



## GENERAL CONDITIONS

### **1. PREAMBLE**

- 1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

### **2. FORMATION OF CONTRACT**

- 2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Vendor has sent an acceptance in writing.

### **3. DRAWINGS AND DESCRIPTIVE DOCUMENTS**

- 3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.

### **4. PASSING OF RISK**

- 4.1. Unless otherwise specifies.

Prices shown in price lists and catalogues shall be deemed to apply to ex works, packing and insurance excluded.

### **5. PASSING OF RISK**

- 5.1. Save as provided in paragraph 6.6., the time at which the risk shall pass shall be fixed accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract.

Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".

- 5.2. In the case of a sale "ex works", the Vendor must given notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

### **6. DELIVERY**

- 6.1. Unless otherwise agreed, the delivery period shall run from the latest of the following dates:

- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Vendor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the contract.

- 6.2. If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimates time require the other party in writing to agree a fixed time.

Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six month from the formation of the Contract.

If in either case the parties fail to agree, either party may recourse to arbitration, in accordance with the provision of Clause 10, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.

- 6.3. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if he Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost if the Purchaser. If required by the Purchaser, the Vendor shall

insure the Plant at the cost of the Purchaser.

If the Purchaser fails for any reason whatever to do so within such time the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceed the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

## **7. PAYMENT**

7.1. Payment shall be made in the manner and at the time or times agreed by the parties.

## **8. GUARANTEE**

- 8.1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.
- 8.2. This liability is limited to defects which appear during the period (hereinafter called "the Guarantee Period") which is 12 month from date of delivery unless otherwise specified.
- 8.3. The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for despatch from the works. If despatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond to control of the Vendor such extension shall not exceed 3 month.
- 8.4. The 12 month Guarantee Period acc. to 8.2 is referring to a 8 hour dails shift. The Guarantee Period shall be reduced accordingly, if the Plant is used more intensively.
- 8.5. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
- 8.6. On receipt of such notification the Vendor shall remedy the defect forthwith at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Vendor of his obligations under this paragraph in respect of such defective part.
- 8.9. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and the Vendor's works.
- 8.10. Where, in pursuance of paragraph 8 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representative on site shall be such as may be specially agreed between the parties.
- 8.11. Defective parts replaced in accordance with this Clause shall be –placed at the disposal of the Vendor.
- 8.12. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.
- 8.13. The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 5. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.
- 8.14. Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 5, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract



or of loss of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.

**9. LIMITATION OF DAMAGES**

- 9.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.
- 9.2. The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provide that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the part guilty of the breach my claim a reduction in the damages.

**10. ARBITRATION AND LAW APPLICABLE**

- 10.1. Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designates in conformity with those Rules.
- 10.2. The Contract shall be interpreted and construed in accordance with and governed by the laws of the Federal Republic of Germany. The place of jurisdiction is 86899 Landsberg am Lech, Germany.

Kaufering, den 22.09.2009