

GENERAL CONDITIONS FOR SERVICES

1. Definitions
2. Acceptance of Contract
3. Scope and Limitations
4. Purchaser's Obligations for Inspection Services
5. Immediate Information
6. Inspection Report
7. Conditions of Contract Price
8. Price Variation
9. Terms of Payment
10. Time for Supply
11. Custom Duties, Import Taxes and Permits
12. Supplier's Warranty for the Works
13. Force Majeure
14. Excepted Risks
15. Supplier's Liability
16. Indemnity
17. Insurance
18. Passing of Risk
19. Copyright, Confidentiality and Proprietary Equipment
20. Language, Weights and Measures
21. Suspension of Works
22. Termination of Contract
23. Applicable Law and Regulations
24. Settlement of Disputes
25. Validity of Tender
26. Transfer of Contract
27. Order of Precedence
28. Entire Agreement

1. Definitions

- 1.1 "Conditions" shall mean these General Conditions for Services.
- 1.2 "Contract" shall mean any agreement between the Purchaser and the Supplier for the supply of the Works as referred to in the Supplier's Tender, which shall incorporate these Conditions and the Supplier's Tender.
- 1.3 "Contract Price" shall mean the price for the Works as defined in the Contract.
- 1.4 "Completion Date" shall mean the date on which the Works as specified in the Scope of Works have been carried out.
- 1.5 "Country" shall mean such country in which the Equipment is situated.
- 1.6 "Equipment" shall mean both the Supplier's proprietary equipment and the Purchaser's own

equipment on which the works shall be executed by the Supplier.

- 1.7 "Inspection Services" shall mean visual inspections which do not cover inspection services that require the use of technical devices or enquiries regarding engineering work, unless otherwise specified in writing in the Contract.
- 1.8 "Materials" shall mean all items and components used as inputs with regard to the performance of the Services.
- 1.9 "Inspection Report" shall mean the written report to be submitted by the Supplier in terms of Clause 6.
- 1.10 "Party" shall mean either the Supplier or the Purchaser and "Parties" shall mean both when jointly referred to.
- 1.11 "Purchaser" shall mean the Party to whom the Supplier's Tender is addressed.
- 1.12 "Services" shall mean the services the Supplier is to provide in terms of the Contract, including Inspection Services, maintenance services, repair and refurbishment services as defined in the Contract, but excluding the provision of technical assistance by the Supplier.
- 1.13 "Supplier" shall mean Polysius AG.
- 1.14 "Tender" shall mean the Supplier's tender submitted to the Purchaser.
- 1.15 "Works" shall mean all supplies, performances and services which shall be provided by the Supplier in terms of the Contract.
- 1.16 "Writing" shall mean any typewritten, printed or hand-written document.

2. Acceptance of Contract

- 2.1 The Contract shall become effective on receipt by the Supplier of the Purchaser's acceptance of the Tender or the signatures of the Parties on the Contract document.

3. Scope and Limitations

- 3.1 The scope of Works of the Supplier comprises the supply of the Services as stipulated in the Contract.
- 3.2 The obligations and liabilities of the Supplier are completely stipulated in the Contract. Therefore, the Purchaser shall not claim from the Supplier any indemnities for consequential damages resulting from defects other than those for which the Supplier has explicitly accepted liability, nor for any indirect damages such as a loss of profit, loss of production and the like.

3.3 Any Contract or order arising out of the Tender shall incorporate and be subject to these Conditions which shall take precedence unless specifically agreed to the contrary in writing by the Parties.

4. Purchaser's Obligations

4.1 General Provisions

4.1.1 The Purchaser is obliged to grant the Supplier physical access to all parts of the Equipment on which the Works are to be provided according to the Scope of Works. The Purchaser shall ensure that all Equipment is to the Supplier's disposal for servicing at the Time for Supply.

4.1.2 The Purchaser shall provide the needed spare parts, consumables and cleaning agents for servicing the Equipment.

4.1.3 The Purchaser shall make sure that the Purchaser's operating personnel will be to the Supplier's disposal free of charge during the execution of the Works.

4.1.4 The Purchaser shall be responsible for the organization of the different service activities to be performed, which shall include, without limitation, the following: coordination of the different fields of expertise related to hydraulic systems, electrical equipment, process investigation and mechanical inspection.

4.1.5 The Purchaser shall inform the Supplier in advance of any known risks (actual or potential) associated with the Services to be performed.

4.1.6 If under exceptional circumstances the Supplier has to use a safety harness to access critical locations the Purchaser shall provide a skilled person to assist the Supplier.

4.1.7 Unless otherwise stated in the Contract the Equipment shall not be kept in operating mode during the period of the execution of the Services, as any inspection and/or other service executed on operating Equipment may fail to identify defects and/or to be executed in accordance with the Scope of Works. The Supplier shall accordingly not be liable for non-identified defects or the like, if the Services have been executed whilst the Equipment was in operation.

4.1.8 The Purchaser is in charge for the professional disposal of waste materials like filters, waste oil, etc.

4.2 Purchaser's Obligations for Inspection Services

Proper planning and execution of Inspection Services requires inter alia historic information of the Equipment to be inspected. To facilitate such proper planning, at least 3 weeks prior to commencement of the scheduled Inspection Services the Purchaser shall provide the Supplier with the following documentation and information in respect of the Equipment to be inspected:

4.2.1 all technical documentation related to the Equipment (drawings, manuals, calculations etc.) required for the planning of the Inspection Services,

4.2.2 any reports of earlier inspections,

4.2.3 any reports of repair work and/or modifications executed on the Equipment,

4.2.4 any reports/documentation of technical observations made by the Purchaser, its employees, agents or third parties on the Equipment,

4.2.5 any information which may be relevant to the determination of the condition of the Equipment, such as, but not limited to, maintenance, accident reports and information of unusual occurrences during operation.

4.2.6 To facilitate the Inspection Services, the Purchaser shall clean the Equipment and remove all obstacles which may influence the identification of defects.

4.2.7 The Purchaser shall grant the Supplier physical access to all parts of the Equipment which are to be inspected according to the Scope of Inspection Services.

Areas of the Equipment not visible from walkways shall only be inspected if the Parties agree in writing to inspect such locations.

The Purchaser shall provide the Supplier free of charge an elevating platform (including an operator conversant in the English language), scaffolding or any other means required to access problematic areas in order to enable the Supplier to inspect those areas of the Equipment which cannot be adequately visually inspected from the walkways.

4.2.8 Any part of the Equipment which could not be inspected due to non-removal of dirt or due to the non-provision of access (resulting from lack of elevating platforms, scaffolding and assistance for harness etc.) will be recorded in the Supplier's final report as "no access provided" and the Supplier shall not be responsible for defects found in these areas after the execution of the Inspection Services. Any waiting time incurred by the Supplier occasioned by cleaning, mobilization time for elevating platforms, construction time for scaffolding, waiting time for assisting personnel shall be charged to the Purchaser as additional work time.

4.2.9 Unless otherwise specified elsewhere in the Contract, the Purchaser shall be obliged to isolate all electrical

drives under permit conditions during the execution of the Inspection Services in accordance with standard procedures. The Equipment shall be isolated as required by the Supplier.

- 4.2.10 The Purchaser shall provide the Supplier with the Equipment required for the execution of the Inspection Services (e.g. scrapers, brushes, spray paint, extension ladders, battery torch, lead lights, safety harness and lanyard, confined space assistance).

5. Immediate Information

- 5.1 Should the Supplier during the execution of the Services identify defects which require immediate remedial measures the Supplier shall inform the Purchaser and make initial recommendations to avoid further damage to the Equipment and any other injury, loss or damage.
- 5.2 Any such recommendation made by the Supplier shall only be preliminary, even if otherwise named, and shall not be deemed to be engineering advice.
- 5.3 Any engineering work required for the elimination of identified defects shall be subject to an additional order by the Purchaser for the execution of such required engineering work.

6. Inspection Report

- 6.1 The Supplier shall deliver to the Purchaser a written Inspection Report after the execution of the Inspection Services.
- 6.2 The Inspection Report shall detail the Supplier's actual findings and where applicable contain recommendations for further inspection measures (non-destructive testing, finite elements analysis etc.) or for proposed remedial measures.
- 6.3 With regard to the Supplier's findings only the statements in the Inspection Report shall be binding on the Supplier. Any prior communication, whether oral, in writing or in electronic form shall not be binding and shall be superseded by the Supplier's Inspection Report.
- 6.4 Any recommendation, representation, statement, opinion or advice expressed or implied in the Inspection Report shall be made in good faith and on the basis that the Supplier, its agents and employees shall not be liable (whether by reason of negligence, lack of care or otherwise) to any person or legal entity taking or not taking (as the case may be) action in respect of any recommendation, representation, statement or advice referred to above.

7. Conditions of Contract Price and Terms of Payment

- 7.1 The Contract Price and the Terms of Payment shall be as specified in the Contract.

8. Time for Supply and Waiting Time

- 8.1 The time for the supply of the Works shall be as agreed between the Parties. Any waiting time incurred by the Supplier occasioned by the non-fulfillment of Purchaser's obligations as per clause 4 or by waiting time for assisting personnel shall be charged to the Purchaser as additional work time. The Supplier reserves the right to claim delay damages in the event of any delay attributable to the Purchaser regarding the delivery of the Works.

9. Customs Duties, Import Taxes and Permits

- 9.1 Taxes including VAT, custom duties, import surcharges, withholding taxes and similar charges levied in connection with the Contract outside the Federal Republic of Germany shall be borne and paid by the Purchaser.
- 9.2 Where applicable, the Purchaser shall be responsible for all import permits.

10. Supplier's Warranty for the Works

- 10.1 Unless specifically stated in the Contract the Supplier's warranties shall be limited to those stated in this clause and shall not extend to the performance of individual components of the Equipment and Services.
- 10.2 Warranty for Materials
- 10.2.1 The Supplier warrants that all Materials used shall be free of defects and of sound workmanship.
- 10.2.2 Defects in the Material, if any, shall be notified to the Supplier in writing immediately upon their appearance. The Supplier undertakes at his option and based on applicable industry standards to repair free of charge any Materials which within 6 months from the Completion Date of those Works for which the Materials have been used prove to be unserviceable or visibly defective due to causes for which Supplier is solely responsible as a consequence of imperfect material or defective workmanship.
- 10.2.3 Replaced Materials shall become the property of the Supplier. The Supplier's liability for defects excludes any failure due to mal-operation, alterations or repairs carried out by the Purchaser without the Supplier's involvement, inadequate maintenance, unsuitable storage, fair wear and tear or any other reason not attributable to the Supplier.
- 10.2.4 The Purchaser undertakes to afford the Supplier the necessary time and opportunity to carry out corrections as well as for the supply and substitute of Materials. Refusal in this regard shall relieve the

Supplier from any further liability for defects. The Purchaser shall only have the right to correct a defect himself or to have it corrected by others and require the Supplier to reimburse him his reasonable expenses for the elimination of the defect in urgent cases where the security of the Equipment would otherwise be endangered, or to prevent substantial damage, or in the event that the Supplier despite the Purchaser's reminder in writing has not commenced work to correct the defect within a reasonable time. In such cases the Purchaser shall inform the Supplier immediately in writing of the problem and the proposed corrective action.

10.2.5 The Supplier may decline to correct the defects if the Purchaser has not fulfilled his contractual obligations.

10.3 Warranty for Engineering Services

10.3.1 Where the Services include Engineering Services the Supplier warrants that all Engineering Services shall be in accordance with sound engineering practice.

10.3.2 Should it happen that the Engineering Services are not in accordance with sound engineering practice the Supplier's warranty applicable thereto shall be limited to the re-performance of the Engineering Services within a period of 6 months after the original supply of the Engineering Services.

10.4. Warranty for Inspection Services

10.4.1 The Supplier's warranty for Inspection Services shall be limited to the provision of experienced personnel.

10.4.2 It is agreed by the Parties that even under favourable conditions it is not possible to identify all defects in the components of the structure of the Equipment and its mechanical or electrical components during the Inspection Services as defects may:

10.4.2.1 develop in areas of the Equipment which are not visible from walkways or are not visible from the walkways due to their size and the distance from the view point,

10.4.2.2 be covered by dirt, oil, paint and the like.

10.4.2.3 have not propagated to the surface of the structure.

10.4.2.4 develop or become evident after the Inspection Services.

10.4.3 The Supplier consequently does not warrant the absence of defects nor does he warrant that the execution of visual Inspection Services of the structural and mechanical components of the Equipment shall identify all possible defects in the Equipment. The Supplier's responsibility shall be limited to providing assistance in the early identification of defects when supported by proper maintenance and operation of the Equipment.

10.4.4 The Supplier's warranty for the provision of experienced personnel shall be in lieu of any other warranty rights the Purchaser may have resulting

from the execution of the Inspection Services under contract, at law, in tort or in equity. The Supplier, therefore, explicitly excludes any warranty or liability for the non-identification of defects during the inspection period.

10.5 Warranty for Services other than Inspection Services

10.5.1 The Supplier warrants that all Services other than Inspection Services shall be performed in a workmanlike manner.

10.5.2 Should it be happen that the Services mentioned in this Clause 10.5 are not in accordance with a workmanlike practice the Supplier's warranty applicable thereto shall be limited to the re-performance of these Services within a period of 6 months after the original supply of these Services.

10.6 The warranty period in the event of replacement, repair or re-performance executed under any of the sub-clauses of this Clause 10 shall be 6 months or the unexpired period of the original warranty period stated in the respective sub-clauses of this Clause 10, whichever is the shorter.

10.7 The Purchaser's remedies under this clause 10 shall be exclusive of further claims and rights.

11. Force Majeure

11.1 Should the Supplier be prevented or delayed in the fulfillment of his obligations under the Contract by an Act of God, riot, war, terrorist acts, hostilities, revolution, civil commotion, strike, lockout, labour disputes, or because of any laws, order, proclamation, regulation or ordinance of any government or of any subdivision thereof, or other causes beyond Supplier's control, including the rejection of castings, then in such cases the Supplier shall not be deemed to be in default or in breach of the Contract. In such cases caused by Force Majeure, the time for the supply of the Services shall be extended by such period of delay and the Purchaser shall not claim liquidated damages or any other compensation for damages caused by the non-fulfilment of the Contract for reasons of Force Majeure.

11.2 If the circumstances of Force Majeure continue for a period of 3 months, the Parties shall consult with each other as to the continuation of the Contract and in particular if and under which conditions it should be continued.

12. Excepted Risks

12.1 The Supplier shall not be liable to make good at his own expense any damage that may result solely from the excepted risks, namely: war hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, insurrection or military usurped

power, terrorist acts, civil war or (otherwise than among the Supplier's employees), riot, commotion or disorder, radio-active contamination, any wrongful or gross negligent act or omission of the Purchaser, his servants or agents or any such operation of the forces of nature as reasonable foresight and ability on the part of the Supplier could not foresee or reasonably provide against.

13. Supplier's Liability

13.1 The Supplier shall only be liable to the Purchaser exclusive of any further rights or remedies for compensation for any direct damage which is exclusively attributable to the Supplier and which has been caused intentionally or by gross negligence by Supplier's personnel. All claims for compensation of direct damages become time-barred after 3 months counted from the Completion Date. The Supplier does not assume any liability for damages the occurrence of which is attributable to the Purchaser or third parties or for damages immaterial to the Purchaser's economic interest. The Supplier does furthermore expressly exclude any liability for injury, loss or damage caused by external personnel, who may be appointed to render the Services.

The operating personnel provided by the Purchaser to assist the Supplier shall remain servants of and under the control of the Purchaser. The Supplier shall not be liable for any act or omission of such personnel.

13.2 Liquidated Damages for non-performance of the Works

The Supplier's total liability to the Purchaser for non-performance of the Works shall be limited to 5 % (five per cent) of the Contract Price.

13.3 Liability for recommendations and the like

The Supplier shall not be liable for recommendations, advice or documentation given by the Supplier to the Purchaser before the acceptance of the Contract.

13.4 Drawings and other documents

Where applicable, the Supplier shall be responsible for the correctness and sufficiency of the drawings and other documents to be delivered to the Purchaser under the Contract. The liability of the Supplier for errors in drawings and documentation shall be restricted to the following obligations. Should errors, faults, omissions or other discrepancies be found in the drawings or other documents to be delivered by the Supplier, the Purchaser shall notify the Supplier accordingly and the Supplier shall immediately submit corrected drawings, specifications, part lists or other data limited to its original scope of work.

13.5 Consequential Damages

13.5.1 The Supplier shall not be liable for any consequential damages which the Purchaser may suffer as a result of a breach by the Supplier of any of the obligations imposed upon it by the Contract or as a result of Inspection Services.

13.5.2 For the purposes of the Contract consequential damages shall mean indirect damages or special damages (whether within the contemplation of the parties at the time of entering into the Contract, or not), which terms shall include, without limitation, any loss of production, loss of profit, loss of business or trade, or loss of business reputation or business opportunities suffered by the Purchaser as a result of any breach by the Supplier of its obligations aforesaid.

13.6 Limitation of Liabilities

13.6.1 Notwithstanding any other provision of the Contract, the Supplier's liability to the Purchaser for any loss or damages from any cause whatsoever and regardless of the form of action whether in terms of the Contract or in delict, including negligence or any statutory or other duty of care, arising from the performance of the Works shall be limited in the aggregate to 10 % (ten per cent) of the total Contract Price.

13.6.2 Payment of the final invoice shall be conclusive evidence that both parties have fulfilled their obligations under the Contract except to the extent of any dispute which has been properly declared before such payment.

13.6.3 During the warranty period as per Clause 10.2.2 the Supplier's sole obligation regarding documentation shall be to correct by replacement any error detected in the drawings, manuals and catalogues which have been supplied as per the Scope of the Contract.

13.6.4 In the event of any modifications and/or repairs undertaken by the Purchaser without the Supplier's prior written consent or in case of non-adherenceto the provisions stated in the Contract the Supplier shall be exempted from any liability.

14. Indemnity

14.1 The Supplier shall only be liable for any injury, loss or damages of third parties of whatsoever nature and howsoever arising which is caused by the Supplier, it's employees and/or subcontractors and which is covered by the existing Third Party Liability Insurance of the Supplier. For all and any other injury, loss or damages the Purchaser hereby indemnifies and holds the Supplier harmless. The Purchaser indemnifies the Supplier for all risks caused by whatsoever reason which result in damage or loss to the Equipment. Should storage of the Equipment on the Supplier's premises become necessary, this shall be at the Purchaser's own risk and the Purchaser shall indemnify the Supplier for any damage or loss to the Equipment.

15. Insurance

15.1 The Supplier shall not insure the Equipment unless otherwise agreed by the Parties.

15.2 The Contract Price assumes that all insurances, including but not limited to Contractors All Risk, Public Liability and insurance shall be provided under the Purchaser's annual policies and that the Supplier shall be included in such policies as joint insured. The Purchaser shall indemnify and hold the Supplier harmless for all and any claims which may arise against the Supplier in this regard.

15.3 It is a condition of Contract that the Purchaser shall authorize the insurers to pay any insurance claim arising out of the Contract direct to the Supplier without any deduction except in respect of the stipulated insurance excess.

16. Copyright, Confidentiality and Proprietary Equipment

16.1 Copyright in any goods sold, the drawings and all other documents supplied to the Purchaser in connection with the Contract vests in the Supplier and/or his sub-contractors and suppliers and the Purchaser agrees to maintain their confidentiality and shall not disclose the contents to any third party.

16.2 Where the Works include proprietary designs and Equipment, the Supplier shall not be required to supply design or manufacturing drawings, material lists or the like. These shall however be available at the places of manufacture/supply of the Equipment for the purpose of quality control and assurance inspections.

17. Language, Weights and Measures

17.1 All data and documentation supplied under the Contract shall be in the English language and all weights, dimensions and measurements shall be in the metric system.

17.2 All figured dimensions on drawings shall be adhered to and there shall be no scaling.

18. Suspension of Works

18.1 In the event of suspension of the Works by the Purchaser, any additional cost incurred by the Supplier shall be borne and paid by the Purchaser. The Supplier shall be entitled to withdraw its personnel from the Purchaser's premises and/or the Country.

The Purchaser shall notify the Supplier immediately of the end of suspension and a new time schedule for the supply of the Works shall be negotiated subject to the availability of Supplier's personnel

18.2 The Supplier shall be entitled to suspend the progress of the Works or any part thereof and/or to withdraw its personnel from the Purchaser's

premises and/or the Country for such time or times as the Supplier may consider necessary in the event that payments of the Contract Price are not received by the Supplier as stipulated in the terms of payment and/or the life, health or security of Supplier's personnel is at risk, whether arising from circumstances at the Purchaser's premises or otherwise out of or in connection with the Contract. The terms and conditions of the Contract which are affected by such suspension or any part thereof shall be re-negotiated.

19. Termination of Contract

19.1 In the event of termination of the Contract for reasons attributable to Purchaser, the Purchaser shall pay to the Supplier compensation for all expenditure and liabilities properly incurred by the Supplier.

20. Applicable Law and Regulations

20.1 Any Contract in terms of these Conditions shall be governed by and interpreted in accordance with the law of Switzerland.

20.2 The Contract is based on laws and regulations ruling at the Tender date. If the cost to the Supplier of the performance of the Contract is increased or reduced by reason of the passing or amendment of any applicable legislation after the Tender date, such increase or reduction shall be added to or deducted from the Contract Price as the case may be.

21. Settlement of disputes

21.1 The Parties undertake to use their best endeavors to amicably settle any dispute or difference which may arise between them in connection with or arising out of the Contract or carrying out of the Works.

21.2 If such resolution is not possible within 14 days either party shall be entitled to refer the matter to be finally settled and binding in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The arbitration shall be held in Zurich, Switzerland and shall be conducted by 1 arbitrator who shall be mutually appointed by the Parties, or if this is not possible shall be appointed in accordance with said Rules.

21.3 No payment due or payable by the Purchaser shall be withheld on account of pending reference to arbitration.

22. Transfer of Contract

22.1 Neither party shall cede, assign, transfer or sub-let the Contract or any portion thereof without the consent in writing of the other party first being obtained. Neither party shall be bound to give such consent but may not withhold same without assigning any reason therefore, or may grant such consent

subject to such terms and stipulations as that party may reasonably stipulate.

23. Order of Precedence

23.1 In the event of any conflict, contradiction, ambiguity or discrepancy between the various documents forming part of the Tender or subsequent Contract, the priority of the various parts, regardless of whether the Contract is an oral or a written one, shall be as follows:

1. the Supplier's Tender
2. the Conditions
3. any agreement agreed on and signed by the Parties,
4. the acceptance of order
5. the Purchaser's order.

24. Entire Agreement

24.1 The Parties intend that their respective rights, obligations and liabilities are exclusively governed by the terms of the Contract. Extra-contractual rights shall be excluded to the extent permitted by the laws of Switzerland. No agreement varying, adding to, deleting from or cancelling the Contract or any part thereof and no waiver of any right under the Contract shall be effective unless reduced to writing and signed by or on behalf of the Parties.

24.2 All provisions of these Conditions shall also apply to work carried out at short notice as agreed between the Parties during the assignment of the Supplier's personnel that extends beyond the originally fixed scope of activities.

25. Severability

Should any of the provisions – in whole or in part – be or become ineffective the validity of the other provisions shall not be affected hereby. The ineffective or invalid provision shall be replaced by an admissible provision aiming at the same economic but valid legal result.