

General conditions of contract of Transver AG

1. The supplier's quotations are binding only for a **period of acceptance** which is expressly stated therein. They may not in any way be revealed to any third party.

The contract shall be deemed to have been entered into upon receipt of supplier's **written acknowledgement** stating his acceptance of the order.

The **supplies** and **services** are exhaustively specified in the order acknowledgement 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.

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

The supplier reserves all **rights to plans** and **technical documentation** which are delivered to the customer. The customer acknowledges these rights and will use the documentation solely for the purpose for which it is provided.

2. The supplier is entitled to make **price adjustments** after conclusions of the contract provided that:

- a change of delivery time occurs subsequently for reasons beyond supplier's control, or is agreed.
- the extent of the agreed supplies or services has been changed
- the goods or execution have been changed because the information and samples submitted to the supplier by the customer did not correspond to actual circumstances or was incomplete

3. The supplier's **supply and performance obligations shall commence** as soon as all the customer's information clarifying the order has been received by the supplier, the contract has been made, the customer's performances to be provided before or upon the commencement of the contract have been provided and as soon as all necessary official authorisations have been granted. If the customer delays in providing performances which he is to provide during the lead-time, in particular if the customer fails to observe the terms of payment, the lead-time shall be correspondingly extended.

The **delivery time fixed by contract** shall also be reasonably extended if:

- the customer subsequently changes the information required by the supplier for performance of the contract and thereby causing a delay in the delivery of the supplies or services
- impediments occur which the supplier is unable to overcome despite all necessary care, irrespective of whether they occur on the premises of the supplier, the customer or a third party. Examples of such impediments are war, mobilisation, insurrection, epidemics, serious disruptions of operations and also shortages of important work pieces.

In case a specific delivery date instead of a delivery period is fixed, such a date shall correspond to the last day of a delivery period.

The **delivery date** shall be the day on which the supplier's products are completed in his works. The supplier shall not have to accept responsibility for any delays in any acceptance procedures.

4. If expressly agreed, the customer may claim **compensation for late delivery** in so far as any delay was demonstrably attributable to the supplier and the customer is able to prove prejudice as a consequence of that delay. If the customer is tied over by means of a substitute delivery, the claim to compensation for delay shall lapse. The compensation for each complete week of delay shall not exceed 0.5% and shall total no more than 5% of the contractual price of the delayed portion of the delivery. No claim for compensation for delay may be made in respect of the first two weeks of delay. After the maximum compensation for delay has been reached, the customer shall allow the supplier in writing a reasonable grace period which shall not generally be less than 20% of the lead-time originally available to the supplier. If the grace period expires unsuccessfully for reasons attributable to the supplier, the customer may refuse to accept the delayed portion of the delivery.

Other than those expressly set out in this Clause 4, the customer shall have no rights or claims for delayed delivery or delayed performances by the supplier.

5. The **enjoyment and risk** shall be transferred to the customer when the consignment is despatched from the supplier's works.

If dispatch is 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.

- 6 **Payments** shall be made to the supplier's domicile in accordance with the agreed payment conditions. The **dates of payment** shall also be observed if transport, delivery, installation, commissioning or taking over of the supplies and services is delayed or prevented due to reasons beyond supplier's control, or if unimportant parts are missing, or if postdelivery work is to be carried out without preventing the supplies from use.

If the **advance payment** or the contractually agreed securities are not provided in acceptance 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 whatsoever, 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 can not 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.

If the customer delays in the agreed terms of payment, it shall be liable, without formal reminder for **interest on defaulted payments** from the due date on. The interest rate shall be the customary interest rate at the customer's domicile for short-term unsecured loans, but it shall be at least 4% above the 3-months Swiss Francs-Libor rate as applicable from time to time.

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

The customer shall co-operate in any measures necessary for the **protection of supplier's title**. In particular upon entering into the contract he authorises 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 his own cost, **maintain the supplies** and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that the supplier's title is in no way prejudiced.

8. 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.

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.

Carrying out of a **taking-over test** needs a special agreement. Taking-over shall also be deemed completed:

- if the taking-over test can not be carried out on the date provided for due to reasons beyond supplier's control
- if the customer refuses the acceptance without being entitled to do so.
- as soon as the customer uses the supplies or services

9. The **warranty period** shall be 12 months (6 months in the case of double-shift working to a maximum of 8 hours) if nothing different has been agreed upon before. 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 reason 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 replaced or repaired parts the warranty period starts anew and lasts 6 months after replacement or completion of the repair or taking-over.

The warranty expires prematurely if the customer or a third party undertakes modifications or repairs without the supplier's agreement, if non-original spare parts or wearing parts are used, if the customer does not promptly take suitable steps to reduce the prejudice when a fault occurs or if the customer has not given the supplier suitable opportunity to remedy the fault.

10. Upon written request of the customer, the supplier undertakes at his choice to **repair or replace** as quickly as possible any parts of the supplies which are proved to be **defective or unusable** before the expiry of the warranty period as a consequence of bad materials, faulty design or inadequate workmanship. Replaced parts shall become the supplier's property. The supplier shall bear the rectification costs incurred in his works. If rectification is impossible in the supplier's works and thus technical staff have to be sent to the delivery site, the additional costs occasioned thereby and the costs of installing and removing the defective parts shall be shared equally between the customer and the supplier.

If **such improvements fail completely or in part**, the customer may claim such compensation as has been agreed before 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 can not be remedied within a reasonable time and provided the supplies and services can not be used for their specific 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 the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

11. Liability for **guaranteed attributes** shall be restricted to those attributes which are expressly designated as such in the acknowledgement of order or in the specifications. The liability for guaranteed attributes is valid until the expiry of the guaranteed period at the latest. If an acceptance test is agreed, the guarantee shall be deemed to be fulfilled if proof of the attributes in question is provided at that test.

If, during the warranty period, it is found that all or some of the guaranteed attributes are not fulfilled, the customer may claim rectification by the supplier. The customer shall allow the supplier the necessary time and opportunity for such rectification.

12. The supplier's **warranty** and liability **shall exclude** all prejudice which is not demonstrably occasioned by bad materials, faulty design or inadequate workmanship and thus, for example, prejudice caused by natural wear and tear, inadequate maintenance, failure to comply with operating instructions, over-loading, unsuitable working materials, installation and assembly work which is not carried out by the supplier, and any other reasons for which the supplier cannot be held responsible.

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.

13. The supplier shall supply the products with the customary **safety precautions** or those prescribed at his domicile. The customer undertakes to order or itself arrange any further safety precautions on the supplier's premises if and in so far as such precautions are prescribed at the place where the supplier's products are to be used or if such precautions are or become necessary in any other way. If the customer does not fulfil or inadequately fulfils his obligation and if the supplier suffers prejudice therefrom, the customer shall compensate the supplier for such prejudice.
14. The customer shall assist the supplier in **patent disputes** caused by alleged infringement of patents by the supplier's products. The sup-

plier shall indemnify the customer for claims for compensation up to the amount of the purchase price of the products or of those parts of the products which are directly the subject of the action for infringement of patent. The customer waives all further claims.

15. The contract shall be adapted appropriately, 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. In so far as such adaptation is economically not justifiable, the supplier shall be entitled to **terminate the contract** or the parts affected thereby.

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

16. The **customer** shall have **no claims other** than those expressly referred to in these Terms and Conditions, irrespective of the legal ground therefore, and especially claims to further damages or indemnification for consequential damage, such as loss of production, *lucrum cessans* or reduced profit and also claims deriving from non-contractual prejudice. Nor shall the supplier be held in any way liable for the consequences of modifications which he may have made at the customer's express request and contrary to his own express advice.

17. 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 the supplier, then the latter shall be entitled to take recourse against the customer.

18. Normally the supplier places at the disposal of the customer, against a charge, supplier's expert mechanics for the purpose of erection, provided the prevailing conditions allow us to do so. The terms will be agreed from case to case.

The wiring to the mains as well as air and water supply have to be installed according to supplier's layout, so that supplier's mechanic has no other work to carry out than that of the actual setting to work of the machine.

If the erection is included in supplier's price or if a lump sum has been agreed, any loss of time incurred owing to the necessary preparations not having been made is charged up on supplier's usual terms. Similarly any extra work carried out by supplier's mechanic will be invoiced up.

19. The **place of performance** for delivery, payment and all other obligations of both parties shall be the supplier's domicile, the courts of which shall have **jurisdiction**. The supplier may, however, institute proceedings against the customer at the latter's registered office. Legal relations between the parties shall be governed by Swiss law and application of the United Nations Convention on the International Sale of Goods of 11.04.80 is expressly excluded for Swiss transactions.

20. In addition to these General Terms and Conditions, the **customer's contractual conditions** shall be valid if and in so far as they have been expressly accepted in writing by the supplier and do not conflict with these General Terms and Conditions of Sale and the supplier's quotation and acknowledgement of order. The text of the order which is confirmed in writing by the supplier shall, however, have precedence over these Terms and Conditions.