

BOGRAMA AG - General Terms and Conditions for the Delivery of Machines and Spare Parts (2011)

1. General

1.1 The agreement shall be concluded upon receipt of the supplier's written confirmation that it accepts the order (order confirmation). Orders, containing no acceptance period shall not be binding.

1.2 These delivery terms shall be binding if they are declared applicable in the offer or in the order confirmation. The buyer's deviating terms and conditions shall only be valid if they have been expressly accepted by the supplier in writing.

1.3 All of the contractual parties' agreements and legally relevant declarations must be in writing to be deemed valid.

1.4 If a term or condition in these General Terms and Conditions for the Delivery of Machines and Spare Parts should prove in whole or in part ineffective then the contractual parties shall replace this term or condition with a new agreement coming as close as possible to their legal and commercial aims.

2. Scope of deliveries and service

The supplier's deliveries and services shall be subsequently listed in the order confirmation, including any attachments to this.

3. Plans and technical documentation

3.1 Brochures and catalogues shall not be binding unless otherwise agreed. Information in technical documents shall only be binding if expressly covenanted.

3.2 Each contractual party reserves all rights to plans and technical documents, which they have provided to the other party. The receiving contractual party shall recognise these rights and shall neither in whole nor in part make the documents accessible to any third parties without prior written authorisation of the other contractual party nor use them outside of the purposes for which they have been provided.

4. Prices

4.1 The prices for deliveries within Switzerland and the Principality of Liechtenstein shall be understood to be net, free delivery, insured, without packaging, including installation. Statutory value added tax shall be added.

For extensions to existing systems installation shall be calculated on a time and materials basis.

4.2 The prices for export deliveries shall be understood – in lieu of an agreement to the contrary – to be net ex works, without packaging, in euros or Swiss Francs, without deductions of any kind, without Swiss value added tax (export).

All ancillary costs, such as for freight, insurance, export, transit, import and other permits and certificates, shall be born by the buyer.

The buyer shall likewise bear all types of taxes, tolls, fees, customs duties and the like, which are levied in association with the agreement, or reimburse the supplier against corresponding documentation if it has been required to pay these. In addition, the buyer shall deliver to the supplier all export confirmation documents for proof of export vis-à-vis Swiss VAT.

4.3 A price shall moreover be appropriately adjusted be if the delivery term is subsequently extended due to one of the reasons specified in Paragraph 7.2. or the documents delivered by the buyer did not correspond to the actual circumstances or were incomplete.

5. Payment terms

5.1 Payments shall be made to the supplier's head office without deducting discounts, expenses, taxes, tolls, fees, customs duties or the like.

In lieu of any agreements to the contrary the price shall be paid in the following instalments:

- One third as a deposit within 8 days of the buyer's receipt of the order confirmation,
- One third following the supplier's readiness for dispatch
- The remainder 30 days after delivery

5.2 The payment schedule shall also be adhered to if transport, delivery, installation, commissioning or acceptance of the deliveries or services are delayed or made impossible for reasons, for which the supplier is not responsible, or if unessential parts are missing or rectification proves necessary, which makes the use of the deliveries impossible.

5.3 If the deposit or securities to be provided upon contract conclusion have not been rendered as stipulated in the agreement the supplier shall be entitled to adhere to or withdraw from the agreement and in both cases to request compensation for damages.

If the buyer is in arrears with another payment or if due to circumstances arising following contract conclusion the supplier has grounds to seriously fear incomplete or untimely receipt of the buyer's payments, the supplier shall be authorised to discontinue further execution of the agreement without prejudice to its statutory rights and to retain deliveries ready for shipment until new payment and delivery terms are agreed and the supplier has received adequate securities. If such an agreement cannot be met within an appropriate period or the supplier receives no adequate securities, it shall be entitled to withdraw from the agreement and request compensation for damages.

6. Retention of title

The supplier shall remain owner of all its deliveries until it has received the payments specified in the agreement in full. The buyer shall be obligated to collaborate in measures, which are required to protect the supplier's property; in particular it shall authorise the supplier upon conclusion of the agreement, to make an entry or note of retention of title in public registers, books or the like, at the buyer's expense, pursuant to the relevant state laws and satisfy all formalities to this effect.

The buyer shall maintain the objects delivered at its expense for the duration of the retention of title. It may neither damage nor pass on nor sell them.

7. Intellectual property

Drawings, illustrations, descriptions and offers of products shall remain our property and may neither be made accessible to third parties without written permission nor copied, nor used for in-house production of the related objects; the same shall also apply accordingly to the products, incl. software.

8. Delivery schedule

8.1 The delivery schedule shall begin as soon as the agreement has been concluded, all official formalities are obtained, payments to be rendered upon ordering have been made and any securities provided and important technical items have been revised. The delivery schedule shall be deemed adhered to if sent to the buyer prior to expiration of the notification of shipping readiness.

8.2 The delivery term shall be appropriately extended:

a) If the supplier does not punctually receive the information it requires to satisfy the agreement or if the buyer subsequently amends it and hence causes a delay in the deliveries or services;

b) If hindrances arise, which the supplier cannot avoid despite exercising due diligence, regardless of whether they arise at its location, the buyer's or a third party's. Such hindrances are, for example, epidemics, mobilisation, war, riots, significant business disruptions, accidents, labour conflicts, delayed or defective delivery of the required raw materials, unfinished or finished products, sub-standard production of important tools, official measures or omissions, acts of god;

c) If the buyer or third party is in arrears with the works it is to execute or delayed in performance of its contractual obligations, particularly if the buyer does not adhere to the payment conditions.

8.3 The buyer shall be entitled to assert a contractual penalty for delayed deliveries if a delay was demonstrably the supplier's fault and the buyer can document damages as a result of this delay. If the buyer was assisted by replacement delivery the claim shall be reduced to damage caused by delay.

For each full week of delay the damage caused by delay shall amount to a maximum of ¼ %, totalling, however, no more than 5%, calculated on the con-

tractual price of the delayed parts for the delivery. The first two weeks of delay shall not give rise to a right to claim for damage caused by delay.

After reaching the maximum damage caused by delay the buyer shall set an appropriate grace period for the supplier in writing. If this grace period is not adhered to, for reasons for which the supplier is not responsible, the buyer shall be entitled to refuse acceptance of the delivery of delayed parts.

8.4 The buyer shall have no rights or claims due to delayed deliveries or services except for those expressly set forth in this Paragraph 8. This limitation shall not apply for unlawful intent or gross negligence of the supplier, however it shall also apply for unlawful intent or gross negligence of auxiliary persons.

9. Transfer of benefit and risk

9.1 Benefit and risk shall pass to the buyer at the latest upon departure of the deliveries ex works.

9.2 If shipping is delayed at the buyer's request or for other reasons for which the supplier is not responsible the risk shall pass to the buyer at the originally scheduled point in time for the ex works delivery. From this point in time onwards the deliveries shall be stored and insured for account and risk of the buyers.

10. Inspection and acceptance of the deliveries and services

10.1 The supplier shall inspect the deliveries and services to the customary extent prior to shipping. If the buyer requests more thorough inspections then these shall be specially agreed and paid for by the buyer.

10.2 The buyer shall inspect deliveries and services within an appropriate period and admonish the supplier immediately in writing regarding any defects. If it fails to do so the deliveries and services shall be deemed accepted.

10.3 The supplier shall remedy the defect reported to it pursuant Paragraph 10.2 as quickly as possible, and the buyer shall give it opportunity to do so.

10.4 Executing an acceptance inspection as well as determining the provisions valid for this shall require a separate agreement.

10.5 The buyer shall have no rights and claims due to defects of any kind in deliveries or services except for those expressly set forth in this Paragraph 10 as well as in Paragraph 11 (guarantee period, liability for defects).

11. Guarantee, liability for defects

11.1 The guarantee shall be for 12 months, 6 months for multiple shift operation. It shall begin with the departure of the deliveries ex works.

For spare or repaired parts the period of guarantee shall start anew and last for 6 months from replacement or completion of the repair.

The guarantee shall expire prematurely if the buyer or third party undertakes improper modifications or repairs or if the buyer – in the event a defect has arisen - does not promptly undertake all appropriate measures to mitigate damages and give the supplier opportunity to remedy the defect.

11.2 The supplier shall be obligated at the buyer's written request to improve or repair at its discretion all parts of the supplier's deliveries up until expiration of the period of guarantee, which are faulty or inoperative demonstrably due to poor materials, defective construction or defective execution, as quickly as possible. Replaced parts shall be the supplier's property if it does not expressly waive this.

11.3 For export deliveries the supplier shall only bear the costs that are incurred in its workshops through the repair or replacement of defective parts as well as associated shipping and transport costs.

11.4 For deliveries within Switzerland and the Principality of Liechtenstein the supplier shall bear the costs for the repair or replacement of defective parts, as well as the costs associated therewith for shipping, transport, installation and disassembly by plant technicians.

11.5 Warranted properties shall only be those, which are described as such in the specifications. The warranty shall be valid until expiration of the period of guarantee at the latest.

If the warranted properties are not or only partially satisfied the buyer shall initially be entitled to immediate remedy of defects by the supplier. The supplier shall grant the buyer the necessary time and opportunity to do so. If this rectification is not or is only partially successful the buyer shall be entitled to an appropriate reduction of the price. If the defect is so serious that it cannot be remedied within an appropriate period and the deliveries or services for the announced purpose are not or are only usable to a significantly reduced degree, the buyer shall have the right to refuse acceptance of the defective parts. The supplier can only be obligated to repay the amounts, which had been paid to it for the related parts prior to the withdrawal.

11.6 Damages shall be excluded from the supplier's guarantee and liability, which are not demonstrably incurred as a result of poor materials, defective construction or defective execution, e.g. resulting from natural wear and tear, defective maintenance, disregard of operating instructions, excessive use, unsuitable operating equipment, chemical or electrolytic influences, construction or installation works not executed by the supplier as well as due to other grounds, for which the supplier is not responsible. Wear parts shall be excluded from the guarantee.

11.7 For sub-supplier deliveries and services, which are stipulated by the buyer, the supplier shall grant the guarantee solely within the framework of the relevant sub-supplier guarantee obligations.

11.8 The buyer shall have no rights or claims for defects in materials, construction or execution as

well as defects in warranted properties outside of those expressly cited in Paragraphs 11.1 through 11.7.

12. Exclusion of other supplier liabilities

All cases of contractual breach and the legal consequences thereof, as well as all buyer claims asserted on the basis of whatever legal foundation shall be conclusively regulated in these terms and conditions. Particularly all claims for compensation for damages, reduction, nullification of the agreement or withdrawal from the agreement not expressly set forth shall be excluded. In no event shall the buyer's claims for compensation for damages exist, which are not incurred to the object of delivery itself, such as for example loss of production, loss of use, loss of orders, loss of profits as well as other direct or indirect damages. This exclusion of liability shall not apply for unlawful intent or gross negligence of the supplier, however it shall also apply for unlawful intent or gross negligence by auxiliary persons.

Apart from that, this exclusion of liability shall not apply to the extent compulsory law opposes it.

13. Jurisdiction and applicable law

13.1 Jurisdiction shall be the supplier's head office.

13.2 The legal relationship shall be subject to Swiss material law.