

## GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY

### SCOPE

These General Terms and Conditions of Sale and Delivery shall govern the transaction described in seller's order confirmation unless additional or contrary terms are expressly stated in the seller's order confirmation. The buyer's General Terms and Conditions, in particular the buyer's Purchasing Terms and Conditions, do not become part of the contract even if the seller accepts payments from the purchaser and makes deliveries.

### 01. CONCLUSION OF CONTRACT

A contract for the sale of goods is made and becomes effective upon receipt by the buyer of the seller's written order confirmation upon the terms stated therein.

### 02. SCOPE OF DELIVERY

The final and complete description of the deliveries and services to be rendered by the seller is given in the order confirmation including any annexes thereto.

### 03. PLANS AND TECHNICAL DOCUMENTATIONS

3.1 Technical documentation such as illustrations, drawings, details of weights and dimensions provided by the seller are only approximate, unless they are contained in or referred to in the order confirmation or an annex thereto.

3.2 Data provided by the seller in respect of buildings (foundation plan, power supply plans, etc.) are not binding upon the seller, unless they are contained or referred to in the order confirmation, and they must be verified and complied with by the buyer with respect to structural features. The buyers are solely responsible for ensuring that its premises comply with the structural prerequisites for installing the items being supplied.

3.3 Each party to the contract reserves all rights to calculations, plans, and technical documentation which it has made available to the other party. The party to the contract receiving such material acknowledges these rights and will not make the documentary material accessible to third parties or utilize it for purposes other than that for which it has been made

available without obtaining the prior written authorization of the other party to the contract.

3.4 The buyer itself may use the software, know-how and documentary material made available to them to the extent provided for, but may not disclose them to third parties or copy them. Any extension or modification of software by the buyer requires the prior written consent of the seller.

3.5 Unless otherwise agreed in writing the seller shall have the right to access the machines, devices, systems etc. of the buyer to collect and transfer such data to a server controlled by the seller for the monitoring of machine performance and further analysis. The data so obtained from the machines of the buyer shall be kept confidential by the seller.

### 04. RETENTION OF OWNERSHIP

4.1 The seller retains ownership of the items supplied until all existing obligations towards it have been met in full and until it has been indemnified in full against all contingent liabilities.

4.2 The buyer shall take all action necessary to protect the seller's property (e.g. procuring insurance on the items supplied) as its own expenses. The buyer shall and hereby does authorize the seller to execute any required instruments in the buyer's name and to make any registration of its retention of ownership in government registers, books or suchlike which may be necessary to comply with the relevant legal provisions. The cost of registration will be borne by the buyer.

### 05. PRICE/PAYMENTS

5.1 Prices and all other charges of seller are payable at Pune, India, unless otherwise specified; in case of documents sent for collection through any bank at the request of the buyer, all charges incurred towards realization of payment are to the buyer's account.

5.2 All prices or quotations are subject to alteration at any time without notice.

5.3 Unless otherwise expressly stipulated, all prices quoted are net of delivery for ex-factory; transport charges, taxes on sales and all

other taxes, cess and duties, by whatever name called, shall be borne by the buyer at the rates prevailing at the time of delivery; in-transit insurance shall be the responsibility of the buyer.

5.4 Prices indicated are based on the present cost of production including the cost of imported and indigenous materials; the prices are subject to revision on account of any increase in Government levies including import / excise duties, depreciation in the value of Rupees vis-a-vis any foreign currency, any increase in price due to any other reason prevailing at the time of delivery or dispatch of goods; these increased costs / government levies shall be paid by buyer in full on demand.

5.5 This contract is only for the machine / conversion supply, the scope of supply does not include the installation commissioning for which the buyer has to enter into a separate contract with the seller.

5.6 No interest is payable on payment made as earnest money or security deposit to seller; earnest money or security deposit is liable to be forfeited without prejudice to seller's other rights in case buyer cancels the contract in full or in part or buyer do not abide by contract terms.

5.7 In case when the seller agrees to the request of the buyer to send the documents for collection through the bank nominated by the buyer, the buyer undertakes to make the payment involved to that Bank; for any reason whatsoever (including the failure of bank) payment is not actually received by the seller within fifteen days from the date of delivery of the documents to the bank, interest at the prevailing market rate but not less than 15 % per annum in any case shall be payable by the buyer on demand.

5.8 Time of payment is the essence of the contract and the contract is entered into on the express understanding that the buyer agree to make full payment notwithstanding any dispute or claim which may be settled by arbitration, as provided for under Clause No. 16; no claim shall be entertained till payment has been made when due.

5.9 Interest at the prevailing market rate but not less than 15 % per annum in any case shall be payable by buyer on demand on all outstanding amounts from the date of default in payment till the date of payment.

## **06. DELIVERY**

6.1 Unless agreed otherwise, delivery shall be ex works pursuant to Incoterms, 2010 Edition.

6.2 The delivery period stated in the quotation / acceptance of order will commence from the date of receipt of the security deposit, earnest money, advance (collectively referred to as initial payment), or completion of commercial formalities and finalization of all technical specifications, or receipt of clarifications thereon, if any whichever is the latest.

6.3 The time of delivery / dispatch indicated in this contract is subject to an shall stand extended by any delays occasioned by causes beyond seller's Sub-suppliers' control including delays on account of the necessity to comply with the Government regulation or due to delay in securing import licenses and / or force majeure such as epidemics, mobilization, war, riot, labour disputes, lay-off, strikes,

lock out, closure of factory on account of political disturbance, damages caused to the plant by natural disaster, embargoes, obstruction of import, export or transit, etc. or other obstacles outside the control of the seller and this contract is entered into in consideration of the express understanding that buyer shall accept delivery of the goods as and when made an will not cancel the contract or part thereof or will not claim any compensation or damages, either direct or indirect, on account of delays, if any, in delivery / dispatch or will not refuse to accept delivery of the goods or any installment thereof or will not return any installment already delivered on ground of delay in delivery / dispatch.

6.4 If delivery is delayed for reasons for which the seller is not responsible, the risk ex works pursuant to Incoterms, 2010 Edition passes to the buyer. The items being supplied will be stored and insured by the seller at the purchaser's expense and risk.

6.5 In case the consignment is under or over the minimum or maximum weight accepted by a carrier, the dispatch shall be made by alternative mode at buyer's cost and risk.

6.6 The buyer must accept delivery and examine the packaging immediately after the arrival of the delivery at its destination and notify the seller immediately in writing of recognizable damage and defects (including incomplete delivery); otherwise the delivery is deemed to be approved in this respect. If the buyer discovers any damage, it shall mitigate this as far as possible.

## **07. DETERIORATION IN FINANCIAL CONDITION/DEFAULT OF ACCEPTANCE BY THE BUYERS**

7.1 If the seller learns of a material deterioration in the financial condition of the buyer the seller can request full or partial payment in advance or the provision of security, or cancel the contract.

7.2 The seller may give the buyer a reasonable grace period for accepting the delivery. After this has expired without such acceptance the seller may make other arrangements for the disposal of the items being supplied and/or cancel the contract and claim liquidated damages in the amount of 10% of the order value, plus any additional damages which may be proven.

7.3 If the buyer fails or refuses to accept delivery of the goods against payment due, the seller has the right to sell the goods at the buyer's risk and responsibility by public auction or private sale either in one or more lots, as per the discretion of the seller, and any loss suffered in this by seller shall be recovered from the buyer; the buyer is not entitled to profit, if any, on such sale.

7.4 The foregoing provisions also apply in the event of the revocation of a delivery order which is already in the process of manufacture.

## **08. INSPECTION AND ACCEPTANCE OF DELIVERY**

8.1 The buyer is entitled to conduct inspections on the seller's premises with the seller's prior written consent at buyer's sole expense.

8.2 After the seller has installed and put into operation the machinery, the buyer must immediately conduct acceptance tests within two weeks and notify the seller immediately in writing of any

defects or failure of the machinery to perform according to its agreed specifications. If the buyer fails to do this, the deliveries and services are deemed to be approved.

8.3 The seller is entitled to attend such acceptance tests and to request that a prior trial run be performed under its technical supervision. If the trial run reveals a failure of the machinery to perform according to its agreed specifications the buyer shall permit the seller to repair or replace any or all of the deliveries pursuant to Clause 11 of these terms and conditions.

## **09. PROPERTY RISK**

9.1 The contract for the supply of goods shall be deemed to have been fulfilled as soon as the goods are declared to the buyer ready for delivery / dispatch. The seller is not responsible for any damage or loss or deterioration or rusting of the said goods on account of delay on the part of the buyer to fulfill his contractual obligation; in the interest of the buyer, the seller may insure the goods while storing in seller's premises, godowns etc. at buyer's expense and risk; the policy certificate for such insurance shall be in the name of the seller, and the same will be endorsed in favour of the buyer and delivered to him after receipt by the seller full payment due under the contract.

## **10. GENERAL LIEN**

The seller shall be entitled to a general lien on the goods in the possession of the seller under any contract, for all moneys for the time being due to the seller. The seller has the option, to adjust the advance moneys lying to the credit of the buyer on any one Contract against moneys due by the buyer on any other Contract.

## **11. WARRANTY; LIABILITY FOR DEFECTS**

11.1 The warranty pursuant to the following provisions is conditioned on the supervision by the seller of the assembly and installation of the machinery.

11.2 The warranty period is 12 months, irrespective of the operating time of the items supplied. It commences on the date on which the items supplied are put into operation. If delivery, acceptance of delivery, assembly, installation or putting into operation are delayed for reasons for which the seller is not responsible, the warranty period shall expire not later than 18 months after notification by the seller that the material is ready for delivery, or the delivery itself, whichever first occurs. If parts of the delivery have to be replaced or repaired pursuant to Clause 11.5, a new warranty period of six months as from delivery or completion of the repair shall be given for the new or repaired parts.

11.3 Subject to a written agreement to the contrary, the seller warrant only the mechanical, electrical and electronic operation of the items supplied.

11.4 The warranty shall be null and void in the event:

- the buyer or a third party performs repairs improperly or make modifications without the seller's written consent
- the buyer – in the event of a defect – fails to take appropriate action immediately to minimize damage and give the seller the opportunity to remedy the defect; or original Rieter spare parts are not used.

11.5 The seller undertakes after the buyer's written request to repair or replace as quickly as possible, at its option and expense, all parts supplied by the seller which become demonstrably defective or unserviceable before expiry of the warranty period due to poor material, incorrect design or deficient workmanship, subject to the following provisions: Replaced parts become the property of the seller. The buyer is obliged to provide the seller with all necessary support in exporting the part of the delivery to be repaired or replaced and in importing the replacement delivery or the repaired part of the delivery; otherwise the buyer himself shall bear the consequences of a delay to or failure to make a replacement, delivery or repair.

11.6 Special characteristics of the items supplied (such as special service lives, production volumes, etc.) or the products to be manufactured with them are only deemed to be warranted if they have been expressly agreed upon in writing as "warranted characteristics". Any such warranties shall be applicable only until the expiry of the standard warrant period. If warranted characteristics are not or only partially met, the buyer's only remedies are those given in Clause 11.5.

11.7 Parts subject to wear and, in particular, defects and damage resulting from ordinary wear and tear, deficient maintenance, disregard of operating instructions or other operating specifications, excessive stress, unsuitable climatic conditions, unsuitable operating material, use of unsuitable raw materials, chemical or electrolytic effects, fluctuations in voltage and current, and other reasons not within the seller's control are excluded from the warranty and the seller's liability.

11.8 Deliveries and services rendered by sub-contractors and outside supplies stipulated by the buyers shall be subject to sellers warranty only to the extent of the warranty obligations of the sub-contractor or outside suppliers concerned.

11.9 In no event shall buyer be entitled to claim compensation for damage of any kind other than to the actual items supplied, such as loss of production. Loss of use, loss of orders, lost profits and other indirect consequential or economic losses.

11.10 Test certificates furnished by seller, if any, will be accepted by buyer as final and conclusive evidence that goods covered by the certificates can fulfill such warranty, if any, as are given by seller.

11.11 If the seller so require the parts in respect of which claim is made, must, before liability can be entertained under this clause, be sent, at buyer's expense to the seller's works. Descriptions and illustrations contained in the seller's catalogue and other advertisement matters are intended to present a general idea of the goods and must not be treated as forming part of the contract.

11.12 Warranty given if any, does not cover the cost of service of seller/his agents, engineers/erectors and such costs will be paid separately by buyer on demand.

11.13 Seller reserves the right without any prior intimation to effect any modifications in design and execution on the machines at any time, which they find to be necessary according to the manufacturing programme, including change of brand names, model, type, etc.

## 12. DISCLAIMER OF LIABILITY

All rights and remedies of the buyers for a claim provided in breach of contract are exclusively established and provided for by these terms and conditions, regardless of the legal theory for the claim. In particular, all claims by the buyer for compensation (including consequential damages such as for production stop- pages, loss of profits, loss of use and any other financial loss), reduction of the purchase price, cancellation of the contract, etc., which are not expressly stated, are excluded. This disclaimer of liability applies without restriction in respect of Clause 11 (warranty, liability for defects); it does not apply to claims based on the intentional wrongdoing or gross negligence of the seller, although it does apply to claims based on the intentional wrongdoing or gross negligence of those assisting the seller.

## 13. PATENT RIGHTS

13.1 The seller is responsible for ensuring that the items being supplied do not infringe the patent rights of third parties in the country of destination of the delivery. The seller is entitled to defend himself against or otherwise settle alleged claims by third parties in or out of court in any appropriate manner. The buyer shall grant the seller power of attorney for this purpose and provide it with all necessary support.

13.2 The seller shall not be liable pursuant to Clause 13.1 if the items supplied or part thereof were manufactured in response to suggestions or request of the buyer, or if the items supplied or parts thereof are used together with other items not supplied by the seller. In such case, the seller shall not be liable to the buyer, and the buyer shall indemnify the seller against all patent infringement claims arising there from, including compensation claims.

## 14. OPERATING SAFETY

14.1 The buyer undertake to comply with the operating instruction and safety information provided with the items supplied and to instruct its personnel accordingly, so that the safe operation of the items supplied is ensured. In the absence of written notification to the contrary from the buyer, the buyer shall be deemed to have received operating instructions and safety information.

14.2 Existing safety devices and safety/warning notices on the machines must not be removed. Poorly attached or damaged notices must immediately be reattached or replaced. The seller promises the buyer to replace safety/warning notices which have become unserviceable any time in reasonable numbers at reasonable cost. Changes in safety instructions must be implemented immediately and complied with by the buyer.

14.3 Modifications to the machines which could adversely affect the safety of operating personnel may only be performed by the seller.

14.4 The buyer is obliged to inform the seller in writing immediately if an accident occurs in connection with the items supplied or it

transpires that the operation of the items supplied entails hazards.

14.5 The buyer shall indemnify the seller against any and all liability to third parties which arises from any failure to perform the foregoing obligations.

## 15. REMEDIES FOR BREACH OF CONTRACT

Failure on the part of the buyer to make the payment on due date or failure / refusal to accept the delivery of good as per the terms accepted by the seller will be regarded as breach of contract and the seller shall be entitled to recover storage, insurance and other charges including cost of material or entire contractual price of machine depending upon its stage of completion and to forfeit any deposit / amount paid by the buyer at the time of order or any time thereafter without further recourse to the buyer.

## 16. ARBITRATION

All dispute or controversies, which may arise from or in connection with this contract, shall be amicably settled by bonafied conciliation between the buyer and the seller. All disputes or controversies or claims, arising out of or connection with the contract, or the breach, termination or invalidity thereof, which cannot be amicably settled as aforesaid, shall be referred to for settlement through arbitration in accordance with the provisions of arbitration, by two arbitrators, each residing in Pune according to the Arbitration and Conciliation Act, 1996, and / or any other statutory modification thereof, such arbitration shall take place at Pune, India.

## 17. JURISDICTION

Subject to clause 18 regarding Arbitration, any suit arising out of any contract entered into with the seller shall be instituted only in a court of competent jurisdiction within the city of Pune, Maharashtra State, India.

## 18. CONCLUDING PROVISIONS

18.1 All agreements and legally relevant declarations by the parties to the contract are binding only if made in writing. This applies to any agreement to waive the requirement for observance of the written form. Declarations only become legally effective when they have been received by the counterparty.

18.2 If one or more provisions of the contract prove to be wholly or partly ineffective or invalid, this does not affect the effectiveness and validity of the remaining provisions of the contract. The parties to the contract will replace the ineffective or invalid provision by an effective or valid provision which most closely approximates the legal and financial object of that which has to be replaced.

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