

## VESTDAVIT GENERAL SALES CONDITIONS FOR GOODS AND SERVICES

All sales of Products, including davits and spare parts (hereinafter called Goods), and/or services (hereinafter called Service (-s)) (hereinafter called together or separately Product (-s)) between the Purchaser and Supplier shall be subject to these Conditions. They have precedence over all other documents concerning the Product, including the Purchaser's purchase conditions if any, unless otherwise agreed in a document signed by the Purchaser and the Supplier or accepted in writing by the Supplier.

### 1. STANDARD CLAUSES FROM THE EUROPEAN ORGANISATION ORGALIME

With the exception of the special clauses in these General Sales Conditions, the clauses of the standards ORGALIME S 2000 shall apply. In case of inconsistency between the special clauses and ORGALIME's clauses, the special clauses shall prevail.

### 2. SPECIAL CLAUSES

#### 2.1 CONTACT

Each party shall appoint a contact that must be fluent in English and in charge of the performance of the contract (supply of Goods and/or Services).

Unless otherwise agreed in writing and unless another person is specifically appointed and accepted by both parties, the contact shall have all the necessary powers of attorney and any decision made by the contact or any other person above him in the hierarchy of the company shall bind the company whose contact person he/she is.

#### 2.2 OFFER, ORDER CONFIRMATION

2.2.1 Unless otherwise accepted in writing by the Supplier an offer presented by the Supplier is open for order 30 days from the date of the offer. The offer shall not apply to orders received after this time limit.

2.2.2 Only written order confirmation from the Supplier, or beginning of delivery by the Supplier, is binding on the Supplier. Unless the Purchaser makes objection by e-mail, with acknowledgement of receipt, not later than 7 days after the receipt of the order confirmation and at least 5 working days before shipment, the Purchaser shall be bound by its contents.

#### 2.3 DELAY OF DELIVERY NOT DUE TO THE SUPPLIER

2.3.1 In case of delay not due to the Supplier but due to force majeure or due to the Purchaser, the Purchaser's contractors or a customer in the chain of contracts from the Purchaser to the end user, the price of the contract shall be adjusted in order to cover the additional costs, including the increase of the costs of production of Goods. In case of a dispute on the amount of the increase of the costs of production, the price revision clause drafted by the United Nations Economic Commission for Europe shall apply (ref. supplementary clause ME/188bis/53).

2.3.2 In case of delay of delivery due to the Purchaser, the Purchaser's contractors or a customer in the chain of contracts from the Purchaser to the end user, the Purchaser shall proceed to pay as if such delay had not occurred.

2.3.3 In case of delay of delivery due to the Purchaser, the Purchaser's contractors or a customer in the chain of contracts from the Purchaser to the end user and in case this results in a claim against the Supplier, the Purchaser shall defend, indemnify and hold the Supplier harmless from such claim.

#### 2.4 PAYMENT

##### 2.4.1 Late payment

2.4.1.1 In case of late payment, the Purchaser shall pay overdue payment without delay and upon Supplier's request present an on demand bank guarantee for the remaining instalments, issued by a bank accepted by the Supplier or confirmed by Supplier's bank.

2.4.1.2 In case of late payment, and if the parties have an agreement on a retention warranty amount or a retention warranty bond, the agreement giving the Purchaser a right of retention shall automatically be cancelled.

2.4.1.3 In case of late payment, the Supplier shall have the right to postpone any delivery until payment of the overdue payment and presentation of the bank guarantee for the remaining parts of the payment.

2.4.1.4 In case of late payment, the Purchaser shall cover the entire costs of debt recovery, including legal costs, in addition to compensation for loss.

#### 2.4.2 The Purchaser's Insolvency

2.4.2.1 In case insolvency proceedings are initiated against the Purchaser or the end user or if insolvency proceedings are not commenced due to insufficient assets, the Supplier shall have the right to terminate the sales contract unless the Purchaser presents an on first demand bank guarantee for confirmation by the Supplier's bank for any overdue payment and remaining parts of the payment issued on behalf of the Purchaser or any third party.

In case of such a termination the Purchaser must pay, as in the case of force majeure below, and hold the Supplier harmless.

2.4.2.2 The same rights and obligations shall apply in case of cancellation of vessel by the Purchaser's customer or the end user.

#### 2.5 RETURN POLICY

2.5.1 All returns shall be pre-authorized by Vestdavit prior to any shipment

2.5.2 A return identification number will be issued for each return shipment. All related documents shall be marked with the return identification number in addition to the original PO-number. Goods received without return identification number will not be handled.

2.5.3 Return shipping cost will be on customer expense

2.5.4 Preparation/wrapping/shipping protection is the customer's responsibility

2.5.5 Customer is responsible for needed customs clearance documents and making sure the package has these attached.

#### Return fee/cost

2.5.6 Standard return fee for custom ordered items is 30% of sales price. Might vary depending on the re-sale possibility (contact Vestdavit in advance for clarification)

2.5.7 Standard return fee for stock items is 15% of sales price

2.5.8 Any damage on received goods will be carried by customer or its shipping insurance

#### 2.6 LIABILITY FOR DEFECTS OR DEFECTIVE SERVICES (WARRANTY)

##### 2.6.1 Warranty

The Supplier warrants the Goods for any defect or lack of conformity resulting from faulty design, materials or workmanship in accordance with the standard and special clauses.

##### 2.6.2 Unjustified warranty claim

2.6.2.1 The Purchaser has a duty before presenting a warranty claim to examine properly if the claim is covered by the Supplier's warranty.

A warranty claim is unjustified when the claim is not covered by the warranty.

2.6.2.2 In case of repair of the Product, done by the Supplier or by a third party on behalf of the Supplier, related to an unjustified warranty claim from the Purchaser, the Supplier shall invoice the Purchaser for the cost of the repair and Purchaser must pay.

2.6.2.3 When the Purchaser asks a customer, in the chain of contracts from the Purchaser to the end user, to address a warranty claim directly to the Supplier, without making proper examination in order to see if the claim is covered by the Supplier's warranty, the Supplier may invoice the Purchaser directly for the cost of the repair and the Purchaser must pay.

2.6.2.4 The invoice shall cover the cost of repair/replacement and all related costs including travelling and living expenses of the persons performing repair/replacement and the labour costs for working time and travel time.

Travel time shall be invoiced at the same rate as for work time. The same shall apply in case of the repair crew's waiting time due to the Purchaser, a person under the control of the Purchaser or the end user. In such cases the Purchaser shall pay the invoice and defend, indemnify and hold the Supplier harmless from the claim from a customer in the chain of contracts from the Purchaser to the end user.

2.6.2.5 If the Supplier thinks that the claim is unjustified because the defect in question is not covered by the warranty, the Supplier may ask for advance payment and the work for repair or replacement will not begin before receipt of the advance payment, without any liability for the Supplier.

If the claim is proven justified the Supplier shall reimburse the Purchaser for the advance payment.

2.6.2.6 Unless otherwise agreed in writing and in case of repair performed by the Purchaser or any third party not expressly appointed by the Supplier, the Supplier shall have neither responsibility nor liability for the repair, the consequences and the payment for the repair.

### **2.6.3 Defective parts covered by the warranty and replaced by or for the Supplier**

Defective parts shall be stocked at the Purchaser's place at the Purchaser's expense for inspection by the Supplier.

After a reasonable time, which shall not be less than 30 days, the Purchaser may request destruction of defective parts. However the Purchaser shall not destroy these parts when the Supplier accepts to cover the storage expenses at cost or requests sending them at the Supplier's expense to the Supplier's place or any other place designated by the Supplier.

In case of legal proceedings, or risk of such proceedings, the defective parts shall be stocked at the Purchaser's place and expense as long as it is requested for the proceedings.

### **2.6.4 Services to be done under the warranty Coverage of additional costs**

Unless otherwise agreed in writing, the Purchaser shall cover the following costs when the Products must be repaired in a place other than the place of the Supplier, i.e. Bergen, Norway: travel and living expenses of the persons performing the repair/replacement and travel and waiting time according to the "rates and conditions for service personnel".

Purchaser must himself, or through any third party having control over the vessel, position and prepare the vessel for warranty repair by or on behalf of the Supplier. In case of delay and waiting time for the service personnel and the Purchaser shall cover all additional costs due to the

delay, including labour costs for waiting time.

### **2.6.5 Limitations of liability**

2.6.5.1 The Supplier is only responsible when he is in charge of the Service and the Service is done by the Supplier or by service personnel specifically appointed by the Supplier. The Supplier has no liability for damages, injury or death due to any other third party's act or passivity, including lack of maintenance, incorrect erection and faulty repair. The Supplier has no warranty obligation in case of late or non payment.

2.6.5.2 The Supplier shall have no liability for defects, damages or injury and death due to the Supplier's delivery in conformity with technical requests from the Purchaser, the end user, a public authority, a supervisory institution or a classification institution.

2.6.5.3 The Purchaser has a duty to inform in due time the Supplier of any technical specifications required by the Purchaser, the end user, a public authority, a supervisory institution or a classification society. In case of breach of this obligation, no claim for lack of conformity with such specifications may be presented by the Purchaser and the Purchaser shall defend, indemnify and hold the Supplier harmless.

## **2.7 ADDITIONAL CONDITIONS FOR SERVICES**

2.7.1 Services include testing, commissioning, maintenance, repair, periodic inspection and up-grading. Services are subject to a specific contract or specific contractual clauses in a sales contract.

2.7.2 Unless otherwise agreed in writing, supply of Services shall be invoiced according to the Supplier's periodic "Rates and Conditions for Service Personnel" which are applicable at the date of the performance of the Service.

2.7.3 When ordering a Service the Purchaser shall provide the Supplier a clear description of the Service to be performed for sending the right service personnel, deciding of the date and place of performance and ordering special utilities/spare parts when it is necessary. Extra costs, included labour costs, due to unclear or incomplete description shall be covered by the Purchaser.

2.7.4 The Purchaser must provide utilities and facilities (electricity, water, premises, machineries, tools etc.) and technical local assistance and interpreters at the place of performance of the Service, unless the local population has a good knowledge of English or a Scandinavian language, for the performance of the Service.

The Purchaser must provide active assistance for getting all required public authorisations from the immigration authority or any other authority which are necessary for the performance of Services by the service personnel at the place of performance.

The Purchaser is in charge of providing secure, safe and decent working and living conditions for the service personnel.

In case of breach of these obligations, the Purchaser shall be liable for the consequences, including costs. The Purchaser shall defend, indemnify and hold the Supplier harmless.

2.7.5 Knock for knock: each party shall be responsible, i.e. indemnify the other party in case of any claim addressed to the other party, for damage to his property and personal injury to or loss of life of any of his employees, irrespectively of the other party's legal liability.

Each party shall contract an insurance policy covering such damages, injuries and loss of life. Such a policy must be a policy from an insurance company of good international reputation. Such a policy shall not contain any subrogation right to the insurance company's benefit against the other party.

2.7.6 The Purchaser shall control the performance of the Service, request a test if necessary, draft a report, sign it and request the head of the Service personnel to sign it before the service personnel leaves the place of performance of the Service. Unless otherwise expressly

noted in such a service report, the Service shall be deemed correctly performed and the Purchaser shall have no right to claim.

## **2.8 FORCE MAJEURE**

In the event the Supplier is unable to fulfil a contract due to force majeure or in case a contract is terminated because of force majeure, the Purchaser shall pay the Supplier pro rata for the deliveries and work already carried out by the Supplier including the purchases done by the Supplier and the parts of the Product already manufactured in accordance with the production schedule and on stock and in case of supply of Service the costs of the service personnel as mentioned in article 2.9.2.2.

## **2.9 APPLICABLE LAW, DISPUTE RESOLUTION**

2.9.1 These Conditions, and any related contract, shall be governed by the United Nations' Convention on Contracts for the International Sale of Goods of 1980, supplemented, when insufficient, by the law of the Supplier's country for legal fields outside the scope of the Convention.

2.9.2 In case of a lack of conformity alleged by the Purchaser, the parties accept the appointment of an independent technical expert by Det norske Veritas upon request from one of the parties. The expert shall present a technical report in English on the alleged lack of conformity, propose solutions and give an opinion. Unless otherwise agreed the expert shall not be a national of the countries of the parties. Unless otherwise agreed in writing, this opinion shall not bind the parties and any party may go directly to the competent jurisdiction/arbitration as described below. The Purchaser must facilitate for the examination by the expert. The failing party shall cover the fee and costs of the expert. If the expert is of the opinion that both parties have a responsibility, the fee shall be shared equally between the parties.

2.9.3 When the Purchaser is from a European State, which has ratified the Lugano convention on the enforcement of judgments, any dispute arising out of or in connection with these conditions, and any matter related to contracts and commercial transactions, shall be settled by the court at the place of the Supplier.

When the Purchaser is from any other State, such disputes shall be finally settled by fast-track arbitration in accordance with the Rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce, in English, in Oslo. If a party refuses to appear, send the documents requested by the arbitral tribunal, pay the administrative fee or advance payment to the tribunal or follow the arbitral procedure and rules, the tribunal shall settle the dispute solely on the basis of the documents presented and render an arbitral award. A document shall be deemed presented to the tribunal only when it is sent in due time and the fee and advance payment from the party presenting the document are received in due time by the tribunal. As an exception to this arbitration clause, the Supplier may request interlocutory measures or initiate a debt recovery procedure, including legal proceedings, at the court of its place or the place of the Purchaser. The Purchaser shall bear all the costs of the debt recovery procedure.

Both parties hereby agree that accepted mediation solution or arbitral decision or court decision may automatically be enforced in all countries, particularly in any country where the relevant party has assets. The parties undertake not to oppose the enforcement of such a solution or decision. The losing party shall bear all legal costs of the winning party. The tribunal may at its reasonable discretion reduce the legal costs to be reimbursed if the winning party does not win all his claims. The losing party shall cover all costs of enforcement.

## **2.10 CHANGE ORDER**

This article does not cover termination or cancellation of the contract but the right and obligations of the parties related to the Purchaser's change order i.e. a requested partial modification of the order due to

technical requirement.

2.10.1 When required by the end user or when it is necessary for improving the Products, the Purchaser is entitled to demand change of quality, quantity or characteristics of the Goods and change of the time schedule. A change shall be reasonable, i.e. not beyond what could reasonably have been expected at the date of the signature of the Order Confirmation.

2.10.2 In case of an increase of the work/order to be done by the Supplier, the Purchaser shall pay the additional costs on demand upon presentation of the additional invoice. The prices shall be according to the prices and labour costs at the date of the performance of the change order.

2.10.3 If the Supplier cannot perform the increase in the requested time, he shall inform the Purchaser without delay and propose another time limit. This time limit shall be deemed contracted unless the parties agree in writing on another time limit or the Purchaser withdraws his change order with immediate notice to the Supplier.

2.10.4 In case of a reduction or suspension of the work/order, the Supplier shall immediately cease production of the part of the order which can be ceased, use his best endeavours to reduce his costs and inform the Purchaser of the new price without undue delay.

The Purchaser shall pay for all the Supplier's costs which cannot be reduced. The Purchaser shall among other pay for all manufactured Goods on stock and performed Services, parts of Goods partly manufactured and all ordered components and materials. These costs include also the cost related to lay off and dismissal of personnel, cancellation of sub-contracts which are necessary because of the change order and the administrative costs for performing the change order.

2.10.6 Unless the parties agree in writing on a new delivery schedule and new milestones by reason of the required changes, the delivery time shall remain unchanged.

2.10.7 In case of change order the Purchaser shall hold the Supplier harmless.

## **2.11 TERMINATION OF CONTRACT**

### **2.11.1 Termination**

A contract may be terminated with immediate effect by either party (the Requesting Party):

2.11.1.1 if the other party has a receiver appointed over any of his assets, becomes insolvent or enters into liquidation, or if a petition of bankruptcy is filed by or against him, or if he makes an arrangement for the benefit of his creditors,

2.11.1.2 in case of default in payment or a material, i.e. substantial, breach by the other party of the obligations arising out of the contract, if the other party does not rectify such default or breach within the time period stipulated by the Requesting Party in the written request of rectification (this time period shall not be less than 15 days unless the default or breach cannot be rectified), or

2.11.1.3 in any other which gives the right to cancel the contract according to the law of the contract.

### **2.11.2 Cancellation by the Purchaser**

2.11.2.1 Supply of Goods:

Notwithstanding the possibility of termination according to Article 2.11.1, the Purchaser may cancel a contract upon the fulfilment of the following conditions:

- a) payment of 10 % of the EXW value of the contract price (EXW latest Incoterms) for cancellation 9 months before the agreed delivery date,

- b)** payment of 20% of the EXW value of the contract price for cancellation 6 months before the agreed delivery date,
- c)** payment of 100% of the contract price in case of later cancellation unless otherwise agreed in a specific written agreement on a compensation.

#### 2.11.2.2. Supply of Services:

Purchaser shall cover all the incurred costs of personnel, the costs for cancellation of travel and accommodation and all costs related to earlier return of the personnel, including the labour costs for the working, waiting and travel time.

If Purchaser cancels or postpones the contract 3 days or less in advance of scheduled and confirmed assignment a cancellation fee will be applied in addition to incurred cost. The cancellation fee consists of the planned working hours for the first 3 days of the assignment.

#### 2.11.2.3

In any case the Purchaser cancelling the contract shall defend, indemnify and hold the Supplier harmless in case of cancellation.

**ORGALIME S 2000**

**GENERAL CONDITIONS  
for the  
SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS**

**Brussels, August 2000**

**PREAMBLE**

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, modifications of or deviations from them must be agreed in writing.

The object(s) to be supplied under these General Conditions is (are) hereinafter referred to as the Product.

Wherever these General Conditions use the term in writing, this shall mean by document signed by the parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

**PRODUCT INFORMATION**

2. All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the contract.

**DRAWINGS AND DESCRIPTIONS**

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 erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

**ACCEPTANCE TESTS**

5. Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

If the contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

6. The Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

7. If the acceptance tests show the Product not to be in accordance with the contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

8. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

**DELIVERY. PASSING OF RISK**

9. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract.

If no trade term is specifically agreed, the delivery shall be Ex works (EXW).

If, in the case of delivery Ex works, 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 shipments shall be permitted unless otherwise agreed.

**TIME FOR DELIVERY. DELAY**

10. If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the contract is entered into, all official formalities have been completed, payments due at the formation of the contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

11. 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.

If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

**12.** If delay in delivery is caused by any of the circumstances mentioned in Clause 39 or by an act or omission on the part of the Purchaser, including suspension under Clauses 20 or 42, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

**13.** If the Product is not delivered at the time for delivery (as defined in Clauses 10 and 12), the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed 7.5 per cent of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages become due at the Purchaser's demand in writing but not before delivery has been completed or the contract is terminated under Clause 14.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within six months after the time when delivery should have taken place.

**14.** If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 13 and if the Product is still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to the Supplier terminate the contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

If the Purchaser terminates the contract he shall be entitled to compensation for the loss he has suffered as a result of the Supplier's delay. The total compensation, including the liquidated damages which are payable under Clause 13, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the contract is terminated.

The Purchaser shall also have the right to terminate the contract by notice in writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 13 would entitle the Purchaser to maximum liquidated damages.

In case of termination on this ground, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 14.

**15.** Liquidated damages under Clause 13 and termination of the contract with limited compensation under Clause 14 are the only remedies available to the Purchaser in case of delay on the part of

the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of gross negligence.

In these General Conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

**16.** If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivery time, 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 delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery, as if delivery had taken place. 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.

**17.** Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 39, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the contract is terminated.

## PAYMENT

**18.** Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the contract and one third when the Supplier notifies the Purchaser that the Product, or the essential part of it, is ready for delivery. Final payment shall be made when the Product is delivered.

Payments shall be made within 30 days of the date of the invoice.

**19.** Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

**20.** 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. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

In case of late payment the Supplier may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment.

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 to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

## RETENTION OF TITLE

**21.** 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 applicable 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 in the country concerned.

The retention of title shall not affect the passing of risk under Clause 9.

## LIABILITY FOR DEFECTS

**22.** Pursuant to the provisions of Clauses 23-37 inclusive, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

**23.** The Supplier's liability is limited to defects which appear within a period of one year from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

**24.** 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. For the remaining parts of the Product the period mentioned in Clause 23 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.

**25.** The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 23.

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 loses 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 resulting from his failure so to notify.

**26.** On receipt of the notice under Clause 25 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 22-37 inclusive.

Repair shall be carried out at the place where the Product is located unless the Supplier deems it appropriate that the defective part or the Product is returned to him for repair or replacement.

The Supplier is obliged to carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, the Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.

**27.** 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 has incurred as a result of the notice.

**28.** The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the defect.

**29.** Unless otherwise agreed, necessary transport of the Product and/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.

**30.** Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for repair, dismantling, installation and transport as a result of the Product being located in a place other than the destination stated in the contract or - if no destination is stated - the place of delivery.

**31.** Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

**32.** If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 26, the Purchaser may by notice in writing fix a final time for completion of the Supplier's obligations.

If the Supplier fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Supplier.

Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

**33.** Where the defect has not been successfully remedied, as stipulated under Clause 32,

a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstance shall such reduction exceed 15 per cent of the purchase price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the contract, the Purchaser may terminate the contract by notice in writing to the Supplier. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the purchase price.

**34.** The Supplier is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser.

**35.** The Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Product.

The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing.

Finally the Supplier's liability does not cover normal wear and tear or deterioration.

**36.** Notwithstanding the provisions of Clauses 22-35 the Supplier shall not be liable for defects in any part of the Product for more than two years from the beginning of the period given in Clause 23.

**37.** Save as stipulated in Clauses 22-36, 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 guilty of gross negligence as defined in Clause 15.

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

**38.** 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.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of gross negligence as defined in Clause 15.

### **FORCE MAJEURE**

**39.** 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 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 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.

**40.** 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 Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

**41.** 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 39 for more than six months.

### **ANTICIPATED NON-PERFORMANCE**

**42.** 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 will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.

### **CONSEQUENTIAL LOSSES**

**43.** 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**

**44.** 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.

**45.** The contract shall be governed by the substantive law of the Supplier's country.

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