

## 1. General

**1.1** In the following General Conditions of Sale and Delivery, Afag Automation AG is referred to as "Supplier" and its customers or contractual partners as "Customer".

**1.2** These General Conditions of Sale and Delivery are binding to the extent that they are declared to be applicable in the offer or the order confirmation. Any contradictory conditions on the part of the Customer shall only be valid to the extent that they have been explicitly accepted by the Supplier in writing.

**1.3** All agreements and legally relevant declarations of the parties to the contract have to be in written form in order to be valid.

## 2. Offers and conclusion of contract

**2.1** The contract shall be deemed to have been entered into upon receipt of the Supplier's written confirmation stating its acceptance of the order.

**2.2** Offers from the Supplier which do not stipulate an acceptance period shall not be binding.

**2.3** Details shown on the Web are not binding. The Supplier reserves the right to amend or withdraw its Website details at any time.

## 3. Scope of supplies

**3.1** The scope and type of supplies and services are specified in the order confirmation. Any material or services which are not included therein shall be additionally charged.

**3.2** The Supplier shall be entitled to make any changes to what is specified in the order confirmation if they lead to improvements for the Customer.

## 4. Regulations in force in the country of destination

The Customer shall inform the Supplier, upon placing the order at the latest, about the standards and regulations in the country of destination (except Switzerland) applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel. These include, in particular, the relevant regulations with regard to machine safety. The Supplier is entitled to fulfil the legal requirements with regard to documentation by means of documents in German or (at the choice of the Customer) in English.

## 5. Plans and technical documents

**5.1** Unless otherwise agreed, brochures and catalogues are not binding. Data provided in technical documents is only binding to the extent that it has been expressly stipulated as such.

**5.2** Each party to the contract retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall not – without previous written consent of the other party – 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.

**5.3** The Customer is responsible for the completeness and accuracy of the sample parts, technical documents, calculations or other details provided to the Supplier in order to execute the order.

## 6. Prices

**6.1** Unless otherwise agreed, the Supplier's prices shall be deemed to be net ex-works, in Swiss Francs and shall not include any packing, freight, insurance, assembly, installation and commissioning. The legal turnover or sales tax shall be added at the level which applies on the day on which the invoice is issued.

**6.2** If there is an increase in the costs which form the basis for the calculation between conclusion of the contract and acceptance of the supply, the Supplier shall be entitled, until final completion of the order, to adjust the prices shown in the order confirmation accordingly.

## 7. Terms of payment

**7.1** The deadline for payments is 30 days net from the date of the invoice.

**7.2** Payments shall be

made by the Customer to the registered address of the Supplier without any deductions for cash discount, expenses, taxes or duties of any kind. Other terms of payment may be specially agreed.

**7.3** In case of delay in payment from the Customer or if the Supplier has serious reason to fear that payments from the Customer will not be received fully or on time due to circumstances which have arisen after conclusion of the contract, the Supplier shall be entitled to suspend the scheduled supplies immediately until further notice and, from the point in time at which payment is due (i.e. after expiry of the payment period defined in Article 7.1), to charge late payment interest at 6 % p.a.

**7.4** In the case of late payment, the Supplier is also entitled, after setting an additional period of time for payment, to withdraw from the contract and to demand return of the goods which have been delivered. The other legal rights of the Supplier, particularly any claims for compensation of damages, remain under reserve in any case.

## 8. Right of retention, payments in advance

The Supplier may withhold performance or make it dependent upon payments in advance by the Customer or demand collateral in respect of its claim for payment if the Customer defaults on payment or the supplier has a suspicion justified by factual evidence that the creditworthiness of the customer is in doubt, particularly if a cheque from the Customer cannot be cashed by the Supplier or the Customer ceases payments.

## 9. Retention of title

**9.1** The Supplier shall be entitled to retain ownership of the goods supplied until they have been paid for in full.

**9.2** The Customer is obliged - at its own cost - to undertake the necessary measures to protect the Supplier's ownership of the goods (namely maintenance and reasonable insurance commensurate with the risks) or to cooperate in the appropriate measures.

**9.3** In particular, the Customer authorises the Supplier, on conclusion of the contract, to have the retention of ownership, to the extent necessary, entered at the cost of the Customer in the relevant register and to fulfil all the associated formalities.

## 10. Delivery Time

**10.1** The delivery time shall begin as soon as the order has been accepted by the Supplier and after full settlement of the technical matters associated with the goods to be supplied.

**10.2** The delivery time shall be reasonably extended:

- if the information required by the Supplier for execution of the contract is not received in time, or if the Customer subsequently changes it;

- if agreed terms of payment are not met, letters of credit are opened too late, or the necessary import licenses are not received by the Supplier in good time;

- if hindrances occur which the Supplier cannot prevent despite using the requisite care, regardless of whether they affect the Supplier or the Customer or a third party. Such hindrances are occurrences of Acts of God, for example epidemics, mobilisation, war, civil commotion, serious breakdowns in the factory, accidents, labour conflicts, late or deficient delivery by subcontractors of the necessary raw materials, semi finished or finished products, official acts or omissions by any state authorities or public bodies, and natural catastrophes.

## 11. Delay in delivery

**11.1** The Customer shall be entitled to claim compensation for delayed delivery provided that the delay has been provably caused by a fault of the Supplier and the Customer can prove to have suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the Customer, the latter shall not be entitled to any compensation for delay.

**11.2** Compensation for delayed delivery shall not exceed 0.5 % of the part of supply in delay for every full week's delay and shall in no case whatsoever exceed 5 % of the contract

price for the part of the supplies in delay. No compensation at all shall be payable for the first four weeks of delay.

**11.3** Any delay of the supplies or services does not entitle the Customer to any rights and claims other than those expressly stipulated in Articles 11.1 and 11.2 above.

## **12. Transfer of benefit and risk**

**12.1** The benefit and risk of the supplies shall pass to the Customer when they leave the factory.

**12.2** If despatch is delayed at the request of the Customer or due to reasons beyond the Supplier's control, the risk of the supplies shall pass to the Customer at the time originally foreseen for their leaving the factory. From that moment on, the supplies shall be stored and insured at the cost and risk of the Customer.

## **13. Forwarding, transport and insurance**

**13.1** The products are carefully packed by the Supplier. The packing is charged separately to the Customer.

**13.2** Special requirements regarding forwarding and insurance shall be communicated to the Supplier in good time. Transport shall be at the Customer's expense and risk. Complaints in respect of transport shall be submitted immediately by the Customer to the last carrier on receipt of the products or the shipping documents.

**13.3** Insurance against risks of any kind (specifically in transport or during assembly) is the responsibility of the Customer and is taken out at the Customer's cost. The Supplier is not obliged to take out insurance cover in favour of the Customer. If, on the basis of a special agreement, the Supplier takes out insurance for the Customer, the relevant costs shall be borne by the Customer.

**13.4** If the Customer collects from the Supplier a consignment that is destined for a foreign country or has the consignment collected by another party (e.g. a freight forwarder) - a so-called "collection supply" - the Customer shall be charged the legal turnover or sales tax unless the Customer can prove and document to the Supplier in a legally acceptable manner that the preconditions for tax-exempt supply in the execution of the concrete, individual case are fulfilled.

## **14. Inspection and acceptance of supplies**

The customer shall inspect the supplied products for completeness and freedom from defects within a reasonable period after having received them and notify the Supplier immediately in writing of any defects.

If the Customer fails to do this, the supplies and services shall be deemed to have been approved.

## **15. Warranty and liability of the Supplier**

**15.1** The supplier hereby warrants for the period shown in Article 15.3 hereof that products supplied are free of "defects", i.e. that they are free of any manufacturing and material faults, and that they comply with any agreed appearance and workmanship. Agreed features are only those that are explicitly described as such in the order confirmation or the instruction manual.

**15.2** Excluded from the warranty and liability of the Supplier, and therefore not "defects" in the sense of Article 15.1 are:

(i) all damage to the supplied products which is probably not the result of poor material, incorrect construction, defective execution or other reasons for which the Supplier is not responsible (e.g. as a consequence of natural wear and tear, careless handling, unsuitable storage, incorrect maintenance, failure to follow operating instructions, chemical or electrolytic influences or due to building or assembly work not carried out by the Supplier);

(ii) all damage to wear and tear parts and any tools that have been supplied at the same time.

**15.3** In the absence of any deviating agreement and subject to any deviating regulations in this Article 15.3, the warranty period is two years (when the products supplied are used in max. 2-shift operation) or one year (for use in 3 or more shift operation) and begins from the point in time of delivery or the

day on which notification is given that the goods are ready for despatch. For third party products distributed by the Supplier but not bearing the name of the Supplier, the warranty period is one year. For replaced or repaired parts, the warranty period begins again and lasts for six months from replacement or completion of the repair, whereby the warranty period for spare parts runs in every case until expiry of the original warranty period. To the extent applicable, all the warranty periods mentioned above end prematurely on reaching 40 million load changes (for handling components) or a running performance of 20,000 km (for axles).

**15.4** If defects in the sense of Article 15.1 provably appear during the warranty period, the Customer can demand in writing that they are corrected by the Supplier. In this case, the Supplier undertakes to correct all faulty parts of the supplied products at its own discretion, i.e. by means of removing the defects or replacing the defective items, i.e. by supplying new ones without defects. Replaced parts become the property of the Supplier. If the defects are not corrected within a reasonable time (improvement or replacement delivery), the Customer can demand a reduction of the purchase price or withdraw from the contract.

**15.5** Any warranty obligation of the Supplier lapses if the Customer or third parties carry out improper changes or repairs or if the Customer fails to undertake all appropriate measures to reduce damage if a defect has arisen and does not give the Supplier the opportunity to correct the defect.

**15.6** For defects in the sense of Article 15.1, the Customer has no rights and claims except for those explicitly mentioned in Article 15.4.

**15.7** All cases of breach of contract by the Supplier and the legal consequences thereof as well as all entitlements of the Customer, regardless of the legal reason under which they are claimed, are conclusively regulated in these terms and conditions. In particular, all claims not explicitly mentioned for compensation of damages, reduction of price, annulment of the contract or withdrawal from the contract are excluded. The Customer shall in no case have any claims for compensation of damage which has not been incurred by the supplied products themselves, such as interruption of production, usage losses, loss of orders, lost profit as well as other direct or indirect damages (or consequential damages).

This exclusion of liability does not apply to the extent that it contradicts compelling law.

## **16. Assembly and commissioning**

**16.1** Unless otherwise agreed, the scope of services provided by the Supplier does not include assembly and commissioning of the goods supplied at the premises of the Customer. If agreement is reached that the Supplier also takes over the assembly and commissioning, the following Articles 16.2 - 16.6 shall apply.

**16.2** Assembly, commissioning and final acceptance will be charged to the Customer at the prevailing rates of the Supplier for working and travelling time, travelling costs and out-of-pocket expenses.

**16.3** The Supplier will supervise the assembly, commissioning, test runs and final acceptance. The Customer will assist the Supplier with qualified technical operating staff and the necessary ancillary personnel free of charge.

**16.4** The Customer will provide the Supplier, free of charge, with all necessary materials, sample parts, accessory equipment, tools and energy at the place of installation.

**16.5** Especially during the commissioning, the test runs and the final acceptance, the Customer shall ensure orderly and safe working conditions in order to enable the Supplier to carry out the necessary work within the scheduled time period.

**16.6** The instruction of the operating staff and the training of the maintenance staff shall be carried out by the Supplier and charged to the Customer at the Supplier's prevailing rates.

## **17. Annulment of the contract by the Supplier**

17.1 If any unforeseen occurrences (in particular Acts of God) significantly change the economic importance or the content of the supplies or services or exert a major impact on the work of the Supplier, and in the case of subsequent impossibility of execution, the contract shall be appropriately amended. If this is not economically viable, the Supplier shall have the right to annul the contract or the relevant parts of the contract.

17.2 If the Supplier wishes to annul the contract, it shall notify the Customer immediately after examining the implications of the occurrence, even if an extension of the delivery period has initially been agreed. In the case of annulment of the contract, the Supplier shall be entitled to compensation for the supplies and services already provided. Claims of the Customer for compensation of damages due to an annulment of the contract of this kind are excluded.

## **18. Partial invalidity**

If one or the abovementioned provisions is or becomes invalid, the other provisions shall remain unaffected. The invalid provision shall be replaced by a valid provision which achieves the intended economic purpose to the extent possible.

## **19. Applicable law**

The legal relationship between the Supplier and the Customer as well as these General Sale and Delivery Conditions are subject to Swiss law under exclusion of any conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods, CISG ("Wiener Kaufrecht").

## **20. Place of jurisdiction**

20.1 The exclusive place of jurisdiction for claims lodged by the Customer against the Supplier is Berne (Switzerland).

20.2 The Supplier has the choice to institute legal proceedings against the Customer either in Berne (Switzerland) or at the domicile of the Customer.

## **21. Product information**

The product documentation is provided exclusively in German, English or French.

## **Afag Automation AG**

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