

# General conditions of contract for the supply of machinery and spare parts

**2006**

## 1. General

1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order.

Tenders which do not stipulate an acceptance period shall not be binding.

1.2 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.

1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.

## 2. Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto.

## 3. Technical documents

3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for 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 — without previous written consent of the other party — not 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. Prices

4.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works including Swiss VAT, if any, excluding packing, without any deduction whatsoever.

4.2 The supplier reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made according to the attached price adjustment clause.

In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reason stated in Clause 7.2, or any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete.

## 5. Terms of payment

5.1 Payments shall be made at supplier's domicile, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed upon, the price shall be paid in the following instalments:

— One third as advance payment within one month after receipt of the order acknowledgement by the customer,

— one third on expiry of two thirds of the agreed delivery time,

— the remainder within one month after supplier's advice that the supplies are ready for dispatch.

5.2 If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate of 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

## 6. Reservation of title

The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract.

Upon entering into the contract the customer authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

## 7. Delivery time

7.1 The delivery time shall start as soon as the contract is entered into, all official formalities have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.

7.2 The delivery time is reasonably extended:

a) if the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;

b) if hindrances occur which the supplier cannot prevent despite using the required 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, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semifinished or finished products, the need to scrap important work pieces, 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 performance of its contractual

obligations, in particular if the customer fails to observe the terms of payment.

7.3 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 has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay. Damages for delayed delivery shall not exceed ½ percent 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 supplies in delay. No damages at all shall be due for the first two weeks of 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 supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

7.4 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 7. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

## **8. Passing of benefit and risk**

8.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.

8.2 If dispatch is delayed at the request of the customer or due to reasons beyond supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

## **9. Inspection and taking-over of the supplies and services**

9.1 As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

9.2 The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.

9.3 Having been notified of the deficiencies according to Clause 9.2, the supplier shall as soon as possible remedy them, and the customer shall give the supplier the possibility of doing so.

9.4 The carrying out of a taking-over test as well as laying down the conditions related thereto need a special agreement.

9.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 9 and 10 (guarantee, liability for defects).

## **10. Guarantee, liability for defects**

10.1 The guarantee period is 12 months, or 6 months in case of a multi-shift system. It starts when the supplies leave the works. If dispatch is delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair, but not longer than the expiry of a period being double to the guarantee 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 possibility of remedying such defect.

10.2 Upon written request of the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become the supplier's property if he does not renounce explicitly.

10.3 Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest.

If the express warranties are not or only partially achieved, the customer may first of all require the supplier to carry out the improvements immediately. The customer shall give the supplier the necessary time and possibility of doing so.

If such improvements fail completely or in part, the customer may claim a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

10.4 Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad 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.

10.5 With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 10.1 to 10.4.

## **11. Exclusion of further liability on the supplier's part**

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, termination 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, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

## **12. Erection**

If the supplier undertakes the erection or the supervision of the erection, the General Conditions of Erection of Swissmem shall apply.

## **13. Jurisdiction and applicable law**

### **13.1 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.

13.2 The contract shall be governed by Swiss substantive law.

## Price Adjustment Formula

issued by Swissmem

$$P = P_0 \left( a + b \frac{L_m}{L_0} + c \frac{M_m}{M_0} \right)$$

|                |         |   |
|----------------|---------|---|
| P              | = _____ | Selling price on date of delivery   |
| P <sub>0</sub> | = _____ | Selling price by tender   |
| a              | = _____ | Coefficient of fixed part of costs (e.g. = 0,1) <sup>1</sup>  |
| b              | = _____ | Coefficient of part varying with wage index (e.g. = 0,6) <sup>1</sup>   |
| c              | = _____ | Coefficient of part varying with material index (e.g. = 0,3) <sup>1</sup>   |
| L <sub>0</sub> | = _____ | Wage index <sup>2</sup> of Swissmem, Zurich, on date of tender  |
| L <sub>m</sub> | = _____ | Average of all wage indices <sup>2</sup><br>– from date of order acknowledgement to completion in accordance with contract* or<br>– during period of manufacture,<br>i.e. from _____ to _____*  |
| M <sub>0</sub> | = _____ | Mean of price indices <sup>3</sup> of principal material in category «metals and metal products» required for manufacture, related to their proportion of value of goods on date of tender  |
| M <sub>m</sub> | = _____ | Average of mean values of all price indices <sup>3</sup> of principal materials in category «metals and metal products» required for manufacture, related to their proportion of value of goods at time of delivery<br>– from date of order acknowledgement to completion in accordance with contract* or<br>– from date of order acknowledgement to date by which supplier had obtained most of these materials, i.e. from _____ to _____* |

<sup>1</sup> a + b + c must always total 1.

<sup>2</sup> Since the wage index is only issued out by Swissmem quarterly, the index for the past quarter shall be inserted in each case.

<sup>3</sup> Fractions of the official producer price index calculated and published monthly. (If the year serving as a basis for determination of the index is changed by the authority concerned, the supplier is entitled to re-calculate the changes in prices in accordance with the new index values.)

\* Delete where inapplicable.