

General Export Conditions of Supply

1. General

- 1.1 The contract shall be deemed binding on receipt of the written order acknowledgement from the customer or on receipt of the order acknowledgement signed by the customer.

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

- 1.2 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer shall only be valid if expressly accepted and confirmed by the supplier in writing.

- 1.3 All agreements, legally relevant declarations and amendments of the parties to the contract must be in writing in order to be valid.

2. Scope of supplies and services

The supplies and services of the supplier are exhaustively specified in the order acknowledgement and in the appendices thereto. The order acknowledgement prevails in case of contradictions between the order acknowledgement and the appendices. The supplier shall be entitled to make any changes that lead to improvements provided such changes do not result in a price increase.

3. Plans and technical documents

- 3.1 Unless otherwise agreed on, 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 plans and technical documents provided to the others. The party receiving such documents recognises 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

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. Otherwise the supplier can assume that the offered supplies and services comply with those standards and regulations at the place of business of the customer. Additional or other safety devices shall be supplied to the extent as having been expressly agreed on.

5. Prices

- 5.1 Unless otherwise agreed on, all prices shall be deemed to be net FCA Kleindöttingen/Switzerland (according to Incoterms 2000), excluding packing, in freely available

Euros or Swiss francs without any deduction whatsoever.

Any and all additional charges, such as freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.

- 5.2 The supplier reserves the right to adjust the prices in case the exchange rate (foreign currency/CHF) or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the price 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 discount, expenses, taxes, levies, fees, duties, and the like.

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

- 30% as advance payment within 10 working days on receipt of the order acknowledgement by the customer,
- 30% on expiry of two thirds of the agreed delivery time,
- the remainder within one month after supplier's advice that the supplies are ready for dispatch.

Payment shall be deemed to be effected as far as Euro or Swiss francs have been made freely available to the supplier at supplier's domicile.

- 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. The customer must not hold back, cut or charge payments due to complaints, requirements or counter claims not being acknowledged by the supplier.

- 6.3 If the advance payment or 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 whatsoever, is in delay with a further payment, or if the supplier is seriously concerned that he 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 his 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, he 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 customer's domicile, but not less than 4 % over the current discount rate of the Swiss National Bank. The right to claim further damages is reserved. In case of delay by the customer all claims of the supplier become due, including those of other supplies. As long as the supplier is in arrears, the supplier is entitled to retain further orders from the customer until payment is effected.

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 on 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, nor annulled, the supplies should neither be sold, seized or otherwise debited.

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, 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 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 on customer's fulfilling of his contractual obligation.

8.3 The delivery time is reasonably extended:

- a) 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;
- b) If hindrances occur which the supplier cannot prevent despite using the required care, regardless whether they originate from him, from the customer or from a third party. Such hindrances 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, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes, acts of God;
- c) If the customer or a third party is behind schedule with work he has to execute, or with the performance of his 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 in so far as it can be proved that the delay has been caused though 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% for every full week's delay and shall in no case whatsoever altogether exceed 5 % 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 supplies. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and claim refund of the money already paid against return of the deliveries supplied.

- 8.5 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; Clauses 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 this Clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed.

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, (e.g. hired drums) 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 pass to the customer by the date of their leaving the works.
- 10.2 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.

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 on receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

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

12. Inspection and taking-over 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 on and paid for by the customer.
- 12.2 The customer shall inspect the supplies and services within a reasonable period (20 days after date of delivery) 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. After remedy of such deficiencies, a taking-over test according to Clause 12.4 will be carried out at the request of the customer or of the supplier.
- 12.4 Subject to Clause 12.3 the carrying out of a taking-over test as well as laying down the conditions related thereto need a special agreement. In the absence of such agreement the following shall apply:

- The supplier shall advise the customer in time of the execution of the taking-over test so that the customer or his representative can attend.
- The supplier is entitled – but not bound to carry out the take-over test with his own personnel.
- A taking-over report shall be prepared which shall be signed by both the customer and the supplier or by their representatives.

In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse the acceptance of the supplies or services and the signing of the taking-over report. The supplier shall remedy such deficiencies without delay.

- In case of considerable deviations from the contract or of serious deficiencies the customer shall give the supplier the possibility of remedying these within a reasonable time. Thereafter a further taking-over test shall take place.

If during this test considerable deviations from the contract or serious deficiencies appear again, which the supplier cannot remedy within a short time, the customer is entitled to claim a price reduction from the supplier.

If, however, the deviations and deficiencies appearing during such tests are of such magnitude that the supplies and services cannot be used for their specified purpose, or 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 justifiable, to terminate the contract. In such case the supplier can only be held liable to reimburse the sums which have been paid to him for the parts affected by the withdrawal from the contract.

12.5 Taking-over shall also be deemed completed

- If the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;
- if the customer refuses acceptance without being entitled to do so;
- if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;
- as soon as the customer uses the supplies or services.

- 12.6 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (guarantee, liability for defects).

13. Guarantee, liability for defects

13.1 Guarantee period (Warranty period)

The guarantee period is 24 months, or 12 months for electric/electronic components. 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 on before, or, if the supplier undertakes the erection, on completion thereof. If dispatch or talking-over or erection are delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 27 months after supplier's notification that the supplies are ready for dispatch. A right to be consulted when selecting the pipe routing as well as the erection planning must be granted to the supplier.

For replaced or repaired parts the guarantee period is extended by 6 months after replacement or completion of the repair or taking-over.

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

On 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, before the expiry of the guarantee period, are proved to be defective due to poor 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 his works. If the repair cannot be carried out in supplier's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

13.3 Liability for granted properties

Granted properties are only those, which have, been expressly specified as such in the order acknowledgement or in the specifications. Granted properties 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 properties.

If the granted properties are not or only partially fulfilled, 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 magnitude 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, 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 him for 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 poor material, faulty design or poor workmanship, e. g. those resulting from normal wear, poor maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, 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 specified by the customer, the supplier assumes guarantee and liability for defects only to the extent of the relevant subcontractors' guarantee and liability obligations.

13.6 Exclusivity of guarantee 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 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, poor performance and their consequences

14.1 In all cases of poor performance or non-performance not expressly covered by these General Export Conditions of Supply – in particular if the supplier, without valid reasons, starts execution of the supplies 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 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, or certain to be 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 Returned goods, i.e. standard materials only, carriage paid, will be accepted – provided they are in unused and resalable condition – and credited as follows: 50% if the orderer placed incorrect orders, and 100% if the supplier made incorrect deliveries. The transport of returned goods must take place within 30 days from the delivery date. Any additional costs for goods to be returned through the orderer's fault will be charged. Returned pipes less than twenty meters shall not be accepted.

14.3 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 claim for damages shall be limited to 10 % 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 appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or 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 he 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. Exclusion of further liability on the supplier's part

All cases of breach of contract and the relevant legal consequences as well as all claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these General Export Conditions of Supply. 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. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

17. Right of recourse of the supplier

If, through actions or omissions of the customer or of persons employed or appointed by him to perform any of his 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. Erection

If the supplier undertakes the erection or the supervision of the erection, the General Conditions of Erection of the Brugg Rohrsystem AG, CH-5314 Kleindöttingen/Switzerland shall apply.

19. Jurisdiction and applicable law

- 19.1 The place of jurisdiction for both the customer and the supplier shall be at the registered office of Brugg Rohrsystem AG, CH-5314 Kleindöttingen/Switzerland.
- 19.2 Swiss substantive law, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) shall govern the contract.