrights, patents, protected territories, etc., and that no boycott clauses, black lists, etc., are violated.

The Contractor shall immediately inform the Purchaser of any infringement of third parties' rights or any violation of boycott clauses or black lists, etc.

In the event of any such infringement or violation, the Contractor shall fully indemnify and hold the Purchaser and the Final Customer harmless against any claims of third parties and shall guarantee the Purchaser and the Final Customer unlimited use of the supplies and services, or shall provide other acceptable alternatives free of charge to the Purchaser/final customer.

#### 14.2 Obligation of Secrecy

Without the Purchaser's written consent, the Contractor shall not disclose to the public nor use for advertising or any other purposes any information related to the order or to the project or any other information obtained directly or indirectly from the Purchaser or the Final Customer, including all information developed by the Contractor on the basis thereof. In particular, engineering documents provided by the Purchaser and the documentation shall be treated in strict confidence and shall not be used for any purpose other than for executing the respective order. This obligation of secrecy shall also be imposed by the Contractor on any person who receives such information. In the event of a breach of this obligation of secrecy, the Contractor shall also indemnify the Purchaser against third parties' claims.

#### 14.3 Copyright

The property and the exclusive right of use for all drawings, information and know-how made available by the Purchaser to the Contractor remains with the Purchaser. The Contractor acknowledges the Purchaser's exclusive copyright thereof.

#### 14.4 Inventions and Improvements

The Contractor is obligated to inform the Purchaser about inventions and improvements made by the Contractor or the Contractor's staff in connection with the implementation of the order on the basis of information and documentation provided by the Purchaser and at the Purchaser's request in accordance with the applicable provisions of the relevant patent law to make use of the inventions. The Contractor shall transfer without reservation the invention (patent) with all rights and obligations to the Purchaser against reimbursement of the inventor's compensation and of the cost incurred by the Contractor resulting from the patent application.

The utilisation of the invention, the application for a patent and the determination of reimbursement to which the inventor is entitled by law will be agreed upon mutually by the Contractor and the Purchaser, in the course of which the Contractor shall take all necessary measures.

The Contractor shall ensure that its subcontractors will take over a similar obligation in favour of the Purchaser.

#### 14.5 Follow-up Orders

In order to protect the know-how obtained by the Contractor from the Purchaser in connection with the contract and to ensure optimal operation of the entire plant also after expiration of the guarantee period, the Contractor shall not conduct any direct business with the Final Customer or its representatives for a period of 10 years with respect to follow-up orders for the plant from the date of final delivery. The Contractor shall not submit direct nor indirect offers to the Final Customer with respect to spare and wear parts without agreement of the Purchaser as a marketing partner.

### 15. FORCE MAJEURE

The Contractor shall be released either fully or partially from his obligation to meet deadlines in fulfilment of the contract in the event he is hindered by force majeure.

Events of force majeure are limited to fire, floods, acts of God, war and riot.

In the event the Contractor is impeded by an event of force majeure, he shall only be entitled to claim force majeure in the event he submits to the Purchaser immediately, or within 5 days at the latest, by registered mail a certificate issued by the authorities or the chamber of commerce of the Contractor's country, confirming the reasons, the commencement date and the expected duration and consequences of the event.



The Contractor shall make every effort to remove or minimise the hindrance caused by force majeure and any consequential damages as well as to continually inform the Purchaser of the current status of affairs.

Dates and deadlines which cannot be kept as a result of force majeure shall be postponed/extended by the duration of the effects of force majeure.

In the event force majeure exceeds 4 weeks, the Purchaser shall have the right to terminate the contract in whole or in part.

The Purchaser shall not be liable towards the Contractor for the consequences arising from any hindrance to the implementation of the contract due to force majeure.

## 16. TERMINATION OF CONTRACT

### 16.1 Breach of Contract

In the event of a serious breach of contract that is not remedied by the Contractor after having been granted a reasonable grace period (generally 2 weeks), the Purchaser shall have the right to terminate the contract in whole or in part.

The Purchaser reserves the right to terminate the contract without granting a grace period under the following conditions:

- The Contractor receives a reminder requesting fulfilment of contractual obligations and is given a reasonable grace period, even in the event the reminder does not expressly set a grace period or threaten with termination.
- In the event the Purchaser has reason before the respective due date to assume that the Contractor is not or will not be willing or able to fulfil essential contractual obligations in due time.

Delays or imminent delays with respect to final or other contractual dates or defects that would jeopardise the fulfilment of the Purchaser's obligations toward the contracting partners shall particularly be considered serious breaches of the contract, even in the event a respective penalty is attached.

In such cases the Purchaser shall reserve the right to execute or have executed the deliveries and services not performed or insufficiently performed by the Contractor at the cost of the Contractor. The costs incurred in this respect can be either directly invoiced by the Purchaser with an agreed payment period of 45 days after invoicing or deducted from the next due payment made by the Purchaser to the Contractor.

The Contractor shall reimburse the amounts already paid by the Purchaser for supplies and/or services not performed, including all related financing costs incurred by the Purchaser.

In the event that substituted services require access to equipment or materials at the Contractor or suppliers, the Contractor shall be obligated to provide this equipment and/or materials to the Purchaser.

In the event that substituted services require access to protected privileges, to documentation (such as workshop drawings, calculations) or other information, the Contractor shall be obligated to provide the required privileges, documentation or information to the Purchaser.

#### Right of Use:

In case of termination or cancellation of the contract the Purchaser and/or the Final Customer has the right to use the supplies and services of the Contractor free of charge until acceptance of an alternative solution.

## 16.2 Credit-Worthiness of the Contractor/Insolvency

In the event of bankruptcy or other insolvency proceedings imminent or instituted against the Contractor or its subcontractors, or in the event of changes to the status of ownership of the Contractor, the Purchaser shall be fully informed by written notice without delay. In the event of bankruptcy or other insolvency proceedings against the Contractor, or in the event of changes to the status of ownership of the Contractor, the Purchaser shall be entitled to immediately take over the supplies and/or services of the Contractor or his subcontractors and/or to terminate the contract in whole or in part.

## 16.3 Transferral of Goods for Use

In the event of cancellation in accordance with article 16.1 and 16.2 of the subject General Commercial Conditions, irrespective of his other contractual or legal claims, the Purchaser shall reserve the right to use the tools and the erection equipment such as cranes, scaffolding, etc., of the Contractor for the completion of the activities to be carried out in accordance with the contract. The use of this equipment shall be reimbursed in an adequate amount which shall be deducted by the Purchaser from claims to damages or other valid claims against the Contractor. The Contractor expressly agrees at this time to the above transferral of goods for use.

## 16.4 Cancellation

The Purchaser reserves the right to cancel the contract either partially or in full without any reason attributable to the Contractor. In this case the Purchaser shall pay the Contractor that portion of the contract value which corresponds to the supplies and services already delivered, plus verified direct cost related to work in progress, and compensation payable to its subcontractors. After the Contractor has been notified of a cancellation, he shall make every effort to minimise all cost and compensation arising therefrom.

## 16.5 Suspension

The Purchaser shall have the right to call for a suspension of the further work at any time. In such case the Contractor shall specify in detail to the Purchaser all the consequences resulting therefrom and suggest the best possible and most economical alternatives available for the further implementation of the project. The Contractor shall not claim any damages resulting from an interruption period of up to a maximum of 3 months.

## 17. OTHER TERMS AND CONDITIONS

### 17.1 Transfer of Risk

For transfer of risk the regulations contained in Incoterms 2010 shall apply. However, in the event the erection of the supplies is included in the scope of work of the Contractor the risk shall transfer to Purchaser upon acceptance.

### 17.2 Transfer of Property

The transfer of property to the Purchaser shall take place simultaneously with the transfer of risk.

### 17.3 Erection Equipment

Equipment for erection and commissioning, etc., required for temporary use at the site shall remain the property and within the full responsibility of the Contractor. The Contractor shall particularly indemnify the Purchaser against any costs arising from the export and import of such equipment. For activities performed at site Purchaser's conditions for execution of erection works shall apply additionally.

### 17.4 Insurance

Unless otherwise agreed in particular, the Contractor shall be responsible for obtaining all insurance coverage considered to be necessary. Such insurance coverage obtained by the Contractor shall contain a waiver of subrogation in favour of the Purchaser and the Final Customer.

Unless the order contains any alternative provisions, the following applies: in the case of orders up to an order value of EUR 10,000.00 the Contractor is obliged to maintain a corporate liability insurance, a product liability insurance and a planning liability insurance in accordance with international standards with minimum coverage of the equivalent of EUR 2,000,000.00 per claim, to retain it until the order has been fulfilled and to substantiate this to the Purchaser within a period of 3 days if required.

In the event the Contractor is co-insured or otherwise covered by an insurance policy taken out by the Purchaser, the Contractor shall accept the respective insurance conditions as binding on himself. The Contractor shall therefore also adhere to all respective obligations, such as providing all the required information, following instructions, complying with stipulations, etc.

### 17.5 Power of Attorney

The Contractor shall be obligated to name those persons at the time of order confirmation at the latest who are authorised to make and receive legally binding declarations. In the event the Contractor fails to name such persons, those who actually act on his behalf shall be deemed as duly empowered.

### 17.6 Liability toward the Contractor

The Purchaser shall not be liable for losses or damages caused by the Final Customer or any third party.

### 17.7 Third Parties' Claims

The Contractor shall fully indemnify the Purchaser for all claims of third parties caused by defects in, or improper execution of, the Contractor's supplies and services.

### 17.8 Assignment

Assignment of the rights of the Contractor is only permitted after having received written authorisation by the Purchaser.

### 17.9 Changes to Services

The Contractor shall notify the Purchaser of any possible improvement to the supplies and services and offer such improvements to the Purchaser. However, any changes to the supplies and/or services under the contract shall require an additional order.

### **17.10 Statutory Liens/Rights of Retention**

The Contractor shall not create or do anything which would result in the creation of any statutory lien, encumbrance, right of retention or any other kind of security on the free-issue parts provided by the Purchaser or on the supplies/services or any part thereof.

The Contractor shall ensure that a similar provision is included in each of its subcontracts.

### **17.11 Reorganisation**

The Contractor shall immediately inform the Purchaser of the initiation, annulment or cancellation of reorganisation proceedings in accordance with the company reorganisation law and shall report monthly to the Purchaser during the period of reorganisation on the status of the reorganisation.

### **17.12 Salvatory Clause**

In the event that individual stipulations of the subject General Commercial Conditions become invalid, ineffective, illegal or unfeasible, this shall have no influence on the validity of the remaining stipulations.

In such an event the Contractor and the Purchaser are obligated to mutually agree on a stipulation that will replace the stipulation that has become invalid, ineffective, illegal or unfeasible. The mutually agreed stipulation shall come as close as possible within the bounds of the law to the economic intent of the original stipulation.

## **18. APPLICABLE LAW AND PLACE OF JURISDICTION**

### **18.1 The following shall apply to orders placed with Contractors whose headquarters are outside the Republic of Austria:**

Subject to Article 18.3 hereof, all disputes arising in connection with the subject order or related to its violation, termination or nullity which cannot be settled by mutual agreement shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Economic Chamber in Vienna by one or more arbitrators appointed in accordance with these Rules. Austrian substantive law under exclusion of the UN Convention on Contracts for the International Sale of Goods 1980 shall apply. The place of arbitration shall be Vienna.

### **18.2 The following shall apply to orders placed with Contractors whose headquarters are within the Republic of Austria:**

Subject to Article 18.3 hereof all disputes arising in connection with the subject order which cannot be settled by mutual agreement shall be finally settled in accordance with the Rules of Arbitration of the permanent Court of Arbitration at the Economic Chamber at the headquarters of the Purchaser.

This order is subject to Austrian substantive law.

**18.3 Regular Course of Law**

In both cases above, the Purchaser reserves the right to assert claims against the Contractor in accordance with regular legal procedure at an ordinary Austrian court at the seat of the Purchaser in Wels, Austria, in accordance with Austrian substantive law (under exclusion of the UN Convention on Contracts for the International Sale of Goods 1980) instead of through the Court of Arbitration.

For the Purchaser

For the Contractor

.....  
Date / Signature

.....  
Date / Signature