



Amtec Kistler GmbH

## General Terms and Conditions of Supply (International)

### I. General

1. All of our supplies and services are based on the present General Terms and Conditions of Supply. Any different purchasing terms and conditions of the customer are not accepted by us; we shall contradict any such declarations right at the outset. No contract shall become effective unless the purchase order has been confirmed by us in writing.
2. Initial quotations are provided free of charge. Further quotations and design work will be provided free of charge only if a legally effective supply contract comes into existence and remains in force. Unless a specific validity period is stated, our quotations shall be without any obligation on our part.
3. The documents belonging to the quotation, such as illustrations, drawings, and specified weights and dimensions, are only approximately relevant unless they have been expressly declared binding.
4. We reserve any and all rights, in particular the right of ownership and copyright, in designs, cost estimates, drawings and all other information of physical and non-physical substance, including other commercial and technical documents of whatever nature. These shall not be disclosed to third parties and in case of non-acceptance of our quotation or, respectively, if so requested by us, they shall be immediately returned to us or destroyed, at our discretion, including all copies; if destroyed, this shall be communicated to us in writing.
5. The customer shall be responsible for compliance with the regulations applicable at the place of use, in particular as far as environmental protection and accident protection are concerned. Where such regulations result in requirements concerning the content of our supplies and services, the customer shall immediately inform us thereof and of the content of the mandatory modifications. The price quoted does not include the expenses resulting from the implementation of such regulations.

### II. Price and payment

1. Our prices are net prices for delivery EXW (according to the INCOTERMS version applicable at the time). For deliveries into another EU country, we require the turnover-tax registration number of the customer as well as a certificate evidencing the transport of the delivered goods into another EU country. Where no such information is available, the statutory amount of the German Value Added Tax will be added to the prices. Our prices are based on the cost factors as applicable at the date of the quotation. We reserve the right to revise our prices in case these should change by the time the goods are ready for shipment.
2. Payments shall be effected without any deduction to the account stated in our quotation. Payment shall be effected in the following instalments:
  - 1/3 down payment upon order placement
  - 1/3 upon expiry of half the delivery period
  - 1/3 upon readiness for shipment
3. The customer shall be entitled to withhold payments or to set off payments against claims only insofar as his claims are undisputed or have been found to be legally effective.
4. Subject to any other provision contained in the present General Terms and Conditions of Supply or in the Contract, all taxes, duties and other fees incurred outside the Federal Republic of Germany shall be to the customer's account.

### III. Intercompany clearing clause

1. We shall be entitled to set off customer claims against any and all claims already existing or arisen by the time of settling accounts, to which we or Siemag Weiss GmbH & Co. KG or a company in which the latter holds a direct or indirect share of at least 50% ("**Siemag**") are entitled, irrespective of their maturity. Moreover, we shall be entitled to set off customer claims vis-à-vis Siemag against any and all already existing claims and claims arisen by the time of settling accounts, to which we or Siemag are entitled, irrespective of their maturity. Information about the group of companies concerned will be submitted to the customer on request at any time.
2. All securities furnished to us shall also serve as security for claims which Siemag Weiss GmbH & Co. KG and/or a company in which the latter hold a direct or indirect share of at least 50% may have against the customer. Vice versa, all securities which the customer has furnished to Siemag Weiss GmbH & Co. KG and/or the said group companies, shall also serve as security for our claims, irrespective of the legal grounds on which these may have arisen.

### IV. Delivery time

1. Adherence to the delivery time is subject to all supplies having been received by us correctly and in a timely manner and in addition requires that all commercial and technical matters have been clarified between the parties to the contract and that the customer has fulfilled all his obligations such as the provision of the necessary certificates and approvals from authorities or effecting of a down payment. If this is not the case, the delivery period shall be extended accordingly. Where an acceptance is required, the acceptance date shall be the applicable date – except in case of a justified refusal of acceptance – alternatively, the notification of readiness for acceptance may be used.  
If the despatch or acceptance of the goods to be delivered is delayed for reasons attributable to the customer, he will be charged the expenses incurred on account of such delay, starting one month after the notification of readiness for despatch or readiness for acceptance, respectively.
2. All cases of Force Majeure as well as unforeseen occurrences which are beyond our control, such as acts or omissions by government institutions or authorities, labour dispute actions (such as strike and lockout), operational disturbances, scrapping, delays in the receipt of raw and construction materials at our end or at our subcontractors, etc., shall adequately extend the delivery time provided that such occurrences affect the timely fulfilment of the contract as a whole or in part. We shall not be responsible for such occurrences either if they arise during a delay. We shall inform the customer about the start and end of such occurrences if this is possible.
3. In case our supplies or services are delayed and a damage arising therefrom causes a loss to the customer, he shall be entitled, with all further rights and claims excluded, to demand liquidated damages for delay. After the expiry of a grace period of two weeks, this shall amount for each further full week of delay to 0.5 % – with a maximum of 5 % – of the value of the delayed deliveries or services. The liquidated damages for late delivery finally settle the consequences of a possible delay, subject to the provisions of section IX and in case of unlawful intent. The claim for liquidated damages for late delivery which may become payable by us shall be filed within [10] days after the notice of readiness for shipment and may be set off against the payment due on readiness for shipment (see Section II. 2. above). In case of non-compliance with this deadline, the claim for liquidated damages for late delivery shall become void.



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### V. Transfer of risk, acceptance

The risk is transferred on delivery EXW (according to the latest version of INCOTERMS). Where acceptance is required, this shall determine the transfer of risk (with the exception of risk of transport). The acceptance shall be performed without delay at the acceptance date or, alternatively, upon notification of the readiness for acceptance. If acceptance is delayed for reasons not attributable to us, the risk shall pass to the customer on the day of notification of readiness for acceptance.

### VI. Retention of ownership

#### 1. Current Account / Balance Clause (Business Connection Clause)

The seller reserves his title to the goods, until the complete settlement of all his accounts receivable from the buyer resulting from the business connection, including future accounts receivable arising from current or future contracts. This also applies if the total accounts receivable by the seller or parts of them are included in a current invoice and the balance is struck and acknowledged.

#### 2. Extended reservation of title in the case of resale with assignment of future claims clause

The buyer is only entitled to the resale of the goods subject to a reservation of title in the ordinary course of business, if he herewith assigns to the seller all claims against buyers or third parties arising from the resale. If goods subject to the reservation of title are sold either unprocessed or processed or in connection with goods which are the complete property of the buyer, the buyer assigns to the seller already now the full amount of the accounts receivable arising from the resale. If goods subject to the reservation of title are sold - after processing/combination - together with goods not owned by the seller, the buyer assigns already now the accounts receivable up to the amount of the goods subject to the reservation of title with all ancillary rights and ranking. The seller accepts this assignment. The buyer is entitled to collect these accounts receivable also after the assignment. The right of the seller to collect the accounts receivable himself remains unaffected; however, the seller undertakes to not collect the accounts receivable as long as the purchaser duly fulfils his payment and other obligations. The seller is entitled to demand from the buyer the disclosure of the assigned accounts receivable and the corresponding debtors and all necessary information for the collection as well as the delivery of the corresponding documentation and the information of the debtor about the assignment.

#### 3. Extended reservation of title with processing clause

The possible treatment or processing of the goods subject to the reservation of title is done by the buyer for the seller without leading to any obligations of the latter. In case of the processing, combination, mixture or blending of goods subject to the reservation of title with other goods not owned by the seller, the seller is entitled to the resulting co-owner's share in the new goods proportionally to the value of the goods subject to the reservation of title as compared to the other goods at the moment of processing, combining, mixture or blending. If the buyer acquires the sole ownership of the new goods, the parties agree that the buyer grants to the seller a co-ownership proportionally to the value of the processed, combined, mixed or blended goods subject to the reservation of title and holds in custody these goods for the seller free of charge.

#### 4. Cheque/Bill Clause

If in connection with the payment of the purchasing price by the buyer a liability of the seller on a bill is created, the reservation of title as well as the accounts receivable from the delivery of goods on which this reservation of title is based on shall not expire before the honouring of the bill by the buyer as drawee.

#### 5. Overcollateralisation Clause

If the value of the existing collateral exceeds the secured accounts receivable by more than 20 %, the seller is obliged to release the collateral up to this rate on demand of the buyer.

### VII. Use of software

1. Where the scope of supply includes software, the customer will be granted the non-exclusive, non-transferable and non-sublicensable right of using the software supplied, including its documentation, for the contractually agreed purpose on the goods supplied therefor. Any use of the software for other purposes and/or on more than one system shall be prohibited.

2. The customer shall duplicate, edit, translate or convert the software from the object code to the source code only to the legally allowed extent. The customer undertakes not to remove nor to change without our prior written approval any manufacturer information, especially no copyright notes.

3. All other rights in the software and documentations, including duplicates, shall remain with us or with the software supplier.

### VIII. Warranty

We shall be liable for defects in the goods supplied, including the lack of warranted quality, with the exclusion of further claims and rights, as follows:

#### Material defects

1. The warranty period for all supplies shall end after 12 months (for multi-shift operation 6 months) from delivery, but at the latest 18 months, after readiness for shipment, whichever comes earlier. If the supplied goods is proved to be defective due to circumstances that have arisen prior to installation or readiness for shipment, if the customer has fulfilled his duty of inspection and objection, the supplied goods shall, at our discretion, be repaired or replaced. All further warranty claims, also in the case of warranted quality, especially rescission, reduction and damages, shall be excluded.

2. If the customer should refuse to grant us the time and opportunity to make all repairs and replacement deliveries as deemed necessary by us, we shall be exempt from our warranty obligations. Only if the operational safety is directly in jeopardy, of which we shall be informed without delay, the customer shall have the right, after contacting us, to repair the defect himself or have it repaired by third parties and to demand from us the reimbursement of adequate costs.

3. The direct costs incurred for the repair or replacement supply shall be borne by us if the notice of defect should turn out to be justified. For the elimination of defects, any existing lifting equipment, etc., shall be made available by the customer free of charge. A repair or replacement supply made by us shall not start the warranty period again.

4. Any liability for delay in connection with the repair or replacement supply shall be excluded.

5. We shall be entitled to refuse the elimination of defects insofar as the customer does not fulfil his obligations.

6. In particular, no warranty will be assumed for defects which are due to, for example, unsuitable or improper use, faulty installation, commissioning, operation or maintenance by the customer or third parties, incorrect or incomplete information by the customer, natural wear and tear, faulty or negligible treatment (including, among others, excessive stressing), use of unsuitable operating materials, poor quality of construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences, unless we are responsible for these items.



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7. Should the customer or a third party effect an improper repair, we shall not be responsible for the resulting consequences. The same shall apply to modifications to the supplied goods which are made without our prior written approval.

### Violation of intellectual property rights

8. Should the contractual use of the supplied goods lead to the violation of intellectual property rights of third parties in the contractually agreed country of use, we shall, at our expense, generally obtain for the customer the right of further use or modify the supplied goods in a manner reasonable to the customer such that the violation of intellectual property rights ceases to exist.

If this should be impossible at financially adequate terms and conditions or within an adequate period of time, the customer is entitled to rescind from the contract. Under the conditions stated above we as well shall be entitled to rescind from the contract, with any damages excluded.

Moreover, we shall keep the customer harmless from and against any undisputed claims or legally effective claims of the respective owner of the intellectual property rights.

9. Our obligations as stated in Section VIII.8 in the event of a violation of intellectual property rights shall be final. They shall exist only if
- the customer informs us without delay of the intellectual property rights violation claimed and in particular such that all protective actions including out-of-court settlements are left to our discretion,
  - the customer declares any acceptance or makes any arrangements, in particular compositions, concerning the claimed intellectual property rights violation or, respectively, any supposed resulting claims only with our written approval,
  - the customer assists us in an adequate manner in the defence of the claims raised and rights or, respectively, makes it possible for us to undertake the modifications as mentioned in Section VIII.8,
  - the intellectual property rights violation is not based on an instruction by the customer, and
  - the intellectual property rights violation has not been caused by the customer having modified the supplied goods without authorization or used it in a manner that does not conform to the contract.

### Software defects

10. Sections VIII.1 to VIII.7 apply accordingly to software defects under the proviso that we will be liable only for reproducible defects. If the use of the software leads to a violation of intellectual property rights of third parties, Sections VIII.8 and VIII.9 shall apply.

## **IX. Waiver of outstanding deliveries in case of delay**

1. If a delay as defined in Section IV.3 has occurred and if the customer, after expiry of the time for which liquidated damages for delay are payable according to Section IV.3, grants us an additional reasonable period to deliver the goods with the explicit declaration that he will refuse to accept the outstanding deliveries after such time has expired, and if the additional period is not adhered to due to our fault, the customer shall be entitled to waive the outstanding deliveries and, as the case may be, claim back any down payments already made for such outstanding deliveries.
2. In addition to the claim for liquidated damages for delay according to Section IV.3 and the right of waiving outstanding deliveries and, as the case may be, claiming back any down payments already made for such outstanding deliveries, all further rights and claims of the customer for delay, especially for redhibition, cancellation, reduction or damages, shall be excluded. Thus, in particular the customer's right of rescission concerning deliveries already made shall be excluded.
3. In case of unforeseen events as defined by Section IV.2 or in case of Force Majeure, we may rescind from the contract either in full or in part, provided that they substantially change the financial importance or the content of the service or significantly affect our operations. No claims for damages by the customer for such a rescission shall apply.

## **X. Liability**

1. Except in case of our willful misconduct, our overall liability, including but not limited to warranty claims, damage compensation, repayment of the contract price, etc. shall, regardless of its legal basis, be limited to one hundred percent (100%) of the contract price.
2. We shall only be liable for compensation of direct and foreseeable damages. We shall not be liable for loss of production, loss of use, loss of profit, business interruption, loss of contracts, loss of interest, any claims and/or rights arising out of buyer's contracts with third parties, any other pure financial or economical loss and/or any incidental, indirect and/or consequential damages in connection with any claims or objects according to these terms and conditions, any contract and/or the applicable law.
3. Any and all claims and rights of the buyer shall be exhaustively stipulated in these terms and conditions. Any and all further rights and remedies of the buyer regardless whether being based in contract, law, tort (including negligence), equity or otherwise shall be excluded.

## **XI. Assertion of contractual claims**

Unless otherwise stipulated above, all customer claims resulting from or in connection with the respective contract, including claims for any repairs or replacement deliveries, shall, for whatever legal grounds, expire at the latest 12 months after delivery or acceptance, if such acceptance has been agreed on or in case of impossibility caused by us at the latest 12 months after conclusion of the contract unless asserted by the customer in writing, stating the amount and legal ground of the asserted claim.

## **XII. Applicable law, arbitration**

1. Unless otherwise agreed on in the contract, substantive Swiss law shall apply, with the UN Convention on the International Sale of Goods (CISG) dated 11 April 1980) excluded.
2. Any and all disputes arising out of or in conjunction with the respective contract, including especially those that concern the effectiveness of the contract, the inclusion of the present General Terms and Conditions of Supply or the present arbitration clause, etc., shall be finally settled with binding effect according to the Rules of Arbitration of the International Chamber of Commerce (ICC Paris), without recourse to the general courts of law, by one or more arbitrators appointed according to such rules. The venue of the court of arbitration shall be Zurich, Switzerland. The language of the proceedings shall be English.