

General Conditions of Supply for Spare Parts

A. General

- These General Conditions of Supply for Spare Parts shall apply to Supplier's quotations and deliveries of spare parts.
The contract shall become effective upon receipt by Buyer of Supplier's written confirmation of the order. The contents of the contract shall be governed exclusively by Supplier's letter of confirmation together with these General Conditions of Supply for Spare Parts and no changes, alterations, modifications or quality promises shall be effective unless agreed upon in writing.
- Any information or documentation given to the Buyer before, at or after conclusion of the contract concerning weights and other technical data shall be deemed as approximate unless expressly declared in writing to be binding. The Supplier reserves the right of ownership and copyright in such drawings descriptions and other documents given to the Buyer. These documents must not be made available to third parties. Design, manufacturing or workshop drawings will not be supplied.
The supplies correspond to the norms of the Supplier, the ISO, EN and DIN standards and the VDE/VDI stipulations.
- The ICC official Rules for the Interpretation of Trade Terms (INCOTERMS) issued by the International Chamber of Commerce shall apply in the version valid at the conclusion of the contract.
- Should any of the contractual provisions – wholly or partially - 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 and legal result.

B. Price and Payment Conditions

- Payments shall be made to Supplier's bank account without any delay and without any deductions.
- Packing material is non returnable.
- If the Buyer delays payment of sums due, he shall, without formal notice and without prejudice to further claims, pay the Supplier interest for the period of the delay calculated at a rate 5 % above the current three months EURO-LIBOR and if payment by instalments has been agreed upon, then all other outstanding instalments shall also immediately become due.
- The Buyer shall not be entitled to withhold payments or offset these payments with alleged counterclaims.
- All public levies (taxes, fees, duties and the like) to which the Supplier, sub-suppliers, or their personnel may be subject outside the Supplier's country shall be borne and paid by the Buyer. The Buyer shall inform the Supplier of any existing regulations regarding such public levies.

C. Retention of Title

- The Supplier reserves ownership and title to the equipment delivered until receipt of all payments agreed upon and provided for in the contract.
- In the event of breach of contract by the Buyer, particularly through delays in payment, the Supplier shall be entitled to take back the deliveries and the Buyer shall return the deliveries to the Supplier on demand. The claim for reservation in title shall not constitute withdrawal from the contract.

D. Delivery Period

- The delivery period shall only commence after receipt of the down payment and all other documents, authorizations and releases which are to be provided by the Buyer and shall always be subject to due fulfilment of Buyer's obligations under the contract. The deliveries shall be deemed to have been delivered by the time provided in the contract if they are ready for dispatch prior to the above date. Partial deliveries shall be admissible.
- If the Supplier is prevented from fulfilling his obligations by reason of unforeseen circumstances beyond his reasonable control, the contractual delivery period shall be extended by an equivalent period. Circumstances beyond the reasonable control of the Supplier within the meaning of this Clause shall include, but not be limited to war, embargo, fire, adverse weather conditions, interruption of production, defects in major castings, rejection, shortage of energy, raw and construction material as well as industrial disputes, particularly strikes and lockouts. The above mentioned circumstances of Force Majeure shall not be the responsibility of the Supplier even if they occur when delivery is already delayed.
- Should the Supplier, due to reasons attributable to him, delay delivery of any specified part of deliveries and should the Buyer suffer damage as a direct result of such delay, the Buyer shall be entitled to claim agreed and liquidated damages at the rate of one half (0.5) per cent of the value of the delayed part(s) for each completed week of delay. Payment of such liquidated damages due shall be in lieu of any other rights and remedies of the Buyer for such delays of Supplier. The total amount of agreed and liquidated damages shall not exceed 5 % of the contract value of the delayed part(s). Claims for agreed and liquidated damages are subject to the Buyer having given the Supplier formal written notice of the delay and allowed him a reasonable period of grace of not less than two weeks. Compliance with the delivery period and the obligation to pay the agreed and liquidated damages is always subject to the Buyer's performance of his contractual obligations.

E. Liability for Defects in Deliveries

- The Supplier undertakes, at his option, to repair or replace free of charge any parts which within twelve (12) months from the agreed date of delivery prove to be unserviceable or visibly defective due to causes occurred before passing of risks, in particular in consequence of faulty design, imperfect material or defective workmanship. Defects, if any, shall be notified to the Supplier in writing immediately upon their appearance. Replaced parts shall become the property of the Supplier. In the event of delivery being delayed through no fault of the Supplier, the liability for defects shall expire no later than twenty four (24) months after readiness for dispatch. Supplier's liability for defects does not cover any failure due to mal-operation/alterations or repairs carried out by the Buyer without the Supplier's consent, poor maintenance, unsuitable storage, fair wear and tear or any other reasons not caused by the Supplier.
- Supplier's liability for defects does also not cover short life items, or damage resulting from faulty or careless handling or damage due to the processing of unsuitable materials which have not been previously agreed or damage due to excessive strain, or unusual natural occurrences.

- The Buyer undertakes to afford the Supplier the necessary time and opportunity to carry out corrections as well as for the supply of replacing parts. Refusal in this respect shall relieve the Supplier from any further liability for defects. The Buyer shall only have the right to correct a defect by 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 works is endangered, or to prevent substantial damage, or in the event that the Supplier despite Buyer's reminder in writing has not started to correct the defect within a reasonable time. In such cases the Buyer shall inform the Supplier immediately in writing of the problem and the supposed solution.
- The Supplier may refuse to correct the defects if the Buyer has not fulfilled his contractual obligations.
- Out of the direct cost to remedy the defect, Supplier shall bear only the costs of replacing parts and the costs for his supervisors for erection where they are needed. Any other costs will be to the account of the Buyer.
- The liability period for a replaced or repaired part of deliveries shall be six (6) months or the unexpired time of the liability period of the original part whichever is the longer.
- During the a.m. liability period Supplier shall also correct all errors and faults (defects) contained in drawings or other technical documentation delivered by the Supplier. The correction of such faults and errors shall be effected by Suppliers' submission of new and faultless drawings and documents.
- Further rights and remedies of the Buyer for the correction of defects, in particular claims for the compensation of damage to parts other than the supplied parts shall be excluded.
- Buyers rights and remedies in connection with defects and other claims of whatsoever nature shall in any case cease and expire at the end of the a.m. liability period.

F. Liability for Infringement of Patents and other Intellectual Property Rights

If, in spite of a utilization of the supplied equipment as contractually provided for, a device patent or other intellectual property right existing at the time of conclusion of the contract is infringed, the Supplier shall procure for the Buyer the right of utilization either by modification of the equipment to the effect that it does not infringe any third party's right, or by procuring the third party's authorization of utilization. If the Supplier does not succeed in either the one or the other, he is obliged to take back the equipment supplied against reimbursement of the contractual price. The same applies for process patents, but only if the Supplier has promised in writing that the utilization as contractually provided for does not infringe any third party's process patent. Further rights and remedies of the Buyer for the infringement of third party intellectual property rights shall be excluded.

G. Liability for subsidiary duties

If the equipment supplied cannot be used by the Buyer for the purpose intended as a result of omissions or defective performance or of faulty instructions or advice given by the Supplier before or after conclusion of the contract, or as a result of any other violation of contractual subsidiary duties then the provisions contained in Clauses E and H hereof shall apply in lieu of any other rights or remedies of the Buyer for the infringement of subsidiary duties.

H. Buyer's Right of Withdrawal

- The Buyer may withdraw from the contract if there exists a complete and objective impossibility of its performance before the risk has passed or if the Supplier is unable to perform the contract.
- The Buyer shall also be entitled to withdraw from the contract if the Supplier has either not remedied a proven or admitted defect during the period of time granted for such remedial work under the contract, or considers it impossible to do so, or is unable to remedy such defect.
- Withdrawal hereunder can only be declared by the Buyer if his interests in the supply have been considerably prejudiced by the defect.
- All other additional rights or remedies of the Buyer are excluded, in particular the right of price reduction, as well as Buyer's right of compensation for damage of whatever kind arising from the Supplier's fault whether under contract or in tort.

I. Supplier's Right of Withdrawal

- In the event of unforeseen circumstances within the meaning of Clause D.2 and insofar as they considerably alter the financial significance of the scope of Supplier's responsibilities, or considerably affect the Supplier's work and if Supplier should be subsequently frustrated in carrying out the contract, then the contract shall be adapted to this new situation. Where this is not acceptable for economical reasons, the Supplier has the right to withdraw from the contract in whole or in part. There shall be no claims for compensation by the Buyer for such withdrawal.

J. Liabilities, Insurances

- Liabilities and responsibilities of the Supplier shall be limited to the rights and remedies of the Buyer as provided for in these General Conditions of Supply for Spare Parts and Supplier shall not be liable to the Buyer for any indirect or consequential loss or damages including, but not limited to loss of profit or loss of production. The total amount for agreed and liquidated damages shall not exceed 5 % of the Contract price.
- Whenever insurance is arranged by Buyer in relation to the equipment delivered by Seller, Buyer shall procure and ensure that the subrogation respectively recourse rights of the insurers against the Supplier are waived. The Buyer shall not sue the Supplier for any loss or damage covered by an insurance.

K. Arbitration, Applicable Law

- All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators all to be appointed by the parties in accordance with the said Rules.
- Venue of Arbitration shall be Zurich (Switzerland). Language of Arbitration shall be English. Any costs and other fees in connection with the arbitral proceedings shall as principle be borne and paid by the defeated party or if there is no defeated party as such, by the parties in proportion to the outcome of the case.
- The applicable Law shall be the Law of Switzerland. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
- The ICC Uniform Customs and Practice for Documentary Credits in the revision valid at the signature of the contract shall apply to all Documentary Credits (including to the extent to which they may be applicable, Standby Letters of Credit).