

General conditions of contract for the supply of products, plant and machinery

1 General

- 1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order.
Tenders who do not stipulate an acceptance period shall not be binding.
- 1.2 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.
- 1.4 Should a provision of these general conditions of supply prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

2 Scope of supplies and services

- 2.1 The supplies and services provided by the supplier are conclusively shown in the order confirmation including any annexes thereto. The supplier is entitled to effect changes which lead to improvements provided such changes do not result in a price increase.

3 Plans, technical documents and know-how

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in technical documents is only binding in so far as having been expressly stipulated as such.
- 3.2 Each party to the contract retains all rights to plans, software, technical documents and know-how provided or made available to the other. The party receiving such plans, software, know-how and documents recognizes these rights and shall - without previous written consent of the other party - not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4 Regulations in force in the country of destination and safety devices

- 4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2 In the absence of any ulterior agreements, the deliveries and services comply with the regulations and standards at the supplier's place of business. Additional or other safe-guards will only be supplied insofar as having been expressly agreed upon.

5 Prices

- 5.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deduction whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier is liable for them.
- 5.2 The supplier reserves the right to adjust the prices in case:
- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
 - the nature or the scope of the agreed supplies or services has changed, or
 - the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete.
 - an amendment has been made to laws, regulations or the principles of interpretation or application.

6 Terms of payment

- 6.1 Payments shall be made by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
Payment shall be deemed to be effected as far as Swiss francs have been made freely available to the supplier at the supplier's domicile. In case payment by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges.
- 6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond the supplier's control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.
- 6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, the supplier shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.
If the customer, for any reason whatsoever, is in delay with a further payment, or if the supplier is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, the supplier, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until the supplier will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case the supplier does not receive adequate securities, the supplier shall be entitled to terminate the contract and to claim damages.

6.4 If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

7 Reservation of title

7.1 The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract. In this connection, the customer undertakes that it shall co-operate immediately and on first request from the supplier in all measures and arrangements which are required or serve for protection of the supplier's property. In particular, the customer hereby expressly confirms that on conclusion of the agreement, the supplier is entitled, at the cost of the customer, to initiate having the retention of title entered into public registers, reference works or public books or the like in accordance with the relevant national laws. During the period of retention of title, the customer shall be responsible for keeping and maintaining the delivered goods in an orderly manner and shall arrange for appropriate insurance protection.

8 Delivery time

8.1 The delivery time shall start as soon as the contract is entered into, payments due with the order have been made, any agreed securities given and the main technical points have been settled and released for production by written confirmation of the customer. The delivery time shall in no case begin before full receipt of the necessary details and documents of the ordering party as required for execution of the agreement and in no case before fulfilment of all formalities required by the authorities such as the procurement of import, export and transit permits. The delivery time shall be deemed to be observed if by that time, the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.

8.2 Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligations.

8.3 The delivery time is reasonably extended:

- a) if the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it, thereby causing a delay in the delivery of the supplies or services;
- b) if hindrances occur which the supplier cannot prevent despite using the required care, regardless of whether they affect the supplier or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil unrest, serious breakdowns in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, or natural catastrophes.
- c) if the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

8.4 In the case of late delivery, the customer is only entitled to claim late delivery compensation if the delay has been provably caused by the supplier and the customer can document damage incurred as a consequence of such delay. If the customer can be helped by means of a substitute delivery, the claim to late delivery compensation lapses. The late delivery compensation amounts for each full week of the delay to at most 0.25% but not more than 5%, calculated on the contract price for the delayed part of the delivery. The first three weeks of the delay do not give any entitlement to delayed delivery compensation. After reaching the maximum of the late delivery compensation, the customer shall give the supplier a reasonable subsequent period in writing. If this supplementary period cannot be met for reasons which are within the control of the supplier, the customer shall be entitled to refuse acceptance of the delayed part of the delivery. If the customer cannot be reasonably expected to accept partial delivery, it is entitled to withdraw from the agreement and to claim back payments already made against a return of the deliveries that have been made. Further claims due to delays are excluded.

8.5 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.

8.6 Any delay of the supplies or services does not entitle the customer to any rights or entitlements apart from those explicitly mentioned in this Art. 8. This limitation, however, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of ancillary persons.

9 Packing

9.1 Packing shall be charged for separately by the supplier and shall not be returnable.

10 Passing of benefit and risk

10.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.

10.2 If dispatch is delayed at the request of the customer or due to reasons beyond the supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured for the account and at the risk of the customer.

11 Forwarding, transport and insurance

11.1 The supplier shall be notified in good time of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall, upon receipt of the supplies or of the shipping documents, be immediately submitted by the customer to the last carrier.

11.2 The customer shall be responsible for taking insurance against risks of any kind.

12 Inspection and taking-over of the supplies and services

- 12.1 As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 12.2 The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify the supplier in writing of any deficiencies. If the customer fails to do so, the supplies and services shall be deemed to have been taken over.
- 12.3 If the supplier has been notified of deficiencies in accordance with Clause 12.2, he shall remedy them as soon as possible, and the customer shall give the supplier the possibility to do so. After remedy of such deficiencies, a taking-over test in accordance with Clause 12.4 will be carried out at the request of the customer or the supplier.
- 12.4 Subject to Clause 12.3, the execution of a taking-over test as well as the stipulation of the conditions related thereto require a special agreement. In the absence of such an agreement the following shall apply:
- The supplier shall advise the customer of the execution of the taking-over test in good time so that the customer or his representative can attend.
 - A taking-over report shall be prepared which shall be signed by both the customer and the supplier or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused it. In the last two cases, the deficiencies shall be listed individually in the report.
 - In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse taking-over of the supplies or services and refuse to sign the taking-over report. The supplier shall remedy such deficiencies without delay.
 - In case of significant deviations from the contract or serious deficiencies, the customer shall give the supplier the possibility to remedy these within a reasonable time. Thereafter, a further taking-over test shall take place.
- 12.5 Taking-over shall also be deemed completed
- if the customer does not participate in the taking-over despite being requested in advance to do so;
 - if the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;
 - if the customer refuses the taking-over without being entitled to do so;
 - if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;
 - as soon as the customer uses the supplies or services.
- 12.6 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (guarantee, liability for defects).

13 Guarantee, liability for defects

- 13.1 **Guarantee period**
The guarantee period is 12 months, in case of single or double shift operation (up to 16 hours/day) or in three shift operation 6 months. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking-over have been agreed upon before, or, if the supplier undertakes the erection, upon completion thereof. If dispatch or taking-over or erection is delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch. Parts subject to wear and tear are covered by a shorter guarantee period appropriate for their nature.
For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair or taking-over, but not longer than the expiry of a period being double the guarantee period stipulated in the preceding paragraph.
The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the possibility of remedying such defect.
The right to file claims due to deficiencies lapses in all cases in 6 months from the point in time at which the deficiency was recognized.
- 13.2 **Liability for defects in material, design and workmanship**
Upon written request of the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship, even if the deficiencies are of a significant nature. Replaced parts shall become supplier's property. The supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in the supplier's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling and living as well as dismantling and reassembly of the defective parts.
- 13.3 **Liability for express warranties**
Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.
If the express warranties are not or only partially achieved, the customer may first of all require the supplier to carry out the improvements immediately. The customer shall give the supplier the necessary time and possibility of doing so. If such improvements fail completely or in part, the customer may claim such compensation as has been agreed before for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

- 13.4 Exclusions from the liability for defects
Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear (wear parts), improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the supplier, or resulting from other reasons beyond supplier's control.
- 13.5 Supplies and services of subcontractors
For supplies and services of subcontractors requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.
- 13.6 Exclusivity of guarantee claims
With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.
- 13.7 Liability for additional obligations
The supplier is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.
- 14 Non-performance, bad performance and their consequences**
- 14.1 In all cases of bad performance or non-performance not expressly covered by these general conditions of supply - in particular if the supplier, without valid reasons, starts execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to supplier's fault, then the customer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to supplier's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.
- 14.2 In such case Clause 16 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.
- 15 Termination of the contract by the supplier**
- 15.1 The contract shall be adapted appropriately if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the supplier, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, the supplier shall be entitled to terminate the contract for the parts affected thereby.
If the supplier wishes to terminate the contract it shall - after having recognised the consequences of the event - immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract the supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.
- 16 Environmental and operating safety**
- 16.1 The customer undertakes to follow the operating instructions and safety notes delivered with the supplied goods, particularly notes with regard to environmental compatibility, use of the products, health-related characteristics and risks, necessary caution and protection measures etc. and to instruct its staff accordingly in order to ensure a safe and environmentally compatible operation of the delivered products.
- 16.2 Existing safety stipulations and danger notices on the supplied products may not be removed. Notices which are poorly affixed or have become scratched or broken must be re-affixed or replaced. The supplier hereby undertakes to replace for the customer at any time and in the required number any safety notices which have become unusable. Improvements in the safety instructions are to be accepted by the customer at any time on request of the supplier and are also to be observed.
- 16.3 Technical adjustments to the supplied goods - particularly if they could affect the safety of people and the environment - may only be carried out with the prior written agreement of the supplier.
- 16.4 The customer is obliged to inform the supplier immediately of any accidents which occur due to or with the supplied goods or if it becomes clear that a danger is associated with the operation or use of the delivered goods.
- 17 Export control**
- 17.1 The customer recognises that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or reexport permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.
- 18 Data protection**
- 18.1 The supplier is entitled to process the personal data of the customer in order to perform the contract. Furthermore, the customer consents in particular to the supplier transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the parties.

19 Software

19.1 If the supplies and services delivered by the supplier include software, the customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the supplier. In case of infringement, the supplier may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as the supplier, may also assert a claim in the event of infringement.

20 Exclusion of further liability on the supplier's part

20.1 All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective of the grounds on which they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law.

21 Right of recourse of the supplier

21.1 If, through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the supplier, then the latter shall be entitled to take recourse against the customer.

22 Installation

22.1 If the supplier undertakes installation or supervision of the installation, the General Conditions of Installation of Swissmem shall apply.

23 Jurisdiction and applicable law

23.1 The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier. The supplier shall, however, be entitled to sue the customer at the latter's registered address.

23.2 The contract shall be governed by Swiss substantive law.

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