

## General terms of contract for the delivery of machinery and equipment

### 1. Generalities

- 1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written Confirmation of Order stating his acceptance of the order. Offer/tenders which do not stipulate a period of acceptance shall not be binding.
- 1.2 These general terms of delivery shall be binding if declared applicable in the offer/ tender or in the Confirmation of Order. Any terms stipulated by the customer which are in contradiction to these general terms of delivery shall only be valid if expressly acknowledged by the supplier in writing.
- 1.3 To be valid all agreements and legally relevant declarations of the parties with regard to the contract shall be in writing.
- 1.4 Should a provision of these general terms of delivery prove to be wholly or partly inoperative, the parties to the contract shall jointly seek an arrangement having a legal and commercial effect which will be as similar as possible to the inoperative provision.

### 2. Scope of goods and services

The goods and services of the supplier are specified in the Confirmation of Order and in any 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.

### 3. Drawings and technical documents

- 3.1 Unless otherwise agreed, brochures and catalogues shall not be binding. Data provided 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 technical documents provided to the other. The party receiving such documents recognises these rights and shall not - without previous written consent of the other party - 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 the country of destination and safety devices

- 4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to standards and regulations applicable to the design of the goods and services and to their operation as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed upon, the goods and services shall comply with those standards and regulations in force at the place of business of the customer and about which the supplier has been informed under Para. 4.1. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

### 5. Prices

- 5.1 Unless otherwise agreed, all prices shall be deemed to be net ex-works, excluding packing, in freely available currency of the supplier's country without any deductions whatsoever.  
Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier shall be liable for them.
- 5.2 The supplier reserves the right to adjust prices in case wage rates, exchange rate or raw material prices change between the submission of the tender and the contractually agreed fulfilment.  
In addition, an appropriate price adjustment shall apply if:
  - The delivery term has to be subsequently extended due to any reason stated in Para. 8.3, or
  - The nature or the scope of the agreed goods and services shall be changed, or
  - The material or the execution shall undergo 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 cash discount, expenses, taxes, levies, fees, duties and such like.  
Unless otherwise agreed upon, the price shall be paid in the following instalments:
  - One third with the Order,
  - two thirds before the agreed delivery,Payment shall be deemed to be effected insofar as the agreed currency amount has been made freely available to the supplier at the supplier's domicile.
- 6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the goods and services is delayed or prevented due to reasons beyond supplier's control, or if unimportant parts are missing, or if post-delivery work has to be carried out which does not prevent the use of the consignment.
- 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 abide by or to terminate the contract, and shall in both cases be entitled to claim damages.  
If the customer, for any reason whatsoever, is in arrears with an instalment, or if the supplier is seriously concerned that he will not receive payments in full or in due time because of circumstances occurring since entering into the contract, the supplier, without being limited in his rights as provided for by law, shall be entitled to refuse the further fulfilment of the contract and to retain the consignments ready for dispatch until new terms of payment and delivery have been agreed and until he has been given satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case the supplier does not receive adequate securities, he shall be entitled to terminate the contract and to claim damages.
- 6.4 Should payment not have been made by the agreed dates the buyer shall, without any particular reminder on the part of the company be liable to interest on the amount due, according to the standard interest rates at the company's domicile. The right to claim for further damages is reserved.

### 7. Retention of title

The supplier shall remain the owner of all consignments until the full payment has been received in accordance with the contract.  
The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular upon entering into the contract he shall authorize the supplier to enter or notify the retention of title in the required form in public registers, books or similar records, in accordance with relevant national laws and to fulfil all corresponding formalities, at the customer's expense.  
During the period of the retention of title, the customer shall, at his own cost, maintain the consignments and insure them for the benefit of the supplier against theft, breakage, fire, water and other risks. He shall further take all measures to ensure that the supplier's title is in no way prejudiced.

### 8. Term of delivery

- 8.1 The delivery term 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 term shall be deemed to be observed if by that time the supplier has sent notice to the customer declaring that the consignments are ready for dispatch.
- 8.2 Compliance with the delivery term is conditional upon customer's fulfilling his contractual obligations.
- 8.3 The delivery term shall be reasonably extended:
  - a) If the information required by the supplier for fulfilment of the contract is not received in time, or if the customer subsequently amends it thereby causing a delay in the dispatch of the goods and services;
  - b) If hindrances occur which the supplier cannot prevent despite his having taken reasonable care, regardless of whether they affect the supplier or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, revolution,

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serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi finished or finished products, the need to scrap important components, 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 it has to execute, or with the fulfilment of their contractual obligations, in particular if the customer shall fail 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 through the fault of the supplier and that the customer can substantiate the fact that he has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter shall not be entitled to any damages for such delay.

Damages for delayed delivery shall not exceed 1/2 per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price of the part of the consignments delayed. No damages at all shall be due for the first two weeks of the 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 the goods and services. If a partial acceptance shall also not be economically justifiable, then the customer shall have the right to terminate the contract and, against return of the consignments supplied, to claim a refund of the money already paid.

- 8.5 In case a specific date instead of a delivery term is fixed, such date shall correspond to the last day of a delivery term; Paras 8.1 to 8.4 apply by analogy.
- 8.6 Any delay of the goods and services does not entitle the customer to any rights and claims other than those expressly stipulated in this Para. 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier.

**9. Packing**

Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as the supplier's property, 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 consignments shall pass to the customer at latest on 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 pertaining to the consignments shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the consignments shall be stored and insured on the account of and at the risk of the customer.

**11. Forwarding, transport and insurance**

- 11.1 The supplier shall be notified in time of special requirements regarding forwarding, transport and insurance. Transport shall be at customer's expense and risk.

Complaints regarding forwarding or transport shall be immediately submitted by the customer to the last carrier upon receipt of the consignments or of the shipping documents.

- 11.2 The customer shall be responsible for taking out insurance against all risks.

**12. Inspection and acceptance of the goods and services**

- 12.1 Insofar as it is normal practice, the supplier shall inspect the goods and services before dispatch. If the customer requests further testing, this shall be the subject of a special agreement and be paid for by the customer.
- 12.2 The customer shall inspect the goods and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails to do so, the goods and services shall be regarded as being approved.
- 12.3 The supplier shall rectify any deficiencies reported to him as per Para. 12.2, whereby the customer shall provide the supplier with the

opportunity to do so. After such deficiencies have been remedied, an acceptance test according to Para. 12.4 shall be carried out at the request of the customer or of the supplier.

- 12.4 Save as provided in Para. 12.3 the carrying out of an acceptance test as well as laying down the conditions related thereto shall be the subject of 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 acceptance test so that the customer or his representative can attend.
- An acceptance report shall be prepared which shall be signed by both the customer and the supplier or by their representatives. Such report shall either state that the acceptance has taken place, or that it has taken place under reservations, or that the customer has refused the acceptance. In the last two cases, the deficiencies shall be listed individually in the report.
- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the goods and services, the customer shall not be entitled to refuse the acceptance of the goods and services and the signing of the acceptance report. The supplier shall remedy such deficiencies without delay.
- In case of important deviations from the contract or of serious deficiencies the customer shall give the supplier the opportunity to remedy these within a reasonable time. Thereafter a further acceptance test shall be carried out.

If during this test important deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensations from the supplier, provided this has been agreed previously. If, however, the deviations and deficiencies appearing during such test are of such importance that they cannot be remedied within a reasonable time and provided the goods 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 commercially not justified, 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 termination.

- 12.5 Acceptance shall also be deemed effected

- If the acceptance test cannot be carried out on the date provided for due to reasons beyond the supplier's control;
- If the customer refuses acceptance without having the right to do so;
- If the customer refuses to sign the acceptance report prepared in accordance with Para. 12.4;
- As soon as the customer uses the supplier's goods and services.

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

**13. Guarantee, liability for defects**

- 13.1 Warranty period

In the absence of any other agreement, the period of warranty is 6 months and starts when the consignments are commissioned. If dispatch or erection or acceptance are delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 12 months after supplier's notification that the supplies are ready for dispatch.

For replaced or repaired genuine parts the warranty period starts anew and is valid for 6 months after replacement or completion of the repair or acceptance, but not longer than the expiry of a period being double to the warranty period stipulated in the preceding paragraph.

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 opportunity to remedy such defect.

- 13.2 Liability for defects in material, design and workmanship

Upon written request of the customer, the supplier undertakes at his discretion to repair or replace as quickly as possible any parts of the

consignments which, before the expiry of the guarantee period, have proved to be defective due to bad 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 (DAP), personnel, travelling, living, dismantling and reassembling of the defective parts.

### 13.3 Liability for warranted qualities

Warranted qualities are only those which have been expressly specified as such in the Confirmation of Order or in the specifications. A warranted quality is valid at latest until the expiry of the guarantee period. If a acceptance test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.

If the warranted qualities are not or only partially achieved, the customer shall have the right to demand that the supplier to carry out the improvements necessary immediately. The customer shall give the supplier the requisite time and opportunity to do so.

If such an improvement fails completely or in part, the customer may claim such compensation as has been agreed before for such cases, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defect is of such importance that it cannot be remedied within a reasonable time and provided the goods and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall have the right to refuse acceptance of the defective part or, if partial acceptance is commercially not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursement of the sums which have been paid to it 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 faulty material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, 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 requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.

### 13.6 Exclusivity of warranty claims

With respect to any defective material, design or workmanship as well as to any failure to fulfil warranted qualities, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Paras 13.1 to 13.5.

### 13.7 Liability for additional obligations

For claims by the customer regarding faulty advice and the like or out of breach of any additional obligations, the supplier shall only be liable to the extent of unlawful intent or gross negligence.

## 14. Non-fulfilment, poor fulfilment and their consequences

14.1 In all cases of poor fulfilment or non-fulfilment not expressly covered by these general conditions of supply - in particular if the supplier, without valid reason, starts accomplishment of the goods and services so late that punctual completion is unlikely, or if due to a fault on the part of the supplier an execution contrary to the terms of the contract can be clearly foreseen, or the goods and services have been executed contrary to the terms of the contract, then the customer shall be entitled to grant a reasonable additional period for the goods and services affected while simultaneously issuing a warning of rescission of the contract in case of non-compliance. If such an additional period lapses ineffectively due to the supplier's negligence, the customer shall be entitled to annul the contract with respect to the goods and 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 goods and services.

14.2 In such a case Para. 16 shall apply with regard to any claims for damages on the part of the customer to the exclusion of any further

liability, and any claim for damages shall be limited to 10 per cent of the contract price for the goods and services affected by the termination.

## 15. Annulment of the contract by the supplier

The contract shall be amended appropriately, if unforeseen events considerably change the commercial effect or the content of the goods and services or considerably affect the activities of the supplier, or if fulfilment subsequently becomes impossible. In so far as such an amendment is economically not justifiable, the supplier shall have the right to annul the contract or the parts affected thereby.

If the supplier wishes to annul the contract he shall - after having recognized the consequences of the act - immediately inform the customer; this applies even if an extension of the delivery time has been previously agreed. In case of annulment of the contract the supplier shall be entitled to the payment of those parts of the goods and services which have already been effected. Claims for damages on the part of the customer because of such termination are excluded.

## 16. Exclusion of further liability on the part of the supplier

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, annulment 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, shall not apply to unlawful intent or gross negligence on the part of the supplier.

This exclusion of liability shall not apply insofar 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, Benninger's General Conditions of Erection 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 the supplier.

The supplier shall, however, be entitled to sue the customer at the latter's registered address.

19.2 The contract shall be governed by law at the domicile of the supplier.

Uzwil, October 2014

Benninger Ltd.