SWISSMEM

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General conditions of contract for the supply of plant and spare parts 2026

1 General

1.1 The contract shall be deemed to have been entered into upon receipt of the supplier's written acknowledgement stating acceptance of the order. Tenders which do not stipulate an acceptance period shall not be binding.

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

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

2. Scope of supplies and services

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

3. Plans and technical documents

3.1 Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding if they have been expressly stipulated as such.

3.2 Each party retains all rights to plans and technical documents provided to the other. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4. Prices

4.1 Unless otherwise agreed, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deductions whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for permits certifications, taxes, fees, levies and customs duties shall be borne by the customer.

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

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

5. Terms of payment

5.1 Payments shall be made by the customer at the supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

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

- one third as advance payment within one month after receipt of the order acknowledgement by the customer,
- one third on expiry of two thirds of the agreed delivery time,
- the remainder within one month after supplier's advice that the supplies are ready for dispatch.

5.2 If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

6. Reservation of title

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

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

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

7. Delivery time

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

7.2 The delivery time shall be reasonably extended:

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

b) if hindrances occur which the supplier cannot prevent despite exercising the required care, regardless of whether they affect the supplier, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;

c) if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.

7.3 The customer shall be entitled to claim liquidated damages for delayed delivery insofar as it can be proven that the delay has been caused through the fault of the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.

Damages for delayed delivery shall not exceed 0.5 per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

After reaching the maximum liquidated damages for delayed delivery, the customer shall grant the supplier a reasonable extension of time in writing. If such an extension is not observed for reasons within the supplier's control, the customer shall have the right to reject the delayed part of the supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

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

8. Passing of benefit and risk

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

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

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

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

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

9.3 If the supplier has been notified of deficiencies in accordance with Clause 9.2, he shall remedy them as soon as possible, and the customer shall give the supplier the possibility to do so.

9.4 The execution of a taking-over test as well as the stipulation of the conditions related thereto require a special agreement.

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

10. Guarantee, liability for defects

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

For replaced or repaired parts the guarantee period starts anew and lasts 6 months from the replacement or completion of the repair, but not longer than the expiry of a period double the guarantee period stipulated in the preceding paragraph.

The guarantee expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the possibility to remedy the defect.

10.2 Upon the written request of the customer, the supplier may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become the supplier's property if he does not explicitly renounce this. Under restriction of proportionality, the supplier shall bear the costs of remedying the defective parts provided that they do not exceed the customary costs of transport, personnel, travelling, accommodation, dismantling and reassembly of the defective parts.

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

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

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

10.4 All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by the supplier, or resulting from other reasons beyond supplier's control are excluded from the supplier's guarantee and liability for defects.

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

11. Export control

The customer recognises that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

12. Exclusion of further liability on the supplier's part

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights.

This exclusion of further liability on the supplier's part does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to persons employed or appointed by the supplier to perform any of his obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law.

13. Installation

If the supplier undertakes installation or supervision of the installation, the General Conditions of Installation of Swissmem shall apply.

14. Jurisdiction and applicable law

14.1 **The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier.**

The supplier shall, however, be entitled to sue the customer at the latter's registered address.

14.2 The contract shall be governed by Swiss substantive law.

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Price Adjustment Formula

issued by Swissmem

$$P = P_0 \left(a + b \frac{Lm}{Lo} + c \frac{Mm}{Mo}\right)$$

P = _____ Selling price on date of delivery

P_0 = _____ Selling price by tender

a = _____ Coefficient of fixed part of costs (e.g. = 0.1)[1]

b = _____ Coefficient of part varying with wage index (e.g. = 0.6)[1]

c = _____ Coefficient of part varying with material index (e.g. = 0.3)[1]

Lo = _____ Wage index[2] of Swissmem, Zurich, on date of tender

Lm = _____ Average of all wage indices [2]

- from date of order acknowledgement to completion in accordance with contract*

or

- during period of manufacture, i.e. from _____ to _____*

Mo = _____ Mean of price indices[3] of principal material in category «metals and metal products» required for manufacture, related to their proportion of value of supplies on date of tender

Mm = _____ Average of mean values of all price indices[3] of principal materials in category «metals and metal products» required for manufacture, related to their proportion of value of supplies at time of delivery

- from date of order acknowledgement to completion in accordance with contract* or

- from date of order acknowledgement to date by which supplier had obtained most of these materials, i.e. from _____*

[1] a + b + c must always total 1.

[2] Since the wage index is only issued by Swissmem quarterly, the index for the past quarter shall be inserted in each case.

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

* Delete where inapplicable.