

## **GENERAL TERMS OF DELIVERY**

### **ARTICLE 1 – MAKING A CONTRACT**

- 1.1 Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms of Delivery shall apply.
- 1.2 The below provisions on the delivery of goods shall also apply mutatis mutandis to performances.
- 1.3 A contract shall be deemed to have been made if the SELLER has sent a written order confirmation upon receipt of an order from the BUYER and if there is no evidence that the BUYER has opposed it within ten days.
- 1.4 SELLER shall be bound by BUYER's terms and conditions only if SELLER has expressly accepted them in written form.

### **ARTICLE 2 – TECHNICAL INFORMATION**

- 2.1. The data on weights, measures, content, prices, performances, or alike, as contained in catalogues, brochures, circular letters, advertisements, pictures and price lists, etc. shall only be definitive if the contract expressly refers to them.
- 2.2. Drawings, design drafts and other technical documents, as well as samples, catalogues, brochures, pictures and alike shall always remain the intellectual property of the SELLER. Any use, copying, reproduction, dissemination and transfer to third parties, and any publication and presentation thereof may only be effected with the express approval of the SELLER.

### **ARTICLE 3 – PACKING**

Unless other arrangements have been agreed upon

- a) the listed prices are including ordinary commercial packaging;
- b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on the way to their agreed destination. The goods are packaged at SELLER's expense, but the packaging material will only be taken back if so agreed by the parties.

### **ARTICLE 4 – PASSING OF RISK**

Risk of loss or damage to the goods shall pass to the BUYER according to ICC Incoterms 2010. The BUYER shall insure the goods against any risk of loss or destruction for the benefit of the SELLER until any amount outstanding in terms of this agreement has been paid.

### **ARTICLE 5 – PERIOD OF DELIVERY**

- 5.1 Date and Time of Delivery are specified in accordance with the conditions of the respective order.
- 5.2 SELLER shall have the right to make partial or advance deliveries.
- 5.3 In case delivery is delayed due to causes which rest with the BUYER, installation, start-up and take-over shall be delayed accordingly without applying of any penalty which may have been agreed between SELLER and BUYER to SELLER.
- 5.4 In case delivery is delayed for more than 30 days due to causes which rest with the BUYER, the SELLER shall have the right
  - either to store the contractual goods and charge interest and storage costs, or

- to dispose the contractual goods for other delivery contracts. In that case a new delivery time has to be agreed upon by the parties and the contract has to be amended accordingly and SELLER preserves the right to charge interest and the storage costs until disposal.

- 5.5 If BUYER does not accept the goods supplied under the contract at the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on SELLER's part, SELLER may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.

The SELLER shall also be entitled to claim a refund of any justified expenses that SELLER additionally had to incur in connection with performing the contract and that are not covered by the payments received.

#### **ARTICLE 6 – PRICE**

Unless otherwise agreed, all prices shall be ex works of SELLER, without loading.

#### **ARTICLE 7 – PAYMENT TERMS**

- 7.1 The payments shall be made in keeping with the agreed conditions of payment.  
Unless specific conditions of payment have been agreed upon, payment terms for machines and systems are: 30 % of the price shall be due upon receipt of the order confirmation, 60 % payable two weeks prior to delivery, 10 % payable thirty days after installation, but latest sixty days after delivery. For invoiced spare part deliveries payment terms are: 100 % payable within fourteen days from invoice date, net.
- 7.2 Bills of exchange and cheques will be credited to the buyer only upon receipt of correct payment. Any interest and charges incurred as a result will be debited to the buyer's account.
- 7.3 The BUYER is not permitted to defer payment or offset any amount against the payment because of any counterclaim on the part of the BUYER.
- 7.4 If the BUYER defaults on the agreed payment or any other performance, SELLER may either insist on the performance of the contract or announce the withdrawal from the contract, granting a reasonable respite.  
In all events, BUYER shall refund to SELLER the dunning charges and collection costs which constitute a further damage caused by the delayed performance.  
If BUYER has not made the payment due or provided any other performance within the respective respite, SELLER may withdraw with immediate effect from the contract by means of a written notice. BUYER shall return to SELLER, upon SELLER's request, any delivered goods and compensate SELLER for any reduction in the value of the goods that has occurred, as well as refund to SELLER all expenses that SELLER had to incur in connection with the performance of the contract.
- 7.5 If the BUYER defaults on the agreed payment, SELLER has the right to charge interest on arrears, as of the due date, in the amount of 10% on the day of maturity.

#### **ARTICLE 8 - RETENTION OF OWNERSHIP**

The goods shall remain the sole and absolute property of SELLER as legal and equitable owner until such time as any amount outstanding in terms of this agreement has been paid, irrespective of the fact that the sold machinery and equipment has been handed over to the BUYER.

It is further agreed between the parties that in case of any instalments not being paid in full or at all, SELLER shall be entitled to retain any amount paid by the BUYER as liquidated damages in case of the contract being cancelled.

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 SELLER a written proof of such registration before shipment.

SELLER may for the purpose of recovery of their goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

In case of an attachment or any other recourse, buyer shall be obliged to claim seller's ownership and to inform the latter without delay.

#### **ARTICLE 9 - RIGHT TO ASSIGN**

SELLER shall be entitled to sub-contract, cede, assign and transfer any or all of its rights, title and interest in and to this agreement to a third party without the BUYER's consent.

#### **ARTICLE 10 - WARRANTY**

10.1 SELLER warrants that all machinery and equipment supplied under this contract shall be brand new and manufactured of high quality materials and in accordance with the specifications, and according to prevailing international standards it will be of first-class workmanship.

The warranty is limited for defects during a period of 12 months, starting at the date of commissioning, but not later than 30 days after delivery.

Such defects must be reported with a detailed written explanation to SELLER immediately. Upon delivery, the BUYER shall thoroughly inspect delivered machinery and equipment for completeness. Defects or deficiencies that are or could have been discovered by such inspection must be reported with a detailed written explanation to Seller within 90 days after delivery to the BUYER, or any rights in connection therewith shall lapse.

Once the BUYER has made a notice on defects to SELLER, SELLER shall - if the defects must be remedied according to the provisions of the present article - at SELLER's choice:

- a) rework the defective goods on BUYER's site;
- b) have the defective goods or the defective parts shipped back to SELLER for reworking;
- c) replace the defective parts;
- d) replace the defective goods.

A precondition for the free of charge replacement and reworking of defective equipment or parts during the warranty period is that the defective equipment or parts will be returned to SELLER or SELLER's representative on BUYER's charges.

10.2 The above warranty does not cover safety fuses and filter as well as wear and tear parts of the injection unit (such as screw, nozzle, pot, cylinder, valve seat, shaft, tip) and insufficient or faulty handling, maintenance or faulty installation executed by any third party, or damage occurring as a result of circumstances beyond SELLER's control.

10.3 SELLER excludes warranty in case the BUYER uses spare parts not delivered by SELLER for repair of the machines.

10.4 SELLER shall deliver FCA Kottlingbrunn according to ICC Incoterms 2010, the parts to be supplied in replacement of any defective parts returned to SELLER or SELLER's representative. Costs for freight and import clearance of goods in the country of destination are on BUYER's account.

10.5 If during work in connection with the assertion of warranty claims it turns out that the BUYER has no claim to warranty, SELLER shall be entitled to charge any expenditure arising in terms of time and material on the basis of the prices agreed upon.

10.6 The BUYER shall have at any time the burden of proof that the machinery and equipment supplied have already been defective at the time of delivery.

10.7 Except as expressly set out in this Article all warranties are hereby excluded to the extent permitted by law.

## **ARTICLE 11 - LIABILITIES**

- 11.1 SELLER shall only be liable vis-à-vis the BUYER for damages caused insofar as such damages are attributable to SELLER on grounds of malice aforethought or serious gross negligence. It is expressly agreed that SELLER shall not be liable to BUYER for standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect or consequential damage.
- 11.2 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.
- 11.3 The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, SELLER's rules on the handling of the purchased object - especially with regard to any possible inspections - and other instructions given.
- 11.4 Any damage claims of the BUYER against SELLER must be asserted within a period of six months from the arising of the damage. The BUYER shall have the burden of proof in regard to any damages as well as in regard to SELLER's intent or serious gross negligence.
- 11.5 In case of damage claims because of defective machinery and equipment it is in SELLER's sole discretion to decide whether to replace or amend the respective machinery and equipment.
- 11.6 SELLER does not assume any liability for damages resulting from modifications carried out by the BUYER on the goods supplied by SELLER. This applies regardless of the nature and extent of the modifications and regardless if SELLER had notice or had to have notice of said modifications. In case the BUYER does carry out modifications to any goods supplied by SELLER, it is the sole responsibility of the BUYER to attach corresponding warning signs to any goods supplied by SELLER and modified by the BUYER. In this case the Certification of Conformity issued by SELLER becomes void and solely BUYER shall be responsible for the machine acceptance by local technical inspection authorities.

## **ARTICLE 12 - MODIFICATIONS**

- 12.1 Modifications and amendments to this contract are valid and binding only if they have been made in writing and duly signed by the authorized representatives of the BUYER and the SELLER.
- 12.2 Should any modification in design, drawings and/or specifications, shipping instruction and delivery schedules affect the contract price and/or delivery, an equitable adjustment in the price and/or delivery will be mutually agreed upon.
- 12.3 Minor variations by SELLER in the details of design and construction of the machinery and equipment shall not give rise to any claim of defect or default. SELLER reserves the right to make such minor changes in details of design and construction which SELLER considers to constitute an improvement over those set forth and described in the contract and appendices thereto.

## **ARTICLE 13 – GENERAL TERMS**

- 13.1 In the event that import and/or export licences or foreign-currency permits or similar authorizations are required for the performance of the contract, the BUYER is responsible for obtaining such documents, licences or permits necessary in due time. SELLER shall at all times provide information concerning which documents, permits and licenses are necessary for the respective transaction in Austria.
- 13.2 The invalidity of any provision of this contract shall not have any influence upon the validity of the remaining provisions. Both contracting parties will use their best efforts to replace the invalid provisions by valid provisions corresponding as much as possible to the original intentions of both parties to the contract.
- 13.3 If one of the parties becomes bankrupt, goes into liquidation whether voluntarily or involuntarily, wound up or dissolved, compounds with its creditors or has a receiver appointed for the whole or any part of its assets or becomes subject to any similar process or proceedings then the other party may cancel this contract with immediate effect.

#### **ARTICLE 14 - CONTRACTUAL LANGUAGE**

This contract and the appendices hereto, which form an integral part of this contract, as well as all exchanges between the parties hereto shall be in English language. In the event of disputes arising from the present contract translated into other languages the English text shall prevail.

#### **ARTICLE 15 - FORCE MAJEURE**

The term "FORCE MAJEURE" is understood by both parties to mean any cause to prevent either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented and are not reasonably avoidable by the party so prevented including strikes, lockouts or other industrial disputes (whether involving the workforce of the party so prevented or any other party, as sub-suppliers), acts of God, war, riots, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, by any competent body or authority, accident, breakdown of plant or machinery, fire, flood or storm, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials or products, currency restrictions. Neither party shall be liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to force majeure provided always that this clause shall not apply in respect of an obligation to pay monies.

In case of an event of force majeure, the parties shall meet to decide on and take appropriate measures.

Any party wishing to plead force majeure must notify the other party within fifteen (15) days by registered letter with return receipt, stating the nature, the starting date and the probable end of the event of force majeure.

Failure to comply with this requirement shall result in full and irrevocable liability of the defaulting party for all risks and consequences of the event of force majeure.

#### **ARTICLE 16 - COVENANT OF CONFIDENTIALITY**

16.1 For the purpose hereof "Confidential Information" shall be deemed to define data, information and software which are mutually disclosed by the parties or which the parties otherwise obtain in conjunction with the business relationship entered into hereunder from the other party.

16.2 The parties shall treat Confidential Information as strictly confidential and may not disclose it to any third party. The BUYER shall have no right to reproduce any drawings, flow-sheets, layouts sketches, technical information sheets or operating handbooks supplied by SELLER for the execution of the contract, nor shall he copy or disclose them to third parties or use them to have equipment or parts of the machinery made by anyone other than SELLER.

In the event that any drawing should have to be given or disclosed to third parties for the execution of the plant, the BUYER shall inform SELLER and may require such drawings or copies from SELLER, specifying their purpose and destination.

16.3 The BUYER shall be responsible for making sure that the duty of confidentiality shall also be complied with by any third parties. The BUYER shall prove at SELLER's request that it has made such third party accept the confidentiality clause or a similar obligation.

16.4 Conversely, SELLER shall observe professional secrecy for all the data communicated to it by the BUYER during execution of contract and subsequent visits.

**ARTICLE 17 - ARBITRATION CLAUSE, APPLICABLE LAW, PLACE OF PERFORMANCE**

- 17.1 In case any controversy shall arise between the BUYER and the SELLER as to the interpretation or application of any terms, conditions, requirements or obligations under or in connection with the present contract, inclusive of those on its validity, final settlement shall be made by arbitration.
- 17.2 The arbitration proceedings shall be governed by the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, France. The proceedings shall take place in Vienna, Austria in the English language. The arbitrators shall apply the laws of Austria to the case at hand, United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Conflict of Law principles shall be excluded.
- 17.3 The ruling of the arbitrators shall be final and binding on BUYER and SELLER.
- 17.4 SELLER's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place.