

## 1. Scope

These General Terms and Conditions of Sale and Delivery shall govern the transaction described in seller's order confirmation unless additional or contrary terms are expressly stated in the seller's order confirmation. The purchaser's General Terms and Conditions, in particular the purchaser's Purchasing Terms and Conditions, do not become part of the contract even if the seller accepts payments from the purchaser and makes deliveries.

## 2. Conclusion of the contract

A contract for the sale of goods is made and becomes effective upon receipt by the purchaser of the seller's written order confirmation upon the terms stated therein.

## 3. Scope of delivery

The final and complete description of the deliveries and services to be rendered by the seller is given in the order confirmation including any annexes thereto.

## 4. Plans and technical documentation

4.1 Technical documentation such as illustrations, drawings, details of weights and dimensions provided by the seller are only approximate, unless they are contained in or referred to in the order confirmation or an annex thereto.

4.2 Data provided by the seller in respect of buildings (foundation plan, power supply plans, etc.) are not binding upon the seller, unless they are contained or referred to in the order confirmation, and they must be verified and complied with by the purchaser with respect to structural features. The purchaser is solely responsible for ensuring that its premises comply with the structural prerequisites for installing the items being supplied.

4.3 Each party to the contract reserves all rights to calculations, plans and technical documentation which it has made available to the other party. The party to the contract receiving such material acknowledges these rights and will not make the documentary material wholly or partially accessible to third parties or utilize it for purposes other than that for which it has been made available without obtaining the prior written authorization of the other party to the contract.

4.4 The purchaser itself may use the software, know-how and documentary material made available to it to the extent provided for, but may not disclose them to third parties or copy them. Any extension or modification of software by the purchaser requires the written consent of the seller.

## 5. Health and safety requirements

The goods manufactured and supplied by the seller shall conform to the relevant directives and standards of the European Community, insofar as their application is mandatory for these goods. Otherwise compliance with any standards, directives or rules requires written agreement to this effect in the order confirmation.

## 6. Retention of ownership

6.1 The seller retains ownership of the items supplied until all existing obligations towards it have been met in full and until it has been indemnified in full against all contingent liabilities.

6.2 The purchaser shall take all action necessary to protect the seller's property (e.g. procuring insurance on the items supplied) at its own expense. The purchaser shall and hereby does authorize the seller to execute any required instruments in the purchaser's name and to make any registration of its retention of ownership in public registers, books or suchlike which may be necessary to comply with the relevant legal provisions. The cost of registration will be borne by the purchaser.

## 7. Delivery, transfer of risk, insurance, etc.

7.1 Delivery, transfer of risk, insurance, etc., shall be made pursuant to the agreed Incoterms clause (2000 Edition). Unless agreed otherwise, delivery, transfer of risk, insurance, etc., shall be ex works pursuant to Incoterms, 2000 Edition.

7.2 Part deliveries are permissible.

7.3 If delivery is delayed for reasons for which the seller is not responsible, the risk ex works pursuant to Incoterms, 2000 Edition, passes to the purchaser. The items being supplied will be stored and insured by the seller at the purchaser's expense and risk.

7.4 Delivery must be accepted by the purchaser. The purchaser must examine the packaging immediately after the arrival of the delivery at its destination and notify the seller immediately in writing of recognizable damage and defects (including incomplete delivery); otherwise the delivery is deemed to be approved in this respect. If the purchaser discovers any damage, it shall mitigate this as far as possible.

## 8. Failure by the seller to comply with the delivery period/ date of delivery

8.1 In the event of delayed delivery the purchaser has no right to claim damages or to cancel the contract.

8.2 However, if the seller has failed to comply with the delivery period or date of delivery through a lack of due care, the purchaser is entitled to the payment of liquidated damages after the fifth week of delay, to the exclusion of all other claims. The liquidated damages shall be limited to 0.5% of the order value of the delayed part of the delivery for each full week of further delay, but in any event not exceeding a total of 5% of the order value of the delayed part of the delivery. The foregoing liquidated damages shall be subject to Clause 12. The seller shall not be liable for damages of any type in the event of delayed deliveries by sub-contractors or outside suppliers specified by the purchaser.

8.3 If delivery has still not been made after the 15th week of delay, the purchaser may give the seller a reasonable grace period together with the express declaration that it will refuse to accept delivery if delivery is not made within this grace period. If the seller fails to deliver within this period through a lack of due care, the purchaser may, by giving written notice to the seller cancel that part of the delivery which cannot be utilized as intended due to the delay caused by the seller.

8.4 If the purchaser cancels a delivery pursuant to Section 8.3, it is entitled to compensation for losses it can prove were caused by the delay. The total amount of compensation, including the liquidated damages for delay pursuant to Clause 8.2, may not exceed 15% of the order value of that part of the delivery, which the purchaser has justifiably cancelled. All such compensation shall be subject to Clause 12.

8.5 The delivery period will be appropriately extended and the date of delivery postponed in the event of force majeure such as epidemics, mobilization, war, riot, labour disputes, damage caused to the plant by natural disaster, embargoes, obstruction of import, export or transit, etc., or other obstacles outside the control of the seller, irrespective of whether these arise with the seller, the purchaser or a third party. Each party to the contract will itself bear the costs it incurs as the result of an event of force majeure.

## **9. Deterioration in financial condition / Default of acceptance by the purchaser**

9.1 If the seller learns of a material deterioration in the financial condition of the purchaser the seller can request full or partial payment in advance or the provision of security, or cancel the contract.

9.2 If delivery is delayed due to circumstances for which the purchaser is responsible, the seller is entitled to store the items being supplied at the purchaser's expense.

9.3 The seller may also give the purchaser a reasonable grace period for accepting the delivery. After this has expired without such acceptance the seller may make other arrangements for the disposal of the items being supplied and/or cancel the contract and claim liquidated damages in the amount of 10% of the order value, plus any additional damages, which may be proven.

9.4 The foregoing provisions also apply in the event of the revocation of a delivery order, which is already in the process of manufacture.

## **10. Inspection and acceptance of delivery**

10.1 The purchaser is entitled to conduct inspections on the seller's premises with the seller's prior written consent at the purchaser's sole expense.

10.2 After the seller has installed and put into operation the machinery, the purchaser must conduct acceptance tests within one month and notify the seller immediately in writing of any defects or failure of the machinery to perform according to its agreed specifications. If the purchaser fails to do this, the deliveries and services are deemed to be approved.

10.3 The seller is entitled to attend all such acceptance tests and to request that a prior trial run be performed under its technical supervision. If the trial run reveals a failure of the machinery to perform according to its agreed specifications the purchaser shall permit the seller to repair or replace any or all of the deliveries pursuant to Clause 11 of these terms and conditions.

## **11. Warranty; liability for defects**

11.1 Insofar as an assembly of the goods by the seller is agreed, the warranty pursuant to the following provisions is conditioned on the supervision by the seller of the assembly and installation of the machinery in which case the seller's «General Conditions of Erection» shall also apply.

11.2 The warranty period is 12 months, irrespective of the operating time of the items supplied. It commences on the date on which the items supplied are put into operation. If delivery, acceptance of delivery, assembly, installation or putting into operation are delayed for reasons for which the seller is not responsible, the warranty period shall expire no later than 18 months after notification by the seller that the material is ready for delivery, or the delivery itself, whichever first occurs. If parts of the delivery have to be replaced or repaired pursuant to Clause 11.5, a new warranty period of six months as from delivery or completion of the repair shall be given for the new or repaired parts.

11.3 Subject to a written agreement to the contrary, the seller warrants only the mechanical, electrical and electronic operation of the items supplied.

11.4 The warranty shall be null and void in the event:

- the purchaser or a third party performs repairs improperly or makes modifications without the seller's written consent;
- the purchaser – in the event of a defect – fails to take appropriate action immediately to minimize damage and give the seller the opportunity to remedy the defect; or
- original SUESSEN spare parts are not used.

11.5 The seller undertakes after the purchaser's written request to repair or replace as quickly as possible, at its option and expense, all parts supplied by the seller which become demonstrably defective or unserviceable before expiry of the warranty period due to

poor material, incorrect design or deficient workmanship, subject to the following provisions: Replaced parts become the property of the seller. The purchaser is obliged to provide the seller with all necessary support in exporting the part of the delivery to be repaired or replaced and in importing the replacement delivery or the repaired part of the delivery; otherwise the purchaser itself shall bear the consequences of a delay to or failure to make a replacement delivery or repair. Any customs duties and taxes in the country of destination of the delivery will be borne by the purchaser.

11.6 Special characteristics of the items supplied (such as special service lives, production volumes, etc.) or the products to be manufactured with them are only deemed to be warranted if they have been expressly agreed upon in writing as «warranted characteristics». Any such warranties shall be applicable only until the expiry of the standard warranty period. If warranted characteristics are not or only partially met, the purchaser's only remedies are those given in Clause 11.5.

11.7 Parts subject to wear and, in particular, defects and damage resulting from ordinary wear and tear, deficient maintenance, disregard of operating instructions or other operating specifications, excessive stress, unsuitable operating materials, use of unsuitable raw materials, chemical or electrolytic effects, fluctuations in voltage and current, and other reasons not within the seller's control are excluded from the warranty and the seller's liability.

11.8 Deliveries and services rendered by subcontractors and outside suppliers stipulated by the purchaser shall be subject to seller's warranty only to the extent of the warranty obligations of the subcontractors or outside suppliers concerned.

11.9 In no event shall the purchaser be entitled to claim compensation for damage of any kind other than to the actual items supplied, such as loss of production, loss of use, loss of orders, lost profits and other indirect consequential or economic losses.

## 12. Disclaimer of liability

All rights and remedies of the purchaser for a claim provided in breach of contract are exclusively established and provided for by these terms and conditions, regardless of the legal theory for the claim. In particular, all claims by the purchaser for compensation (including consequential damages such as for production stoppages, loss of profits, loss of use and any other financial loss), reduction of the purchase price, cancellation of the contract, etc., which are not expressly stated, are excluded. This disclaimer of liability applies without restriction in respect of Clause 11 (warranty, liability for defects); with respect to Clauses 8.2 and 8.4 (default by the seller) it does not apply to claims based on the intentional wrongdoing or gross negligence of the seller, although it does apply to claims based on the intentional wrongdoing or gross negligence of those assisting the seller.

## 13. Patent rights

13.1 The seller is responsible for ensuring that the items being supplied do not infringe the patent rights of third parties in the country of destination of the delivery. The seller is entitled to defend itself against or otherwise settle alleged claims by third parties in or out of court in any appropriate manner. The purchaser shall grant the seller power of attorney for this purpose and provide it with all necessary support.

13.2 The seller shall not be liable pursuant to Clause 13.1 if the items supplied or parts thereof were manufactured in response to suggestions or requests of the purchaser, or if the items supplied or parts thereof are used together with other items not supplied by the seller. In such case, the seller shall not be liable to the purchaser, and the purchaser shall indemnify the seller against all patent infringement claims arising therefrom, including compensation claims.

## 14. Operating safety

14.1 The purchaser undertakes to comply with the operating instructions and safety information provided with the items supplied and to instruct its personnel accordingly, so that the safe operation of the items supplied is ensured. In the absence of written notification to the contrary from the purchaser, the purchaser shall be deemed to have received operating instructions and safety information.

14.2 Safety devices and warning notices placed by the seller may not be removed. Poorly attached or damaged notices must immediately be reattached or replaced. The seller promises the purchaser to replace safety notices, which have become unserviceable at any time in reasonable numbers. Changes in safety instructions must be implemented immediately and complied with by the purchaser.

14.3 Modifications to the supplied goods, which could adversely affect the safety of operating personnel, may only be performed by the seller.

14.4 The purchaser is obliged to inform the seller in writing immediately if an accident occurs in connection with the items supplied or it transpires that the operation of the items supplied entails hazards.

14.5 The purchaser shall indemnify the seller against any and all liability to third parties, which arises from any failure to perform the foregoing obligations.

## 15. Arbitral tribunal and applicable law

15.1 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 appointed in accordance with the said Rules. The seller is entitled to stipulate the place of arbitration and the language of the proceedings. The arbitrators may not be employed by one of the parties to the contract, either as staff, as executives or in any other capacity.

15.2 The seller is entitled to have recourse to the ordinary courts exercising jurisdiction at its domicile or that of the purchaser instead of the arbitral tribunal unless arbitration proceedings have already been brought by one of the parties to the contract.

15.3 The UN Convention on Contracts for the International Sale of Goods dated April 11, 1980, is applicable unless otherwise agreed in writing; with regard to all issues, which are not covered by this convention, the contract is subject to substantive Swiss law excluding conflicts of law.

### **16. Concluding provisions**

16.1 All agreements and legally relevant declarations by the parties to the contract are binding only if made in writing. This also applies to any agreement to waive the requirement for observance of the written form. Declarations only become legally effective when they have been received by the counterparty.

16.2 If one or more provisions of the contract prove to be wholly or partly ineffective or invalid, this does not affect the effectiveness and validity of the remaining provisions of the contract. The parties to the contract will replace the ineffective or invalid provision by an effective or valid provision, which most closely approximates the legal and financial object of that which has to be replaced.

Suessen, 1<sup>st</sup> October, 2005