

## **SPARE PARTS GENERAL SALES CONDITIONS**

In force from January 1<sup>st</sup> 2012

### **DEFINITIONS**

The words below shall have the meanings herein assigned to them:

"**Contract**" shall mean the entire agreement between the Buyer and the Supplier, including these General Conditions, and will be setup by mean of the Offer, the Buyer's Purchase Order or the acceptance of the Offer, the Supplier's order confirmation and any amendments thereto of these documents.

"**Offer**" shall mean the budget or firm commercial quotation issued in writing by the Supplier to the Buyer for the sale of the Parts and/or the Services.

"**Parts**" shall mean any of the spare parts, optional components and upgrades supplied.

"**Services**" shall mean manpower, and/or maintenance and/or training supplied.

**1. GENERAL** - These General Conditions shall govern all quotations, offers, orders, and any other sale document between the Parties and shall prevail over any conflicting clauses contained in the Buyer's general terms and conditions of purchase. The Buyer's general terms and conditions of purchase will not be accepted in any circumstances and if contained in another document they shall be deemed to have no effect. These General Conditions shall come into force upon their signature by both Parties. The Contract supersedes any and all previous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. The Contract shall be deemed to have been entered into upon the date of the order confirmation. No modification from these General Conditions shall be considered as accepted until it has been agreed to by the Parties in written. The Buyer is responsible for providing to the Supplier all information, data and specifications necessary for the Supplier to provide an accurate Offer.

**2. CREDIT APPROVAL, INFORMATION AND ACCEPTANCE** – All orders are subject to approval of Buyer's credit and acceptance by Supplier. As a condition of sale, Buyer grants Supplier the right to investigate Buyer's credit, to exchange credit information with others and to report to others about Buyer's account and relationship with Supplier and Supplier is released from any liability emanating there from.

**3. PRICE, PAYMENT CONDITIONS** - The price for the Contract is firm, and is definitive for the duration of the Contract. Price for Parts is to be considered unpacked at storage (Supplier's plant) location, loading operations and expenses not included. All payments shall be made in accordance with terms specified in the Offer or in the Contract and shall be considered fulfilled as soon as they will be credited into the bank account of the Supplier.

The price does not include import duties or taxes, stamp taxes, VAT, sales taxes or any other fee, levy or charge of any kind whatsoever levied in the Buyer's country, which shall be borne and paid by the Buyer.

In the event of a delay in payment, the Buyer shall be liable, as of right, for late interest penalties at a rate of three months EURIBOR plus a spread of 7,00%.

Any delay in payment shall entitle the Supplier to suspend or interrupt the fulfillment of its obligations including the Service. In case of a dispute, the Buyer shall have no right to set off any payment due against presumed expenses borne.

Any prices quotes or charged to Buyer contemplate reasonable manufacturing lead time and delivery schedules and shall be valid for only thirty (30) days from the date of quotation. List prices are subject to change without notice.

**4. DELIVERY** – Any special delivery instructions must be given by Buyer prior to acceptance of the quoted price so that Supplier has the possibility to adjust its price and Buyer will assume any cost attributable to a variation in the delivery instructions or place of delivery. Shipment and delivery dates/lead times indicated on Quotation and Order Confirmation are estimated and are not guaranteed unless specified. Supplier shall not be liable for failure to fill any order or deliver the goods or for delay in delivering the goods due to any causes whatsoever beyond the Supplier's control or in the event of the curtailment of manufacturing or delay in delivery. Supplier reserves the right to deliver on a pro-rata basis the goods and Buyer agrees to pay for such partial deliveries. Unless otherwise agreed by the Supplier or indicated in the Supplier's invoice, the time upon which the risk on the Parts shall pass to the Buyer shall be deemed to be fixed in accordance with the "EXW" delivery Incoterms® 2010.

**5. PARTIAL SHIPMENTS** – Supplier reserves the right to make partial shipments. All partial shipments will be separately invoiced and must be paid within thirty (30) days without regard to subsequent deliveries. Delay in delivery of any partial shipment shall not relieve Buyer of its obligation to accept and pay for previous and remaining shipments. Supplier reserves the right to refuse to make further shipments if Buyer fails to pay for any partial shipments when due.

**6. INSPECTION, STORAGE, WAREHOUSING** - Buyer shall open the crate(s) and inspect the Supplier's Parts promptly upon their arrival at the delivery destination and shall within five (5) business days after delivery give written notice to the Supplier of any claim for damages, defects or nonconformity, together with photographic evidence of the damage to the Supplier's Parts. Failure to make such claim or give such notice within the stated period shall constitute an irrevocable acceptance of the Supplier's Parts and an admission that such Parts have been received by Buyer in good condition, free of damage and that they fully comply with all the terms and conditions of the Contract. Any loss or damage to the Supplier's Parts that occurs during transportation, storage or otherwise after the Parts have been accepted shall be the sole responsibility of Buyer.

**7. ORDERS CANCELLATION** – All orders received are firm and definitive.

Parts: cancellation of the order of a Part will either be charged (totally or partially) or not by the Supplier depending on the Part concerned and the nature and progress of manufacturing of this Part. In any case, the Supplier will charge the Buyer for the costs of any upgrade study.

Manpower: when the cancellation of the order of technicians occurs ten (10) business days or less prior to the determined date of intervention, the Supplier will charge the Buyer for the travel booking fees.

Training: when the cancellation of the order of a training session occurs ten (10) business days or less prior to the determined date of the training session, the Supplier will charge the Buyer the total price of the training session and travel booking fees.

In case, the trainees do not attend the whole duration of the training session, the Supplier will nevertheless charge the Buyer the total price of the training session and travel fees.

**8. RETURNS** – Buyer may not return goods unless written authorization is received from Supplier. Buyer will require to Supplier a Return Material Authorization (RMA) number prior to return the goods. Custom or special order products are not subject to return under any circumstances. In the event Supplier authorizes a return, Buyer shall be liable for payment of a restocking charge equal to 20% of the value of the returned goods. Electrical items must be returned in the original packaging with the seal unbroken. Any returns accepted will be for credit only, transportation cost to be at Buyer's expense, and Supplier retains, at its sole discretion, the right to determine the value at which the returned goods will be credited. Supplier reserves the right to dispose of any unauthorized returns to materials without granting credit. Any oral instruction must be confirmed in writing by Supplier to be valid. All returned goods must be in saleable condition (un-used) or no credit will be allowed by Supplier.

**9. WARRANTY** - The Supplier warrants that the Parts are free from any malfunction due to a defect in the material, in the manufacture or in the conception of such Parts for a period of six (6) months from shipment date. No other warranty shall be borne by the Supplier. Common wear parts and consumables are excluded from the warranty. Wear parts are those parts designed to support on their own or as a priority the deteriorations such as abrasion, corroding, ageing, fatigue, etc. Wear parts are for example, but not limited to, seals, guiding parts (bearings, rollers...), shock absorbers, springs, electrical components, filter elements, fuses, lubricants, pressure gauges, hose, stack taper wear, etc...

The Supplier is not bound by any warranty whether legal or contractual, and shall not be held liable for defects or damages arising from any of the following reasons: (i) bad maintenance by Buyer of the Parts or the Equipment on which they are installed (ii) modification/replacement/repair of the Parts or the Equipment without the written consent of the Supplier or incorrectly carried out by the Buyer, (iii) non-compliance with operating manual and directions for use provided by the Supplier, (iv) use/intervention by unqualified or not properly trained/educated personnel, (v) normal wear and tear, (vi) exposure to conditions outside the range of the environmental specifications, or (vii) chemical, electronic or electrical influences which were not contemplated in the Contract. Supplier shall provide the Services under the Contract with the sole obligation to use the necessary resources.

Training shall be provided on a collective basis and Supplier will be deemed to have fulfilled its obligations hereunder even though some or all trainees have not attended all courses. At the end of each training course, Supplier may issue a training certificate in respect of each trainee having completed the courses, but Supplier shall not incur any liability as to the results of such training courses or as to the trainees' performance of their tasks after having been trained.

Any failure related to the performance of the Services shall be notified to Supplier within 8 days upon completion of the Service concerned and, should the claim be justified, shall cause the defective Service to be performed again.

THE ABOVE WARRANTIES SHALL CONSTITUTE THE ONLY WARRANTY AND SOLE REMEDY OF PURCHASER AND THE SOLE LIABILITY OF SUPPLIER; THE WARRANTIES OF THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED BY STATUTE, TRADE USAGE OR OTHERWISE ARE EXCLUDED AND SHALL NOT APPLY TO THE PARTS DELIVERED OR SERVICES PERFORMED, EXCEPT FOR WARRANTIES WHICH BY LAW CANNOT BE EXCLUDED OR LIMITED.

Warranty claims do not extend the warranty period beyond the original expiry date (of either the new equipment warranty or original component warranty) and warranty is not transferable. Supplier reserves the right to request all maintenance records and any missing document may affect the warranty acceptance.

The act of shipping a replacement part in good faith, to support a Buyer's production, when it is understood that further warranty validation is required, does not validate the warranty claim. If the warranty claim is eventually denied, the Buyer agrees to pay the Parts and/or Services provided.

If the Supplier determines that failed component must be returned, a Return Material Authorization (RMA) will be issued. An RMA must be issued before any defective product is returned. If the failed component is not returned within thirty (30) days, the Supplier reserves the right to invoice the Buyer. The Buyer is responsible for properly packaging the failed components for return. The Supplier reserves the right to invoice the Buyer if damages incurred were a result of poor or improper packaging methods.

**10. TOOLS RENTAL** - Buyer is the sole responsible for any damages incurred for the using rented tools in performing the Services. Buyer is also responsible for ensuring the only qualified personnel operates all rented equipment and that the proper Personal Protective Equipment (PPE) is used at all times.

**11. ASSIGNMENT, SUBCONTRACTING** - The Supplier shall be entitled to assign any or all of its rights and obligations under this Contract to any third party. The Supplier shall be entitled to subcontract any or all of its rights and obligations under this Contract provided that the Supplier will guarantee its obligations under the Contract.

**12. LIMITATION IN LIABILITY** - All cases of contractual breach and the relevant consequences as well as all rights and claims on the part of the Buyer, irrespective on what grounds they are based on, are exhaustively covered by the Contract. In particular, any claim, not expressly mentioned for damages, reduction of price, termination of or withdrawal from the Contract, are excluded. In no case the Buyer shall be entitled to claim damages other than restitution for costs of remedying defects in the Equipment or as those expressly specified herein.

Supplier shall be liable only for damages directly caused by their own negligence. The Supplier shall under no circumstances be liable for any indirect, immaterial or consequential loss or damage whatsoever, including, but not limited to, loss of production, loss of use, loss of anticipated revenues or profit, or any other financial or economic loss.

Supplier's total liability, including applicable liquidated damages, if any, for any cause cannot exceed the aggregate amount of ten percent of the EXW Price of the Parts and/or the Services. In addition it is expressly agreed between the Parties that the Buyer shall use all reasonable efforts and take all reasonable steps in order to mitigate any loss incurred.

**13. FORCE MAJEURE** - In addition to and without limiting any other provision hereof, which limits or releases Supplier from liability. Supplier shall not be responsible for delays, charges, damages, or failure to fulfill any obligation under the Contract caused by industrial

disturbances or disputes, strikes, fire, acts of nature, acts of Providence, casualty, embargoes, currency restrictions, labor, conflicts or shortages, war, radiation, civil riot, import or export restrictions, shortage of materials or labor, failure or delay of suppliers, vendors, and subcontractors restrictions in the use of power, interruption or unavailability of transportation by the usual common carriers, or any other cause beyond Supplier's reasonable control, even if Supplier knew, had reason to believe, or was advised of the possibility or probability of any such cause.

**14. INTELLECTUAL PROPERTY** - The copyrights, patents, patent applications and any other intellectual property rights (hereinafter referred to as "the Intellectual Property Rights") over any documents, components and software embedded in or delivered with the Parts, shall remain in the exclusive property of the Supplier. Except per specific agreement, the foregoing applies without any limitation to the Intellectual Property Rights arising from or used in the execution of an order by the Buyer. The Supplier grants the Buyer, the limited non-exclusive, non transferable right to use the intellectual Property Rights that are necessary for the working of the Parts sold by the Supplier. No other rights express or implied in connection with such Intellectual Property Rights are granted. Consequently, Buyer undertakes not to manufacture or have any third party(ies) manufacture the Parts that are the object of an Intellectual Property Right. Furthermore, Buyer shall make neither de-compilation of the software supplied by the Supplier, nor copy thereof, nor modification without express agreement from the Supplier. Documents may only be copied for record purposes or strictly operational purposes. Any and all such copies shall contain the same Ownership and Confidential notices and legends which appear on the original documentation. The Supplier's name and its logo are protected by trademarks and shall not be used for advertising or other purpose without prior written agreement by the Supplier.

Supplier represents that, to the best of their knowledge, the Parts does not infringe upon any industrial or intellectual property rights of third parties (hereafter "Third Party Rights").

The Supplier shall have no obligations hereunder with respect to infringements caused by: i) Supplier's compliance with the Buyer's designs or instructions, ii) use of the Parts in a manner, for purpose, or in a foreign country not agreed to in writing by the Supplier, iii) the assembly, operation or use of the Parts in combination with any product not supplied by the Supplier, iv) the modification of the Parts without the Supplier's prior written consent.

The Buyer shall forthwith indemnify and hold harmless the Supplier from and against any claim whatsoever made by third parties in connection or arising out of infringements or alleged infringements of trade marks, patent rights, inventions and any other such industrial/intellectual property rights, such infringements or alleged infringements due to or being a consequence of any authorized use by the Buyer of the licensed information or licensed trademark or Supplier know-how.

**15. VALIDITY AND TERMINATION** - This Contract will be in force from the Effective Date until the completion of its obligations by each Party and it may be terminated prior to the natural expiration of its term as follows:

1. mutually, by Supplier and Buyer, upon execution of a signed document indicating the Parties' will to terminate the Contract;
2. unilaterally, by one of the Parties, indicating the intention to unilaterally terminate the Contract, in case of bankruptcy (or similar proceedings) or dissolution (whether the dissolution is voluntary or is the result of an act of government) of the other Party to the Contract;
3. according to specific clauses defined in the Special Conditions.

Upon termination of the Contract, Supplier's performance obligations under the Contract shall cease and Buyer shall pay the Supplier the balance of any and all payments due to Supplier for Parts delivered and Services provided up to and including the date of termination and all costs (direct and indirect) of the work in progress as at the date of termination, including tools, parts and material in inventory or ordered to the vendors.

**16. MISCELLANEOUS** - The Parties are independent contractors, and nothing in the Contract shall operate or be construed to constitute either Party as the agent, partner or representative of the other Party, nor permit either Party to obligate or bind the other Party with respect to third parties.

Severability: should a provision of this Contract become unenforceable or invalid under the laws of any country having jurisdiction over the subject matter involved, such provision will be considered as having been severed from the Contract and will have no further force or effect. In such event, the Parties hereto shall endeavor to substitute forthwith such other enforceable provision as will most closely restore the legal and economic balance of the Contract as initially agreed between the Parties.

If the Contract is written in two languages, the English version will prevail and be solely binding.

Translations of the English version of the Contract may exist; these translations are for informational purposes only and do not become part of the Contract.

**17. WAIVERS** - None of the terms or conditions of this Contract shall be deemed to have been waived by any Party unless such waiver is set forth in a written instrument properly signed by such Party.

The Contract sets forth all rights and obligations agreed upon between the Parties and supersedes any and all previous agreements and understandings, whether written or oral, between them with respect to the subject matter hereof.

**18. ARBITRATION** - The Parties will attempt to settle any claim or controversy, arising out of or relating to this Contract, through consultation and negotiation in good faith and with spirit of mutual co-operation. In the case that the controversy persists, the dispute will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules unless the Parties agree on the choice of one arbitrator. The arbitration will take place in the country where the Supplier has its registered office; the language of the arbitration will be the language of the country where the Supplier has its registered office.

Notwithstanding anything to the contrary contained in this Contract, the Supplier may, in its sole discretion, elect to institute an action or proceeding to collect monies owed to it by the Buyer in such manner and in such forums as the Supplier deems appropriate, without having to comply with the provisions of this Clause 18 relating to the mandatory submission of disputes to arbitration

**19. APPLICABLE LAW** - The Contract shall be governed by and construed in accordance with the law of the country where the Supplier has its registered office without regard to its conflict

of other laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods, issued in Vienna on 11 April 1980, shall be excluded.

**20. CONFIDENTIALITY** - For the purposes of the present Contract, the term "Confidential Information" shall mean all information in whatever form, tangible or intangible, including but not limited to all technical and/or financial information, documentation, software embedded in the Equipment, drawings, developments or improvements or processes, design, know-how and other unpublished information obtained by either Party (the "Receiving Party") from the other Party (the "Disclosing Party"). All information not generally known outside of the Disclosing Party's organization shall be deemed to be Confidential Information.

Any and all Confidential Information shall remain the exclusive property of the Disclosing Party and/or their affiliated companies and Receiving Party shall not acquire any license or other right of use in relation to any intellectual property of the Disclosing Party or any of their affiliated companies under the Contract, except upon express stipulations.

Without prior written consent from the Disclosing Party, the Receiving Party shall neither disclose Confidential Information to a third party, nor use it for any purpose other than as required for the implementation of the Contract or the exercise of their rights hereunder.

The Receiving Party shall take such steps as may be reasonably necessary, and in any case at least the same care as to protect its own Confidential Information, in order to prevent the disclosure of any Confidential Information to others, except to those of their employees, suppliers or subcontractors who are required to know such Confidential Information for the purpose of performing the Project and/or because they are directly responsible for the said tasks.

The Receiving Party shall ensure that their employees, suppliers or subcontractors mentioned above comply with said obligations.

Except to comply with applicable laws and regulations or as otherwise agreed upon by the Parties in writing, the Parties agree to keep the content of the Contract strictly Confidential. Any public announcement regarding the Contract shall be agreed upon in writing prior to any release thereof.

Notwithstanding the foregoing, the above obligations shall not be binding on the Receiving Party with respect to any Confidential Information which:

- is lawfully and demonstrably known to the Receiving Party prior to the time of disclosure;
- is in the public domain or subsequently comes into the public domain, through no fault of the Receiving Party;
- is received lawfully from a third party, who has not obtained such Confidential Information directly or indirectly from the Disclosing Party under an obligation to keep it Confidential;
- is developed by the Receiving Party wholly independently as a result of its own efforts and without knowledge of the Confidential Information;
- is required to be disclosed by applicable law or governmental regulation or by any competent institution or authority, provided that the Receiving Party shall notify the Disclosing Party of the Information to be disclosed (and of the circumstances in which the disclosure is required) as early as reasonably possible before such disclosure.

The Receiving Party shall take all reasonable actions to avoid and limit such disclosure.

The Parties acknowledge that no representation or warranty, express or implied, is made by the Parties hereto with respect to the truth, accuracy, completeness or reasonableness of Confidential Information exchanged.

In the event that this Contract is terminated for any reason whatsoever all such information deemed as "Confidential Information" or concerning prices and costs, that has not at that time entered the public domain, shall be returned to the owner Party immediately by the user Party, subcontractors and/or suppliers.

The obligation imposed on each Party or on subcontractors and/or suppliers under this article shall apply during the term of this Contract and shall survive its expiration or termination for a period of five (5) years.