

# GENERAL TERMS AND CONDITIONS OF SUPPLY

## 1. General

1.1. Except otherwise agreed in writing, these General Terms and Conditions shall apply to all contracts related to the sale of products or services by Erocarb SA ("Vendor") to a Customer ("Purchaser"). Erocarb's acceptance of a Customer's order is conditional on the Customer's assent to these General Terms and Conditions. Customer's order without an objection to these General Terms and Conditions shall constitute such assent. All amendments to General Terms and Conditions, appendices and legally relevant documents must be in writing and signed by both Parties ("Vendor and Customer") in order to be valid and binding.

## 2. Tenders

2.1 Tenders which do not stipulate an acceptance date shall not be binding.

## 3. Formation of Contract

3.1 The contract shall be deemed to have been concluded when, on receipt of an order, the vendor acknowledges acceptance in writing.

## 4. Scope of Contract

4.1 The goods to be supplied and the work to be done under the contract shall be as specified in the order acknowledgement. Items not referred to therein shall be charged separately.

## 5. Technical Documents

5.1 Technical documents, such as drawings, descriptions, illustrations and like constitute only an approximate guide; the vendor reserves the right to make any changes considered necessary.

5.2 All technical documents remain the exclusive property of the vendor and may not be copied or reproduced or communicated to a third party; nor may they be used for the construction of the machinery/equipment or parts thereof. They may be used for operation and maintenance, provided they are marked accordingly by the vendor.

5.3 Technical documents submitted with tenders that do not result in an order being placed, shall be returned at once.

## 6. Regulations in force at Destination

6.1 The Purchaser must inform the vendor of any regulations and all laws, governmental or others, in force which apply or bear any relation to the execution of the erection work, the operation of the machinery/equipment as well as to the sickness of personnel and the prevention of accidents.

## 7. Price

7.1 All prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs (CHF) or other specified currency in the offer, without any deductions whatsoever. All additional charges, such as the cost of carriage, insurance, fees for export, transit, import and other permits and certificates, shall be borne by the Purchaser. Likewise, the Purchaser shall be liable for all kind of taxes, fees, custom duties and like charges.

7.2 The vendor reserves the right to adjust the price if, in the period between submission of the tender and delivery of the goods in accordance with the contract, the wage rates or prices or raw materials vary. This adjustment shall be made according to the VSM (Swiss Association of Machinery Manufacturers) sliding-price formula.

## 8. Terms of Payment

8.1 Payment shall be made by the Purchaser to the vendor at his registered address by the purchaser, without any deductions for cash discount, expenses, taxes or dues of any kind. In the event of partial consignments, payment shall be made according to the volume of the individual consignments. Payments shall be deemed effected when the particular sum is available in Swiss francs to the vendor in Switzerland.

8.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or acceptance of the machinery/equipment is delayed or prevented by circumstances beyond vendor's control. The purchaser shall not withhold or reduce payments on account of complaints or claims or of counter-claims not accepted by the vendor. Payments shall also be made if unimportant parts of machinery/equipment are missing, but do not prevent the machinery/equipment from being used, or if post delivery work has to be carried out on the machinery/equipment.

8.3 If, in special circumstances, the Purchaser has to be granted extended terms of payment, he shall be liable for interest at the rate exceeding the rate of discount of the Swiss National Bank by at least 4% on any payments still due on completion of the goods in the works.

8.4 If the Purchaser defaults in payment, he shall be liable for interest with effect from the date on which the payment was due, without further warning, at a rate depending on the terms prevailing at the Purchaser's registered address, but not less than 8% per annum. Payment of default interest shall not release the Purchaser from paying the sums due under the terms of the contract.

## 9. Property Right

9.1 The vendor shall remain the owner of the goods supplied until full payment has been received. The Purchaser shall participate in any measures necessary for the protection of vendor's property.

## 10. Delivery Time

10.1 The delivery time shall commence on the date of formation of the contract, when all official formalities such as the import and payment permits have been settled, payments due with order have been received, opening of the Letter of Credit acceptable by the Vendor and any agreed security given, and when the main technical points have been settled. The delivery time shall be deemed duly observed if the goods are ready in the works by that time.

10.2 The delivery time may be reasonably extended:

- a) if the information required by the vendor for execution of the order is not received in time, or if subsequent changes which delay in the delivery are made by the Purchaser;
- b) if hindrances arise beyond the control of the vendor, regardless of whether they occur on his own premises, those of the Purchaser or those of a third party, such as epidemics, mobilisation, war, revolution, serious breakdowns in the factory, accidents, labour conflicts, late or deficient delivery of raw or other materials or goods by sub-contractors, the need to scrap important work pieces, official actions, natural catastrophes and acts of God;

- c) if the Purchaser is behind schedule with the work that he should execute, or with the fulfilment of his contractual obligations, especially if he fails to observe the terms of payment or delays the opening of an acceptable confirmed Letter of Credit in favour of the Vendor in a timely manner.
- 10.3 The imposition of penalties for delayed delivery requires special agreement in writing. They may only be imposed on proof that the delay is fault of the vendor and that the purchaser has suffered loss as a result. If the supply of substitute material can help purchaser, he shall not be entitled to impose any penalty.
- 10.4 In the event of a penalty being imposed, it shall not exceed ¼ per cent for every full week's delay, and altogether not exceed 5 per cent of the contract price of that part of the machinery/equipment that is delayed. When the time fixed for delivery exceeds 3 months, no penalty shall be imposed for the first two week's delay.
- 10.5 The purchaser is not entitled to claim indemnity or cancel the contract if delivery is delayed.
- 11. Testing and Acceptance of Goods**
- 11.1 Where it is the normal practice, the goods will be tested by the vendor during manufacture. If the purchaser stipulates additional tests, they shall be agreed in writing and paid for by the purchaser.
- 11.2 The purchaser shall test the goods delivered, at the latest 2 weeks after receipt of the goods and report any shortcomings to the vendor in writing without delay. If he fails to do this, the goods shall be deemed to have been accepted.
- 11.3 If the purchaser wishes acceptance tests to be performed, they must be agreed in writing. If, for reasons beyond the vendor's control, these tests cannot be performed in the specified time, the properties to be examined by these tests shall be deemed to have been proved.
- 11.4 If the acceptance tests prove that the goods do not fulfil the terms of the contract, the purchaser shall give the vendor an immediate opportunity of correcting any deficiency within a reasonable time
- 11.5 The purchaser shall not be entitled to claim any indemnity for deficiencies in the goods delivered, in particular to damages or cancellation of the contract.
- 12. Packing**
- 12.1 Packing shall be charged separately by the vendor and shall not be returnable. However, if it is declared vendor's property, it shall be returned, carriage paid, to his registered address.
- 13. Transfer of Use and Risk**
- 13.1 The right to use the goods and the risk involved are transferred to the purchaser not later than the date of their leaving the vendor's works, even if delivery is carriage paid, CIF, FOB, or under similar terms or includes erection. If despatch is delayed or prevented by circumstances beyond purchaser's control, the goods shall be stored at the purchaser's expense and risk.
- 14. Transport and Insurance**
- 14.1 Special requirements regarding forwarding and insurance shall be communicated to the vendor in good time. Transport shall be at the purchaser's expense and risk. Complaints in respect of transport shall be submitted immediately by the purchaser to the last carrier on receipt of the goods or the shipping documents.
- 14.2 Insurance against risks of any kind is the responsibility of the purchaser. Even when taken out by the vendor, it shall be at the purchaser's expense and risk.
- 15. Erection**
- 15.1 If the vendor also undertakes erection of the goods, the General Conditions of Erection of VSM shall apply.
- 16. Guarantee**
- 16.1 The vendor undertakes upon written request of the purchaser to repair or replace at his own discretion and as quickly as possible, any parts exhibiting deficiencies due to faulty material, bad design or poor workmanship. Replaced parts shall become vendor's property.
- 16.2 The purchaser shall bear only the costs resulting from the repair or replacement of defective parts in his own factory. If, for any reason beyond the vendor's control such parts cannot be repaired or replaced in his own factory, all additional costs resulting there from shall be borne by the purchaser. Costs of outward and return freight, customs duties, taxes and other expenses in the country of the purchaser, shall be borne by the purchaser himself.
- 16.3 The purchaser shall not be entitled to claim indemnity for deficiencies in the goods delivered, in particular to damages or cancellation of the contract.
- 16.4 The guarantee period is 12 months, or, in the case of 24-hour operation, 4 months. It begins when the goods are despatched from the vendor's works or, if the vendor undertakes erection, when it is completed. If despatch or erection are delayed for reasons beyond the purchaser's control, the guarantee period shall end not later than 14 months after the vendor's notification that the goods are ready for despatch.
- 16.5 For replaced parts the guarantee period begins anew. It ends at the latest 18 months after the beginning of the guarantee period for the main goods or, if delivery or erection of the main goods have been delayed for reasons beyond the purchaser's control, at the latest 18 months after the vendor's notification that the main goods are ready for despatch.
- 16.6 Excluded from the guarantee are losses resulting from natural wear, improper maintenance, failure to observe the operating instructions, excessive loading, the use of unsuitable media, the influence of chemical or electrolytic action, unsatisfactory building or erection work not undertaken by the vendor, or other reasons beyond the control of the vendor.
- 16.7 The vendor's liability shall cease if the purchaser or a third party undertakes changes or repairs to the goods without the vendor's written consent; likewise if the purchaser does not take immediately steps to prevent the damage from becoming more serious when the vendor is able to rectify the defect.
- 16.8 For materials or goods supplied by third parties the vendor accepts liability only to the extent of the sub-contractor's guarantee liabilities, but he shall advise the purchaser accordingly.
- 17. Liability**
- 17.1 The vendor shall deliver the goods in accordance with the terms of the contract and shall fulfil his guarantee liabilities. He shall not be liable to the purchaser for any other claims.
- 18. Place of Performance and Jurisdiction, Law applicable**
- 18.1 The place of performance and jurisdiction for both purchaser and vendor is the registered address of the vendor.
- 18.2 The contract shall be governed by Swiss law.
- 19. Validity**
- 19.1 These General Conditions of Supply shall be binding if declared applicable in the tender or order acknowledgement. Other requirements stipulated by the purchaser shall be valid if they are expressly acknowledged in writing by the vendor.