

## **General Terms of Delivery**

of SML Maschinengesellschaft mbH

December 18

### **1. Preamble**

Unless the contracting Parties have expressly agreed otherwise in writing, the present General Terms of Delivery shall apply.

### **2. Making of a Contract**

- 2.1 A Contract shall be deemed to have been made if BUYER and SELLER have both signed a written contract or a written order confirmation (ORC).
- 2.2 SELLER shall confirm in writing any modifications of and amendments to a contract in order to make these valid. SELLER shall be bound by BUYER's conditions of purchase only if SELLER has accepted them separately in writing.
- 2.3 In the event that import and/or export licences or foreign-currency permits or similar authorisations are required for the performance of the Contract, the party responsible for obtaining such documents according to ICC INCOTERMS 2010 shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.

### **3. Drawings and Documents**

The data on weights, measures, content, prices, performances, or alike, as contained in the SELLER's catalogues, brochures, circular letters, advertisements, pictures and price lists, etc. shall only be definitive if the Contract expressly refers to them.

### **4. Delivery, Passing of Risk**

- 4.1 Risk of loss or damage to the goods shall pass to the BUYER according to agreed term of delivery as per the ICC INCOTERMS 2010 according to Contract. If no trade term is specifically agreed, the delivery shall be Ex works (EXW).
- 4.2 If, in the case of delivery Ex works, the SELLER, at the request of the BUYER, undertakes to send the goods to its destination, the risk will pass no later than when the goods are handed over to the first carrier.
- 4.3 Partial shipment shall be permitted unless otherwise agreed.
- 4.4 The BUYER shall insure the goods against any risk of loss or destruction for the benefit of the SELLER until any amount outstanding has been paid.

### **5. Period of Delivery**

- 5.1 In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:
  - a) the date of the order confirmation duly signed by both parties
  - b) the date on which BUYER has complied with all commercial and financial preconditions for which BUYER is responsible under the contract;

- c) the date of SELLER's receipt of the agreed down-payment of total Contract value
  - d) the date of SELLER's receipt of approval from relevant Austrian authorities such as Austrian Kontrollbank, if required
  - e) the date on which all technical specifications and the scope of the goods and services are clarified.
- 5.2 In the event of a delay due to the fault of the SELLER in delivery of the Contractual machinery according to agreed terms of delivery and in the event that such delay actually delays completion of the project, the SELLER will pay to the BUYER after a grace period of 2 weeks agreed and liquidated damages at the rate of 0,5 percent of the value of the Contractual machinery not delivered on time for every full week. However, the total amount of agreed and liquidated damages for delay in delivery is not to exceed 5 percent of the value of each complete Contractual machinery or unit not delivered on time.
- 5.3 The above rates of agreed and liquidated damages cannot be changed by arbitration and shall be the BUYER's sole and exclusive remedy for delay in delivery due to the fault of the SELLER.
- 5.4 For the purpose of calculating agreed and liquidated damages for delay in delivery, delivery is deemed to be effected when the SELLER has handed over the goods to the first carrier.
- 5.5 In case of Force Majeure according to Clause 11 the SELLER shall upon given written notice to BUYER be released without any liability on its part from the performance of its obligations under this Contract.
- 5.6 If the BUYER is in default of acceptance or culpably violates other obligations to cooperate, SELLER shall be entitled to demand compensation for losses incurred, including any storage costs. Notwithstanding clause 8 the risk of accidental deterioration or accidental loss of the Contractual machinery passes to the BUYER upon default of acceptance.

## **6. Acceptance Test**

- 6.1 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the BUYER's site during normal working hours of SELLER. The tests shall be carried out according to the general practice of the industry. SELLER shall notify the BUYER in due time of the acceptance test to permit the BUYER to be represented at the tests.
- 6.2 An acceptance protocol shall be signed by both parties immediately following the acceptance test. Acceptance implies confirmation to the SELLER that the Contractual machinery supplied is acknowledged to be in accordance with the Contract.
- 6.3 BUYER may ask that the test be repeated only in cases of a major defect. Just insignificant defects shall not entitle a refusal to effect acceptance. Defects to be regarded as insignificant are those which do not impair efficiency and industrial safety and which can be repaired within reasonable time and without considerable expenditure. These defects are listed on a punch list and shall be remedied by SELLER within reasonable time after acceptance.
- 6.4 Acceptance shall be considered to have been effected, however, if the BUYER puts the Contractual machinery into operation or if he refuses to sign the Acceptance Certificate without good reason.

## **7. Payment**

- 7.1 The Contract Price shall be paid without any deduction within the time limits and in accordance with the provisions stated in the agreed conditions of payment
- 7.2 Unless otherwise agreed the Contract Price shall be paid with 30% at the formation of the Contract and 70% when the SELLER notifies the BUYER that the Contractual machinery or essential part of it is ready for delivery.
- 7.3 Whatever the means of payment used, payment shall not be deemed to have been effected until the SELLER's account has been fully and irrevocably credited. Buyer shall ensure that securities and financing have been made available in due time.
- 7.4 If payment of any sum payable is delayed, the SELLER shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be calculated at an annual rate of 8% above the rate of the main refinancing facility of the European Central Bank (ECB). If the BUYER has not paid the amount due within 3 month the SELLER shall be entitled to declare the entire open amount plus interest for delayed payment immediately due or to terminate the Contract by notice in writing to the BUYER and. to retain any amount paid by the BUYER as liquidated damages.
- 7.5 In case of late payment the SELLER may, after having notified the BUYER, suspend his performance of the contract until he receives all outstanding payment.
- 7.6 BUYER shall not have the right to withhold payments due to warranty claims or any other counter-claims that SELLER has not accepted in writing.

## 8. Retention of Title and Ownership

- 8.1 The goods shall remain the sole and absolute property of the SELLER as legal and equitable owner until such time as any amount outstanding in terms of this Contract has been paid, irrespective of the fact that the sold machinery and equipment has been handed over to the BUYER to the extent that such retention of title is valid under the applicable law. The SELLER's title is maintained even when the goods supplied are processed, converted or mixed with objects owned by the BUYER.
- 8.2 In case legal registration of ownership is required due to law, the BUYER is obliged to fulfil the registration proceedings at his costs and to present to the SELLER a written proof of such registration before shipment.
- 8.3 In case of any instalments not being paid in full or at all, the SELLER may for the purpose of recovery of its goods enter upon any premises where the Contractual machinery is stored or where it is reasonably thought to be stored and may repossess the same.

## 9. Warranty and Liability

- 9.1 The SELLER warrants that the Contractual machinery supplied under this Contract shall be free from defects and in accordance with the specifications as described in the Contract. Therefore SELLER shall remedy any nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship. Nothing in the Contract shall be understood or implied as a guarantee in the legal sense. The warranty does not cover operating parts which are subject to or damaged by normal wear and tear.
- 9.2 The rights and duties provided for in the Contract are the only rights and duties in case and in consequence of a breach of this Contract by either Party and all further rights and duties, be they under this Contract or otherwise, are hereby expressly excluded.

No claims from this warranty can be made against the SELLER if the Product Specification or the Warranted Parameters are not complied with because of insufficient or defective raw materials supplied by BUYER or if requirements specified in the Contract are not supplied or maintained by the BUYER.

- 9.3 Unless otherwise agreed in the Contract, the warranty period is 12 months (a) from the date of delivery or (b) from the date of acceptance or unjustified refusal of acceptance in case the Parties to the Contract agree on an acceptance test according to Article 6 above or (c) from the date the BUYER puts the Contractual machinery into operation before acceptance. In any case, the warranty period ends latest 18 months after delivery date.

All claims for damages due to defects in deliveries and/or performances must be filed in court within the contractually agreed warranty period if SELLER does not explicitly accept the defect; otherwise all claims become extinct.

- 9.4 Warranty is provided either through repair or replacement of those parts that have material defects, provided they are not parts subject to wear and tear, and provided the BUYER has given notice of the defect without undue delay after having discovered the defect or after the BUYER ought to have discovered it. Such notice must in any case have been given at the latest before expiry of the warranty period, and the BUYER shall prove that the machinery and equipment supplied have already been defective at the time of delivery. Warranty claims shall not entitle the BUYER to abate the purchase price.

The arrangements on presumption according to § 924 of the Austrian General Civil Law Code as well as the reversal of the burden of proof according to § 1298 of the Austrian General Civil Law Code are excluded.

SELLER will replace all defective parts within the stated warranty period, provided that the defective equipment or parts will be returned to the SELLER on the BUYER's charges and risk. All taxes, duties and customs therefore in BUYER's country shall be paid by the BUYER.

Notwithstanding Clause 9.3 replacement or repair of defective parts neither does renew nor extend the warranty period of the Contractual machinery, nor of the repaired or replaced parts.

- 9.5 SELLER shall only refund any costs for remedying a defect, undertaken by BUYER himself, if SELLER has agreed to this procedure in writing.

If the BUYER carries out the installation of the Contractual machinery by himself or uses spare parts not delivered by the SELLER for repair of the machines, the warranty lapses in this respect.

- 9.6 SELLER's liability in case of damage of BUYER's property shall be limited to 5% of the total Contract Price.

- 9.7 The SELLER shall not be liable to the BUYER for any economic losses such as for example loss of production, loss of income and/or profit, loss of Contract or any other economic or indirect or consequential damage.

This restriction of liability shall apply to all damage claims, regardless of their legal grounds, including but not limited to pre-Contractual and ancillary Contractual claims.

This provision shall apply only insofar as the law allows.

## **10. Data Protection**

- 10.1 SELLER shall have the right to store, to communicate, to process and delete person-related data of BUYER in the framework of their business relations.
- 10.2 The Parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.
- 10.3 Any intellectual or industrial property related to the Contractual machinery including the specifications mentioned in the Contract, software, drawings, design drafts and other technical documents, as well as samples, catalogues, brochures, pictures and alike shall always remain the property of SELLER. Any use, copying, reproduction, dissemination and transfer to third parties of any publication and presentation of the Machines may only be performed with the express approval of SELLER.

## **11. Force Majeure**

- 11.1 Either Party shall be entitled to suspend performance of its obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the Parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in delivery by sub-contractors caused by any such circumstance referred to in this Clause.
- 11.2 A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect of the performance of the Contract could not be foreseen at the time of the formation of the Contract.
- 11.3 A Party affected by an event of force majeure may, however, only claim the existence of force majeure if it informs the other Party without delay, at the latest though, within 5 calendar days, about the onset and anticipated end of an obstruction in writing.  
  
Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or if applicable, by a period to be determined by mutual consent.
- 11.4 If a circumstance of force majeure prevails by more than 4 weeks, BUYER and SELLER shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, SELLER may withdraw from the contract in part or in toto.

## **12. Termination**

Without prejudice to Clause 7.4, this Contract may be terminated by SELLER immediately and without the necessity of a judicial or arbitral resolution, in the following cases:

- a) Judicial award of the goods of BUYER to its creditors.
- b) Suspension of payment to creditors.
- c) The voluntary or involuntary instalment of proceedings by or against BUYER, of stop payment, bankruptcy, judicial administration, or dissolution and liquidation of BUYER.
- d)

## **13. Place of Jurisdiction, Applicable Law, Contractual Language**

- 13.1 Unless the law stipulates otherwise, the place of jurisdiction for all disputes arising directly or indirectly from this Contract shall be the relevant Austrian court with competence for SELLER's principal place of business. SELLER may, however, also resort to the court with jurisdiction for BUYER.
- 13.2 The Parties may agree that an arbitral tribunal has jurisdiction.
- 13.3 Unless otherwise agreed, this Contract shall be subject to Austrian law excluding, however, its conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96.
- 13.4 In the event of disputes arising from the present Contract translated into other languages, the English version shall prevail.