

**PREAMBLE**

1. These General Conditions shall apply upon acceptance of this Proposal or the placing of a purchase order for Goods which shall govern any agreement resulting from this proposal and any subsequent or further agreements, except otherwise agreed by the parties. Any modifications of or deviations from them must be agreed in Writing.

**DEFINITIONS**

2. In these General Conditions the following terms shall have the following meanings: "Contract": the agreement in Writing between the parties concerning supply of the Product and all appendices, including agreed amendments and additions in Writing to the said documents; "Gross Negligence": an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such an act or omission; "in Writing": communication by document signed by both parties or by letter, fax, electronic mail and by such other means as are agreed by the parties; "the Product": the object(s) to be supplied under the Contract, including software and documentation.

**DRAWINGS AND TECHNICAL INFORMATION**

3. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
4. The Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

**DELIVERY PASSING OF RISK**

5. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract. If no trade term has been specifically agreed, the delivery shall be Ex-Works (EXW) at the place named by the Supplier. If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial delivery shall be permitted, unless otherwise agreed. Unless otherwise specified in the Proposal, any installation and assembly services are not included.

**TIME FOR DELIVERY**

6. If a date of delivery is mentioned to in the Proposal or in any agreement resulting there from, it is estimated only and not guaranteed. However, Seller will make any reasonable effort to adhere to such delivery date. If any technical date, specifications, instructions, goods, materials or payments must be provided to Seller in advance, any delay therein will cause the delivery date postponed accordingly
7. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in Writing, stating the reason and, if possible, the time when delivery can be expected.
8. If delay in delivery is caused by any of the circumstances mentioned in Clause 34, by an act or omission on the part of the Purchaser, including suspension under Clauses 17 and 34, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.
9. If the Supplier still fails to delivery within a reasonable amount of time which shall be at least within 10 working days after the expected date of delivery and this is not due to any circumstances

which are attributable to the Purchaser, then the Purchaser may by notice in Writing to the Supplier terminate the Contract to the extent that has not yet been performed and to the extent that the Supplier cannot be reasonably expected to let the, as yet unperformed, part of the Contract stand.

10. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier in Writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, he shall nevertheless pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

11. Purchaser must visually examine the packaging upon receipt. If any damage is detected, it shall be written in the carrier's delivery document and report it in writing to the Supplier, if possible, with photographic record. Purchaser must also make physical examination of the Goods immediately upon delivery and shall state any incompleteness or unsounding of the goods in writing within five working days after reception. Failure to do so will result in extinction of all rights in connection with incompleteness, unsounding or defects Purchaser may have found.

**PAYMENT**

12. Payment shall be due as set forth in the Proposal or as mutually agreed upon in Writing.
13. Whatever the means of payment used, payment shall not be deemed to have been affected before the Supplier's account has been irrevocably credited for the amount due.
14. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs, including any currency price losses suffered by the Supplier. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due. In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser in Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security. If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the loss he incurs. Such compensation shall not exceed the agreed purchase price.

**RETENTION OF TITLE**

15. The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the relevant law. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product. The retention of title shall not affect the passing of risk under Clause 8.

**LIABILITY FOR DEFECTS**

16. Pursuant to the provisions of Clauses 20-32, the Supplier shall remedy any defect or nonconformity (hereinafter termed defects(s)) resulting from faulty design, materials or workmanship.
17. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.
18. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

guilty of Gross Negligence.

19. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent in Writing. The Supplier shall neither be liable for normal wear and tear, deterioration or corrosion of wetted parts.
20. The Supplier's liability shall be limited to defects which appear within a period of twelve months from Product start-up but not later than eighteen months from the delivery.
21. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year.
22. The Purchaser shall without undue delay notify the Supplier in Writing of any defect which appears. Such notice shall under no circumstances be given after the expiry of the period given in Clause 23 or the extended period(s) under Clause 24, where applicable.  
The notice shall contain a description of the defect.  
If the Purchaser fails to notify the Supplier in Writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied.  
Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Supplier.
23. On receipt of the notice under Clause 25 the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 20-32. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities. Repair shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.  
If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser. Supplier shall not bear any cost unless Purchaser is instructed to do so in Writing.
24. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.
25. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.
26. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.
27. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.
28. If the Purchaser has given such notice as mentioned in Clause 25 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs because of the notice.
29. Save as stipulated in Clauses 19-31, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been

#### **ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

30. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.  
If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

#### **FORCE MAJEURE**

31. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause.  
A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.
32. The party claiming to be affected by Force Majeure shall notify the other party in Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.  
If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.
33. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in Writing to the other party if performance of the Contract is suspended under Clause 34 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

34. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof in Writing.

#### **CONSEQUENTIAL LOSSES**

35. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

#### **DISPUTES AND APPLICABLE LAW**

36. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
37. The Contract shall be governed by the substantive laws of Portugal.