

General Conditions of Contract for the Supply of Equipment

2016

1. General

1.1 The contract shall be deemed to have entered into upon receipt of supplier's written acknowledgement stating its acceptance of the tender.

Tenders, which do not stipulate an acceptance period, shall not be binding.

1.2 These general conditions of supply shall be binding for both parties, if declared applicable in the tender or in the order acknowledgment. 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 or economic effect, which will be as similar as possible to the invalid provision.

2. Scope of supplies and services.

The supplies and services are exhaustively specified in the order acknowledgment and in appendices thereto. The supplier shall be entitled to make any changes, which lead to improvements provided such changes do not result in a price increase.

3. Technical documents

3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

3.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such 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 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under clause 4.1. Additionally other safety devices shall be supplied to the extent 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, 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 wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case, the adjustment shall be made according to the attached price adjustment clause.

In addition, an appropriate price adjustment shall apply 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.

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.

Unless otherwise agreed upon, the price shall be paid in the following instalments:

- one third as advance payment within one month after receipt of the order acknowledgement by the customer,
- one third, on expiry of two thirds of the agreed delivery time,
- the remaining within one month after supplier's advice that the supplies are ready for dispatch.
Payment shall be deemed to be effected as far as Swiss francs have been made freely available to the supplier at supplier's domicile. In case payments by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bills 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 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 of 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, 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 delays in the agreed terms of payment, it 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 supplier's domicile, but not less than 4 percent over the current discount rate of the Swiss National Bank. Any further damages are reserved.

7. Reservation of title

The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular, upon entering into the contract it authorizes the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall at its own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

8. Delivery time

8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payment due with the order have been made, any agreed securities given and the main technical points settled. 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, 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;

- 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, mobilization, war, revolution, serious breakdown in the works, accidents, labor 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, natural catastrophes, acts of Gods;

- 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 The customer shall be entitled to claim liquidated damages for delayed delivery as far as it can be proved that the delay has been caused through the fault of the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay. Damages for delayed delivery shall not exceed 0.5 percent for every full week's delay and shall in no case whatsoever altogether exceed 5 percent of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

After reaching the maximum liquidated damages for delayed delivery, the customer shall grant the supplier a reasonable extension of time in writing. If such extension is not observed for reasons within supplier's control, the customer shall have the right to reject the delayed part of the supplies or services. If a partial acceptance is economically not justifiable on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

8.5 In case of specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; clause 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 and claims other than those expressly stipulated in clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, or persons employed or appointed by the supplier to perform any of its obligations.

9. Packing

Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as supplier's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

10. Passing of benefit and risk

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

10.2 If dispatch will be delayed at the request of the customer or due to reasons beyond 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 on the account and at the risk of the customer.

11. Forwarding, transport and insurance

11.1 The supplier shall in time be notified 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 carrier.

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

12. Inspection 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 and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.

12.3 Having been notified of deficiencies according to clause 12.2 the supplier shall as soon as possible remedy them and the customer shall give the supplier the possibility of doing so.

12.4 Taking-over shall also be deemed completed

- as soon as the equipment has left the workshop unless otherwise agreed upon;
- If the customer refuses the acceptance without being entitled to do so;
- As soon as the customer uses the supplies or services.

12.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in clause 13 (guarantee, liability and defects).

13. Guarantee, liability for defects

13.1 Guarantee period

The guarantee period is 12 months, or 6 months in case of 24-hour operation at the customer. 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 are 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.

For replacement 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.

13.2 Liability for defects in material design and workmanship

Upon written request of the customer, the supplier undertakes at its own 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. 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 supplier's works, the customer shall bear the related costs of transport personnel, travelling, living 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 acknowledgement 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, the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justifiable for it, to terminate the contract. In such case the supplier can only be held liable or reimbursing the sums which have been paid to it or 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, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, any corrosion damages, 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 to guarantee claims/aims

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 clause 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 competition 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, 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 claims for damages shall be limited to 10 percent of the contract price for the supplies and services affected by the termination.

15. Termination of the contract by the supplier

The contract shall be adapted appropriate, if unforeseen, events considerably change the economic effect or the content of the supplies and services or considerably affect the activities of the supplier, or if performance subsequently becomes impossible. As far as such adaptations is economically not justifiable, the supplier shall be entitled to terminate the contract or the parts effected thereby.

If the supplier wishes to terminate the contract it shall – after having recognized 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 parts of the customer because of such termination are excluded.

16. Exclusion of further liability on the supplier's part

All cases of breaches of contract and the relevant consequences as well as any right and claims on the part of the customer, irrespective on what ground they are based, are excluded unless expressly stipulated in these general conditions of supply. This exclusion refers in particular to all not expressly mentioned claims for damages, reduction of price, termination or withdrawal of the contract. 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 damages. These exclusions of liability, however, do not apply to unlawful intent or gross negligence on the part of the supplier, but do apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations, or persons employed or appointed by the supplier to perform any of its obligations.

17. Right of recourse of the supplier

If, through actions or omissions of the customers or of the 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.

18. Jurisdiction, applicable law and where a contract is to be fulfilled

18.1 The place of jurisdiction for both customer and the supplier shall be at the registered office of the supplier.

18.2 The agreement of the United Nations regarding contracts about international purchase of goods (so called 'Wiener Kaufrecht') dated 11.04.1980 is excluded.

18.3 Swiss law governs the contract.

The supplier shall, however, be entitled to sue the customer at the latter's registered address.

18.4 Unless otherwise agreed upon, the place of contract fulfilment is the workshop of the supplier.

CALORIFER Engineering AG, CH-8472 Seuzach, Switzerland