

## GENERAL TERMS AND CONDITIONS OF DELIVERY (Swiss Law)

EDITION 11/2015

### 1. General

- 1.1. These General Terms and Conditions of Delivery (hereinafter referred to as "General Terms and Conditions") shall apply in addition to the specific conditions of the supply contract (hereinafter referred to as "Contract Documentation" individually or together with the General Terms and Conditions referred to as "Contract") between the purchaser (hereinafter referred to as "Purchaser") and SAMSON AKTIENGESELLSCHAFT (hereinafter referred to as "Seller") entered into by Purchaser and Seller (hereinafter referred to as the "Parties") in connection with the supply of certain goods. These goods to be supplied under the Contract are hereinafter referred to as "Products".
- 1.2. In case of contradictions or inconsistencies between the General Terms and Conditions and any specific conditions agreed upon between the Parties, the specific conditions shall prevail.
- 1.3. These General Terms and Conditions apply exclusively; terms and conditions of Purchaser conflicting with or deviating from the General Terms and Conditions shall be deemed as binding only to the extent Seller has expressly agreed to them in writing.
- 1.4. No terms and conditions appearing on Purchaser's order or documents that are additional to or different from the General Terms and Conditions shall be binding upon Seller unless specifically agreed to by Seller in writing.
- 1.5. Receipt by Seller of Purchaser's order or Purchaser's confirmation of Seller's order acknowledgement without Seller's objections to the terms and conditions of Purchaser, shall not constitute acceptance by Seller of such terms and conditions.
- 1.6. Seller's offers shall not be binding unless confirmed by Seller in writing.
- 1.7. Oral undertakings, representations and warranties are not binding unless confirmed by Seller in writing.
- 1.8. In any event the General Terms and Conditions shall be deemed to be accepted by Purchaser whenever the latter accepts a delivery of Products.

### 2. Extent of Supply

- 2.1. The Contract Documentation shall be conclusive for the extent of supply. Deviating understandings shall be subject to the express written confirmation of Seller.
- 2.2. Seller reserves the right to apply changes in technical design in so far as such changes result from updates or new versions of Seller's standard products.

### 3. Characteristics of the Products and Product Information

- 3.1. It is agreed that any information relating to the Products and their use, such as weights, dimensions, capacities, prices and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of Seller or its sub-suppliers, shall not take effect as terms of the Contract unless expressly referred to in the Contract Documentation.
- 3.2. Unless otherwise agreed, quality and dimensions shall be determined according to DIN, EN, ANSI or JIS-norms or other international standards. If no such standards are specifically agreed, the corresponding European Standards and in their absence the generally accepted technical standards shall apply.
- 3.3. References to standards, specifications or test certificates and other details of quality and dimensions shall not be

construed as guarantees within the meaning specific to Swiss law.

- 3.4. Seller shall not be obliged to check for correctness any documents submitted or data provided by Purchaser or third parties on Purchaser's behalf. Seller shall not be liable for any errors, omissions or faults contained therein.
  - 3.5. If and to the extent confirmed by Seller in writing expressly, Seller shall provide information and documents which are necessary to permit Purchaser to erect, commission, operate and maintain the Products. Seller shall, however, in no event be obliged to provide drawings of any nature whatsoever for the Products or for parts thereof.
  - 3.6. Purchaser does not acquire any intellectual or other property rights in software, drawings or other technical information (hereinafter referred to as "Information"), which may have been made available to Purchaser. Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the Products. Any Information received by Purchaser shall not, without the written consent of Seller, be used for any other purpose than the erection, commissioning, operation or maintenance of the Products. In particular Purchaser shall not disclose any Information to any third party without the express prior written consent of Seller, unless compelled by law or court order.
  - 3.7. Seller grants Purchaser the limited license to use the software which is part of the Products according to the Contract Documentation. This license shall be unlimited in time, non-exclusive, non-sub licensable and transferable to third parties only as part of a sale of the Products, except with respect to software of which Seller is licensee of such software and such license does not allow Seller to sublicense such rights to Purchaser. Seller remains the owner of the property right authorization over the software.
  - 3.8. Purchaser may neither modify, process nor integrate the software into other systems without the written express approval of Seller. Unauthorized modifications to the software programs may disable built-in safety functions. Seller shall not be responsible for hazards or damages resulting from such unauthorized modifications, nor from intellectual property rights' violations stemming there from. The Purchaser shall indemnify and hold Seller harmless from any possible claims by third parties pertaining to this subject.
- ### 4. Prices
- 4.1. The quoted prices are subject to change prior to acceptance of Purchaser's order by Seller.
  - 4.2. Unless otherwise agreed, the prices shall be subject to VAT. Any taxes or other duties, levies or charges payable in Purchaser's country or in the country of destination in connection with the deliveries made (hereinafter referred to as "Local Taxes"), shall be borne by Purchaser, even if the law in force in Purchaser's country or in the place of destination of the Products provides for Seller's responsibility for the payment of such Local Taxes or requires that such Local Taxes be withheld from payments to Seller; in any such case, the prices shall be adjusted accordingly, so that Seller receives payment without deduction of Local Taxes.
  - 4.3. Unless otherwise agreed in writing, the prices shall be understood EXW Seller (or EXW manufacturer, in case Seller does not manufacture the Products) exclusive of packing, freight, erection, installation and commissioning.
  - 4.4. The prices are calculated on the basis of the costs prevailing on the date of the execution of the Contract. Seller shall be entitled to adjust in good-faith the prices in



- the event of changes in the material prices, wages or other cost factors.
- 5. Payment Conditions**
- 5.1. Subject to any deviating agreements provided in the Contract Documentation all payments shall be made without any deduction within 30 (thirty) calendar days after receipt of Seller's invoice.
- 5.2. All payments shall be made on the due dates and without any deduction whatsoever to Seller's free and unrestricted disposal in the contractually agreed currency. Any bank fees and charges for the monetary transactions and or for issuing the agreed payment securities shall be borne by Purchaser.
- 5.3. If Seller has not received by the relevant due date the payment(s), Seller - without prejudice to its other rights and remedies, regardless whether provided by contract or at law - shall be entitled to charge Purchaser interest at an annual rate of 10 (ten) percentage points above the Base Interest Rate of the European Central Bank.
- 5.4. In case of late payment Seller, Seller - without prejudice to its rights and remedies under contract or at law - and without being required to send a reminder -, may suspend its performance of the Contract until it receives payment in full.
- 5.5. If there is any substantial deterioration in the Purchaser's financial situation or if it suspends payments, Seller – without prejudice to its rights under contract or at law - shall be entitled to:
- 5.5.1. an appropriate payment security from Purchaser, by means of bank guarantee issued under terms approved by Seller at its sole discretion, or other payment security acceptable to Seller, as condition precedent to the delivery of the Products; or
- 5.5.2. terminate the Contract.
- 5.6. Purchaser shall not be entitled to either withhold any due payments by reason of any counter-claims not acknowledged by Seller or set off any such counter-claims from any payments due by Purchaser.
- 5.7. Seller reserves the right to set off all amounts owed to Seller by Purchaser against payments owed by Seller or any other SAMSON Group Company to Purchaser (whether due or not) on whatsoever reasons.
- 6. Inspection of the Products, Acceptance Tests**
- 6.1. Inspections and other tests (hereinafter referred to as collectively "Acceptance Tests") provided in the Contract Documentation shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Contract Documentation does not specify the technical requirements, the Acceptance Tests shall be carried out in accordance with general practice in the respective branch of industry in the country of manufacture.
- 6.2. Seller shall notify Purchaser of the readiness for conducting the Acceptance Tests in good time. If Purchaser or Purchaser's representative has not attended to the Acceptance Tests, the test reports shall be sent to Purchaser and shall be deemed accurate.
- 6.3. If the Acceptance Tests show any lack of conformity of the Products (as qualified by Clause 9.3), Seller shall be entitled to repeat the Acceptance Tests after having remedied any deficiencies or made appropriate adjustments. New Acceptance Tests shall then be carried out, unless the deficiency was insignificant.
- 6.4. Seller shall bear the costs for the Acceptance Tests carried out at the place of manufacture. Purchaser shall, however, bear its own costs and expenses, in particular the travelling and accommodation expenses for its representatives.
- 7. Retention of Title**
- 7.1. Even if Purchaser's payment obligation has been transferred to a current account of Purchaser with Seller, the Products shall remain the property of Seller and Seller shall retain title to the Products until all of Seller's claims arising in connection with the Contract have been fully settled. Until title passes Purchaser shall hold the Products in trust for Seller.
- 7.2. If the law of the country to which the Products are supplied does not permit a retention of title but allows Seller to reserve other comparable rights; Seller shall be at liberty to exercise all such rights. If Purchaser's co-operation is necessary for the generation of such rights (e.g. registration), Purchaser shall take all measures required for the creation and maintenance of such rights and shall bear the respective costs and expenses.
- 7.3. During the period of retention of title or any other right in accordance with Clause 7.2 Purchaser shall insure the Products against all relevant risks, such as theft, breakage, fire, water and other risks with the provision that Seller shall be entitled to exercise all rights arising out of the insurance contract as an additionally insured party. The insurance policy and the receipts for the premiums shall be presented to Seller upon request.
- 7.4. Purchaser shall take all measures to ensure, that Seller's title or any other right in accordance with Clause 7.2 are in no way prejudiced or impaired. Purchaser shall advise Seller immediately of any seizure or other impairment of Seller's rights.
- 8. Delivery, Time of Delivery, Delay**
- 8.1. Seller's obligation to supply the Products shall be subject to Seller being supplied properly and in due time by its sub-suppliers.
- 8.2. Delivery is conditioned upon timely and proper performance of all duties owed by the Purchaser to the Seller.
- 8.3. Quoted delivery times are approximate. Delivery times are subject to clarification of all details of the Contract Documentation in due time and fulfilment by Purchaser of all its obligations in due time including, without limitation, provision of all official certificates and permissions, issuance of letters of credit and guarantees and the effecting of down-payments.
- 8.4. The delivery dates shall be deemed observed upon Purchaser's receipt of Seller's notification of readiness for dispatch in case the Products cannot be dispatched in due time through no fault of Seller.
- 8.5. In the event of terms being agreed on the conditions of delivery in the Contract, the same shall be interpreted in accordance with the Incoterms issued by the International Chamber of Commerce, Paris (hereinafter referred to, as "ICC") in the most recent version made available by ICC on the date of conclusion of the Contract.
- 8.6. Partial or early deliveries shall be permissible.
- 8.7. Purchaser shall take over the Products irrespective of the existence of minor non-conformities, provided such non-conformities do not make it impossible to use the Products and Seller has confirmed that such defects will be remedied within a reasonable period.
- 8.8. If it has been agreed that Seller shall arrange for transport or shipment of the Products, Seller shall be at liberty to determine the shipping route and means of transportation as well as the forwarding agent and carrier.
- 8.9. Risk shall pass to Purchaser pursuant to the respective Incoterm or in the absence of an agreed Incoterm as per the relevant contents of the Contract Documentation otherwise upon delivery. However, if dispatch is delayed for reasons beyond Seller's control or becomes impossible due to such reasons, risk shall pass to Purchaser upon Purchaser's receipt of notification of readiness for dispatch.
- 8.10. Delivery shall be considered as having been completed when the risk passes to Purchaser pursuant to the preceding Clause.
- 8.11. In the event the delivery of the Products has become impossible or has been delayed for reasons beyond Seller's control, Seller shall not be in breach of the Contract and Seller -without prejudice to its other rights and



- remedies provided by contract or at law - shall be entitled to store the Products at Purchaser's risk and costs. The respective costs and expenses incurred therefrom by Seller shall be charged to Purchaser's account in the minimum amount of 1% of the net purchase price for each month commenced, starting after the expiry of the relevant delivery date. In case of such storage Purchaser shall pay the agreed purchase price which would have become due upon delivery against warehouse receipt or similar document. Any deterioration of the Products during storage does not entitle Purchaser to refuse delivery or taking over of the Products or to request a reduction of the purchase price.
- 8.12. If delay in delivery is caused by an event of Force Majeure or by an act or omission on the part of Purchaser or by any other event beyond the control of Seller, the time for delivery and the validity of the respective payment security shall be extended by a corresponding period having regard to all relevant circumstances. This provision applies regardless of whether the reason for the delay occurs prior to or after the agreed time for delivery.
- 8.13. If Seller has not delivered the Products at the due date for reasons solely attributable to Seller and Purchaser has suffered a loss on account of such delay, Purchaser to the exclusion of all other compensational claims is entitled to claim a compensation for the delay at a maximum rate of zero point five (0.5) % of the net purchase price of the delayed portion for each full week of delay as liquidated damages. However, the aggregate liability in all cases of delay shall not exceed five (5) % of the net purchase price of that portion of the total supply which by reason of such delay cannot be used in time or put to the use intended. In case the purchase price has not been fully paid by Purchaser, the liquidated damages shall be offset against the final payment to Seller. Purchaser shall forfeit its right to liquidated damages or any other indemnification for the delay, if it has not reserved its right upon receipt of the Products.
- 8.14. If Seller has not delivered the Products for reasons solely attributable to Seller, by the date on which Purchaser has become entitled to the maximum amount of liquidated damages under Clause 8.13 and, if the Products are still not delivered, Purchaser may in writing demand delivery within a reasonable final period which shall not be less than four (4) weeks.
- 8.15. If Seller does not deliver within such final period the Products and this is due to reasons solely attributable to Seller, then Purchaser may by notice in writing to Seller, terminate the Contract in respect of such portion of the Products which has not been delivered.
- 8.16. The aforementioned claim for liquidated damages and the right of termination of the Contract are the sole and exclusive remedies available to Purchaser in case of delay on the part of Seller with respect to any contractually agreed dates. All other claims against Seller based on such delay shall be excluded to the extent permissible under the applicable law. The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of Seller. In the event the delay has been caused by other persons employed or appointed by Seller such as a vicarious agent or a regular employee of Seller then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.
- 9. Liability for Defects of the Products**
- 9.1. Purchaser shall examine the Products as soon as possible after its arrival at destination and shall notify Seller in writing of any non-conformity of the Products by specifying the nature of such non-conformity within ten (10) calendar days from the date when Purchaser discovers or ought to have discovered the non-conformity. Any non-conformity not detectable even on close examination must be notified as soon as it is discovered. In case Purchaser fails to notify Seller within the periods mentioned herein, Seller shall be deemed to have delivered the Products in full conformity with the Contract.
- 9.2. Not limiting the generality of the preceding Clause, in any event Purchaser shall have no remedy for non-conformity, if it fails to notify Seller thereof (by specifying the nature of such non-conformity) within twelve (12) months from the date of delivery of the Products.
- 9.3. Products will be deemed to conform to the Contract irrespective of the existence of minor non-conformities, provided such non-conformities do not make it impossible to use the Products and Seller has confirmed that such defects will be remedied within a reasonable period.
- 9.4. Where the Products are non-conforming and provided Purchaser has given notice of the lack of conformity in compliance with Clauses 9.1 and 9.2, Seller shall at its option:
- 9.4.1. either repair the Products within a period of time reasonable under the circumstances and, if so chosen by Seller, at Purchaser's premises, for which Purchaser has to grant access to Seller's personnel and to give all reasonable support and assistance; or
- 9.4.2. replace on a CIP Seller's site (or CIP manufacturer's site, in case Seller does not manufacture the Products) delivery basis the non-conforming Products with conforming Products within a period of time reasonable under the circumstances whereby Seller shall be entitled to remove and dispose of the replaced Products by any means Seller finds proper in its sole discretion.
- 9.5. If Purchaser has given notice of the non-conformity and no lack of conformity is found for which Seller can be held responsible, Seller shall be entitled to compensation for the costs it has incurred as a result of such notice.
- 9.6. If within a reasonable period of time, Seller does not fulfil its duties under Clause 9.4, Purchaser, by written notice, may fix a reasonable period for completion of Seller's obligations. Such period shall always:
- 9.6.1. last for not less than six (6) weeks; and
- 9.6.2. be sufficiently long to allow Seller to perform two (2) attempts to remedy the defects, taking into the consideration the complexity of the Products.
- 9.7. If Seller fails to fulfil its remedy obligations within such final period, Purchaser may itself undertake or employ a third party to undertake the necessary remedial works at the expense of Seller. Where successful remedial work has been undertaken by Purchaser or a third party, Seller shall reimburse the reasonable and properly substantiated cost incurred by Purchaser, however, limited to (50 %) of the net purchase price of the non-conforming Products.
- 9.8. Only where the non-conformity has not been successfully remedied in accordance with the preceding Clauses:
- 9.8.1. Purchaser is entitled to a reduction of the net purchase price in proportion to the reduced value of the Products, provided, that under no circumstances such reduction shall exceed (50 %) of the net purchase price of the Products; or,
- 9.8.2. where the non-conformity is so substantial as to significantly deprive Purchaser of the benefit of the Products beyond the above limit of price reduction, Purchaser may terminate the Contract by giving written notice to Seller.
- 9.9. Seller is liable only for lack of conformity of the Products which appears under the conditions of operation provided for in the Contract Documentation and under proper use of the Products.
- 9.10. Seller is not liable for
- 9.10.1. normal wear and tear of parts, which, owing to their inherent material properties or the use they are intended for, are subject to premature wear; or
- 9.10.2. non-conformities of the Products arising out of materials provided by or a design made or specified by Purchaser; or



- 9.10.3. non-conformities caused by the use of incorrect solvents, fluids or lubricants, unsuitable raw material and incorrect or faulty power supply; or
- 9.10.4. non-conformities which are caused by faulty operation, storage, maintenance, incorrect erection/installation or faulty repair by Purchaser or third parties or; by alterations carried out without Seller's consent in writing; or
- 9.10.5. any other event beyond Seller's reasonable control.
- 9.11. Purchaser may only make claims for defects if:
- 9.11.1. Purchaser has observed the instructions issued by Seller, in respect of the operating and maintenance of the Products and, in particular, has duly carried out any specified checks; and
- 9.11.2. no work has been carried out without the previous written and express approval of Seller; and
- 9.11.3. no parts other than those released by Seller have been used; and
- 9.11.4. no unauthorised modifications of the Products have been made.
- 9.12. Unless otherwise agreed in writing, no action for non-conformity can be taken by Purchaser, whether before judicial or arbitral tribunals, later than a period (hereinafter referred to as "Warranty Period") of two (2) years commencing from the date of the transfer of risk.
- 9.13. In respect of subsequent performance work and built-in replaced parts all and any obligation of Seller shall expire – even in the event of repeated subsequent performance – twelve months after the expiration of the Warranty Period at the latest.
- 9.14. It is expressly agreed that after the expiry of the periods referred to in Clauses 9.12 and 9.13, Purchaser will not plead non-conformity of the Products or make a counter-claim thereon in defence to any action by Seller against Purchaser.
- 9.15. In the event of software defects, the preceding provisions apply but modified as follows:  
Only those defects are to be regarded as software defects which occur by virtue of the contractually envisaged conditions of application and which affect contractually agreed performance. Purchaser is aware and agrees that it is impossible according to current technology, to exclude defects completely in data processing programs under all usage conditions.
- 9.16. The above liability for defects of the Products is made in lieu of all other liabilities or warranties, expressed or implied, including but not limited to any implied warranty of merchantability and/or fitness for a particular purpose and is made in lieu of all other obligations or liabilities on the part of Seller of any nature whatsoever.
- 10. Third Parties' Intellectual Property Rights**
- 10.1. If Purchaser's use of the Products, such use being in conformity with the Contract Documentation, results in an infringement of third parties' intellectual property rights within the Warranty Period, Seller will at its own expense arrange for Purchaser to have continued use or modify the Products to such an extent that satisfies Purchaser and so that the infringement of rights no longer exists.
- 10.2. Claims may only be brought against Seller by Purchaser if:
- 10.2.1. Purchaser immediately notifies Seller of claims asserted by third parties due to infringements or alleged infringements of third parties' intellectual property rights; and
- 10.2.2. Purchaser allows Seller, if it requests so, to take over and control the defence, including for the purposes of appointing legal counsel and experts; and
- 10.2.3. Purchaser supports Seller in its defence against such claims to a reasonable extent and permits Seller to make any modifications to the Products in accordance with this Clause; and
- 10.2.4. Seller reserves to itself all defensive measures including out of court settlement; and
- 10.2.5. the infringement is not the result of any instruction by Purchaser; and
- 10.2.6. the infringement was not caused by any unauthorised change to the Products by Purchaser or by virtue of use by Purchaser which is not in accordance with the Contract Documentation.
- 10.3. The above liability for infringements of third parties' intellectual property rights is made in lieu of all other liabilities or warranties, expressed or implied, and is made in lieu of all other obligations or liabilities on the part of Seller of any nature whatsoever.
- 11. Export Control Compliance**
- 11.1. Purchaser shall comply with all applicable export laws, rules and regulations of the Federal Republic of Germany, the United States of America as well as of other countries having jurisdiction over the Products. Purchaser shall not violate any such laws, rules and regulations, especially by exporting or re-exporting the Products without holding all necessary authorizations and licenses therefor. Purchaser further warrants that it will take all reasonable and appropriate steps, including, but not limited to, obtaining warranties, guarantees or other assurances, to ensure that no third party purchasing or otherwise procuring the Products will export or re-export the same in violation of the aforementioned applicable laws, rules and regulations.
- 11.2. The delivery of the Products may be subject to the relevant export licenses being granted by the competent German Export Control Authority. If applicable, Purchaser shall therefore provide Seller with a valid and duly signed End-Use Certificate or a Statement of End-User and End-Use, as the case may be, within four (4) weeks after the execution of the Contract. Any detriments due to delay in providing Seller with the aforementioned documentation, shall be for Purchaser's account.
- 11.3. Seller reserves the right to not accept an order that Seller considers in conflict with one or all of the Clause 11.1 and 11.2.
- 11.4. Seller shall be entitled to terminate the Contract with immediate effect in case of any obligation addressed in Clause 11.1 being violated by Purchaser or Purchaser's customer.
- 11.5. In case Seller refuses to accept an order due to the reasons mentioned in Clause 11.3 or in case Seller terminates the Contract for any of the reasons stipulated in Clause 11.4, Seller shall under no circumstances be liable, neither directly nor indirectly, for any repayment or compensation of costs, expenses, any other form of efforts as well as for any damages or losses incurred by Purchaser in connection with said refusal or termination.
- 12. Force Majeure**
- 12.1. Notwithstanding to Clause 11 neither party will be liable to the other for any penalties, liquidated or unliquidated damages nor shall either party be entitled to exercise any remedy otherwise available to it, if one party's performance of any of its obligations is delayed or prevented by events such as, but not limited to the following: Natural disasters, strikes, lock-outs, sabotage, export or import restrictions such as but not limited to bans and embargoes, port congestions, lack of usual means of transportation, industrial dispute, war, civil war or warlike operations, threats of terrorism or strikes of terrorists, civil commotions, usurpation of civil or military government, restrictions in the use of power and delays in deliveries by subcontractors or sub-suppliers caused by any such circumstances referred in this Clause or any other circumstances which are beyond the reasonable control of the Party affected (hereinafter referred to as "Force Majeure"), regardless of whether the occurrence of such circumstance has been foreseeable or not. An event of Force Majeure, however, shall not excuse the failure of payment of moneys due by either Party to the other.





- 12.2. The Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing without delay on the occurrence and on the cessation of such circumstance.
- 12.3. If Force Majeure prevents Seller from fulfilling its obligations in time, the delivery period shall be deemed extended adequately and Purchaser shall extend the validity of payment securities correspondingly. In addition, if Force Majeure prevents Purchaser from fulfilling its obligations, it shall compensate Seller for expenses incurred in securing and protecting the Products.
- 12.4. If the performance of the Contract or a portion thereof is prevented, hindered or delayed for a single period of more than eight (8) months or an aggregate period of more than ten (10) months on account of one or more events of Force Majeure, the Parties will attempt to develop a mutually satisfactory solution. Failure to agree upon such solution within ten (10) weeks of being requested by the other Party therefor, shall entitle either Party to terminate the Contract or the portion thereof being affected by Force Majeure respectively by giving written notice to the other Party.
- 12.5. Upon such termination, Purchaser shall pay to Seller the purchase price properly attributable to the parts of the Products delivered or work executed by Seller or being in progress at the date of termination and the costs reasonably incurred by Seller in the removal of Seller's equipment from Purchaser's premises (if applicable).
- 13. Limitation of Liability for Damages**
- 13.1. Unless provided to the contrary by applicable law mandatorily, Seller's obligations to compensate damages shall always require Seller's culpable breach of duties.
- 13.2. If Seller is liable to Purchaser for direct damages to property or injury or death of any person provided those property damages or injuries or death to persons are attributable to the negligence of Seller or its employees, Seller's liability is limited:
- 13.2.1. for property damages to a maximum of EUR 2.5 m. per incident, however, not exceeding EUR 5 m. in the aggregate; and
- 13.2.2. for injury or death of persons to EUR 2.5 m. per incident.
- 13.3. Notwithstanding anything provided to the contrary by mandatory applicable law, in no event, whether as a result of breach of contract, warranty, tort or otherwise, shall Seller, or its sub-contractors or sub-suppliers, be liable for other damages than those mentioned in Clause 13.2, including but not limited to:
- 13.3.1. Damages not inflicted on the Products other than set forth in Clause 13.2; and
- 13.3.2. loss of profit or revenues, loss of use of the Products or any associated equipment, loss of production, downtime costs, loss of savings, loss of hire, loss of contract, loss of capital, cost of substitute goods, loss or corruption of data or claims of Purchaser's customers for such losses or damages; and
- 13.3.3. any special, consequential, incidental or indirect, incl. exemplary or punitive damages.
- 13.4. The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of Seller. In the event damages have been caused by other persons employed or appointed by Seller other than directors or officers, such as vicarious agents or regular employees of Seller then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.
- 13.5. If Seller furnishes Purchaser with advice or other assistance concerning any Product or any equipment in which any such Product may be installed and if such equipment is not within the contractual scope of delivery the Contract Documentation or pursuant to any agreement resulting thereof the furnishing of such advice or assistance is given on a good will basis and shall not subject Seller to any liability, whether in contract, warranty, tort (including negligence or intellectual property infringement) or otherwise.
- 13.6. The above liability for damages and other compensational claims is made in lieu of all other liabilities or warranties, expressed or implied, and any other related obligations or liabilities on the part of Seller of any nature whatsoever.
- 14. Termination of the Contract by Purchaser**
- 14.1. If Seller is in default of any material obligation of the Contract - except for:
- 14.1.1. a delay of the Seller, which is subject to Clause 8.13 exclusively; or
- 14.1.2. a non-conformity of the Products, which is subject to Clause 9.8.2 exclusively; or
- 14.1.3. an event of Force Majeure, which is subject to Clause 12.4 exclusively and does not commence and diligently proceed to cure such default within one (1) month of receipt of notice in writing requiring it to do so, Purchaser may, by written notice to Seller terminate the Contract.
- 14.2. Purchaser shall execute any termination right only if the Purchaser is not in arrears with its obligations arising out of the Contract.
- 14.3. The above termination rights of Purchaser are made in lieu of all other termination or cancellation rights, expressed or implied, whether based on contract, warranty, tort or otherwise including but not limited to any such rights provided by law or at equity.
- 15. Miscellaneous**
- 15.1. Purchaser shall not assign its contractual rights to a third party without the prior express and written consent of Seller.
- 15.2. The invalidity of any provisions of the Contract does not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a valid one which is likely to achieve the intended commercial purpose.
- 15.3. Any amendment of, addition to or change of the Contract must be in writing to be valid.
- 15.4. Unless otherwise stipulated in the General Terms and Conditions expressly, any claims of Purchaser against Seller arising out of or in connection with the Contract shall be time-barred after two (2) years after the transfer of risk.
- 15.5. For purposes of the Contract and unless otherwise agreed, the place of performance of Seller shall be or shall be deemed to be the place of Seller's registered office.
- 16. Governing Law and Jurisdiction**
- 16.1. The Contract shall be governed by and construed in accordance with the laws of Switzerland exclusively.
- 16.2. Unless otherwise agreed in writing, all disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the ICC by three arbitrators appointed in accordance with the said Rules. The Place of arbitration shall be Zurich, Switzerland. The language of arbitration shall be English.