

# GENERAL TERMS AND CONDITIONS FOR THE SUPPLY AND ASSEMBLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS OF THE WUPPERMANN GROUP

## PREAMBLE

1. These General terms and Conditions apply if the Parties agree to them, in writing or otherwise. Any changes or deviations from these Terms and Conditions must be agreed in writing.

## DEFINITIONS

2. In these General Terms and Conditions, the following terms shall be understood as follows:
  - **“Contract”** means the agreement made in writing between the Parties for the supply and performance of the Work and all appendices to that agreement, including any agreed written additions and supplements to the aforesaid documents;
  - **“Contract Price”** means the price to be paid for the Work. If assembly is to be carried out by a specified deadline and has not been completed by that time, the Contract Price within the meaning of Sections 21, 43, 44 and 51 shall be the price of the Deliverable plus 10 per cent or such other percentage as the Parties may agree;
  - **“Gross Negligence”** means an act or omission in which the Party concerned either failed to exercise due care with respect to the occurrence of serious consequences, which a responsible contracting party would normally have foreseen, or in which the Party concerned knowingly disregarded the consequences of such act or omission;
  - **“In Writing”** means by means of a written document signed by both Parties or by letter, fax, email or other form agreed by the Parties;
  - **“Deliverable”** means machines, accessories, materials, articles, documentation, software and all other items to be supplied by the Manufacturer under the Contract;
  - **“Assembly Site”** means the place where the Deliverable is to be assembled, including adjacent areas necessary for the unloading, storage and internal transport of the Deliverable and the assembly equipment;
  - **“Work”** means the Deliverable, the assembly and any other work to be carried out by the Manufacturer under the Contract. If the Contract provides for acceptance of the Work in several steps intended to be used independently of each other, these Terms and Conditions shall apply separately to each such step. The term “Work” shall then refer to the step in question.

## PRODUCT INFORMATION

3. The details and information contained in general product documentation and price lists are only binding to the extent that the Contract expressly refers to them in writing.

## DRAWINGS AND TECHNICAL INFORMATION

4. If one Party provides the other Party, before or after the conclusion of the Contract, with drawings and technical documents relating to the Work, these shall remain the property of the submitting Party.

If a Party receives drawings, technical documents or other technical information, it may only use these for the intended purpose without the consent of the other Party. They may not be used for other purposes, copied, reproduced, transferred to third parties or disclosed without the consent of the submitting Party.

5. The Manufacturer shall, not later than the time of acceptance, provide the details and drawings the Purchaser requires to commission, use and maintain the Work free of charge. The agreed number of such instructions and drawings shall be handed over, but at least one copy of each. The Manufacturer shall not be obliged to procure workshop drawings for the Deliverable or for spare parts.

## TESTS BEFORE DISPATCH

6. In the absence of any agreement to the contrary, tests of the Deliverable agreed in the Contract shall be carried out at the place of manufacture during normal working hours. If the Contract does not contain provisions on technical requirements, the tests shall be carried out in accordance with the general practice of the industry concerned in the country of manufacture.
7. The Manufacturer shall notify the Purchaser in writing of such tests in good time, to enable the Purchaser to be represented at the tests. If the Purchaser is not represented, the Manufacturer shall provide the Purchaser with a test report, the correctness of which the Manufacturer may no longer dispute.
8. If the tests show that the Deliverable does not conform with the Contract, the Manufacturer shall remedy any defect required to bring the Deliverable into conformity with the Contract without undue delay. The Purchaser may only demand a repetition of the tests in cases of substantial defects.
9. The Manufacturer shall bear all the costs for tests carried out before dispatch of the Deliverable. However, the Purchaser shall bear all travel and accommodation expenses incurred in connection with the tests for its representatives.

## PREPARATORY WORK AND WORKING CONDITIONS

10. The Manufacturer shall supply the drawings for the assembly of the Deliverable in good time, as well as all instructions necessary to construct the appropriate foundations, to transport the Deliverable and the necessary equipment to the Assembly Site and to make all necessary connections to the Work.

11. The Purchaser shall perform preparatory work in good time so that the conditions necessary for the assembly of the Deliverable and for the proper use of the Work are fulfilled. This does not apply to preparatory work which, according to the Contract, is to be carried out by the Manufacturer.
  12. The Purchaser shall carry out the preparatory work referred to in Section 11 in accordance with the drawings and instructions supplied by the Manufacturer pursuant to Section 10. In any case, the Purchaser shall ensure that the foundations are adequately load-bearing. If the Purchaser is responsible for transporting the Deliverable to the Assembly Site, the Purchaser shall ensure that the Deliverable arrives before the agreed start of assembly.
  13. The Manufacturer shall bear all the costs of any necessary remedial work necessitated by defective or incomplete drawings or instructions referred to in Section 10, provided that the Manufacturer discovers the defect or incompleteness within the period referred to in Section 59 or is notified thereof in writing within that period.
  14. The Purchaser shall ensure that:
    - a) the Manufacturer's personnel are able to start work in accordance with the agreed schedule and to work during normal working hours. The work may be carried out outside normal working hours to the extent that the Manufacturer considers it necessary and provided that the Purchaser has been notified thereof in writing within a reasonable time;
    - b) the Manufacturer is informed in good time before the start of the assembly, and in writing, of all relevant safety provisions applicable at the Assembly Site. Assembly is not carried out in unhealthy or hazardous environments. All necessary safety and protective measures must be taken before starting assembly and maintained during assembly;
    - c) the Manufacturer's personnel have the opportunity to be adequately housed and catered for in the vicinity of the Assembly Site and have access to sanitary facilities and medical care of an international standard;
    - d) it makes available to the Manufacturer free of charge and on time at the Assembly Site, all necessary cranes, lifting equipment and means of transport within the Assembly Site, ancillary equipment, machinery, materials and supplies (including petrol, oils, grease and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) and the Purchaser's measuring and testing equipment available at the Assembly Site. The Manufacturer shall notify the Purchaser in writing not later than one month before the agreed date of commencement of the assembly, of the cranes, lifting appliances, measuring and testing equipment and means of transport required at the Assembly Site;
    - e) it provides the Manufacturer, free of charge, with adequate office space at the Assembly Site, equipped with telephone and Internet connections;
    - f) in order to protect the Deliverable, the tools and equipment necessary for assembly and the personal effects of the Manufacturer's personnel against theft and deterioration, the Purchaser provides the Manufacturer with the necessary storage facilities free of charge;
    - g) the access routes to the Assembly Site are suitable for the necessary transport of the Deliverable or the Manufacturer's equipment.
  15. At the Manufacturer's timely request, the Purchaser shall make such assistants and operating personnel as may be agreed in the Contract or as may be reasonably required for the purposes of the Contract available to the Manufacturer free of charge. The persons provided by the Purchaser in accordance with this Section shall provide their own tools. The Manufacturer shall not be liable for any such personnel provided by the Purchaser or for any act or omission of the Purchaser's personnel.
  16. Upon request, the Purchaser shall fully support the Manufacturer in the import and re-export of the Manufacturer's equipment and tools, including customs formalities. This assistance is provided at no additional cost.
  17. The Purchaser shall provide the necessary assistance to ensure that the Manufacturer's personnel obtain visas and other official entry, exit or work permits and any tax certificates required in the Purchaser's country and access to the Assembly Site in good time. This assistance is provided at no additional cost.
  18. At the latest when the Manufacturer notifies the Purchaser that the Deliverable is ready for dispatch from the place of manufacture, each of the Parties shall appoint a person in writing to represent it at the Assembly Site during the Work. These representatives shall be at or near the Assembly Site during normal working hours. In the absence of any agreement to the contrary in the Contract, the representatives shall be fully entitled to perform acts on behalf of the respective Party insofar as matters within the scope of the assembly work are concerned. Where reference is made to the fact that notice must be given in writing in these General Terms and Conditions, the representative shall always be entitled to receive such notice on behalf of the Party they represent.
- NON-PERFORMANCE ON THE PART OF THE PURCHASER**
19. If it is foreseeable that the Purchaser will be unable to fulfil its obligations necessary for the performance of the assembly in time, in particular in accordance with the conditions set out in Sections 11, 12 and 14-17, the Purchaser shall notify the Manufacturer of this in writing without undue delay, stating the reason, and shall, if possible, advise the Manufacturer of the time when it will be able to fulfil its obligations.
  20. Without prejudice to the Manufacturer's rights under Section 21, if the Purchaser fails to fulfil its obligations necessary for the performance of the assembly, in particular in accordance with the conditions set out in Sections 11, 12 and 14-17, in a fault-free and timely manner, the following shall apply:
    - a) The Manufacturer may, at its discretion, perform the Purchaser's obligations itself or have them performed by a third party or take other measures appropriate in

the circumstances to avoid or mitigate the effects of the Purchaser's failure to perform.

- b) The Manufacturer may discontinue performance of the Contract in whole or in part. The Manufacturer must inform the Purchaser about the discontinuation in writing without undue delay.
  - c) If the Deliverable is not yet at the Assembly Site, the Manufacturer shall arrange for the storage of the Deliverable at the Purchaser's risk. At the request of the Purchaser, the Manufacturer shall insure the Deliverable.
  - d) The Purchaser shall pay that part of the Contract Price to the Manufacturer which would have been due but for the delay.
  - e) The Purchaser shall indemnify the Manufacturer against all reasonable costs not covered by Sections 47 and 48 to the extent that such costs are incurred by the Manufacturer as a result of action taken under subsections (a), (b) or (c) of this Section.
21. If acceptance is prevented by the Purchaser's failure to perform in accordance with Section 20 and such failure is not due to a circumstance covered by Section 72, the Manufacturer may still require the Purchaser, in writing, to rectify its failure to perform within a final reasonable period.

If for any reason not attributable to the Manufacturer, the Purchaser fails to remedy its failure to perform within such period, the Manufacturer shall be entitled to terminate the Contract in whole or in part by issuing notice in writing. The Manufacturer shall then be entitled to compensation for any loss suffered as a result of the Purchaser's failure to perform; this shall also apply to indirect and consequential loss. The compensation shall not exceed that part of the Contract Price which corresponds to that part of the Work in respect of which the Contract is terminated.

#### **REGIONAL LAWS AND REGULATIONS**

22. The Manufacturer shall ensure that the Work is performed in accordance with and otherwise comply with all laws and regulations applicable to the Work. At the Manufacturer's request, the Purchaser shall provide relevant information concerning such laws and regulations in writing.
23. The Manufacturer shall carry out any alterations, etc., which become necessary in the event of changes in the laws and regulations referred to in Section 22 or in the event of changes in generally accepted design principles relating thereto, provided that such change takes place between the date of submission of the offer and the date of acceptance. The Purchaser shall bear all costs incurred separately as well as all other consequences resulting from such changes, in particular for the conversion work.
24. If the Parties fail to agree on the separate costs incurred and the further consequences of a change in the laws and regulations referred to in Section 22, the Manufacturer shall be compensated for the conversion work on the basis of the hours worked.

#### **CHANGES**

25. Subject to the provisions of Section 29, the Purchaser shall be entitled to request changes in the scope, design and construction of the Work up to the time of acceptance of the Work. The Manufacturer may propose such changes in writing.
26. Change requests shall be submitted to the Manufacturer in writing and shall describe the change in detail.
27. Immediately after the Manufacturer has received a change request or has made a proposal for a change, the Manufacturer shall notify the Purchaser in writing whether and, if so, how the change can be carried out and what changes in respect of the Contract Price, the period for taking delivery and other provisions of the Contract this will entail.
- The Manufacturer shall also notify the Purchaser of any changes if such changes are due to changes in the laws and regulations referred to in Section 22.
28. If acceptance is delayed due to a disagreement between the Parties as to the consequences of changes, the Purchaser shall pay that part of the Contract Price which would have become due if acceptance of the Work had not been delayed.
29. Subject to the provisions of Section 23, the Manufacturer shall not be implement changes requested by the Purchaser until the Parties have agreed on the effect on the Contract Price, on the time for taking delivery and on other provisions of the Contract.

#### **TRANSFER OF RISK**

30. The risk of loss of or damage to the Deliverable shall transfer to the Purchaser in accordance with the agreed trade terms, which shall be interpreted in accordance with the INCOTERMS® in force at the time of conclusion of the Contract. In the absence of a special delivery clause in the Contract, the delivery of the Deliverable shall be made "Free Carrier" (FCA) to the place designated by the Manufacturer.

Any risk of loss of or damage to the Work not covered by the first paragraph of this Section shall transfer to the Purchaser on acceptance of the Work. Following the transfer of risk the Purchaser shall bear the risk of any loss of or damage to the Deliverable or the Work unless such loss or damage is due to the Manufacturer's negligence.

#### **ACCEPTANCE TESTS**

31. In the absence of any agreement to the contrary, acceptance tests shall be carried out after completion of the assembly work in order to determine whether the Work complies with the contractual provisions with regard to acceptance.

The Manufacturer shall notify the Purchaser in writing that the Works are ready for acceptance. Such notice shall include a date for the acceptance tests which shall give the Purchaser sufficient time to prepare for and be represented at the tests.

The Purchaser shall bear all costs for the acceptance tests. The Manufacturer, on the other hand, shall bear all costs incurred by its personnel and other representatives.

32. The Purchaser shall provide, at its own expense, power, lubricants, water, fuels, raw materials and all other materials insofar as these are necessary for the performance of the acceptance tests and the final adjustments in preparation for the tests. Likewise, the Purchaser shall set up equipment at its own expense and provide the manpower or auxiliary means required to carry out the acceptance tests.
33. If the Purchaser has received notice in accordance with Section 31 and fails to comply with its obligations under Section 32 or otherwise prevents the acceptance tests from being carried out, the tests shall be deemed to have been successfully completed on the date specified as the date for the acceptance tests in the Manufacturer's notice.
34. The acceptance tests will be carried out during normal working hours. If the Contract does not contain provisions on technical requirements, the tests shall be carried out in accordance with the general practice of the industry concerned in the Purchaser's country.
35. The Manufacturer shall prepare a report of the acceptance tests. The Manufacturer will send this report to the Purchaser. If the Purchaser is not represented at the acceptance tests after having received notice in accordance with Section 31, the Purchaser may no longer contest the correctness of the acceptance report.
36. If during the acceptance tests the Work proves to be in breach of the Contract, the Manufacturer shall remedy any defect without undue delay. Upon the Purchaser's immediate written request, further tests shall be carried out in accordance with Sections 31-35. This does not apply in cases of insignificant defects.

## ACCEPTANCE

37. The work shall be deemed to have been accepted,
  - a) if the acceptance tests have been successfully completed or are deemed to have been successfully completed in accordance with Section 33; or
  - b) when the Purchaser has received written notice from the Manufacturer that the Work has been completed, provided that the Work complies with the provisions of the Contract with respect to acceptance, but only in cases where the Parties have not agreed that acceptance tests are to be carried out.

Minor defects which do not affect the performance of the Work shall not constitute grounds for refusing acceptance.

The Manufacturer's obligation to assemble the Deliverable at the Assembly Site shall be deemed to have been fulfilled

on acceptance of the Work in accordance with this Section 37; any obligation to remedy minor defects shall not be affected.

38. The Purchaser shall not be entitled to use the Work or any part thereof prior to acceptance. Otherwise the Work shall be deemed to have been accepted except with the Manufacturer's prior written consent. The Manufacturer is then no longer obliged to carry out acceptance tests.
39. After acceptance of the Work in accordance with Section 37 or 38, the period described in Section 59 shall commence. The Purchaser shall, upon the Manufacturer's written request, issue a certificate stating the date of acceptance of the Works. If the Purchaser nevertheless fails to issue such a certificate, this shall not affect acceptance in accordance with Sections 37 and 38.

## DELAYS ON THE PART OF THE MANUFACTURER

40. If, instead of an acceptance date, the Parties have agreed on a deadline by which acceptance is to take place, such deadline shall commence as soon as the Contract has been concluded and all agreed preconditions incumbent upon the Purchaser have been fulfilled, for example, with regard to official formalities, all payments due upon conclusion of the Contract or, if applicable, agreed securities.
41. If it is foreseeable that the Manufacturer will be unable to fulfil its obligations for acceptance by the acceptance date, it shall notify the Purchaser of this in writing without undue delay, stating the reasons, and, if possible, the estimated acceptance date.

If the Manufacturer fails to give such notice, the Purchaser shall be entitled to claim compensation for all additional costs it incurs as a result of not having received such notice.
42. The Manufacturer shall be entitled to an extension of the acceptance period if any delay is due to:
  - a) a circumstance defined in Section 72, or
  - b) conversion work in accordance with Section 23 or
  - c) changes in accordance with Sections 25-29 or
  - d) the discontinuation of performance in accordance with Section 20, 51 or 75

or

- e) an act or omission of the Purchaser or to another circumstance attributable to the Purchaser.

The period shall be reasonably extended to take account of the circumstances. This provision shall apply irrespective of whether the reason for the delay occurs before or after the agreed acceptance date.

43. If the Work is not completed on the agreed acceptance date, the Purchaser shall be entitled to payment of liquidated damages from the date on which acceptance should have taken place.

The liquidated damages shall be fixed at 0.5 per cent of the Contract Value for each week of delay commenced. The liquidated damages may exceed 7.5 per cent of the Contract Value.

If only a part of the Work is delayed, the liquidated damages shall be determined on the basis of that part of the Contract Price which corresponds to that part of the Work which cannot be used as intended due to the delay.

The liquidated damages shall become due and payable upon written assertion by the Purchaser, but in no event prior to acceptance or termination of the Contract in accordance with Section 44.

44. If the Purchaser is entitled to claim the maximum liquidated damages under Section 43 because of the length of the delay and the Work is still not ready for acceptance, the Purchaser may fix a final reasonable period of not less than one week for completion of the Work by issuing notice in writing.

If the Manufacturer fails to complete the Work before such final period expires and if such failure is due to any cause beyond the Purchaser's reasonable control, the Purchaser may withdraw from the Contract in respect of such part of the Work that cannot be used for the intended purpose because of the Manufacturer's delay by issuing notice in writing to the Manufacturer .

If the Purchaser withdraws from the Contract, it shall be entitled to compensation for the loss it has suffered as a result of the Manufacturer's delay, including indirect and consequential loss. The total amount of the compensation, including liquidated damages under Section 43, shall not exceed 15 per cent of that part of the Contract Price which corresponds to that part of the Work in respect of which the Contract has been terminated.

The Purchaser shall also be entitled to terminate the Contract by notice in writing to the Manufacturer if it is clear from the circumstances that the acceptance of the Work will be delayed for a period which would entitle the Purchaser to the maximum liquidated damages under Section 43. If the Contract is terminated for this reason, the Purchaser shall be entitled to the maximum rate of liquidated damages and to compensation under the third paragraph of this Section 44.

45. In the event of a delay on the part of the Manufacturer, the Purchaser shall not be entitled to assert any further claims over and above the liquidated damages under Section 43 and the withdrawal from the Contract with limited compensation under Section 44. All other claims against the Manufacturer with regard to such delays are excluded, unless there is a culpable breach of essential contractual obligations, intent or gross negligence on the part of the Manufacturer in accordance with Section 2.

## PAYMENT

46. In the absence of any agreement to the contrary, payment shall be made within thirty days of the invoice date as follows:

- a) For assembly according to hours worked:
- one third of the agreed price of the Deliverable upon conclusion of the Contract,
  - one third when the Manufacturer notifies the Purchaser that the Deliverable or an essential part thereof is ready for dispatch from the place of manufacture, and

- the last third upon arrival of the Deliverable at the Assembly Site.

Payments for assembly shall be made against monthly invoices.

- b) If the assembly is included in the Contract Price:
- 30 per cent of the Contract Price upon conclusion of the Contract,
  - 30 per cent when the Manufacturer notifies the Purchaser that the Deliverable or an essential part thereof is ready for dispatch from the place of manufacture, and
  - 30 per cent upon arrival of the Deliverable at the Assembly Site,
  - the remaining part of the Contract Price upon acceptance.

47. In case of assembly according to hours worked, the following items will be invoiced separately:

- a) any travel expenses incurred by the Manufacturer for its personnel and the cost of transporting its equipment and personal luggage to a reasonable extent according to the type and class of transport agreed in the Contract, if any;
- b) living expenses, including appropriate daily allowances for each day of absence of the assembly personnel from their place of residence, including days of rest and public holidays; daily allowances shall also be paid in the event of absence due to illness or accident;
- c) the hours worked, calculated on the basis of the hours which the Purchaser has confirmed as worked by its signature on the respective time sheets. Overtime, Sunday, holiday and night work shall be charged at special rates. The rates shall be based on the agreement made in the Contract; in the absence of any such agreement, they shall be based on the rates normally charged by the Manufacturer. In the absence of any agreement to the contrary, the hourly rates shall include the normal wear and tear of the Manufacturer's tools and light equipment;
- d) the time required for:
- the preparation and formalities concerning outward and return journeys of the Manufacturer's personnel,
  - outward and return journeys and other journeys to which personnel are entitled by law, regulations or collective agreements in force in the Manufacturer's country,
  - the daily outward and return journey of the Manufacturer's personnel between the accommodation and the Assembly Site if this exceeds half an hour one way and reasonable accommodation closer to the Assembly Site is not available,
  - bridging of periods in which work is prevented due to circumstances not attributable to the Manufacturer;
- e) contractual expenses incurred by the Manufacturer for the provision of equipment and, where applicable, a fee for the use of its heavy tools;
- f) taxes and duties payable by the Manufacturer in the country of assembly from the invoice amount;

- g) costs which could not reasonably have been foreseen by the Manufacturer and which are due to circumstances not attributable to the Manufacturer;
  - h) additional costs due to compulsory applicable rules of social legislation in the country of the Purchaser;
  - i) costs, expenses and time spent due to additional work not attributable to the Manufacturer. Costs on a time basis shall be charged at the rates set forth in this Section 47(c).
48. In the case of installation at a lump-sum price, the Contract Price shall include all items listed in Section 47(a) to (e) inclusive. Items listed in Section 47(f) to (i) inclusive shall be deemed not to be included in the Contract Price and shall therefore be invoiced separately. Costs on a time basis shall be charged at the rates set forth in Section 47(c).
49. If the assembly is delayed for reasons attributable to the Purchaser, the Purchaser shall compensate the Manufacturer for any additional costs incurred, including, but not limited to:
- a) waiting time and additional travel time;
  - b) costs and additional work due to the delay, including dismantling, securing and setting up the assembly equipment;
  - c) additional costs, in particular costs incurred by the Manufacturer as a result of its equipment being tied up at the Assembly Site for longer than anticipated;
  - d) additional allowances and travel expenses for the Manufacturer's personnel;
  - e) additional financing and insurance costs;
  - f) other documented costs incurred by the Manufacturer as a result of deviations from the assembly programme. Costs on a time basis shall be charged at the rates set forth in Section 47(c).
50. Regardless of the means of payment used, payment shall not be deemed to have been made until the amount due has been irrevocably credited to the Manufacturer's account.
51. If the Purchaser is in arrears with its payments, the Manufacturer shall be entitled to claim interest on arrears and reimbursement of the costs of collection from the due date. In the absence of any agreement to the contrary, an interest rate of 8 percentage points above the rate of the marginal lending facility of the European Central Bank shall be deemed to have been agreed. The recovery costs to be reimbursed shall amount to 1 per cent of the amount for which default interest is due.

In the event of delayed payment or failure by the Purchaser to provide an agreed security within the prescribed period, the Manufacturer may, after giving written notice to the Purchaser, suspend performance of its own obligations until payment has been received or security has been provided.

If the Purchaser is more than three months in arrears with payments, the Manufacturer may terminate the Contract by notice in writing to the Purchaser and, in addition to interest and the costs of recovery under this Section 51, recover from the Purchaser any loss it has suffered. Such compensation shall not exceed the Contract Price.

## **RETENTION OF TITLE**

52. The Deliverable shall remain the property of the Manufacturer until payment has been made in full, which shall also include payment for the assembly of the Deliverable, provided that such retention of title is effective under the respective law.

At the request of the Manufacturer, the Purchaser shall fully support the Manufacturer in its efforts to protect the Manufacturer's title to the Deliverable.

The retention of title shall not affect the provisions on the transfer of risk under Section 30.

## **LIABILITY FOR PROPERTY DAMAGE BEFORE ACCEPTANCE**

53. The Manufacturer shall be liable for all damage to the Work occurring before the transfer of risk to the Purchaser. This shall apply irrespective of the cause of the damage, unless the damage was caused by the Purchaser itself or by a third party for which the Purchaser is responsible in connection with the performance of this Contract. Even in cases where the Manufacturer is not liable for damage to the Work in accordance with this Section, the Manufacturer shall nevertheless remedy the damage at the Purchaser's request and in that case at the Purchaser's expense.
54. The Manufacturer's liability for damage to the Purchaser's property up to the acceptance of the Works shall be limited to cases where the Manufacturer or a third party for whom the Manufacturer is responsible in the course of performance of the Contract has caused the damage by negligence. However, the Manufacturer shall in no case be liable for loss of production, loss of profit or other consequential or indirect damages.

## **LIABILITY FOR DEFECTS**

55. Subject to Sections 56-71, the Manufacturer shall remedy any defect or non-conformity (hereinafter referred to as "defect(s)") in the Work due to faulty design, materials or workmanship.
56. The Manufacturer shall not be liable for defects caused by materials provided by the Purchaser or by a design prescribed or specified by the Purchaser.
57. The Manufacturer shall only be liable for such defects as occur under the operating conditions provided for in the Contract and in normal use of the Work.
58. The Manufacturer shall not be liable for defects due to circumstances arising after the transfer of risk, such as defects due to poor maintenance or faulty repair by the Purchaser or due to alterations made without the Manufacturer's written consent. The Manufacturer is not liable for normal wear and tear or for deterioration.
59. The Manufacturer's liability shall be limited to defects in the Work which appear within one year of acceptance. If the use of the work exceeds the agreed scope, this period

shall be shortened accordingly. If acceptance is delayed for reasons attributable to the Purchaser, the Manufacturer's liability for defects shall, in the absence of any provision to the contrary in Section 60, cease at the latest 18 months after delivery of the Deliverable.

60. If a defect in part of the Work is remedied, the Manufacturer shall be liable for defects in the replaced or repaired parts for a period of one year on the same terms as for the original Work. For all other parts of the Work, the period referred to in Section 59 shall be extended only to the extent that and for as long as the interruption of use of the Work caused by the defect continues.
61. The Purchaser shall immediately notify the Manufacturer in writing of any occurring defect. Such notice of defects must in any case be given within two weeks after the expiry of the period stipulated in Section 59 or the extended period(s) pursuant to Section 60.

The notice must describe the defect.

If the Purchaser fails to notify the Manufacturer of the defect in writing within the period specified in paragraph 1 of this Section, the Purchaser shall forfeit its right to have the defect remedied.

If the defect may cause damage, the Purchaser shall notify the Manufacturer in writing without undue delay. The Purchaser shall bear the risk of damage to the Work resulting from any failure to give such notice. The Purchaser shall take all reasonable steps to mitigate the damage and shall comply with the Manufacturer's instructions in this respect.

62. Upon receipt of the notice of defects in accordance with Section 61, the Manufacturer shall remedy the defect without undue delay and at its own expense in accordance with Sections 55-71. The time for remedying defects shall be determined in such a way that the Purchaser's operations are not unnecessarily impaired.

Defect shall generally be remedied at the Assembly Site unless the Manufacturer, having considered the interests of both Parties, considers it more appropriate to have the Deliverable or the defective part sent to it or to another place the Manufacturer designates.

If the work to remedy the defect is carried out at the Assembly Site, Sections 14-17 and 54 shall apply accordingly.

If the defect can be remedied by replacement or repair of a defective part and the removal and installation of the part does not require special expertise, the Manufacturer may require the defective part to be shipped to it or to another place the Manufacturer designates. In this case, the Manufacturer's obligation with respect to the defect shall end with the delivery of the properly repaired or replaced part to the Purchaser.

63. The Purchaser shall, at its own expense, provide access to the Work and any intervention in respect of equipment which is not part of the Work to the extent necessary to remedy the defect.
64. In the absence of any agreement to the contrary, the necessary transport of the Deliverable or individual parts

thereof to and from the Manufacturer in connection with the remedying of defects for which the Manufacturer is liable shall be at the risk and expense of the Manufacturer. The Purchaser must follow the Manufacturer's instructions for such transport.

65. In the absence of any agreement to the contrary, the Purchaser shall bear any additional costs incurred by the Manufacturer in remedying the defect due to the fact that the location of the Work is different from the Assembly Site.
66. Replaced defective parts shall be made available to the Manufacturer and shall become its property.
67. If the Purchaser has given notice of a defect in accordance with Section 61 and no defect is found for which the Manufacturer is liable, the Purchaser shall reimburse the Manufacturer the costs incurred by the Manufacturer as a result of the Purchaser's notice of defects.
68. If the Manufacturer fails to comply with its obligations under Section 62, the Purchaser may fix a final reasonable period of not less than one week within which the Manufacturer shall comply with its obligations by issuing notice in writing.

If the Manufacturer does not fulfil its obligations within this final period, the Purchaser may carry out the necessary repairs itself or have them carried out by a third party at the expense and risk of the Manufacturer.

If the repair has been successfully carried out by the Purchaser or a third party, all claims of the Purchaser against the Manufacturer in respect of such defect shall be satisfied by the reimbursement of the reasonable costs incurred by the Purchaser.

69. If a rectification of defects in accordance with Section 68 fails:
- a) the Purchaser may claim a reduction in the Contract Price commensurate with the diminished value of the Work, provided that the reduction does not exceed 15 per cent of the Contract Price; or, if the defect is so substantial that the Purchaser has no interest in the Contract in respect of the Work or a substantial part thereof,
  - b) the Purchaser may terminate the Contract in respect of such part of the Work as cannot be used as intended because of the defect by issuing notice in writing to the Manufacturer. The Purchaser shall then be entitled to compensation for its losses, costs and damages up to a maximum of 15 per cent of that part of the Contract Price which corresponds to that part of the Work in respect of which the Contract has been terminated.
70. Without prejudice to the provisions of Sections 55-69, the Manufacturer's liability for defects in any part of the Work shall be limited to one year from the end of the period of liability specified in Section 59 or the end of any different period of liability agreed by the Parties.
71. Subject to the provisions of Sections 55-70, the Manufacturer shall not be liable for defects. This applies to any damage caused by the defect, such as loss of production, loss of profit and other indirect damage. The limitation of liability of the Manufacturer shall not apply in

the event of intent or gross negligence pursuant to Section 2 or in the event of culpable injury to life, limb or health.

The limitation of liability shall also not apply in the event of a culpable breach of essential contractual obligations. In the event of slight negligence, the Manufacturer shall only be liable for reasonably foreseeable damage typical of the Contract.

The limitation of liability shall also not apply in cases in which liability is assumed under the German Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the Work. It shall also not apply in the case of defects which the Manufacturer has fraudulently concealed or the absence of which it has guaranteed.

#### **FORCE MAJEURE**

72. Each Party shall be entitled to discontinue its contractual obligations to the extent that such performance is rendered impossible or unreasonably difficult by force majeure, including: labour disputes and all circumstances independent of the will of the Parties, such as fire, war, general mobilisation, insurrection, requisition, seizure, embargo, restrictions on energy consumption, foreign exchange and export restrictions, epidemics, natural disasters, extreme natural events, acts of terrorism and defective or delayed deliveries by subcontractors due to the circumstances listed in this Section.

If a circumstance listed in this Section occurs before or after conclusion of the Contract, it shall only constitute grounds for discontinuation to the extent that its effects on the performance of the Contract could not be foreseen at the time of conclusion of the Contract.

73. The Party invoking force majeure shall immediately notify the other Party in writing of the occurrence and cessation of such circumstance. If a Party fails to give such notice, the other Party shall be entitled to claim compensation for any additional costs it incurs as a result of not having received such notice.

If force majeure prevents the Purchaser from fulfilling its obligations under the Contract, it shall compensate the Manufacturer for any costs incurred in securing and protecting the Work.

74. Notwithstanding anything contained in these General Terms and Conditions, either Party shall have the right to terminate the Contract by issuing notice in writing to the other Party if the discontinuation of the performance of the Contract under Section 72 continues for more than six months.

#### **FORESEEABLE NON-PERFORMANCE**

75. Notwithstanding anything to the contrary in these General Terms and Conditions relating to suspension of performance, either Party shall have the right to discontinue the performance of its obligations under the Contract if it is clear from the circumstances that the other Party will not perform its obligations. A Party that discontinues the

performance of its contractual obligations shall immediately notify the other Party thereof in writing.

#### **CONSEQUENTIAL DAMAGES**

76. Subject to deviating provisions in these General Terms and Conditions, the liability of one Party towards the other Party for loss of production, loss of profit, loss of use, loss of contract or any other consequential or indirect damage is excluded.

This exclusion of liability shall not apply in the event of intent or gross negligence pursuant to Section 2 or in the event of culpable injury to life, limb or health. It shall also not apply in the event of a culpable breach of essential contractual obligations. In the event of a slightly negligent breach of essential contractual obligations, however, the Manufacturer shall only be liable for reasonably foreseeable damage typical of the Contract.

The exclusion of liability shall also not apply in cases in which liability is assumed under the German Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the Work. It shall also not apply in the event of damage due to fraudulent misrepresentation or within the scope of special guarantee commitments.

#### **DISPUTES AND APPLICABLE LAW**

77. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules.

78. The Contract is governed by the substantive law of the country of the Manufacturer.