

## Terms and Conditions for Supply and Services (January 2020)

### E.1 Applicability and Scope

The following terms and conditions shall apply for all present and future supplies and services provided by Seller to the Buyer, including but not limited to supply of goods and machinery, installations, repair work, spare part sales and other services (hereinafter: Object of Agreement).

Changes and amendments of these Terms and Conditions for Supply and Services require a written confirmation. General terms and conditions of the Buyer shall only apply if the Seller has explicitly agreed to such Buyer conditions in writing.

These Terms and Conditions for Supply and Services shall apply - notwithstanding any Buyer's condition deviating from or contradicting to these Conditions - if Seller has executed deliveries without any reservation.

### E.2 Conclusion of Contract, Quotation and Related Documents

The Seller's quotation is non-binding.

The presentation of Seller's products and services in brochures, catalogues, flyers, reference drawing as well as indications with respect to weight, measures and the like are only approximately applicable.

If the Seller has submitted a quotation and the related order has not been placed, all drawings and other documents related to such quotation shall be returned to the Seller immediately on Seller's request.

The mutually signed contract or the Seller's written order confirmation by the Seller set the terms of the contract and bring the contract into effect even if the written order confirmation is not consistent with the declarations of the Buyer in every respect, especially with reference to the exclusive application of these Terms and Conditions for Supply and Services.

If the Buyer objects to the order confirmation he shall contest the order in writing within a short time, at the latest seven calendar days after receipt of the written order confirmation by the Buyer.

### E.3 Buyer's Obligation to Cooperate

Approvals and other verification or approval certificates requested by third parties, which are required for the installation and operation of the Object of Agreement, shall be procured by the Buyer in due time and at his own expense.

Any cost, incurred by the Seller due to a directive by a third party requesting to provide services and materials exceeding the scope of supply as stipulated by the contract respectively the order confirmation, shall be completely borne by the Buyer.

The Buyer is obliged to submit to the Seller immediately and free of charge all information required by the Seller to fulfill his contractual obligations. This includes, but is not limited to:

- a) drawings with exact dimensions of work pieces to be machined;
- b) layout plan for installation and indication of the required position of the Object of Agreement;
- c) operating instructions and regulations as well as executive instructions;
- d) safety regulations and standards.

Documentation as mentioned under a.), c.) and d.) of this paragraph shall be provided to the Seller prior to the conclusion of the contract respectively the order confirmation.

Unless otherwise agreed, for the purpose of erection, commissioning and acceptance of the Object of Agreement and/or of rendering maintenance or repair service, the Buyer, at his own expense, is obliged to provide the items as detailed below:

- a) complete machine foundation;

- b) covers between machine and foundation, including concrete parts, railing, stairways, pit, safety features, etc.;
- c) auxiliary supports (wedges and supporting plates) for erection of machine; drawings to be provided by the Seller;
- d) workpiece driver if necessary;
- e) steel tanks for water filtering units, in accordance with Seller's design;
- f) crane for installation and workpiece handling, with low and high speed function;
- g) workpiece(s) in connection with final acceptance test(s),
- h) clean, dry and oil-free compressed air (4 - 6 bar; Pneurop/ISO class 4);
- i) first fillings of delivered equipment with lubricants and additives according to Seller's specification (details will be provided after order placement);
- j) heating, illumination, electric power supply, water, including circuit points for installation works as well as compressed air supply; aforementioned media connections shall be provided at the TOP's;
- k) appropriate storage space, which is adequately secured against theft and damage, for the Object of Agreement and assembly tools.

Furthermore to be supplied by the Buyer:

- a) safety fences, safety doors, bumper rails etc. according to Seller's engineering;
- b) basic training of operation and maintenance staff prior to commissioning of machine/plant according to Seller's documentation;
- c) additional training on annual basis for operation and maintenance staff including written confirmation of the training.

### E.4 Payment Terms, Right to Set-Off, Taxes and Duties

Unless otherwise agreed upon or stipulated in the quotation, payments shall be made by irrevocable and confirmable letter of credit to be issued by a bank acceptable to the Seller in favor of the Seller on short notice, at the latest one month after receipt of the order confirmation. All cost in connection with the letter of credit shall be borne by the Buyer.

Buyer's payment obligation is fulfilled only if and when the invoice amount is received without reservation by Seller at his free disposal. Unless agreed otherwise this is given when the respective amount is credited to Seller's bank account.

The Seller is entitled to set off its claims against payment claims the Buyer has towards the Seller.

The Buyer may set off only those claims which are undisputed or legally binding.

All taxes, duties, expenses or/and other charges incurred outside Germany shall be borne by the Buyer.

If any sales tax, consumption tax or similar taxes are raised in connection with the sale of the Object of Agreement and if the Seller is charged with such taxes, the Seller shall be entitled to increase the agreed price accordingly.

In case of deterioration of Buyer's financial circumstances after conclusion of the contract, the Seller is entitled to refuse performance until any claim has been settled or if otherwise securities have been provided to safeguard outstanding payments.

### **E.5 Retention of Title, Right of Use, Transfer of Risk**

The Seller retains the title to the Object of Agreement until the final and irrevocable receipt of all payments.

The Seller reserves all intellectual property rights and copyrights to illustrations, drawings, cost estimates and other documents relating to quotations. Any such material shall only be made available to third parties with prior written consent from the Seller.

The Buyer is granted a non-exclusive and non-transferable right of use to programs and related documentation, including subsequent amendments to such programs and documentation, which are delivered with and required for making the stipulated use of the goods delivered by the Seller. Any reproduction of such program or documentation, apart from a back-up copy, is not permitted. Without prior written consent from the Seller, any such material must not be transferred or otherwise made directly or indirectly available to third parties by the Buyer.

Unless otherwise stipulated, the risk of the Object of Agreement shifts to the Buyer Ex Works (Incoterms 2010) even when partial deliveries are made or if the Seller has undertaken to provide other services, i.e. delivery, forwarding expenses, installation, commissioning, training etc.

### **E.6 Delivery Time**

All delivery and performance dates (hereinafter Delivery Time) require a written agreement between the Seller and the Buyer.

The Delivery time stated in the quotation may change until the date of conclusion of the contract, based on the Seller's production capacities.

Delivery Time starts with the latest date set forth below:

- a) conclusion of the contract;
- b) Seller's receipt of documentation as described under E.3 a), c), and d);
- c) Seller's receipt of the contractually agreed down-payment.

Adherence to the Delivery Time is dependent on Buyer's compliance with regard to payment terms as well as fulfillment of Buyer's obligation to cooperate and perform as well as the issuance of export permits, if necessary.

If the delivery is delayed due to act or omission of the Buyer, an extension of the Delivery Time in a reasonable proportion to the circumstances shall be granted. This shall also apply, if the cause of such delay occurs after expiry of the Delivery Period stipulated in the contract.

If the Delivery Time is not met for reasons beyond Seller's control, like e.g. industrial disputes, shortage of materials or power supplies or Act of God, the Delivery Time shall be extended by the period required to remedy the cause of delay plus an appropriate grace period.

If a fixed Delivery Time has been agreed upon in the contract and Seller fails to deliver within such fixed Delivery time (or any extension thereof granted in accordance with the present article), the Buyer - after a grace period of four weeks - is entitled to claim a compensation for such delay for each full week thereof amounting to maximum 0,3% of the value of the part of the Object of Agreement being delivered late. In no event the cumulative compensation shall exceed a total of 3% of the value of the Object of Agreement; however, such entitlement shall not apply, if it can be reasonably concluded from the circumstances of the particular case that the Buyer has suffered no damage.

Any enforcement of a claim for compensation shall explicitly exclude, subject to the provisions as stipulated under E.9 d), any other liability of Seller for delay of Delivery Time.

### **E.7 Test Run, Final Acceptance, Accuracy and Performance Data**

The Seller reserves the right to make changes in design, which do not affect the purpose of the contract.

Test Run and start-up are to be carried out in presence of a chief erector nominated by the Seller.

The Final Acceptance immediately follows the erection and commissioning of the machine.

Unless otherwise agreed with the Buyer, for the acceptance of the Object of Agreement the technical details, such as accuracy values and performance data stated in the quotation shall be applicable.

Contractually agreed accuracy values as well as performance data shall only be binding under the following conditions:

- a) erection, commissioning and test run have taken place under Seller's supervision and observation of all information by Buyer.
- b) Adequate foundation for the machine has been prepared by the Buyer. The minimum dry off time for the foundation shall be 28 days. Grouting is to be done with non-shrinking, nonmetallic, fast drying material.
- c) Machine installation started immediately after arrival of the Object of Agreement on site, respectively the Object of the Agreement has been stored entirely in a dry, dust-free area with temperatures not exceeding the limits of +5 °C and +40 °C.
- d) Machining installation is carried out in clean, dry, dust-free, closed and temperature stable (+15 °C to +30 °C) environment.
- e) Ambient temperature fluctuation not to exceed +/-1 °C per hour and +/-6 °C per day for erection and acceptance test. The ambient temperature to be within +15 °C to +30 °C during acceptance as well as neither draught, nor direct sunlight, nor spot heaters are allowed in the workshop.
- f) The functionality of the Object of Agreement is only ensured, independent from agreed performance data, in a dry, dust-free and closed area with a constant temperature between +5 °C and +40 °C.
- g) The entire workpiece temperature has to be homogeneous and constant (max.: +/-1 °C deviation from ambient temperature).
- h) The coolant temperature has to be homogeneous and constant (max.: +/-2 °C deviation from ambient temperature).
- i) Suitable work tools of best quality have to be used.
- j) Mounting of the workpieces is conducted as stipulated in the contract.

It is mutually agreed, that the machine shall be deemed as accepted, when the Object of Agreement is used for production.

### **E.8 Warranty**

The warranty period generally expires 12 months after start of production by the Buyer or after Final Acceptance as the case may be (whichever occurs first), however, not later than 18 months after readiness for dispatch.

For spare parts the warranty period generally expires 12 months after delivery, however, not later than 18 months after readiness for dispatch.

The Seller warrants the equipment covered to be free from defective material and workmanship.

If the Buyer notifies within the warranty period that there are parts found to be defective due to defects resulting from design, manufacturing, processing or erection, Seller is obliged at his discretion to repair or replace such parts within a reasonable period of time.

In case the Seller does not fulfill this obligation, the Buyer may ask for appropriate reduction of the contract price.

However, if a mutual agreement about the reduction cannot be reached, the Buyer can ask at a maximum for rescission of the contract.

The Buyer, at his own risk and expense, is responsible for transportation of defective parts, repaired parts or spare parts between domicile and works of the Seller.

This warranty does not include defective parts, materials or equipment manufactured by or on behalf of the Buyer.

The Seller's warranty obligations shall only apply to defects that appear under the applicable contractual operation and regular use.

This warranty does not cover defects in or damage to the products which are due to improper maintenance or operation, modifications without the prior written approval by the Seller, badly implemented repairs by the Buyer or a third party and normal wear and tear.

The Seller's warranty obligations do not cover traveling cost incurred by service interventions during the warranty period.

From date of transfer of risk, the Seller shall not accept any liability that exceeds the scope stated in the present article.

#### **E.9 Limitation of Liability**

It is expressly agreed, that notwithstanding any contrary provisions in this contract the liability of the Seller towards the Buyer is to the following extend:

- a) to the extent of the contractual agreed liquidated damages;
- b) within the frame of contractual agreed insurances of the Seller.
- c) Regardless of the legal theory under which any claim may be pursued and as far as not covered by any insurances of the Seller, the Seller in no event shall be liable for damages not occurring on the equipment itself and especially the Seller shall not be liable for indirect, special, incidental or consequential damages, including but not limited to loss of profits or revenue, loss of use of equipment, cost of capital, cost of substitute equipment etc..
- d) The exclusion respectively limitation of the Seller's liability shall not apply in case of willful intent or gross negligence of the organs of the Seller or his executive employees responsible for the execution of the contract, culpable injury to life, body or health, defects concealed maliciously by the organs of the Seller or his executive employees responsible for the execution of the contract or in case of liability under the Product Liability Act ("Produkthaftungsgesetz").
- e) The Object of Agreement has to meet the contractual specifications. In case the Object of Agreement does not meet the contractual specification or the Seller does not fulfill his contractual obligations the Seller is obliged at his choice to repair or replace or to fulfill his contractual obligations within a reasonable time. In case the Seller does not fulfill his obligation within a reasonable time or within an agreed further extension of time, the Buyer may ask for compensation. However, if a mutual agreement about the compensation cannot be reached the Buyer can ask at a maximum for rescission of the contract. In this case the Seller will reimburse all payments received from the Buyer so far on return of the delivered equipment.
- f) Where the Buyer pleads non-fulfillment of contract, the Buyer is obliged to do everything possible to minimize the incurred loss provided this does not entail unreasonable cost or disadvantages. Otherwise, in case of Buyer's failure to meet this obligation, the Seller is entitled to a reduction of compensation.

#### **E.10 General Terms and Conditions**

As for the rest, outside of the Federal Republic of Germany the "GENERAL CONDITIONS for the SUPPLY AND ERECTION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS (ORGALIME S1 14)" shall apply, unless otherwise stipulated in these Terms and Conditions for Supply and Services.

#### **E.11 CE-Standards (only applicable within the scope of EC Machinery Directive)**

The basic requirements of the security of a machine regarding safety and health regulations are stipulated according to the EC Machinery Directive. By fixing the CE sign on the machine and handing over the CE declaration of conformity, it is documented for the Buyer that the

safety and health regulations according to the EC Machinery Directive have been observed.

#### **E.12 Scope of Supply and Services - CE-Standards**

To be provided by the Seller:

- a) Engineering of machine-related safety devices as e.g.: light barrier or safety fence for safeguarding access to the machine or danger spots e.g. roll (in cooperation with the Buyer), machine-related safety devices such as e.g.: monitoring modules for safety fences, safety doors, bumper rails etc. and their integration into the control system;
- b) delivery of machine-related safety devices such as e.g.: monitoring modules for safety fences, safety doors, bumper rails etc. and their integration into the control system;
- c) warning signs;
- d) CE marking and declaration of conformity.

To be supplied by the Buyer:

- a) As the case may be necessary coordination of the safety concept with the competent authorities for industrial safety and accident prevention (Institution for Statutory Accident Insurance and Prevention, TÜV, etc.);
- b) Supply of safety fences, safety doors, bumper rails etc. as per Seller's engineering;
- c) Basic training of operation and maintenance staff and implementation of internal instructions prior to the commissioning of the machine/plant according to Seller's documentation.

#### **E.13 GOVERNING LAW, LEGAL VENUE**

Unless otherwise stipulated in individual agreements, the law of the Federal Republic of Germany shall generally apply to all disputes relating to the supplies and services of the Seller.

The exclusive court of jurisdiction for all disputes arising from or relating to the supplies and services of the Seller is Siegen, Germany.

In the event that at least one of the Contractual Parties has its registered offices in the People's Republic of China, by way of exception to the above clauses, the following shall apply:

For all disputes arising from and in connection with the deliveries and services of the Seller, the rules of arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. ("DIS"), shall apply. The place of arbitration shall be Frankfurt am Main, Federal Republic of Germany. The proceedings shall be conducted in the English language. The arbitration tribunal shall comprise 3 (three) arbitrators, whereby each Contractual Parties shall appoint one arbitrator and these two arbitrators shall then jointly appoint a third arbitrator, who shall act as chairman of the arbitration tribunal. Should any Contractual Party have not appointed an arbitrator within 30 (thirty) days of the receipt of the notice of arbitral proceedings from DIS, or the arbitrators have not appointed a chairman after 30 (thirty) days of their nomination, the corresponding arbitrator or chairman will be appointed by the chairman of DIS. The arbitral award shall be final and binding on the Contractual Parties. The reasonable costs and expenses (including fees for legal counsel) incurred in connection with the proceedings shall, unless stipulated otherwise by the arbitration court, be borne by the Contractual Party losing the legal dispute.

The Contractual Parties agree that the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall be excluded.



#### **E. 14 Final Provisions**

The Buyer acknowledges and agrees that, pursuant to pertinent data protection laws, Seller will store data in connection with the contractual relationship for the purpose of data processing.

If any of the provisions of these Terms and Conditions for Supply and Services and of the agreements between the Contractual Parties and of any other applicable regulations is or becomes invalid and/or unenforceable, this shall not affect the validity and/or unenforceability of the remaining provisions. The Contractual Parties shall in any such event be deemed to have agreed in lieu of the invalid and/or unenforceable provision a valid one which approximates as closely as possible the economic intent of the invalid and/or unenforceable provision; the Contractual Parties shall undertake to replace the invalid and/or unenforceable provision with a corresponding valid and/or forceable provision. This shall also apply in the event that a contractual gap becomes apparent in the course of implementation of the agreements/provisions agreed between the Contractual Parties.