



## General Terms and Conditions (International) of Metso Germany GmbH

(November 2018 Version)

### § 1 General Information - Scope

- (1) Our General Terms ("General Terms ") shall apply exclusively; we shall not recognize any contradictory general terms of our contractual partner (the "Buyer") or general terms which deviate from our General Terms unless we have explicitly approved any such terms. Our General Terms shall also apply exclusively if we carry out the delivery to the Buyer without reservation in the knowledge of contradictory terms and conditions of the Buyer or terms and conditions which deviate from our General Terms.
- (2) Our General Terms shall only apply towards companies and legal entities under public law or special assets under public law.
- (3) Our General Terms shall also apply to all future business with the Buyer from ongoing business relationships.

### § 2 Offer – Offer Documents – Conclusion of Contracts

- (1) Our offer is without obligation insofar as not explicitly otherwise declared by us.
- (2) Insofar as an offer should not be without obligation contrary to § 2 Par. 1 offers shall have a validity of 10 workdays. If not shown otherwise the term of acceptance begins with the date of our offer.
- (3) All drawings and calculations shall be deemed as non-binding until the final order. All liability claims are insofar excluded.
- (4) Orders are to be placed with us in writing. Orders placed with us only come into effect upon our order confirmation or – in case an order confirmation has not been issued – if we deliver the ordered goods or services without reservation. Verbal agreements with our field service employees or sales agents are, insofar as they acted without presentation of a power of attorney, only legally binding if we have confirmed these in writing. Insofar as not otherwise agreed the contents of our order confirmation shall be decisive for the contents of the contract, in particular the scope and time of the delivery.
- (5) In case of call orders we are entitled to procure the material or personnel resources for the whole order and to produce the total order quantity immediately. Possible requests for changes of the Buyer can accordingly no longer be taken into consideration after the order has been placed, unless this was explicitly agreed. Partial deliveries are permitted.

### § 3 Prices – Terms of Payment

- (1) Unless otherwise agreed in the contractual agreement any pricing of goods shall apply "ex works" (Incoterms 2010), plus packaging costs in an amount customary to the market and costs for possible assembly services.
- (2) Re-usable special packaging such as wooden and steel drums, steel frames, Euro pallets and iron cores will be credited with 2/3 of the amount charged to the Buyer provided these are returned to us freight-free and in usable condition.
- (3) In case of delivery of goods by our own vehicles a reasonable and customary market transport cost share is charged, insofar as this is not contrary to a contractual regulation concerning the place of performance. We reserve the right to group orders together in order to reduce transport costs.
- (4) Unless otherwise agreed, with regards to the services provided by us, we calculate our services according to actual time expended. The cost of dispatching the service personnel will be calculated according to the rates informed when placing the order, otherwise on the basis of our price lists.

- (5) If wages, accommodation allowances or social security contributions should increase before completion of the services, we are entitled to adjust these rates accordingly. However, the increase will in total not exceed five percent of the total amount foreseen for the services.
- (6) As proof of services rendered, we can use the time sheets to be submitted to the Buyer upon request.
- (7) Unless otherwise agreed, all prices are excluding VAT and other applicable sales and use taxes, fees or charges in respective legal rate. In case we exceptionally take over transportation costs or are charged with any public charges and fees (e.g. customs duties and import and export fees), we are entitled to charge back to the Buyer the full amount of such incurred costs, fees and charges after conclusion of the contract.
- (8) We reserve the right to charge any additional costs incurred due to change requests by the Buyer, even if we have approved the changes.
- (9) Unless otherwise agreed, payment of the purchase price is due and payable net cash (without deduction) immediately after receipt of the delivered goods, or with contracts for work and services after its acceptance, and receipt of invoice. However, regarding the settlement of the costs for installation services, we are entitled to issue monthly instalment invoices, which shall become due and payable 30 days following the date of the invoice. The final settlement is carried out directly after completion of the assembly.
- (10) Unless otherwise agreed upon, the Buyer shall pay the purchase price of orders the value of which is more than EUR 100,000 as follows:
  - 30 % down payment upon receipt of the order confirmation,
  - 65 % as soon as the Buyer has been informed by us that the goods, or main parts thereof, are ready for shipment; and
  - 5 % upon delivery of all essential components.
- (11) The right to set-off against our claims is only available to the Buyer, if the Buyer's counter-claims have been determined legal and binding, are undisputed or have been recognized by us. The exercising of a right to retention or right to refuse service by the Buyer is only justified if the Buyer's counter-claim is due to the same contractual relationship. We are entitled to the right to offset to an unlimited extent.
- (12) In case the Buyer orders transportation of the goods separately or in case transportation of the goods is included as a component of an agreed total price, an offered price refers to the shortest transport route and the most cost-effective mode of transport. Additional expenses which may be incurred during transport (such as detours, waiting times) for which we are not responsible for are charged by us separately and at cost.
- (13) If we are obliged to provide a service in advance and if after the conclusion of the contract we become aware of circumstances according to which a substantial deterioration of the Buyer's assets and/or financial standing can be assumed, then we can at our choice either request collateral within a reasonable deadline or payment of the complete remuneration agreed upon matching the value of the delivered goods. If the Buyer does not satisfy this request we are entitled, subject to further statutory rights, to cancel the contract. The services provided for the Buyer prior to such cancellation are to be reimbursed by the Buyer.
- (14) If the Buyer is in default with his payment obligations, we charge for the period of delay the default interest of 8 percentage points above the base interest rate p.a.

(15) To check whether deliveries can be made free of sales tax, the Buyer shall provide to us the sales tax identification number, the full name and address, the place of destination and all documents required for the determination of a tax-exempt supply. In case of incomplete or inaccurate information provided by the Buyer we are entitled to charge the amount of sales tax to the Buyer, if we cannot off-set the tax payment, or in case excessive efforts would be required from us to try to off-set the tax payment.

(16) All payments to be made to us pursuant to the contract shall be made by the Buyer from an account owned by the Buyer at an internationally renowned bank or equivalent financial institution. Should the Buyer intend to use any other accounts or means of payment, e.g. a Buyer group financial service provider, such arrangement shall be approved by us prior to any payments being received.

#### **§ 4 Delivery Time and Scope of Delivery**

(1) The start of the delivery time or any installation periods or deadlines stated by us presumes the clarification of all technical questions and the compliance with the obligations of the Buyer and – as the case may be – the compliance with delivery prerequisites to be provided by the Buyer, such as submission of documents and permits as well as the timely clarification and approval of any plans (e.g. layout drawings or installation schedules). Unless otherwise agreed or not otherwise derived from the contractual relationship the delivery time stated by us is merely to be understood as approximate delivery time, customary trade deviations in the delivery date are permitted. In no-obligation or only approximate (e.g., ca., about, etc.) service dates and deadlines we try to meet dates as indicated. Unless otherwise agreed, the Buyer shall provide any permits for transport and – as the case may be – for export; this is a prerequisite for the start of transport, particularly of oversize and heavy parts.

(2) If a fixed time for delivery is agreed upon, any delays that are solely attributable to us shall be subject to payment of liquidated damages for delay. The amount of liquidated damages shall correspond to 0.5 % of the purchase price of delayed goods for each complete week of delay. The maximum amount of liquidated damages and our maximum liability for such delay shall, however, not exceed an amount corresponding to 5 % of the purchase price of delayed goods. Such liquidated damages shall be the Buyer's sole and exclusive remedy for delay to fixed date of delivery attributable to us until the maximum amount of liquidated damages has been reached. Thereafter, and provided that the delay is still ongoing, the Buyer is entitled to cancel the contract.

(3) In case of delays due to force majeure or other unforeseen circumstances not attributable to us, such as operational breakdowns, strikes, lockouts, lack of transportation, labor disputes, natural disasters, commodity procurement difficulties, untimely delivery by sub-suppliers and in the case of import or export permits that cannot be provided and official import or export prohibitions, an agreed delivery period shall be extended by the duration of the delay plus a reasonable start-up period. If the impediment lasts longer than six months, either party shall be entitled after a reasonable grace period, to terminate the contract with regard to its unfulfilled part.

(4) The compliance with our delivery obligation is subject to timely and proper satisfaction of the obligations of the Buyer. If we exceptionally execute or have executed the transport of the goods, the Buyer shall ensure free transport routes for our deliveries and a free, unhindered access to the discharge or construction site and carries the risk of additional costs in this respect.

(5) In case the Buyer does not accept the delivered goods within one month after delivery, due to reasons attributable to the Buyer (default of acceptance), the delivered goods shall be deemed as delivered and accepted in the legal sense after the expiry of a two-week grace period which we have beforehand set in writing. If the Buyer is in default of acceptance or violates other duties to cooperate, we are entitled to claim for compensation for the resulting damage to us, including any additional expenses. The risk of accidental loss or accidental deterioration of the goods is transferred at the time to the Buyer, in which Buyer is in default of acceptance. We are entitled to charge from the date of such default provision costs for material

and personnel, furthermore the costs resulting from storage of goods, even when stored in our own factory. A market-based fee can be charged.

(6) If the delivery time is extended at the request of the Buyer, we can charge the resulting costs to the Buyer.

(7) We are entitled to make partial deliveries insofar as this is not contrary to a recognizable interest of the Buyer.

#### **§ 5 Assembly and Repair Services**

The terms of Appendix A shall apply additionally to the installation or repair work carried out by us.

#### **§ 6 Passing of Risk**

(1) Insofar as not otherwise derived from the order confirmation, and this is not contrary to any regulation concerning the place of performance, the delivery of goods is agreed as FCA at our workshops (Incoterms 2010). This shall also apply in the event of partial deliveries as well as the transport by our own vehicles.

(2) Insofar as an acceptance is to be carried out, its date is decisive for the passing of risk. In case the Buyer begins to use the goods or the result of services, the risk is deemed to have passed to the Buyer.

(3) We will cover transport insurance for the delivery only at the explicit request of the Buyer and only when the Buyer bears the relating costs.

#### **§ 7 Acceptance**

(1) An acceptance is to be carried out within one week after receipt of our completion report by the Buyer. If this is not carried out for reasons, for which the Buyer is responsible, or if the Buyer does not report any substantial defects within 10 days after receipt of the delivery or completion of services, the object of the delivery or the services, as applicable, shall be deemed as accepted.

(2) The Buyer undertakes to also accept the object of delivery or the services if there are slight defects which only insignificantly impair the use.

(3) We are entitled to demand a partial acceptance for individual, technically identifiable assembly work.

#### **§ 8 Claims for Defects**

(1) We warrant that the goods delivered by us will be free from defects in design, engineering, materials, and workmanship strictly subject to the terms set forth below in these General Terms. Any warranty rights (claims for defects) of the Buyer are subject to the Buyer inspecting the delivered object without delay and properly reporting recognizable defects (duty to examine and give notice of defects in terms of commercial law) to us. Claims for defects not reported in time are excluded. Reports have to be made with the specified details of the defects.

(2) Claims for defects do not exist if the quality or usability of the goods for their use is affected only slightly and no limitation of function is given. Customary or technically unavoidable deviations, e.g. from the agreed color, shape as well as the descriptions of the goods in the order confirmation are not considered a defect. Customary or technically unavoidable deviations of physical or chemical quantities are no defect. Variations in quantity of up to 10% are also not considered a defect unless a contractually defined quantity is set.

(3) Performance of machines and equipment in our offers are achieved subject to fulfillment of Buyer's duties to cooperate, supply of feed material according to the contract, correct and professional filling of the system and operation and maintenance of the facility in accordance with the operating and installation instructions. Appropriate tolerance of performance is, in the operation of heavy machinery, inevitable and therefore to be taken into account. Unless otherwise expressly agreed upon, performance levels and values are provided only on reasonable endeavours basis and are not to

be understood as guaranteed values. In the event guaranteed performance values are provided, any failure to achieve such guaranteed values which is solely attributable to us shall entitle the Buyer to liquidated damages for performance. The aggregate maximum amount of such liquidated damages and our liability for any failure to achieve the guaranteed performance values shall be limited to an amount corresponding to 5 % of the purchase price of the relevant goods. Such liquidated damages shall be the Buyer's sole and exclusive remedy for failure by us to reach the guaranteed performance values.

- (4) Weight, measurement details and technical details, and performance characteristics in drawings, brochures, diagrams and other documents are, insofar as not explicitly otherwise agreed, only approximate details and in particular do not represent any guarantees of condition.
- (5) No warranty is assumed for defects and damages which the Buyer is responsible for, in particular where caused by unsuitable or improper use, faulty assembly or putting into operation by the Buyer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable work equipment, replaceable materials, faulty building work, unsuitable building foundation, chemical, electro-chemical or electrical influences at the place of delivery. Furthermore, we accept no warranty or liability if defects are caused by incomplete or incorrect information of Buyer regarding feed material, technical/local conditions of the site and / or logistical or technical process flows.

Our warranty also does not apply as far as defects / damages of any kind are due to the fact that the Buyer or a third party makes technical modifications or repair work without our prior approval. Unless otherwise expressly agreed, we do not warrant that the goods or components supplied by us are compatible with third-party supplies or on-site components.

- (6) If the Buyer unjustifiably and for reasons we are not responsible for reports the existence of a defect for which we are not responsible, then we are entitled to charge the Buyer for reasonable expenses incurred by us for the remedy or diagnosis of the defect.
- (7) Claims of the Buyer owing to the expenses which are necessary for the purpose of the supplementary performance attributable to our warranty obligations, in particular transport, route, labour and material costs are excluded, insofar as the expenses are increased by a subsequent relocation of the delivered object to another location than the original place of installation. We are entitled to charge the Buyer with such additional costs.
- (8) Claims of the Buyer for defects shall become statute-barred in 12 months from delivery or, insofar as such is agreed, from acceptance.

If the duration of the warranty period is assessed according to operating hours in the contract, albeit also only as an alternative, all operating hours from the putting into use of the system shall also count, also insofar as they were run before the normal statute-of-limitations.

- (9) We undertake, at our discretion and cost, to repair or replace defective goods covered by the warranty, provided that the Buyer has notified us in writing of the defects and has given us the opportunity to examine and test the defective goods.

With respect to replacement parts provided pursuant to the warranty, a new warranty period equal to the original one commencing on the date of installation of the replacement parts shall be granted. All warranties (whether for replacement parts, latent defects or otherwise) shall expire upon 24 months from the last major delivery of the goods.

- (10) Before the Buyer can assert further claims or rights (cancellation, reduction, damages, reimbursement of expenses) we are initially to be given the opportunity for supplementary performance within a reasonable deadline insofar as we have not submitted any guarantee to the contrary. Only in urgent cases of the operational safety and to defend disproportionately high damages, whereby we are to be informed immediately, does the Buyer have the right to remedy the defect itself or to have this remedied by third parties and to request reimbursement of the necessary costs from us. If the

supplementary performance fails despite at least two attempts at supplementary performance, if the supplementary performance is impossible, is refused or if it is deemed unreasonable for the Buyer, then the Buyer can cancel the contract or reduce the remuneration. § 9 of these Terms of Delivery shall apply to the assertion of claims for damages by the Buyer.

- (11) The following shall apply to defects of title: Insofar as not otherwise agreed we are merely obliged to provide the delivery in the country of the place of delivery free of rights of third parties. In the event of an actual or alleged infringement of property rights of third parties for which we are responsible we can at our choice either at our costs obtain a right of use which is sufficient for the agreed or presumed use and grant these to the Buyer, or modify the object of delivery to the extent that the property right is not infringed or exchange the object of delivery insofar as there the agreed or presumed use of the object of delivery is not impaired by the Buyer. If this is not possible or deemed unreasonable for us then the Buyer shall be entitled to the statutory claims and rights. § 9 shall apply to claims for damages.
- (12) The sale of used objects is carried out under the exclusion of any warranty. This exclusion does not apply to damages arising from liability for defects that are based on an intentional or grossly negligent breach of our obligations as well as the culpable violation of life, body and health.
- (13) The express warranties and remedies described above and in our offer are the sole and exclusive warranties and remedies provided by us to the Buyer. Any and all other warranties, whether express, implied, or statutory, as well as conditions of merchantability, fitness for particular purpose, or otherwise, are hereby waived and excluded.

#### **§ 9 Liability for Damages**

- (1) Notwithstanding anything contained in these General Terms or the contract, we shall not be liable to the Buyer for any loss of profit, loss of production, loss of revenue, loss of savings, loss of or excessive utilization of raw materials or energy, cost of capital, nor any indirect, consequential or special loss or damage, arising out of or in relation to the contract whether in an action for breach of the contract, tort (including negligence), indemnity or strict liability.
- (2) Notwithstanding anything to the contrary in these General Terms or the contract, our total aggregate liability (including but not limited to any liquidated damages), whether based on the contract, tort, indemnity, statute, breach of warranty or any other legal or equitable ground, is limited to 20% of the net value of the contractual deliveries and services.
- (3) The aforesaid limitations of liability shall not, however, apply to personal injury or death to the extent caused by us, or damages caused by our willful misconduct or gross negligence.
- (4) A change to the statutory regulations for burden of proof is not associated with the regulations in § 9.
- (5) Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and assisting agents.
- (6) Possible claims for damages shall become statute-barred according to the statutory provisions, by no later however than after expiry of one year from knowledge or the grossly negligent lack of knowledge of the Buyer of the reason for the claim. This restriction shall not apply to the claims described in § 8 (8).
- (7) If the delivery item shall be incorporated in equipment, machinery assembly or machine of the Buyer or connected to it, for which the Buyer shall make a Declaration of Conformity or Declaration of Incorporation according to the EU machinery directive, we are not liable for missing declarations. In such a case, the Buyer is responsible for obtaining the Declaration of Conformity / Declaration of Incorporation for the entire system.

## § 10 Reservation of Ownership; Intellectual Property

- (1) We reserve the right to ownership to the delivered object until the receipt of all payments due from the Buyer.

Title to software (software programs and libraries, whether in object or in source code format, upgrades, new releases and versions, modifications, additions, updates and fixes, and all documentation and know-how pertaining thereto) shall at all times remain with us. The Buyer or the end user, as the case may be, shall be granted license to use the software in accordance with our software licensing terms. The Buyer agrees to execute or ensures that the end user executes, as the case may be, Metso Software License Agreement upon our request.

- (2) In case of a conduct of the Buyer which is in breach of the contract, in particular in case of default of payment after setting reasonable deadline, we are entitled to cancel the contract and take back the delivered object. This shall not apply insofar as the Buyer has already applied for insolvency proceedings or such were opened, owing to which an immediate taking back of the delivered objects is not permitted. The cancellation of the contract does not exclude claims for damages against the Buyer. After the delivered object has been taken back we are authorized to sell it, the sales proceeds are to be offset against the liabilities of the Buyer – minus reasonable sales costs.
- (3) The Buyer undertakes to treat the object of delivery with due care and attention for as long as the reservation of title exists; Buyer is in particular obliged to sufficiently insure this at the value as new at Buyer's own costs against fire, water and theft damages. Insofar as service and inspection work is necessary the Buyer must carry this out in time at Buyer's own costs.
- (4) In case of seizure claims or other interventions by third parties the Buyer has to point out the reservation of title and inform us immediately.
- (5) The Buyer is entitled to resell the object of delivery in the ordinary course of business, however the Buyer shall hereby now already assign to us claims in the amount of the final invoice amount (including value added tax) of our claims, to which the Buyer is entitled from the resale against the Buyer's customer or third parties irrespective of whether the delivered object has been resold without or after processing. The Buyer shall also remain authorized to collect this claim after the assignment.
- (6) We are authorized to collect the claim ourselves, if the Buyer does not satisfy the Buyer's payment obligations from the collected proceeds, is in default of payment or has filed for the opening of insolvency proceedings or a third party has filed for. If this is the case we can request that the Buyer announces the assigned claims and their debtors, provides all details which are necessary for the collection, hands over the associated documents and informs the debtors (third parties) of the assignment.
- (7) The integration or modification or connection of the delivered object is always required to be carried out to the delivered object by the Buyer or by us. If the delivered object is integrated, modified, connected or inseparably mixed with other objects which do not belong to us, we shall acquire the co-ownership to the new object in the ratio of the value of delivered object to the other integrated, modified, connected or mixed objects at the time of the integration, modification or connection/ mixing. The same shall incidentally apply to the object produced hereby as to the objects of delivery under reservation of title.
- (8) We undertake to insofar release the securities to which we are entitled at the request of the Buyer to the extent that the value of our securities exceeds the claims, which are to be secured, by more than 20 %; we reserve the right to select the amount and type of securities which are to be released.
- (9) Copyright and any other intellectual property rights in drawings, specifications, data, software, firmware, manuals, utility instructions, documentation, and other documents, which we make available to the Buyer, are owned by us or our suppliers, and may be used by the Buyer only for the installation, operation, maintenance and repair of products. Documents belonging to

our offers shall be returned to us on demand and in any case when the order is not placed. The use, duplication, reproduction, or transmission of such works and data and its disclosure to third parties is only allowed with our prior written approval. All our and our supplier's, rights, title and shares in inventions, discoveries, concepts, ideas, or other forms of intellectual property, which are contained in or in relation to the delivered goods remain vested in us or our suppliers, as applicable.

## § 11 Provisions - Tools / Production Equipment

- (1) Insofar as we deliver objects according to drawings, samples, models, forms, equipment or other objects, documents or details (hereinafter collectively: "sample materials"), which were handed over to us by the Buyer, the Buyer shall be liable for any actual or alleged infringement of property rights of third parties, which are due to this. The same applies if such claims are due to any changes or modifications by the Buyer. The Buyer is, in such a case, obliged to indemnify us from such claims of third parties immediately.
- (2) Sample materials provided by the Buyer as required for the execution of the order are to be delivered by the Buyer free of charge to us to the site stated by us in time, in good condition and in the agreed quality, including excess quantity to cover rejects. In the absence of an agreement, the Buyer shall provide a reasonable and appropriate quality and quantity of sample materials.
- (3) Insofar as sample materials are produced or procured by us at the request of the Buyer, the Buyer has to remunerate us the costs incurred for this. With the payment of the purchase price the ownership to the sample materials shall pass to the Buyer. Ownership shall pass to the Buyer upon payment of the purchase price even though the storage of the sample materials may in certain cases still remain with us. The sample materials shall be exclusively used for deliveries to the Buyer for the duration of the business relationship between the Buyer and us. If more than two years have passed since the last order or delivery we are not obliged for the further storage of the sample materials. If the sample materials are no longer required by us then the Buyer has to pick these up at Buyer's own costs immediately after the request. Sample materials acquired or produced by us at our own costs are our sole property.

## § 12 Export Control and Sanctions Laws

- (1) With respect to the fulfilment of the contract, we and the Buyer undertake as follows:
  - (a) To comply with any and all laws and regulations applicable to the Buyer or us with respect to the contract and any action taken pursuant to either prohibiting or otherwise restricting trade with any individual, entity or jurisdiction, or imposing licensing requirements on the same, including without limitation financial sanctions, trade embargoes and export controls such as those imposed by the US Treasury Department Office of Foreign Assets Control (OFAC), the US Department of State, the US Commerce Department, the European Commission or any member state of the European Union (together "Sanctions and Export Control Laws").
  - (b) To not take any action, or make any omission, that could cause any party to be in breach of, or otherwise be exposed to any restriction or penalty pursuant to, or suffer any adverse consequences of any kind arising directly or indirectly from, any Sanctions and Export Control Laws, including without limitation making any goods or any item incorporating the goods available for the direct or indirect benefit of a person subject to financial sanctions, such as those named on the OFAC list of Specially Designated Nationals and Blocked Persons, the EU Consolidated List of Financial Sanctions Targets or any similar list maintained by any EU member state, or any party owned or controlled by such a person (together "Sanctions Targets").
- (2) We shall have the right to suspend performance of our obligations under the contract, and the right to terminate the contract, with immediate effect and without liability, if:

- (a) in our reasonable judgment, circumstances exist that could result in the non-fulfilment of the undertaking in clause 12(1);
  - (b) the Buyer becomes a Sanctions Target;
  - (c) any bank refuses to receive or otherwise process any payment under the contract.
- (3) The Buyer shall reimburse us for any claims, damages, losses, costs and expenses (including attorney's fees) suffered or incurred by us resulting from
- (i) the Buyer's breach of either of the undertakings in clause 12(1);  
or
  - (ii) our suspension of our obligations under, or termination of, the contract pursuant to clause 12(2).
- (4) In the event that we terminate the contract pursuant to clause 12(2) above, and without prejudice to our other rights and obligations under the contract, we shall be entitled to use the money as a set-off against claims under clause 12(3).

### § 13 Final Provisions

- (1) With regard to the goods delivered by us to the Buyer, the Buyer agrees to the transmission of equipment data to us (including but not limited to equipment details, operational data, time data and position data) and the storage of such data by us. We shall have the right, free of charge, among others to use such data, for the purpose of providing on-line reporting services, offering, recommending and/or providing products and/or services to the Buyer. We shall not use the raw data obtained solely and directly from the Buyer's equipment to provide products and services to our other customers. Without prejudice to the foregoing, we may compile and analyse the data and combine it with other data for the purposes of product development, evaluation, customer services and provision of goods and services on an anonymous and aggregated basis. For the avoidance of doubt, we

may transmit the data to our affiliated companies, suppliers, subcontractors and consultants. All rights, title and interest to the data obtained and results and developments made or derived shall belong to us. We shall not publish data in such manner which would identify the Buyer to the data, unless so consented by the Buyer in writing.

The Buyer shall ensure that the end-user (in case other than the Buyer) shall give a similar consent of equipment data transmission to us.

- (2) The legal relations between the parties are exclusively governed by the Swiss law under the exclusion of any international conventions, particularly the UN Convention on the International Sale of Goods (UNCITRAL/CISG).
- (3) The assignment of rights or obligations of the Buyer under the contract shall be subject to our prior written approval.
- (4) Should individual provisions of the contract or these General Terms be or become invalid this shall have no effect on the validity of the other provisions.
- (5) All agreements that are made for the purpose of execution of the contract are to be recorded in writing. Orally delivered, contract-changing declarations by not duly authorized employees of us must be confirmed in writing by us for effectiveness. There are no separate oral agreements relating to these General Terms.
- (6) Any dispute arising out of or in connection with the contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Zurich, Switzerland, and the language of the proceedings and the award shall be German or English. Judgment upon the award rendered by the Arbitrator(s) shall be binding and final upon the Parties. The foregoing shall not preclude interim injunctive relief on an immediate basis from a court of competent jurisdiction pending outcome of the arbitration.

## APPENDIX A – Service Terms

The following additional terms and conditions shall apply to any installation, assembly, repair and other services provided by us to the Buyer.

### § A.1 Scope

- (1) Unless otherwise expressly agreed in writing, assembly of goods delivered by us or repairs and service assignments (general term: "Assemblies") extend to put the delivery item in a mechanically, electrically and hydraulically functioning condition. As part of the Assemblies the mechanical assembly of the delivery item and directly afterwards the commissioning (functional test) will be carried out by our assembly staff and under our supervision of the staff of the Buyer.
- (2) Further work, especially the installation and the connection of supply lines (steam, gas, compressed air, thermal oil, water, etc.), the implementation of electrical installations, installation and commissioning of all other units that are not in our delivery include, production supervision, staff training, proficiency testing, trial operation outside the function test etc. only belong to our scope of services, if and as far as this has been expressly agreed.

### § A.2 Safety, Accident Prevention

- (1) The Buyer shall announce to us in time, as a rule four weeks before the start of installation, the Assembly Process safety rules, including the accident prevention regulations applicable to the Assembly Site.
- (2) The Buyer shall take the necessary safety precautions for the protection of persons and property at the place of assembly ("Assembly Site"), possibly also the necessary specific location-based measures at the Assembly Site.
- (3) The Buyer shall inform our assembly personnel on site of existing safety regulations, as are relevant for the performance of the assemblies. If the Buyer appoints a construction or project manager, this manager must ensure that the safety regulations, in particular the accident prevention regulations are adhered to by our installation personnel.
- (4) Violations by our assembly personnel of security regulations shall be immediately reported to us by the Buyer. For serious violations, the Buyer may, in consultation with us, refuse the offender further access to the Assembly Site.
- (5) The Buyer is obliged in case of emergencies or accidents of our assembly staff to help and inform us immediately.

### § A.3 Cooperation Duties of the Buyer

- (1) The Buyer undertakes to obtain early enough prior to the start of our services all the necessary public permits and any necessary permits of third parties under private law to ensure that our installation and other services can be carried out smoothly at the Assembly Site. This particularly applies for special permits for overtime (work on Sundays and holidays) and certain dangerous situations at the Assembly Site.
- (2) The Buyer is liable for sufficient site access and assembly clearance at the Assembly Site. He is also committed to support the implementation of our installation services, for the delivery of technical equipment and equipment components of heavy machinery, by providing Buyer's own staff. In particular, the Buyer shall provide the following services and supplies at his cost and risk at the Assembly Site in good time:
  - a) Trained fitters, high voltage electricians, electric welders and helpers with the necessary tools. The staff of the Buyer shall be suitable for the necessary work and willing to perform in accordance with the specifications of our installation staff. Buyer's staff must follow the instructions of our assembly manager. We are not liable for damage and poor performance by the staff of the Buyer;
  - b) Preparing all foundations and any required buildings, where system components are to be installed, with casting the anchor holes, paved access roads to the Assembly site suitable for heavy traffic;

- c) Providing of the means required for installation and maintenance, such as tools, lifting equipment, welding equipment, all protection facilities required by regulations of the employer's liability insurance association as well as required equipment and consumables such as lubricating and hydraulic oils, scaffold boards, wedges, shims for adjusting and aligning, cleaning and sealant means, all energy / media such as electricity, water, compressed air, welding gases, fuels, including the required connections to the Assembly Site. In case required installation means are missing on the Assembly Site, they will be procured by our assembly personnel. In such cases we reserve the right to charge arising reasonable costs back to the Buyer;
- d) Adequate lighting of the Assembly Site;
- e) Dry, illuminated and lockable premises in the immediate vicinity of the Assembly Site for storage of switchboards, special machine parts as well as tools of our assembly staff;
- f) Suitable accommodation for our assembly personnel, equipped with all the necessary furnishings with heating, lighting, washing and sanitary facilities;
- g) Unloading of the assembly parts, tools and means at the Assembly Site, providing that we have not contractually assumed the responsibility for unloading;
- h) Appropriate storage facilities, protected against theft, damage and weathering, for the assembly parts, tools and equipment to the Assembly Site. Transport of the assembly parts, tools and equipment to the installation site with loading and unloading, as far as storing them near the Assembly Site is not possible;
- i) Protective clothing and protective equipment at the installation site, and
- j) Transport of our assembly personnel to and from the nearest station / airport and the daily transport between their accommodation facilities and the Assembly Site.
- k) We will inform the Buyer at Buyer's request regarding details of the required conditions of the Assembly Site. In the case of repair operations and smaller installation assemblies the Buyer is responsible for providing - divergent from §A.3(2) a) to j) above – site access and assembly clearance, provision of personnel and adequate assistance as far as is necessary.

- (3) The technical cooperation of the Buyer must ensure that the installation and subsequent commissioning can be started immediately after the arrival of the installation personnel and carried out without delay and interruption by the Buyer. If special plans or instructions on our parts are required, we provide them to the Buyer in a timely manner.
- (4) If the Buyer does not meet the obligations referred to, we shall be entitled to suspend our work, upon issuance of a hold-up notification, and / or to set Buyer a reasonable grace period for the fulfillment. After the expiry of the grace period, we are entitled but not obliged to undertake the actions which should have been carried out by the Buyer on Buyer's behalf and costs. In exigent circumstances, as well as emergence of otherwise high costs we are entitled to work at the expense of the Buyer even without providing a grace period. Any other legal rights and claims on our part remain unaffected.

### § A.4 Insurance

- (1) Unless otherwise agreed by contract, we do not take out assembly insurance; this is the responsibility of the Buyer. Should the Buyer order an assembly insurance to be taken out by us, we will take this out at available market terms and the costs will be paid by the Buyer.