

General Terms and Conditions of Contract

1. General

- 1.1 These General Terms and Conditions of Contract ("General Terms") shall apply to the supply of plant and machinery ("Supply") by DrM Dr. Müller AG ("DrM"). The Supply may include the installation or supervision of installation ("Services") of the products.
- 1.2 The Contract shall become effective upon receipt by the Customer of DrM's acknowledgement stating DrM's acceptance of the purchase order ("Order Acknowledgement").
- 1.3 Customer's general terms and conditions of contract shall not be valid unless expressly accepted in writing by DrM.

2. Designs and trade secrets

Any drawings, data, designs, software programs or other technical information supplied by DrM to the Customer in connection with the sale of Supply shall remain DrM's property and be held in confidence by the Customer. Such information shall not be reproduced or disclosed to others without DrM's prior written consent.

3. Prices

- 3.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing, without any deduction whatsoever.
- 3.2 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 DrM against adequate evidence in case DrM is liable for them.
- 3.3 DrM reserves the right to adjust prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance.
- 3.4 In addition, an appropriate price adjustment shall apply in case:
- the delivery time has been subsequently extended due to any reason stated in Clause 6.2, or
 - the nature or the scope of the agreed Supply 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.

4. Terms of payment

- 4.1 Payments shall be made by the Customer at DrM's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- 4.2 Unless otherwise agreed upon, the price shall be paid in the following installments:
- 1/3 as advance payment within one month after receipt of the Order Acknowledgement by the customer,
 - 1/3 on expiry of two thirds of the agreed delivery time,
 - the remainder within one month after DrM's advice that the supplies are ready for dispatch.

4.3 The dates of payment shall also be observed if transport, delivery, commissioning or taking over of the Supply or services is delayed or prevented due to reasons beyond DrM's control, or if unimportant parts are missing, or if postdelivery work is to be carried out without the Supply being prevented from use.

4.4 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, DrM shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.

4.5 If the Customer, for any reason whatsoever, is in arrears with a further payment, or if DrM 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, DrM, 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 Supply ready for dispatch until new terms of payment and delivery will have been agreed and until DrM will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case DrM does not receive adequate securities, DrM shall be entitled to terminate the contract and to claim damages.

4.6 If the Customer delays in the agreed terms of payment, it shall be liable for interest with effect from the agreed date on which the payment was due at a rate of 4 per cent over the current 3-month LIBOR target (in the agreed currency of the price). The right to claim further damages is reserved.

5. Reservation of title

- 5.1 The supplier shall remain the owner of the Supply until having received the full payments in accordance with the contract.
- 5.2 The Customer shall cooperate in any measures necessary for the protection of DrM's title. In particular upon entering into the contract it authorises DrM 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 fulfill all corresponding formalities, at Customer's cost.

6. Delivery time

6.1 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, payments 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 DrM has sent a notice to the Customer informing that the Supply is ready for dispatch.

6.2 The delivery time is reasonably extended:

- if the information required by DrM 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 Supply or Services;
- if circumstances beyond the reasonable control of DrM occur, regardless of whether they affect DrM or the Customer or a third party. Such circumstances include, but shall not be limited to, epidemics, mobilisation, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, actions or omissions by any state authorities or public bodies, such as sanctions or refusal of an export licence, natural catastrophes, acts of God;

- 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.

6.3 The Customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of DrM and that the Customer has suffered a loss as a result of such delay.

6.4 Damages for delayed delivery shall not exceed 1 % for every full week's delay and shall in no case whatsoever altogether exceed 5 % of the contract price of the part of the Supply in delay. No damages at all shall be due for the first two weeks of delay.

6.5 After reaching the maximum liquidated damages for delayed delivery, the Customer shall grant DrM a reasonable extension of time in writing. If such extension is not observed for reasons within DrM's control, the Customer shall have the right to reject the delayed part of the Supply. If a partial acceptance is economically not justified on the part of the Customer, the latter shall be entitled to terminate the contract and to claim refund of the payments already paid (without any interest) against return of the deliveries supplied.

6.6 In the event that the above mentioned circumstances under Clause 6.2 make it impossible for DrM to fulfill its delivery obligations, DrM is entitled to terminate the contract according to Clause 12 below.

6.7 The claims of the Customer arising from or in connection with any delays in the performance of the Contract are expressly and exhaustively regulated in this Clause 6.

7. Transfer of Risk

7.1 Unless otherwise agreed upon in the Order Acknowledgement, the risk of damage to the Supply shall pass to the Customer upon delivery EXW (INCOTERMS 2000).

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

7.3 Agreed delivery terms, such as the INCOTERMS, shall never impose responsibility and/or liability on DrM with regard to export licence requirements, such as the risk of not being able to obtain a licence. Any agreed delivery terms shall be deemed to be amended in this respect.

8. Transport and Insurance

8.1 DrM shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at Customer's expense and risk.

8.2 Objections regarding forwarding or transport shall upon receipt of the Supply or of the shipping documents be immediately submitted by the Customer to the last carrier.

8.3 The Customer shall be responsible for taking insurance against risks of any kind.

9. Acceptance

9.1 The Customer shall have the right and the obligation to inspect the Supply at the works upon receipt of a notice that the Supply is ready for dispatch ("Dispatch Notice").

9.2 If the Customer requests further testing, this has to be specially agreed upon and paid for by the Customer.

9.3 If the customer fails to inspect the Supply within 14 days of receipt of the Dispatch Notice, the Supply shall be deemed to have

been accepted by the Customer and a Transfer of Risk according to Clause 7 occurs.

- 9.4 An acceptance report shall be prepared which shall be signed by both Parties or by their representatives. The report shall either state that acceptance has taken place, or that it has taken place under reservations or that the Customer has refused acceptance. In the last two cases, all deficiencies shall be listed in detail and individually in the report.
- 9.5 In the event the Supply is shown to be defective, the Customer's rights are restricted to demanding that DrM remedy the defects within a reasonable time. Thereafter a further acceptance procedure shall take place.
- 9.6 In the event the inspection shows that the Supply is not defective or that it reveals minor defects, the Supply shall be deemed to have been accepted by the Customer upon completion of the inspection. DrM shall remedy minor defects without delay.
- 9.7 The claims of the Customer arising from or in connection with any defects of the Supply are expressly and exhaustively regulated in this Clause 9.

10. Warranty

10.1 Warranty period

The warranty period for the equipment, mechanical and workmanship, is 12 months from start up, or 18 months after receipt of the Dispatch Notice, whichever elapses earlier.

For replaced or repaired parts the warranty period starts anew and lasts 12 months after replacement or completion of the repair or acceptance, but not longer than the expiry of a period being double to the warranty period as stipulated above.

The warranty 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 DrM the possibility of remedying such defect.

10.2 Liability for defects in material, design and workmanship

Upon written request of the Customer, DrM undertakes at its choice to repair or replace as quickly as possible any parts of the Supply which, before the expiry of the warranty period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become DrM's property. DrM shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in DrM's works, the Customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, traveling, living, dismantling and reassembly of the defective parts.

10.3 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 warranty period at the latest. If an acceptance test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality.

If the express warranties are not or only partially achieved, the Customer may first of all require DrM to carry out the improvements immediately. The Customer shall give DrM the necessary time and opportunity 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 the price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the Supply 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 DrM can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

10.4 Exclusions from the liability for defects

Excluded from DrM's warranty 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, assembly work not undertaken by DrM, or resulting from other reasons beyond DrM's control.

10.5 Supplies and services of subcontractors

For supplies and services of subcontractors requested by the Customer, DrM assumes warranty and liability for defects only to the extent of such subcontractors' warranty and liability obligations.

10.6 Exclusivity of warranty claims

With respect to any defective material, design or workmanship as well as to any failure to fulfill express warranties, the Customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 10.1 to 10.5.

10.7 Liability for secondary obligations

DrM 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 secondary obligations are concerned.

11. Non-performance, bad performance and their consequences

11.1 In all cases of bad performance or non-performance not expressly covered by these General Terms - in particular if DrM, without valid reasons, starts execution of the Supply 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 DrM's fault, or if the Supply and Services has been executed contrary to the terms of the contract due to DrM's fault -, then the Customer shall be entitled to grant a reasonable additional period for the Supply or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to DrM's fault, the Customer shall be entitled to terminate the contract with respect to the Supply 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 Supply.

11.2 In such case Clause 14 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 % of the contract price for the Supply affected by the termination.

12. Termination of the contract by DrM

12.1 The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the Supply or Services or considerably affect the activities of DrM, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, DrM shall be entitled to terminate the contract or the parts affected thereby.

12.2 If DrM 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 DrM shall be entitled to the payment of those parts of the Supply and Services which have already been carried out. Claims for damages on the part of the Customer because of such termination are excluded.

13. Termination/Cancellation of Orders of the contract by Customer

13.1 In the event that work and/or equipment or Supply ordered is cancelled at Customer's request, DrM shall be entitled to be paid for all costs incurred in relation to planning & design work, work performed and for procured or subcontracted items relating to the work for which DrM is unable to avoid making payments, together with a fair and reasonable contribution to overheads and profit.

14. Exclusion of further liability on DrM's part

14.1 All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the Customer, irrespective on what ground they are based, are exhaustively covered by these General Terms. 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.

14.2 This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of DrM, but does apply to unlawful intent or gross negligence of persons employed or appointed by DrM to perform any of its obligations.

15. Right of recourse of DrM

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 DrM, then the latter shall be entitled to take recourse against the Customer.

16. Concluding Provisions

16.1 The Order Acknowledgment, these General Terms and the INCOTERMS 2000 constitute the entire agreement between the parties and supersede all prior agreements, arrangements and statements of the parties.

16.2 Any amendments to the contract and these General Terms shall be in written form.

16.3 The invalidity or unenforceability of any part of these General Terms and Conditions of Contract and of any contract between the parties which refers thereto shall not affect the validity of the remaining terms and conditions thereof.

17. Jurisdiction and applicable law

17.1 Place of jurisdiction shall be Zurich, Switzerland. DrM may, however, also bring an action before the courts at the Customer's domicile.

17.2 The contract shall be governed by the substantive laws of Switzerland. The application of the United Nations' Convention on Contracts for the International Sale of Goods of April 11, 1980, shall be excluded.

DrM, Dr. Müller AG, Männedorf
February 2011