

# LA General Conditions for the Supply of Machines for Export



## 1. Preamble

These general conditions shall apply, save as varied by express agreement accepted in writing by both parties.

## 2. Offer, formation of contract, volume of delivery

- 2.1 Any documents such as illustrated matter, drawings, weights, dimensions, data on technical procedures, consumption and production being part of the offer constitute an approximate guide, save to the extent that they are by reference expressly declared binding. Any offers, drawings or other documents submitted remain the exclusive property of the supplier who also reserves the copyright. They may not be copied, reproduced, transmitted or communicated to a third party. The supplier may not, without the purchasers consent, copy, reproduce, transmit or communicate drawings to be declared as confidential to a third party.
- 2.2 The contract shall be deemed to have been entered into when, upon receipt of an order, the supplier has sent an acceptance in writing within the time-limit (if any) fixed by the purchaser.
- 2.3 For the volume of the delivery the written confirmation of the supplier is binding. In case that the supplier has submitted an offer which is binding temporarily and subject to acceptance within a time-limit the offer will bind. Collateral agreements and modifications must be confirmed in writing by the supplier.
- 2.4 Protective devices against dangers when utilizing the delivered goods are part of our delivery, as far as agreed upon. The non-delivery of protection devices is no fault as far as it has not been expressly so agreed.
- 2.5 The supplier reserves the right of modification and improvements with regard to the constructive design, the utilized material and the execution on the condition that these measures will not cause any disadvantage as fast as the serviceability of the delivered goods is concerned.

## 3. Packing

Unless otherwise specified, prices quoted in offers and in the contract shall be deemed to include the necessary packing or the necessary protection to prevent damage to the delivered goods under normal transport conditions before they reach their destination as stated in the contract.

## 4. Passing of risk and acceptance

- 4.1 Save as provided in paragraph 5.5, the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the contract.
- 4.2 The delivered items are to be accepted by the purchaser without prejudice to the rights as set out under Art. 8 even if they show unimportant deficiencies.
- 4.3 Deficiencies that can be found by a normal inspection after arrival of the goods at destination must be claimed at the latest within 8 days after reception of the goods by returning the delivery-note. The purchaser shall be liable to produce a certificate issued either by the Railway Company or the carrier evidencing eventually occurred damages or short deliveries.

## 5. Time of delivery

- 5.1 The time of delivery starts at the date at which the confirmation of order has been posted, however, not earlier than the date at which the documents, authorizations and releases to be procured by the purchaser, as well as the agreed advance payment have been received.
- 5.2 The time of delivery shall be deemed to be fulfilled on the condition that until the date of its expiration the delivered goods have left the factory or the readiness for dispatch has been notified.
- 5.3 The time of delivery shall be extended conveniently in case of measures taking place as a consequence of industrial disputes, in particular strikes and lock outs, same as in case of unforeseen impediments being against the will of the supplier, as far as such impediments are evidently of major influence to the completion or consignment of the goods to be delivered. The same applies should these circumstances occur at the end of sub-suppliers. For the aforesaid circumstances the supplier cannot be held liable in case they arise during a yet existing delay. In important cases the beginning and the end of such impediments will be notified the soonest possible by the supplier.
- 5.4 If the supplier has made an expressive written agreement with the purchaser about the payment of an indemnification for delay the purchaser can claim, on the condition that a damage occurred to him owing to a delay in the delivery for which the supplier is held liable, 0,5% for each complete week, however at maximum a total of 5% of the net price of those parts that are not ready for operation owing to delay in the consignment. By the payment of the indemnification for delay all other claims raised by the purchaser for delay in the consignment are settled. Further claims, in particular with regard to damages, are excluded.
- 5.5 If the purchaser does not accept the consignment within the agreed time, he has nevertheless to effect the payment dependent on the delivery, as if the goods had been delivered. In this case the supplier shall provide the storage of goods at the cost and risk of the purchaser. Invoiced shall be the cost originated by the storage, in case of storing the goods at the factory at least 0,5% of the invoice amount per month. In addition, the supplier is obliged to cover on demand and at the cost of the purchaser the insurances the purchaser requires.
- 5.6 If the purchaser refuses to accept the delivered goods even after convenient storage time, the supplier is entitled to claim damage for non-fulfilment to the amount of the effective damage, at least 20% of the order value.

## 6. Property reservation

- 6.1 The delivered goods shall remain the property of the supplier until receipt of all payments resulting from the contract, as far as this is permitted by the law in force in the territory where the goods are. If this law does not allow any property reservation, but entitles the supplier to reserve other rights subject to the delivered goods the supplier shall be authorized to make use of all rights of this kind.
- 6.2 The purchaser shall be obliged to participate in measures taken by the supplier with a view of protecting his property, or instead of this, in any other right exercised by the supplier for the same purpose.

## 7. Price and payment conditions

- 7.1 Prices are based on the cost-prices for material and wages valid at the time at which the offer was established. The contract reserves the right to alter the prices in case of an increase of material prices and wages.
- 7.2 For the prices issued in accordance with the Incoterms is binding the offer or the confirmation of order. The prices are quoted in EURO. They are to be understood without turn-over tax, which will be charged in addition to the legal rate in invoices established for consignments to German exporters and which is payable upon receipt of invoice. Prices quoted in foreign currency are to be understood on the basis of the actually valid rate exchange. Should this rate change, the prices will be adjusted accordingly.
- 7.3 For consignments for export all charges (taxes, fees, duties etc.) to be paid outside the Federal Republic of Germany shall be borne by the purchaser.
- 7.4 Payments are to be made free supplier's office, in compliance with the conditions so agreed.
- 7.5 If the purchaser delays in making any payment, the supplier may postpone the fulfilment of his own obligation until such payment is made, unless the failure of the purchaser is due to an act or omission of the supplier.
- 7.6 The supplier is entitled to charge without reminder an interest of 2% above the discount rate of the German Federal Bank, at least of 6% should payment be delayed.
- 7.7 The purchaser is not entitled to retain payments or to compensate any counter-claims contested by the supplier.

## **8. Erection**

- 8.1 Unless otherwise agreed, erection is not included in the price. For the erection of the machinery by our mounting staff the purchaser shall provide in time and free of charge qualified auxiliary labour, hoists and all required materials. For sending personnel for assembly and erection work, please refer to our special conditions.
- 8.2 Authorizations that may be required for the erection of the plants are the responsibility of the purchaser.
- 8.3 Before starting erection, foundation work must be sufficiently advanced to enable a troublefree and continuous work. As far as work has to be carried out on site, while erection work is in process, same shall be supported to such an extent that impediments and interruptions be avoided. Should an interruption of the erection work become necessary owing to circumstances for which neither the supplier nor the erection personnel are responsible, the purchaser shall bear the costs for waiting time and repeated trips of the erection personnel that might be necessary.

## **9. Liability for fault**

The supplier shall be liable for faults including the absence of promised qualities, to the exclusion of all further claims made against him as follows:

- 9.1 The supplier shall replace or repair free of charge, at his discretion, all parts which can be shown to have become useless or to have been markedly impaired in usefulness within 6 months (or within 3 months in case of shift work) after putting into operation owing to a circumstance incurred before passing of risk, in particular faulty design, poor materials or inadequate workmanship. The finding of such deficiencies shall be reported to the supplier in writing immediately. Replaced parts shall become the property of the supplier.
- If delivery, setting up or putting into operation is delayed, the liability will expire 12 months at the latest after devolution of risk.
- For essential products of foreign sources the liability of the supplier shall be limited to the cession of the claims for deficiency granted to him by the sub-supplier supplying the foreign material.
- 9.2 The right of the purchaser to lodge claims resulting from deficiencies becomes prescriptive in all cases 5 months after the date of filing the original claim, at the earliest when the period of time for lodging claims for deficiencies has elapsed.
- 9.3 For delivered parts being subject to premature wear owing to their material composition and kind of utilization no liability is assumed, nor for damage caused for the following reasons: inappropriate and inadequate use, faulty erection or putting into operation by the purchaser or third parties faulty or negligent treatment, unsuitable requisites, substitution of raw materials, defective engineering work, unsuitable construction ground, chemical, electrochemical and electrical influences, provided they are not due to the fault of the supplier.
- 9.4 For all repairs and spare parts deliveries that appear necessary to the fair-minded supplier, the purchaser in agreement with the supplier shall give the supplier the necessary time and opportunity, otherwise the supplier shall be released from any liability for deficiencies. Only in urgent cases in which the safety of operation is endangered or expressively great damage is threatening, conditions to be reported immediately to the supplier, or if the supplier, delays eliminating the fault, the purchaser shall be entitled to eliminate the deficiency either himself or to order third parties to do so, and to claim from the supplier compensation for the expenses incurred.
- 9.5 Of the direct costs arising from repairs or spare parts the supplier shall bear - in so far as the claim is proved to be justified - the costs of the spare parts including the costs for the delivery, the reasonable costs arising from dismantling and reassembling, furthermore if this can be reasonably claimed - which is dependent on the individual case - the costs incurred by the necessary employment of his own mechanics and auxiliary labour. All other costs shall be borne by the purchaser.
- 9.6 The period of liability for replaced parts and repair work is 3 months. However, it will remain in force until the end of the period of liability for the original goods. The warranty period for the delivered goods shall be extended by the length of interruption in operation caused by the necessity for repair.
- 9.7 The supplier shall not be held liable for the troublefree operation of the machines provided that the assembly had not been carried out by the supplier. Deficiencies resulting from faulty treatment, wrong servicing or undue wear of the plant, same as from faulty intervention or insufficient maintenance shall also be excepted from the liability.
- 9.8 If the supplier has made a promise in respect of the power consumption or output capacity, they shall be deemed to be fulfilled in case of the tolerance  $\pm 10\%$ .
- 9.9 Claims in respect of the performance of the delivered goods shall be reported by the purchaser by registered mail - if and in as far as the supplier is liable for the performance - within a delay of one month after putting into operation and under enumeration of the alleged deficiencies. The supplier shall be given on his demand a commensurate delay from the moment at which he received the deficiency claim. Within this period of time he shall prove his ability to fulfill the agreed performance. For this purpose the supplier shall be entitled to send delegates whose given instructions must be followed by the employees of the purchaser.
- If as a consequence of unforeseen circumstances the delivered equipment proves to be inadequate for the intended purpose, the supplier shall be obliged to withdraw the machinery that he has delivered against refund of the received payment. Any further claims of the purchaser shall be excluded.
- 9.10 The supplier is not obliged to make any repair or repeat delivery as long as the purchaser does not fulfill his obligations.
- 9.11 Second hand machines and repairs on second hand machines shall be excluded from any warranty. The same applies to deliveries of spare and wearing parts thereof.

## **10. Warranty and Liability**

Claims for compensation of indirect damage are excluded. Indirect damage means such damage not having arisen on the delivered goods themselves. Independently hereof, the entrepreneur shall be liable to the purchaser to the extent to which the industrial liability insurance pays damages.

## **11. Acceptance and performance**

- 11.1 Unsignificant claims shall not entitle the purchaser to refuse the acceptance of the delivered goods. The performance shall be deemed being made if the delivered goods comply essentially with the conditions stipulated in the contract.
- From this moment the contractor shall only be liable in accordance with the regulations governing the warranty, except eventual accessory obligations (f. e. the erection).
- 11.2 Complete plants shall be surrendered officially by our erectors. The purchaser shall in any case take over the plant as soon as the supplier has offered him the taking over. Taking over cannot be refused by the purchaser for claims that do not deteriorate the operation of the plant.

## **12. Premature cancellation of the contract**

In case of premature cancellation of contract for reasons for which the supplier is not liable, the supplier shall be entitled, without giving evidence, to invoice cancellation costs to the amount of 20% of the order value unless higher costs can be evidenced.

## **13. Appendix to General Conditions of Supply**

- 13.1 Jurisdiction for all legal disputes arising within the contract is the registered court of the supplier. The supplier is also entitled to institute any claims at the registered court of the purchaser.
- 13.2 The legal law of the Federal Republic of Germany applies, unless otherwise agreed.
- 13.3 The purchaser is not entitled to transfer his contract rights and obligations to a third party without the written consent of the supplier.
- 13.4 If individual clauses of the general conditions of supply will become no more valid, all other conditions will remain as stipulated.