

1. General

This contract shall be deemed to be entered into upon receipt of order, including submittal of required samples, drawings and engineering and technical information needed to manufacture the plant &/or machinery. Unless otherwise stated, the delivery period shall begin at the time of order.

2. Scope of Services

The Services (meaning services and/or equipment as the case may be and as stated in the contract documents) accepted in the acknowledgement of the Buyer purchase order, shall be performed at the Buyer's premises, unless otherwise specifically agreed.

The Seller (Stellba AG) shall be entitled to make changes that will lead to the improvement of Services with no increased cost to the Buyer.

3. Documents /Confidentiality

Each party to this contract shall retain all rights to technical documentation (hardcopies as well as software) provided to the other. The party receiving such documents recognises these rights and shall – without previous written consent 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.

The obligation of confidentiality shall not apply to any proprietary information which is (a) in the public domain at the time of disclosure or thereafter becomes part of the public domain by publication or otherwise other than by the receiving party, or (b) is in the receiving party's possession prior to the disclosure as shown by written record, or (c) after it has lawfully been obtained by the receiving party on a non confidential basis from other sources.

4. Title and Risk of Loss

Title shall pass to the Buyer upon full payment for the work or completed part, as the case may be. Risk of loss shall pass at the time of delivery.

5. Price and Payment

Unless otherwise agreed, all prices shall be in Swiss Francs.

Unless otherwise agreed, one third shall be paid at the time of acknowledgement of order, one third at the time of expiry of two thirds of the agreed delivery time with the remainder at time of delivery ex-works.

Any additional charges (that is, those not stipulated in the acknowledgement of the purchase order) including but not necessarily limited to insurance premiums, freight charges, fees for export, shall be paid by the Buyer.

Unless otherwise stipulated, all payment shall be net thirty (30) days after delivery of the equipment or completion of the services, but in any case net thirty (30) days after submission of the invoice.

Any overdue payments shall be subject to a late payment charge equal to the lesser of 1.5% per month or the highest applicable rate permitted by law.

The contract price does not include any federal, state or local property, license, privilege, sales service, use, excise, value added, gross receipts, custom duties or other comparable taxes, which may now or later be applicable to the contract, if not stated otherwise.

6. Delivery of equipment

Unless otherwise stipulated, delivery of equipment shall be ExWorks. (Incoterms 2000). The goods shall be packed ready for dispatch.

If delivery cannot be achieved not due to the Seller's fault, the risk and expense shall be that of the Buyer.

Delivery is also used as the term for completion of the services work, as the case may be.

7. Liquidated Damages

It is agreed that should the Seller be delayed in delivery, the Seller shall pay as liquidated damages, and not as a penalty, an amount as stated in the purchase order. If such amount is not stated, then the damages for delay shall not exceed one per cent (1%) for every full week's delay and shall in no event whatsoever altogether exceed five per cent (5%) of the contract price of the part of the work in delay. After reaching the maximum liquidated damages for delayed delivery, then the Buyer shall be entitled to terminate the contract and to claim a refund of the money already paid against return of the tangible deliveries supplied. These liabilities and remedies are the sole and exclusive liabilities and remedies of the parties. Under Swiss Law, Art.s 160 - 163 of the Swiss Code are specifically excluded.

8. Warranty

The Seller warrants the equipment supplied under this contract against defects in material and workmanship for a period of twelve (12) months after delivery to the Buyer.

For replaced or repaired parts, the warranty period starts anew and lasts 6 months after replacement or completion of the repair but not longer than eighteen (18) months from the beginning of the original warranty period.

Upon written request of the Buyer, the Seller undertakes at its choice the repair or replacement as quickly as possible of the affected services or plant/machinery, which, before the expiry of the warranty period are proved to be defective due to bad material, faulty design (if such design is that of Stellba and not the Buyer) or poor workmanship. The Seller shall bear the cost of remedying the defective parts.

Express warranties are only those which have been expressly specified as such in the contract.

If such repairs or replacements fail completely or in part so that use is not possible or considerably impaired, then the Buyer may refuse acceptance of such parts and to terminate the contract. The Seller shall only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

Specifically excluded from the warranty are those defects which cannot be proved to have their origins in bad material, faulty design (as applicable) or poor workmanship, eg., those resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by Seller or resulting from reasons beyond the control of the Seller.

With respect to any defective material, design (if applicable) or workmanship as well as to any failure to fulfil express warranties, the Buyer shall not be entitled to any rights and claims other than those expressly stipulated under this Warranty clause.

Any latent defects (which are those discovered outside the warranty period) are hereby excluded.

9. Force Majeure

If hindrances occur which the Seller cannot reasonably prevent despite using the required care, regardless of whether they affect the Seller or the Buyer or a third party, the time of delivery shall be extended to reasonably accommodate the circumstances. Such hindrances include, but are not limited to, epidemics, mobilisation, war, revolution, accidents, labour conflicts, actions by governments or quasi-governmental authorities, natural catastrophes or acts of God.

10. Termination for Seller Default

Should the Seller be in default under this contract, then the Buyer shall notify the Seller in writing of the alleged default. The Seller shall be granted a reasonable time in which to rectify or begin to rectify as the case may be, the default. If the Seller fails to do so, then – upon further written notice – the Buyer may terminate the contract. Upon termination, the Buyer (at its option) may have the work completed by itself or by a third party. Such costs shall be paid by the Seller.

11. Default for Buyer Default

Should the Buyer default in its payment obligations or any other substantial obligation under the contract, such as but not necessarily limited to the supply of samples, information and engineering information, the Seller may declare the Buyer in default. If, following a reasonable period of time, the Buyer fails to correct the default, the Seller may terminate the contract.

12. Patent Indemnity

The Seller shall indemnify the Buyer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name provided that all of the following conditions are satisfied:

- I the claim or proceedings arise out of the design, manufacture or use of the equipment provided under the contract
- II the right is protected at the date the equipment was supplied (in the Buyer's country)
- III the alleged infringement was not caused due to any misuse of the supplied equipment, either alone or in conjunction with other machinery or equipment not provided by the Seller.
- IV the infringement was not caused by the Seller following a design supplied by the Buyer.

The Seller shall be promptly notified of any claim or proceeding. The Seller shall negotiate any settlement and/or negotiation related thereto. However, the Seller shall not conduct any negotiations without first informing the Buyer. The Buyer agrees that he shall give all reasonable assistance in regard to such alleged infringement. The Seller shall not make any claim prejudicial to the Buyer.

13. Limitation of Liability

Notwithstanding anything to the contrary, Seller's aggregate liability on all claims, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of or in connection with this contract, shall not exceed the contract price (or that of the specific purchase order under the contract, as specified).

14. Exclusive Remedies

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the Buyer, irrespective on what ground they are based, are exhaustively covered by these general conditions. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the Buyer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers to, but shall not be limited to, loss of production, loss of use, loss of orders, loss of profit and any direct or indirect or consequential damages. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of the Seller

15. Law

The law governing this contract shall be that of Switzerland. Any dispute arising under the contract which cannot be resolved by the good faith negotiation of the parties shall be finally resolved by ICC arbitration in English, with three arbitrators, at Zurich or some other mutually agreeable forum, and any determination or award shall be set forth in writing and shall be final and binding. During the pendency of the dispute resolution, the Contractor shall not be obliged to perform the work in dispute.

16. Miscellaneous

- 0 Both the UN-Convention on International Sale of Goods (CISG;SR 0.221.211.1) and the Federal Act on International Private Law (IPRG;SR 291) are not applicable.
- 0 Any expenses or costs associated with any changes in laws, rules, regulations and the like following the date of this contract shall be to the account of the Buyer.
- 0 Any additional or inconsistent terms in the Buyer's purchase order or other documents are expressly excluded.
- 0 Should any provision hereunder be held invalid or unenforceable, such shall not affect any other provision hereof.