

# General business terms and conditions

OERTLI Tool Factory Inc., Hofstrasse 1, CH-8181 Höri

## 1. General

- 1.1 These general terms and conditions shall be binding, if declared applicable in the quotation or in the order acknowledgement. Any other conditions stipulated by the customer are only valid, if they are explicitly acknowledged by the supplier in writing.
- 1.2 All agreements and legally relevant declarations of the contract 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 equal to written declarations, provided this has been specifically so agreed by the parties.
- 1.3 Should a provision of these general terms and conditions prove to be wholly or partly invalid, the contract parties shall replace it by a new provision, having legally and economically a most possible similar effect as the invalid provision.
- 1.4 The sales contract is binding with the signature on the order form by the customer and the counter signature by the supplier. One-sided or verbal orders (Fax, Phone) are also binding, provided they are not cancelled within a week by the supplier.
- 1.5 Quotations, which do not stipulate an acceptance period of time, shall not be binding.

## 2. Scope of supplies and services

In case the supplier issues an order acknowledgement, all supplies and services are finally specified in it. The supplier shall be entitled to make changes on the order leading to improvements, provided such changes do not result in a price increase.

## 3. Drawings and technical documents

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in drawings and technical documents are only binding in so far as having been explicitly stipulated as such.
- 3.2 The contract parties retain all rights to drawings and technical documents provided to each other. The contract party receiving such documents recognises these rights and shall – without previous written authorization 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. Regulations in force in the country of destination and safety devices

- 4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, to the operation as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under Clause 4.1. Additional or other safety devices shall be supplied to the extent as having been explicitly agreed upon.

## 5. Prices

- 5.1 Unless otherwise agreed upon, all prices shall be deemed to be net without VAT, ex works, excluding packing, in freely available Swiss francs without any deduction whatsoever.
- All additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier is liable for them.
- 5.2 Price information in catalogues and other sales documents are not binding. They may be changed by the supplier at any time without previous notice.

## 6. Terms of payment

- 6.1 Unless otherwise agreed, payments of our invoices are due within 30 days net. Payments shall be made by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- Payment shall be deemed to be effected as soon as Swiss francs or Euro have been made freely available to the supplier at supplier's domicile. In case payment by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges.
- 6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond supplier's control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.
- 6.3 If the customer delays the agreed terms of payment, he shall be liable, without reminder, for interests effectively 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 remains reserved.

## 7. Retention of ownership

- The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract.
- The customer shall co-operate in any measures necessary for the protection of supplier's ownership. In particular upon entering into the contract, he authorises the supplier to enter or notify the reservation of ownership in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at customer's cost. During the period of the reservation of ownership, the customer shall, at its 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 ownership is in no way prejudiced.

## 8. Delivery time

- 8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, and any agreed securities given and the main technical points settled.
- 8.2 Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligations.
- 8.3 The delivery time is reasonably extended:
- a) If the information required by the supplier for fulfilment 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 using 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, revolution, serious breakdowns 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, official actions or omissions by any state authorities or public bodies, natural catastrophes;
- c) If the customer or a third party is behind schedule with work it has to execute, or with the fulfilment of its contractual obligations, in particular if the customer fails to observe the terms of payment.
- 8.4 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.3 apply by analogy.
- 8.5 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those explicitly stipulated in this Clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of assistant persons employed or appointed by the supplier to perform any of its obligations.

## 9. Packing

- Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as supplier's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

## 10. Passing of benefit and risk

- 10.1 The benefit and the risk of the supplies shall pass over to the customer at time of dispatch ex works.
- 10.2 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 over to the customer at the time originally foreseen for their dispatch ex works. At this moment, the supplies shall be stored and insured on the account and at the risk of the customer.

## 11. Dispatch, transport and insurance

- 11.1 The supplier shall in time be notified of special requirements regarding dispatch, transport and insurance. The transport shall be at customer's expense and risk.
- Complaints regarding dispatch or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.
- 11.2 The customer shall be responsible for taking insurance against risks of any kind.
- 11.3 Partial deliveries are possible.

## 12. Inspection and taking-over of the supplies and services

- 12.1 As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, it requires be specifically agreeing upon and paying for by the customer.
- 12.2 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 in doing so, the supplies and services count as accepted.

- 12.3 Having been notified of deficiencies according to Clause 12.2, the supplier shall as soon as possible correct them, and the customer shall give the supplier the possibility for doing so. After correction of such deficiencies, a taking-over test according to Clause 12.4 will be carried out at the request of the customer or of the supplier.
- 12.4 Carrying-out of a taking-over test as well as laying down the conditions related thereto, require a special agreement.
- 12.5 Taking-over shall also be deemed completed,
- If the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;
  - If the customer refuses the acceptance without being entitled to do so;
  - If the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;
  - As soon as the customer uses the supplies or services.
- 12.6 Deficiencies of any kind on supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 13 (guarantee, liability for defects).

## 13. Guarantee, liability for defects

- 13.1 **Guarantee period**  
The guarantee period is 12 months, or 6 months in case of a multi-shift operation. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking-over have been agreed upon before; or, if the supplier undertakes the erection, upon completion thereof. If dispatch, taking-over or erection is 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 after replacement or completion of the repair or taking-over, but not longer than the expiry of a period being double to the guarantee period stipulated in the preceding paragraph.
- The guarantee expires prematurely, if the customer or a third party undertakes inappropriate 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 of remedying such defect.

- 13.2 **Liability for defects on material, design and workmanship**  
Upon written request by the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry date of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become supplier's property. The supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in supplier's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

- 13.3 **Liability for assured warranties**  
Assured warranties are only those which have been explicitly specified as such in the order acknowledgement or in the specifications. An assured warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed on, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality and performance.
- If the assured 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 for doing so.

- If such improvements fail completely or in part, the customer may claim such compensation as has been agreed on before for such a case; or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided 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 it, to terminate the contract. In such a case the supplier can only be held liable for reimbursing the amount which has been paid for the parts affected by the termination.

- 13.4 **Exclusions from the liability for defects**  
Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved 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 operation, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the supplier, or resulting from other reasons beyond supplier's control.

- Components not delivered by the supplier are also excluded from supplier's guarantee and liability.
- 13.5 **Supplies and services of subcontractors**  
For supplies and services of subcontractors requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.

- 13.6 **Exclusivity of guarantee claims**  
With respect to any defective material, design or workmanship as well as to any failure to fulfil assured warranties, the customer shall not be entitled to any rights and claims other than those explicitly stipulated in Clauses 13.1 to 13.5.

- 13.7 **Liability for additional obligations**  
For claims from customer arising out of faulty advice and the like or out of breach of any additional obligations, the supplier is only liable to the extent of unlawful intent or gross negligence.

## 14. Non-performance, bad performance and their consequences

- 14.1 In all cases of bad performance or non-performance not explicitly covered by these general conditions of supply – in particular if the supplier, without valid reasons, starts execution of the supplies and services so late that completion in time can unlikely be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to supplier's fault – then the customer shall be entitled to grant a reasonable additional period of time for the supplies or services affected, thereby simultaneously warning to terminate the contract in case of non-compliance. If such an additional period of time lapses due to supplier's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services already executed, or because it can be foreseen with certainty that the execution will be contrary to the terms of the contract, thereby claiming a refund of the payments already made for such supplies or services.

- 14.2 In such a case Clause 16 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability. Any claim for such damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.

## 15. Termination of the contract by the supplier

- If unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the supplier and therefore the execution subsequently becomes impossible, the contract shall be adapted appropriately. As far as such adaptation is economically not justifiable, the supplier shall be entitled to terminate the contract or the parts affected thereby.
- If the supplier wishes to terminate the contract, he shall – after having recognised the consequences of the event – immediately inform the customer. This applies even if an extension of the delivery time has been agreed before. In case of termination of the contract, the supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried-out. Claims for damages on the part of the customer for such a termination are excluded.

## 16. Exclusion of further liabilities 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 reasons they are based on, are finally covered by these general terms and conditions of supply. In particular, any claims not explicitly mentioned for damages, diminution, termination of the contract or withdrawal from the contract, are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for 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, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of the supplier, but does apply to unlawful intent or gross negligence of assistant persons employed or appointed by the supplier to perform any of its obligations.
- This exclusion of liability does not apply as far as it is contrary to compulsory law.

## 17. Right of recourse of the supplier

- If, through actions or omissions by the customer or by assistant persons employed, persons are injured or property of third parties is damaged and therefore a claim is made against the supplier, then the supplier shall be entitled to take recourse against the customer.

## 18. Erection

- If the supplier undertakes the erection or the supervision of the erection, the General Conditions of Erection of HBT Switzerland shall apply.

## 19. Jurisdiction and applicable law

- 19.1 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.
- 19.2 The contract shall be governed by Swiss substantive law.

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