

**SUPPLEMENTAL STANDARD TERMS OF  
SERVICE CENTER GELSENKIRCHEN GMBH  
FOR ACQUISITIONS OF MACHINERY EQUIPMENT AND OTHER  
WORKS AND SERVICES**



October 2011

These Supplemental Standard Terms for Acquisitions of machinery equipment and other Works and Services (hereinafter: "Supplemental Standard Terms") shall apply by way of supplementing our Standard Terms of Purchase. In the event of any divergence between these Supplemental Standard Terms and our Standard Terms of Purchase, the former shall prevail.

**1. ORDERS, INSTRUCTIONS**

- 1.1 Even where not specifically stated, our orders shall include the delivery and installation of the accessories necessary for proper operation of the equipment (the "Equipment").
- 1.2 We may issue instructions to the supplier (the "Supplier") as to manufacture and installation. The Supplier shall check our instructions in the Supplier's own responsibility and with due and proper care. If the Supplier does not without undue delay object in writing to our instructions, then the Supplier shall be liable for the factual accuracy of such instructions.
- 1.3 If any service not stipulated in the contract (additional service) is demanded by us, then prior to rendering such service the Supplier shall warn us as to any additional remuneration that may become payable with regard to such additional service. In the absence of such warning the Supplier shall have no claim to remuneration for such additional service, except where the Supplier proves that in the specific circumstances of the case a warning had been unnecessary for our protection against surprising cost increases or that the failure to warn had been neither negligent nor intentional.

**2. DOCUMENTS**

The documents and records that the Supplier shall deliver to us under Clause 6.5 of the Standard Terms of Purchase shall also include (where relevant) a full set of printable component drawings, group or general assembly drawings, lists of parts, maintenance plans, machine specifications, commissioning instructions, lubricating plans, lists of replacement parts, trouble-shooting checklists, TÜV and safety certificates and all and any other necessary documents. Except where the parties hereto agree otherwise, such documents and records shall also be delivered to us in electronic form.

**3. PACKAGING**

- 3.1 The Supplier shall package the Equipment with due skill and care in order to rule out as far as possible its being lost or damaged during transport. Inlet and outlet points and other openings shall be capped or stoppered. Nozzles, surface parts or other polished parts shall be covered with a robust, easily removable protective cover for protection against corrosion and damage.
- 3.2 Each package to be transported shall be marked with the order number and the number and designation of the packaged items. The transport papers shall include the same information. Moreover all parts of Equipment to be mounted on site shall be labelled with the numbers and designations provided for them in the installation drawing.

**4. MATERIALS, APPLIANCES, INSTALLATION**

- 4.1 The manufacturer shall observe i.a. the following rules, standards and technical rules (as amended at the time of delivery and/or acceptance) including their successor rules at the time of delivery and/or acceptance, if any:
  - EC Machine Directive,
  - Low Voltage Directive,
  - German Appliances and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*) and the regulations passed thereunder,

- DIN 60204-1:2006,
- ISO 12100:2010.

- 4.2 The Supplier shall install the Equipment on our premises in the Supplier's own responsibility. Installation shall also include unloading the Equipment on the premises and moving it to the place of installation stated by us.
- 4.3 The Supplier shall thoroughly familiarise itself with the local situation, especially with the access roads to our premises, the access routes to the installation site and with the possibilities for delivering, unloading, storing and installing the Equipment.
- 4.4 The Supplier shall provide, at the Supplier's cost, the personnel required for the installation and all special tools required for the installation. Personnel shall be deployed in compliance with the relevant social security laws and other laws.
- 4.5 Prior to beginning the installation the Supplier shall appoint the responsible chief installer. He shall ensure that the rules applicable at the installation site are observed. The chief installer shall be the Supplier's authorised representative.
- 4.6 The Supplier shall ensure that the installation site is clean and shall duly and properly dispose of the Supplier's packaging materials. The Supplier shall separate the debris and other waste produced by the Supplier's work in accordance with our instructions and at the Supplier's cost and shall collect, transport, process and store it in compliance with waste laws.

**5. SUPERVISION**

- 5.1 We shall be entitled to access the Supplier's manufacturing sites, construction sites and storage premises during normal working hours to supervise the works on the Equipment and to check the materials and appliances intended for it. At our demand the Supplier shall provide us with the necessary information and shall submit the necessary documents for our inspection. We shall be entitled to perform quality control at any time. Test certificates shall be submitted to us without our specific demand.
- 5.2 The Supplier shall grant us access to the manufacturing sites, construction sites and storage premises of the Supplier's suppliers to enable us to supervise the works on the Equipment and to check the materials and appliances intended for it. Sub-clause (1) above shall apply *mutatis mutandis*.
- 5.3 Our supervision of the Supplier and of the Supplier's suppliers shall not release the Supplier from its liability for its contractual obligations.

**6. TIME LIMITS**

The contractual time limits for manufacturing, delivering and installing the Equipment shall commence at the date of our order. The manufacture, delivery or installation shall be deemed to have been belated also if the Equipment is defective and the defect has not been cleared up before the contractual time limit expires.

**7. TIME SCHEDULE**

- 7.1 After entering the contract, the Supplier shall deliver to us a manufacturing time schedule, which shall show in detail how the Supplier plans to carry out the contracted works and services during the contractual time limit. The time schedule shall show the commencement and completion of

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the following works and services for all the important parts of the Equipment:

- a) Planning and design
- b) Purchase of third-party parts
- c) Manufacture of own parts
- d) Installation
- e) Trial run

Each and any modification to the manufacturing time schedule shall require our written consent.

- 7.2 The Supplier shall report to us in writing at regular intervals on the progress and on the current status of the work. If any delay as compared to the original time schedule occurs or becomes foreseeable, then the Supplier without undue delay shall report the reason for and expected duration of and the expected effects of the delay and shall explain the steps the Supplier is taking to catch up again. The latter obligation shall apply also where any delay becomes foreseeable as a result of any modification to the nature or scope of the works and services. The Supplier's liability, if any, for the damage and loss resulting from any delay shall be unaffected by our consent to a modification of the manufacturing time schedule made by the Supplier in view of the delay.
- 7.3 If the status of the Supplier's works and services is insufficient to a degree that execution time limits of the manufacturing time schedule or other contractual execution time limits obviously cannot be kept, then at our demand the Supplier shall remedy the situation without undue delay. This shall not affect our right to rescind the contract pursuant to statutory provisions even before the Supplier's performance falls due.

**8. ACCEPTANCE**

- 8.1 The acceptance procedure for the Equipment shall be carried out within a reasonable period of time after receipt of the Supplier's written notice that the Equipment has been duly delivered, fully installed and is ready to be put into operation.
- 8.2 Acceptance shall be issued on basis of a trial run or other performance demonstration made in the presence of both parties hereto. The trial run or performance demonstration shall be carried out by the Supplier in the Supplier's own responsibility by trained personnel deployed by the Supplier for the purpose. The Supplier shall be liable for any damage caused by the trial run or performance demonstration and caused by any fact falling outside our scope of responsibilities.
- 8.3 The result of the acceptance procedure shall be set down in an acceptance log to be signed by both parties, which shall include the Supplier's objections, if any, against any defect reports made by us. We shall be entitled to deny our declaration of acceptance as long as the Equipment fails to achieve agreed performance parameters or shows any other defect.
- 8.4 The Supplier without undue delay shall remove the defects set down in the log. After removal of the defects the Equipment shall again be made available for acceptance.
- 8.5 Under Clause 9 of our Standard Terms of Purchase claiming contractual penalties shall not require a reservation in the acceptance log for the Equipment.

**9. PAYMENTS**

- 9.1 We shall be entitled to make payments to creditors of the Supplier in performance of our payment obligations, insofar as such creditors have a part in the performance of the Supplier's works and services under a contract for works and services with the Supplier, with justification refuse to continue their performance because of the Supplier's payment default,

and our direct payment is to ensure continuation of their performance. The Supplier shall state at our demand within a time limit set by us whether and to what extent the Supplier acknowledges the creditors' payment claims; if such statement is not given when due, the availability of the right to make a direct payment shall be deemed to have been acknowledged.

- 9.2 Our payments (including the final payment) shall not be deemed to constitute acceptance of the Equipment nor of any part thereof.
- 9.3 If a defect to be removed by the Supplier is present, then after acceptance we shall be entitled to deny payment of a reasonable increment of the remuneration, at least equal to three times the amount of the necessary cost of a removal of the defect. We reserve all and any other or further warranty claims. We shall be entitled to retain an amount of up to 5% of the price as collateral for any warranty claims.

**10. WARRANTY CLAIMS**

- 10.1 We reserve all and any warranty claims (including but not limited to specific defect-free re-performance, substituting performance ourselves (*Selbstvornahme*), rescission of contract, unilateral reduction of price payable, damages, reimbursement for expenses).
- 10.2 Specific defect-free re-performance shall be deemed to have failed at the latest after the second failed attempt.

**11. TERMINATION**

- 11.1 We shall be entitled to rescind the contract if any fact arises that cause, according to objective standards, doubts in the Supplier's ability to perform to appear justified and due and proper performance of the contract as endangered, especially if the Supplier has filed a petition for insolvency proceedings to be commenced for the Supplier's assets, insolvency proceedings for the Supplier's assets have been commenced or the Supplier has suspended all payments. This shall not affect our other or further rights.
- 11.2 We shall be entitled to terminate the contract or any part thereof at any time by our notice. This shall not affect our other or further rights to terminate, including the right to terminate for gross breach (*aus wichtigem Grund*). The effects of our termination notice on the Supplier's claim to remuneration shall be governed by the statutory provisions, except insofar as these Supplemental Standard Terms and our Standard Terms of Purchase stipulate otherwise.
- 11.3 At our option we may elect to terminate the contract instead even where we are entitled whether under any contractual term or statutory provision to rescind the contract.

**12. INSURANCE**

- 12.1 The Supplier shall take out and maintain liability cover insuring against all and any risks in relation to its works and services and the ones rendered by any sub-contractors used by the Supplier. Such insurance cover must provide adequate insured amounts for personal injury, death, property damage and pecuniary loss.
- 12.2 At our demand the Supplier without undue delay shall deliver proof of the existence of such insurance cover.