

# General Conditions for the Procurement of Machines and Plant

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## 1. Scope

- (1) These "General Conditions for the Procurement of Machines and Plant (GC for Machines)" shall apply to any procurement of machines, plant parts and complete or inter-linked plant (hereinafter all referred to by the general term "Equipment") by the Customer ("Customer") and all performance connected with the planning, design, manufacture, supply, commissioning, installation, removal or modification and the maintenance, inspection or modernisation of the Equipment in connection with existing goods and services insofar as reference is made to these Conditions in the call for tenders, the order or in the contract; in such case any general purchase conditions of the Customer printed on the reverse side of an order form shall not apply. These GC for Machines shall apply as a supplement to, and subordinate to any individual contract provisions agreed between the Customer and Contractor ("Contractor").
- (2) These GC for Machines shall apply to the exclusion of any general conditions of business or other conditions of the Contractor; this shall also apply even if the Customer does not expressly object to the conditions of the Contractor. Any conflicting or deviating conditions of the Contractor in relation to the order or the GC for Machines shall not be recognised and shall not apply unless such application is expressly agreed to.
- (3) Upon the provision of the offer but no later than at the time of the carrying out of the order these Conditions shall be deemed to have been accepted unconditionally.

## 2. Offers, Authority to Represent, Terms of Trade

- (1) All offers shall be at no expense to the Customer and non-binding for the Customer.
- (2) Any legally-binding orders, awarding of contracts or other legally-binding statements of the Customer related to the formation, amendment or ending of any contract must be made by the purchase department of the Customer and must be, for the purposes of evidence, in a written form. Construction managers, project managers, operation managers and any consultants or service providers shall not have any authority to represent the Customer. Any oral orders, awarding of contracts or other concluding of contracts by any employee or representative of the Customer must be confirmed in writing by the Customer in order to be effective unless such declarations were provided by a member of an executive body. The Contractor shall notify the purchase department of the Customer immediately

as to any awarding of a contract, order, concluding of a contract or any other action or limitation related to remuneration undertaken by any employee or representative of the Customer. Silence on the part of the Customer in relation to any offers including those provided in electronic form shall not be deemed to be an acceptance thereof.

- (3) All materials including documentation shall be – unless otherwise expressly agreed – produced in the German language.
- (4) INCOTERMS in the version current at the time of the concluding of the contract shall apply to any interpretation of the terms of trade.

## 3. Scope of Performance and Completion Clause

- (1) Any and all performance undertaken by the Contractor shall correspond with the contractual scope of performance and in particular the material qualities specified therein and shall be suitable without any limitations for the normal period of use and the purpose required by the contract or, if such is not determined, for the purpose for which such is normally used. Conformity with the duties set out in section 3 shall be determined on the basis of the agreed general completion date or, in the absence of such, the date of acceptance.
- (2) The following performance and duties shall always constitute an integral part of the scope of performance and shall not be subject to any additional consideration even if such are not expressly or separately listed in the contractual documents:
  - a) all goods and services necessary for the full completion and unlimited and correct and safe use and operation of the Equipment when in continuous operation regardless of whether such are actually detailed individually in the call for tenders, the offer, technical specifications or other correspondence;
  - b) compliance with all legal and regulatory requirements in relation to the Equipment and in particular but not limited to work security, work safety, product safety and environmental protection;
  - c) the production and provision of technical documentation which in accordance with standards reflects the actual state of performance and consists of the performance documentation, operation manual and maintenance instructions with spare part lists in each case in accordance with the technical specifications or any separate agreement in relation thereto;
  - d) models and templates (insofar as such are necessary for the performance of an order)

as well as any non-standard auxiliary equipment; upon readiness for operation the Customer shall be provided with a list and such shall be the basis for its decision as to which models, templates or auxiliary equipment is to be delivered to it before acceptance and which shall be transferred to its ownership upon completion of the acceptance procedures;

- e) spare parts lists for all consumables and for parts subject to wear and tear as well as for any necessary spare parts for regular maintenance and inspection work; corresponding lists with details of prices are to be provided by the Contractor whereby the Contractor undertakes to clearly identify the original manufacturer details; the spare parts lists shall be so clear and complete that the Customer is able to make inquiries with, and to order such from third parties.

- (3) The Contractor undertakes to carry out the scope of the provision of goods and services in accordance with the applicable European and German legal requirements. Notwithstanding any additional legal provisions, the scope of performance for the goods and services shall be undertaken so that the requirements of work safety, the avoidance of danger and environmental protection can be ensured.

In particular, product safety laws and related regulations are to be observed. In addition, the EU Machinery Directive 2006/42/EC as well as the applicable relevant norms and the general minimum requirements of the Directive for work equipment under Directive 89/655/EEC are to be complied with, in the applicable version in each case, insofar as such by way of reference or lack of implementation into national law are to be directly observed.

The applicable regulations pertaining to an EC conformity assessment and to any necessary CE labelling must be complied with. The risk assessment shall be provided to the Customer by no later than the commencement of the test operations. Any necessary declaration of conformity (e. g. for a complete machine) must be provided by no later than the time of readiness for operation. Any necessary installation declarations (e. g. for an incomplete machine) must be provided, at the latest, by the beginning of the test operations. The Contractor shall perform any and all assessment, declaration and labelling obligations in accordance with the requirements of law in order to allow for the designated use of the equipment.

- (4) The Contractor shall notify the Customer in good time and in detail if and to what extent

any changes to the scope of performance shall be necessary in terms of the contract performance. In addition, without undue delay the Contractor shall give notice of any concerns in relation to the intended and required method of performance or in relation to any instructions of the Customer or in relation to any orders.

- (5) Further to the above performance the following shall also constitute an integral part of the contract and shall not be subject to any further consideration for performance:
- any lifting devices as well as all necessary equipment and scaffolding with exception of cranes which the Customer can make available in accordance with a separate agreement;
  - the complete delivery of the Equipment in accordance with paragraph 1 including packing insofar such is necessary;
  - the removal of any waste resulting from the work of the Contractor;
  - all necessary disassembly, cleaning and modification work to the existing plant, facilities and buildings insofar as such are necessary for the installation, operation and use of the total scope of performance;
  - the loading of adapted old parts in furnace sizes onto containers or wagons according to type;
  - the complete assembly of the Equipment ready for operation including test operations and commissioning up to the time of the acceptance procedures; as well as the loading and unloading of parts including any intermediate transporting to the installation or assembly site.

#### **4. Duties to Conduct Investigations and Provide Support**

- (1) The Contractor undertakes to investigate the place of performance, the location of installation in relation to the Equipment and the intended construction site before the concluding of a contract and to make itself fully conversant at such time with the local conditions and to clarify any uncertainty with the Customer. The Customer shall allow the Contractor to undertake these checks in terms of the operational possibilities and provide any information necessary for the provision of an offer insofar as such is possible by reasonable means. Any remaining uncertainties or risks shall be expressly referred to as reservations by the Contractor in its offer.
- (2) In the event that the Contractor does not undertake the required investigations set out in paragraph 1, it is not entitled to rely on such circumstances where these would have been apparent in the course of any investigation. The same

shall apply accordingly to any failure to mention reservations.

- (3) Any measurements to be made as well as checking of drawings in relation to conformity with the existing plant, facilities and buildings necessary for the carrying out of the contract for constructional specifications and assembly and commissioning shall be undertaken by the Contractor itself and at its own responsibility.
- (4) In each case the Contractor shall request from the Customer any agreed or otherwise required planning materials, declarations of approval or other information of the Customer in good time in advance and generally two weeks before the required time.

## 5. Prices and Pricing

- (1) Unless otherwise agreed, prices shall be fixed prices. All prices shall be subject to the respective applicable statutory turnover tax (*Umsatzsteuer*).
- (2) The prices shall cover all that which the Contractor has to perform in terms of its duties at the agreed place of performance. Performance shall take place for the respective agreed place of receipt. For example, the following are included in the scope of performance and the respective price:
  - all costs for technical processing, performance documentation and contract-specific tools (e.g. templates) of the Contractor, any materials to be supplied, wages and additional wage related costs, facilities, surveillance, the provision and correct clearing of the building site, the making available and provision of all equipment, scaffolding, tools, safety measures, barriers, etc., personnel and equipment rooms as well as any operating materials and consumables, necessary for assembly equipment, cutting gases, the transport of such to and from the construction site, any unloading, transport of all materials etc. from the place of storage to the places of use as well as any costs of storage;
  - acceptance tests before commissioning of plant with any substances which could pollute water are to be carried out by an approved expert in accordance with the Administrative Directive for Substances Harmful to Water (VAwS) at the expense of the Contractor.
- (3) If any weights are agreed for mechanical and machine facilities that are subject to a lump-sum price, and if the actual weights fall below

5 % of the agreed weights, the invoiced amount shall be reduced correspondingly for any short weight more than 5 % below based on the average price per kilogramme. Any excess weight shall not be reimbursed.

- (4) The Customer is entitled to have any statics erected by the Contractor checked by a certified structural engineer. Any costs resulting from changes required by the structural engineer shall be borne by the Contractor insofar as it cannot prove that the requirements are unjustified.

## 6. Deviations from Contract

- (1) Any performance deviating from a contract (modified or additional performance) by the Contractor shall require a prior amendment to the contract (supplement) in relation to which the provisions under § 2 paragraph 2 shall apply. The statutory regulations concerning quantum meruit (*negotiorum gestio, Ge schäfts-führung ohne Auftrag*) shall not be affected thereby.
- (2) If the Contractor regards any modified or additional performance as necessary or if it regards any performance required by the Customer as not being within the scope of the contract, the Contractor shall without any need to be requested to do so and without undue delay provide a written amended offer on the basis of the contractual pricing; in this regard any reduced performance under the contract shall be taken into account so as to reduce the respective price. The amended offer must include all technical, commercial and constructional consequences related to the deviation in performance. Any provision of an amended offer shall be at no charge to the Customer.
- (3) Any approval of a deviation from the performance shall be by way of a written supplementary agreement or a written amendment to the order through the purchasing department of the Customer.
- (4) Any deadlines or dates for performance shall be affected by the modifications in the performance only if such is expressly agreed in writing.
- (5) Any right of a party to undertake performance itself or to award additional performance to third party is expressly reserved.

## 7. Packing and Waste

- (1) Packing material shall remain the property of the Contractor unless otherwise agreed.

- (2) The correct and proper disposal of packing materials shall be the responsibility of the Contractor and shall take place at its expense. The existing disposal systems of the Customer may be used only if the Customer has agreed to such.
- (3) Any old plant parts, replaced parts and plant or electrical waste shall remain the property of the Customer.

## 8. Performance

- (1) All objects made available by the Customer shall be used only for the purpose of performing the contract. Subsequently, such are to be returned undamaged and without undue delay. Any excessive use or damage shall be at the expense of the Contractor.
- (2) The Contractor alone shall be responsible for its design complying with applicable regulations and rules.
- (3) Performance documentation of the Contractor shall be received by the Customer purely for the purposes of inspection. Any signing of such documentation confirms only that the Customer has seen the documentation; the Customer does not accept any responsibility thereby for the design, performance or defect-free nature of such. Any suggestions for changes, information or objections of the Customer shall not release the Contractor from its sole responsibility for the provision of the result to be provided under the contract. The Customer shall be entitled to give instructions to the Contractor to ensure the achieving of the contract purpose and a defect-free performance thereof. In relation to any such instructions the Customer shall be liable in terms of § 645 Civil Code (*BGB*) only if the Contractor immediately communicates its written concerns in relation thereto with the related reasons.
- (4) The performance documentation made available by the Contractor to the Customer shall become the property of the Customer if the contract is awarded. Without any special permission the Customer is entitled to use the performance documentation for procuring accessory equipment, for maintenance, for later changes and for the production of spare parts or reserve parts itself or by a third party and the Customer is further entitled for such work to provide the performance documentation to a third party.
- (5) The Contractor shall name an authorised representative. In the case that such person is to be changed the prior written approval of the Customer is required but such approval can

only be refused for good cause (*aus wichtigem Grund*).

- (6) The Customer may refuse for good cause (e.g. serious infringement of work safety regulations) persons working for the Contractor access to its premises.
- (7) All objects brought onto the factory premises of the Customer shall be subject to a factory security inspection and shall be labelled in advance by the Contractor with its name or company logo. In cases of any transport to or from the premises factory security is to be provided with a written list of the objects for countersigning. Wagons and other means of transport shall be processed only during normal office hours.
- (8) The Customer, notwithstanding the duties of the Contractor, reserves the right to inspect the performance of the work on the construction site or at the premises of the Contractor and its subcontractors and to make any objections to incorrect performance and to reject defective parts. The Customer shall be allowed access to the work places, factories and storage rooms in which the objects for the performance or parts thereof are produced or in relation to which the related materials are stored during the hours of business or operations. At the request of the Customer the performance documentation shall be made available to it for inspection and any necessary information shall be provided. The Customer shall have no right to have information revealed concerning production or business secrets of the Contractor. In case of any suspicion of defect or damage in connection with delivered parts of the contractual performance or subcontracted work the Contractor shall, at the request of the Customer, provide information concerning the supplier, wholesaler or subcontractor and provide all necessary details for making a claim against such. Any information concerning production or business secrets acquired during an inspection or from documentation as well as any other briefing shall be treated as confidential by the Customer.
- (9) The Contractor shall have full responsibility for the performance of work at the factory premises of the Customer or for the objects provided by the Customer to the Contractor and the Contractor shall bear all risk in relation thereto (e.g. theft, fire).
- (10) Insofar as the contract documentation requires for documents to be provided, such shall include the provision of a specific version or copy of the same to be retained by the Customer.

## 9. Transfer of Contract / Change of Company Name, Subcontractors,

## Requirements for Deployment of Personnel on Factory Premises

- (1) The Contractor shall notify the Customer without undue delay of any legal transfer of a contract and any changes in its company name, legal form or the seat of the company.
- (2) If in relation to the assets of the Contractor any application is made for insolvency proceedings or if sufficient indications exist that the requirements for an application for insolvency are available or if the Contractor does not have sufficient assets the Customer is entitled to terminate the contract immediately to the exclusion of any rights on the part of the Contractor to claim damages.
- (3) Any establishing of a working group or consortium shall require the prior written approval of the Customer.
- (4) The Contractor shall provide the contract performance generally through its own operations and in relation to the substantial elements of its performance shall be entitled to use only those subcontractors listed in the offer. Any change or engagement of further subcontractors shall require the prior approval of the Customer. The Customer reserves the right to make any approval subject to specific qualifications. In addition, the Customer reserves the right to withhold any approval for the deployment of a subcontractor in case of continued unreliability or in case of a required qualification no longer existing or in case of any criminal offence or regulatory offence or in case of industrial disruption.

If any contractual performance by the Contractor is carried out by a subcontractor the Customer may require that the Customer is also present at any technical consultations with the subcontractor. The Contractor shall be liable for its suppliers and subcontractors as it would be in the case of its own fault.

- (5) The Contractor undertakes to comply with the following requirements for the deployment of personnel at the factory premises of the Customer:
  - a) All personnel of the Contractor deployed for this contract must be duly registered for social security (*Sozialversicherung*) and possess a social security ID (*Sozialversicherungsausweis*).
  - b) The Contractor shall deduct the wage tax (*Lohnsteuer*) and all social security payments (*Sozialversicherungsbeiträge*) in a correct and proper manner.
  - c) Any foreign personnel deployed shall have the required work permits.

- d) At least the foremen or master craftsmen shall have a good knowledge of the German language in order to ensure trouble-free communication with the Customer and any emergency personnel.
  - e) The Contractor hereby undertakes to comply with all applicable operating regulations, accident prevention regulations and other work safety requirements including, for example, hazardous materials and hazardous goods regulations, water resources regulations including specific state regulations as well as working time regulations; the Contractor hereby further declares that it is aware of the applicable regulations required for its performance and has instructed the personnel of the Contractor as to the applicable work safety regulations.
- (6) The Contractor shall ensure that its subcontractors shall also comply with the above provisions. Insofar as the Contractor deploys persons not requiring social security insurance (e.g. independent contractors as subcontractors) the Contractor shall ensure that such have sufficient accident and health insurance and, in the event that they are practising a trade, are duly registered (§ 14, § 15 paragraph 1 Trade Regulations (*GewO*)). In order to obtain an ID for the factory premises, the factory security of the Customer shall be provided with a confirmation of receipt of the application for the registration of a trade or business.
  - (7) The Customer may at any time require evidence of compliance with the above duties.
  - (8) If the Contractor does not comply in whole or in part with any of the above duties, the Customer may withdraw the contract from the Contractor in whole or in part with immediate effect and demand compensation for any resulting damage.

## 10. Obligations in Relation to Transport

The Contractor shall carefully safeguard the interests of the Customer in relation to any transportation of goods. The Customer reserves the right not to process any wagon loads until delivery papers have been provided. The Contractor shall bear any costs resulting to the Customer as a result of any breach of a duty on the part of the Contractor.

## 11. Dates, Hindrance or Disruption of Performance

- (1) The contractually agreed acceptance and general completion dates and other dates or dead-

lines which are identified as "contractual dates" or "contractual deadlines" shall constitute binding dates and deadlines and any culpable failure to meet such dates or deadlines shall constitute a default delay.

- (2) In the event that the Contractor is of the opinion that for reasons beyond the sphere of performance or risk of the Contractor that it is hindered in the performance or it becomes apparent that such circumstances will occur, the Contractor shall notify such immediately to the Customer and allow the Customer an opportunity to provide a remedy. The provisions of § 642, § 645 Civil Code (*BGB*) shall not be affected thereby.
- (3) If circumstances occur with the Contractor from its sphere of performance or risk which result or could result in any detriment to the performance of the contract, or to the performance of parallel work or to the time schedule, the Contractor shall notify these circumstances without undue delay to the Customer so that measures can be introduced to mitigate any damage.
- (4) Customary or foreseeable weather conditions shall not change any date or deadline; such are to be taken into account in advance in regard to the agreed dates or deadlines. In case of any completely unusual or unforeseeable weather conditions resulting in quasi-catastrophic situations the performance dates and deadlines shall be extended to a reasonable extent without any additional costs being able to be charged to the Customer. The provisions concerning force majeure under section 12 shall not be affected hereby.
- (5) The Contractor shall obtain any official approval or permit required for any Sunday or holiday work necessary to achieve a date or deadline.
- (6) Any consequences resulting from default shall be determined in accordance with the provisions of law. In case of the existence of the usual prerequisites for a right of withdrawal (*Rücktrittsrecht*) the Customer may limit any withdrawal to the unperformed or not correctly performed part of the performance regardless of whether such relates to a completed or separable part of the performance. Instead of exercising its right of withdrawal the Customer may terminate the contract in relation to the outstanding service for good cause without affecting its other rights at law.
- (7) In order to allow the Customer to obtain alternative performance, the Contractor shall, after the exercising of any right of withdrawal by the Customer, provide the Customer with prepared plans, drawings, calculations, software

documents, proprietary rights, documentation and specifications in return for a reasonable price; in this regard the Customer shall have a right of option. In addition, the Contractor shall after the exercising of any right of withdrawal on the part of the Customer provide the Customer at no charge and to the necessary extent with information concerning the performance provided.

## 12. Force Majeure

- (1) Any events of force majeure shall entitle the respective Party to extend the delivery time for the performance of its obligations or, if the performance of the contract in part or in whole can no longer reasonably be expected, it may withdraw from the contract without the other Party deriving any right to claim damages as a result thereof. Force majeure shall include all events which are unexpected and which are not culpably caused by any of the Parties and in particular: natural catastrophes, fire, lightning, explosion, the escaping of any poison or gas, flooding, any general disruption of utilities, conflicts, terrorism, civil unrest or comparable events, employment disruption at the premises of a Party or in any third party company as well as any acts of God.
- (2) Force Majeure shall include any serious disruptions of operations which result in a limitation or ceasing of the operations and any other circumstances which make the performance of the contractual duties unreasonably difficult or impossible and regardless of whether such occur at the Party or any third party provided that such Party or third party is not responsible for such.

## 13. Proprietary Rights

- (1) The Contractor shall be liable for any infringement of proprietary rights of third parties (e.g. registered or pending patents, copyright) as a result of its performance or any agreed use by the Customer. If possible, the Contractor shall allow the Customer to use such by way of satisfying the claims of any third party or by appropriate modifications to the Equipment. Any modification shall in no way reduce the performance of the Equipment.
- (2) Notwithstanding the rights available at law, the Contractor shall indemnify the Customer against all claims of third parties, any damage, expenses and other disadvantages resulting thereto to the Customer. This shall include in particular any disadvantages resulting to the Customer as a result of any necessary changes in buildings, machines, plant or IT systems or

programs or resulting from any delay in the building, project or operational procedures.

- (3) If the Contractor cannot allow for the use by the Customer in particular because the third party insists on the non-use of the Equipment or if any modification for this purpose is not possible, the Contractor shall remove at its own costs the respective Equipment and reimburse any remuneration paid including interest at the rate of five percentage points above the basis interest rate in accordance with § 247 Civil Code (*BGB*). Any further legal rights to claim shall not be affected hereby.
- (4) Upon acquiring the Equipment the Customer shall also have the right to obtain any accessory equipment, maintenance and repair, to later changes and to the production of spare parts and reserve parts by itself or by third parties. These rights shall not be limited by the proprietary rights of the Contractor. The Contractor should be liable for ensuring that the proprietary rights of third parties do not prevent such.
- (5) If as a result of the preparation or carrying out of the contract any know-how or circumstances become apparent concerning the procedures, devices or plant used which are capable of being protected, and if the Customer has contributed to such know-how or circumstances by way of its involvement at technical discussions, joint tests, test operations etc. the Contractor and the Customer shall act jointly as the registering parties in any protection applications locally or internationally. Any duties resulting from the Employee Invention Act (*Arbeitnehmererfindungsgesetz*) shall not be affected hereby. The use of any protectable know-how and circumstances shall take place having regard to the mutual interests and shares in the invention. In the event that one of the applicants waives its share to the object of the joint application or any jointly acquired proprietary right, the right of disposition shall transfer to the other applicant party. Any duties to pay any inventor remuneration resulting from the Employee Invention Act for the party rendering its rights shall be transferred to the party assuming such rights. The above provisions shall apply accordingly in relation to any non-protectable know-how or circumstances.

#### **14. Proof of Performance and Acceptance Procedures**

- (1) Unless otherwise agreed in a contract, any performance by the Contractor shall require formal acceptance procedures; acceptance procedures in all contracts which are based on these conditions shall form the basis for

any remuneration of the Contractor becoming due for payment. Acceptance procedures should take place as early as possible. The Customer shall undertake the acceptance of the performance at the place of performance as soon as the Contractor has notified such of the completion in writing and all pre-requisites for the acceptance procedures have been satisfied. The acceptance procedures must involve the preparation of a record on the basis of the template of the Customer and such is to be signed by both Parties. The Contractor has the right to have any differing opinion noted in the record. An oral acceptance or implied acceptance by way of commissioning operations is hereby excluded. If the contract only envisages the Customer being provided a "notification of completion" by the Contractor after complete performance, the effects of the acceptance shall take place after the expiry of four weeks after the receipt of the notification of completion by the Customer unless the Customer has raised any objection within this period or has requested formal acceptance procedures.

- (2) Any commissioning or temporary correct use of the contractual Equipment from the time of readiness until the acceptance procedures for the purposes of the contractually envisaged testing, trial, simulation or review procedures, for error rate tests or for fine adjustments or for reviewing the suitability, reliability, defect-free nature or readiness for acceptance shall not be the basis of either a transfer of risk to the Customer nor shall such constitute any acceptance implied through conduct nor shall such constitute a waiver of any requirements of formal acceptance procedures. The Customer shall be entitled at no charge to any pre-materials or raw materials made available by the Customer and any produced or processed goods resulting therefrom or with the support thereof at no charge. In addition, the Customer may use the Equipment under the supervision of the Contractor in order to mitigate damage before the concluding of remaining work not absolutely required for a safe operation of the Equipment.
- (3) Acceptance procedures shall require the satisfaction by the Contractor of the requirements to provide the material qualities and material performance characteristics and proof of performance of which shall commence at the earliest after the provision of the readiness for operation of the Equipment and which shall end upon the satisfaction of the material characteristics and performance characteristics; such may be refused until material defects are rectified. The same right shall apply to the Customer in case of failure to provide operational or maintenance instructions or other information by the time of acceptance in accordance with the contract (e.g. documentation) and until such time as

such are provided in a defect-free and complete state.

- (4) In case material qualities are not achieved for reasons for which the Contractor is responsible, the Contractor shall have the right to require a repeating of the proof of performance and the duty to undertake without undue delay all necessary steps in order to improve the Equipment so that the material qualities and/or performance characteristics are achieved. If such evidence of performance is however not achieved within a reasonable period of time, no more than three months – calculated from the contractually agreed time of readiness for operation – the Customer shall be entitled to exercise its rights at law.
- (5) If evidence of performance or other necessary preconditions for the acceptance procedures are not provided during a period totalling more than six months, calculated from the time of readiness for operation, except for reasons for which the Customer is solely responsible, the Equipment shall be deemed to have been accepted after the expiry of the above named six months period.
- (6) In case of any material defects detected during the acceptance procedure the Contractor shall rectify such without undue delay. Any successful rectification of defects shall be documented and the limitation period for claims in relation to such shall commence therewith.
- (7) Any risk of accidental loss or accidental deterioration as well as title to the goods shall transfer upon acceptance by the Customer.

## 15. Defects

- (1) The Contractor warrants that its performance shall be defect-free and complete in all regards and in particular the material qualities expressly agreed as such in a contract shall exist and that the goods shall be suitable for the intended purpose having regard to normal operational conditions. Insofar as individual contracts expressly agree on certain running times for parts due to wear and tear, the parts due to wear and tear must reliably and without limitation survive such running times; any need for such parts to be exchanged after the expiry of the agreed running times shall not constitute a defect.
- (2) Any expiry of claims as result of non-performance or incorrect performance shall be determined in accordance with the provisions of law. Such limitation periods shall commence from the time of acceptance. Notwithstanding the above, limitation periods for

spare parts and reserve parts shall commence from the time of installation, commissioning or use and shall end at the latest five years after delivery.

- (3) In relation to any defects or defects as to title in terms of the performance of the Contractor, the Customer shall be entitled to the rights available at law. The Customer shall allow the Contractor the possibility of subsequent performance whereby the Customer is entitled to allocate the period of a planned downtime for the plant to the Contractor if the carrying out of any subsequent performance might unreasonably interfere with the operations of the Customer. The Customer is entitled to set a reasonable deadline for subsequent performance; whether such is reasonable shall be determined, amongst other considerations, in accordance with the operational requirements of the Customer. In case the subsequent performance appears to be unreasonable the Customer shall be entitled to refuse any subsequent performance. Notwithstanding the provisions of law, it may be regarded as unreasonable if subsequent performance leads or could lead to an unreasonable delay or to uncertainty in relation to the successful operation of safety-related devices, plant or facilities or those used for the maintenance of operational, production or business procedures. Mutual agreements as to the period for subsequent performance shall have the same legal effect as a deadline being set by the Customer.
- (4) In the event that the other requirements for the exercise for a right of withdrawal exist, the Customer may withdraw from the contract in relation to the non-performed or not correctly performed parts of the performance regardless of whether or not such relates to a completed or separable part of the performance. Instead of exercising a right of withdrawal the Customer may terminate a contract in relation to the outstanding performance for good cause without affecting its other rights at law.
- (5) If any returning of Equipment after the exercising of a right of withdrawal leads to a disproportionate amount of damage to the Customer, the Customer may demand in order to mitigate damage that the temporary use of the Equipment at its own risk in return for a reasonable payment be allowed but for no longer than until the time of the procurement or the operational readiness of any replacement objects .
- (6) Notwithstanding any rights at law, in case of any defects the Customer shall be entitled to undertake the work itself and claim a deposit after the expiry of the subsequent performance deadline set without any satisfaction also in relation to work performance contracts under § 637 Civil Code (*BGB*).

- (7) In the event that the Customer is subject to a duty to examine and serve notice of defect in accordance with § 377 Commercial Code (*HGB*) the notice period in case of apparent defects shall be two weeks from the time of delivery and in case of hidden defects such period shall be two weeks from the time of the detection of the defect.

## 16. Limitation of Liability

- (1) Insofar as nothing is agreed to the contrary in individual contracts, the liability of the Parties in their mutual relationship for damages and/or reimbursement of expenses shall be in accordance with the provisions of law subject to the following:
- Liability shall be limited to that for foreseeable damage.
  - Liability for default delay shall be limited to 20 % of the total invoice value taking into account any forfeited penalty.
  - Except in cases of default delay there shall be no liability for loss of production, interruption of operations, downtimes, loss of profit, loss of data, data recovery costs and financing loss as there is no insurance cover for such.
  - The liability of each Party shall be limited to contractual damages or reimbursement of expenses including default delay liability up to the total gross invoice value - i.e. the total price of the contractual performance including any amendments and including the statutory turnover tax (*Umsatzsteuer*). If the total invoice price is less than EUR 10,000 the liability of each Party shall be limited in relation to contractual damages and reimbursement of expenses to the amount of EUR 10,000.
  - Notwithstanding the above provisions, in relation to any circumstances in which liability cannot be contractually excluded or limited (e.g. wilful conduct, deceit, personal injury, damage to privately-used property) the provisions of law concerning liability shall apply.
  - Insofar as special or further individual contract insurance obligations have been agreed, the Parties shall not rely on any limitations of liability in terms of insurance cover.
- (2) Unless other levels of insurance cover are contractually agreed, the Contractor shall conclude and maintain for the entire term of a contract reasonable and customary insurance to cover the risks of performance including public liability insurance – including work damage – with a minimum cover of EUR 5

million for property damage and personal injury, provided that twice this amount cannot be exceeded in any calendar year as well as cover for financial loss of EUR 100,000. Upon request the existence of and the scope of such insurance cover shall be proven by way of presentation of the insurance certificates.

- (3) In the event that the Contractor breaches the duty under paragraph 2 or any other duties arising out of a contract, it shall put the Customer in the position it would have been if the contractually agreed insurance cover had been duly taken out and/or continued.

## 17. Invoicing by Contractor

- (1) A separate invoice shall be issued providing full evidence of performance in relation to each contract including any supplementary orders.
- (2) Such an invoice shall correspond with the requirements of the Turnover Tax Act (*Umsatzsteuergesetz*), shall be verifiable and shall in a clear and demonstrable manner list the services provided with the respective order number.

## 18. Payment

- (1) The respective amounts for each agreed payment are to be requested by the Contractor. Payments do not constitute an acknowledgment of the correctness of any invoice and/or the contract-conform performance in relation thereto but are subject to a reservation of a right of subsequent examination.
- (2) Unless otherwise agreed, in case of any delay on the part of the Customer, interest for delay shall be at an annual interest rate of 5 % above the basis interest rate in accordance with § 247 Civil Code (*BGB*). The Customer may, at its choice, pay either by bank transfer or by cheque. Payment shall be deemed to have been paid on time if by the due date it can be demonstrated that the bank transfer order or cheque has been sent.
- (3) The Customer will not accept any cash on delivery matters.
- (4) The Customer may charge a reasonable administrative fee for processing any assignment, third-party-declarations, lien or transfer documentation as well as any lien or collection orders and such an administrative fee shall be deducted from the respective amount payable.

## 19. Assignment

- (1) The Contractor may not assign any claims against the Customer in part or in whole without the prior written approval of the Customer. The Customer shall not withhold such approval except for good cause.
- (2) In case of any assignment resulting from an extended retention of title, the Customer shall agree to such on the condition that in relation to the assignee the Customer reserves all rights to which it would have been entitled in relation to the Contractor had the assignment not taken place.

## 20. Interest on Claims Against Contractor

Any payment claims against the Contractor shall be subject to interest at the same rate as that agreed for any default delay in payment by the Customer.

## 21. Security

If the Customer makes any advanced payment or preliminary payments for an order, the Customer is entitled at any time to require a corresponding guarantee with its wording and/or a chattel mortgage over corresponding materials especially those ordered objects currently being processed.

## 22. Set-off and Retention by Contractor

- (1) The Contractor may set off any amount only in relation to undisputed claims or claims which are confirmed by way of a final legally-binding judgment.
- (2) Any right of retention shall be available to the Contractor only insofar as such arises out of the same contractual relationship.
- (3) In the event of any differences of opinion concerning additional or changed performance the Contractor shall not be entitled to a right of retention or other rights to refuse performance and in particular a right to cease construction or assembly work.

## 23. Confidentiality

- (1) The Contractor and its agents or contractors (such as its own personnel or subcontractors) shall treat as confidential any performance documentation of the Customer, regardless of its nature or type, of which the Contractor and any of its agents or contractors become aware. The same shall apply to all other op-

erational matters and figures, models, drawings, sketches, pictures and any other information in relation to which the Customer has a right of confidentiality because of the nature, of which the Contractor or its agents or contractors becomes aware in connection with the performance of a contract. The information referred to in sentences 1 and 2 shall not be published or copied without the prior written approval of the Customer nor shall it be made accessible to any third parties nor shall it be used for any other purpose other than the originally intended purpose.

- (2) Except for the purposes of a contract any and all orders shall not be used or made public except with the prior written approval of the Customer. The same shall apply to any recordings of photographs within the work premises of the Customer and the publication of such.
- (3) The Contractor shall make its agents and contractors subject to the above duties.

## 24. Severance Clause

In the event that any provision of these conditions is in part or in whole ineffective the other provisions shall remain fully effective.

## 25. Applicable Law

- (1) For all legal transactions between the Parties the local law applicable to legal relations between the Parties as determined by the seat of the ordering Party shall apply, to the exclusion of any foreign law.
- (2) The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## 26. Jurisdiction and Place of Performance

- (1) The jurisdiction for both Parties shall be the District Court (*Amtsgericht*) or Regional Court (*Landgericht*) at the seat of the ordering party; in addition the Customer is entitled to select the general place of jurisdiction of the Contractor.
- (2) The place of performance for any claims related to payment of the Parties is the respective seat of administration of the Customer and for all other claims the respective place of receipt in the order form of the Customer under "delivery address".