

GENERAL CONDITIONS

Prepared under the auspices of The UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

1. PREAMBLE

- 1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

2. FORMATION OF CONTRACT

- 2.1. The Contract shall be deemed to have been entered into force when, upon receipt of an order, the Vendor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.
- 2.2. If the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into force when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Vendor not later than one week after the expiration of such time-limit.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

- 3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.
- 3.2. Any drawings or technical documents intended for use in the construction of the Product or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Vendor. They may not, without the Vendor's consent, be utilized by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser:
- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.

- 3.3. Any drawings or technical documents intended for use in the construction of the Product or of part thereof and submitted to the Vendor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilized by the Vendor or copied, reproduced, transmitted or communicated to a third party.
- 3.4. The Vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as defined in Clause 9, information of the Product in sufficient detail to enable the Purchaser to carry out maintenance (including running repairs) of all parts of the Product. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Vendor so stipulates, they shall remain confidential.

4. PACKING

- 4.1. Unless otherwise specified:
- (a) prices shown in price-lists and catalogues shall be deemed to apply to unpacked Product;
- (b) prices quoted in tenders and in the contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Product before it reaches its destination as stated in the Contract.

5. INSPECTION

- 5.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the details of the quality of the materials used and the parts of the Product, both during manufacture and when completed, inspected and checked by his authorized representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Vendor as to date and time.
- 5.2. If, as a result of such inspection and checking, the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reasons therefor.

6. PASSING OF RISK

- 6.1. Save as provided in paragraph 7.6., the time at which the passing of risk takes place shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms 2020) of the International Chamber of Commerce in force at the date of the formation of the Contract.
- Where no indication is given in the Contract, the Product shall be deemed to be sold "ex works".
- 6.2. In the case of a sale "ex-works", the Vendor must give notice in writing to the Purchaser of the date from which the Purchaser shall take delivery of the Product. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

7. DELIVERY

- 7.1. Unless otherwise agreed, the delivery period shall run from the latest of the following dates:
- (a) the date of the formation of the Contract as defined in Clause 2;
- (b) the date on which the Vendor receives notice of the issue of a valid import license where such is necessary for the execution of the Contract;
- (c) the date of the receipt by the Vendor of such payment in advance as stipulated in the Contract.
- 7.2. Should delay in delivery be caused by any of the circumstances mentioned in Clause 10 or by an act or omission of the Purchaser and whether such cause occurs before or after the time or extended time for delivery, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the delivery period as it is reasonable having regard to all the circumstances of the case.
- 7.3. If a fixed time for delivery is provided for in the Contract and the Vendor fails to deliver within such time or any extension thereof granted under paragraph 2 hereof, the

Purchaser shall be entitled, on giving to the Vendor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in paragraph A of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Product as cannot, in consequence of the said delay, be put to the use intended for each complete week of delay commencing on the due date of delivery but shall not exceed the maximum percentage named in paragraph B of the Appendix. Such reduction shall be allowed when a payment becomes due on or after delivery.

7.4. If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.

Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six months from the formation of the Contract. If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 13, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.

7.5. If any portion of the Product in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains undelivered, the Purchaser may by notice in writing to the Vendor require him to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever the Vendor fails within such time to do everything that he must do to effect the delivery, the Purchaser shall be entitled by notice in writing to the Vendor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Product and thereupon to recover from the Vendor any loss suffered by the Purchaser by reason of the failure of the Vendor as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Product as could not in consequence of the Vendor's failure be put to the use intended.

7.6. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Product had been delivered. The Vendor shall arrange for the storage of the Product at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Product at the cost of the Purchaser. Provided that, if the delay in accepting the delivery is due to one of the circumstances mentioned in Clause 10 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Product shall not be borne by the Purchaser.

7.7. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 10, the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time.

If the Purchaser fails for any reason whatsoever to do so within such time, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Product as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss, suffered by reason of such failure up to an amount not exceeding the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Product.

8. PAYMENT

- 8.1. Payment shall be made in the manner and at the time or times agreed by the parties.
- 8.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.
- 8.3. If the delivery has been made before payment of the whole sum payable under the Contract, Product delivered shall, to the extent permitted by the law of the country where the Product is situated after delivery, remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to retain the property of the Product, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as aforesaid.
- 8.4. A payment conditional on the fulfillment of an obligation by the Vendor shall not be due until such obligation has been fulfilled unless the failure of the Vendor is due to an act or omission of the Purchaser.
- 8.5. If the Purchaser delays in making any payment, the Vendor may postpone the fulfillment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor.
- 8.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 10, the Vendor shall not be entitled to any interest on the sum due.
- 8.7. Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall, on giving to the Purchaser within a reasonable time notice in writing, be entitled to the payment of interest on the sum due at the rate fixed in paragraph E of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph F of the Appendix, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph D of the Appendix.

9. GUARANTEE

- 9.1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.
- 9.2. This liability is limited to defects which appear during the period (here in after called "the Guarantee Period") specified in paragraph G of the Appendix.
- 9.3. In fixing this period, due account has been taken of the time normally required for transport as contemplated in the Contract.
- 9.4. In respect of such parts (whether of the Vendor's own manufacture or not) of the Product as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as it is specified in respect of each of such parts.
- 9.5. The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Product is ready for dispatch. If dispatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Product. Provided, however, that if such delay is due to a cause beyond the control of the Vendor, such extension shall not exceed the number of months stated in paragraph H of the Appendix.

- 9.6. The daily use of the Product and the amount by which the Guarantee Period shall be reduced if the Product is used more intensively are stated in paragraph I of the Appendix.
- 9.7. A fresh Guarantee Period equal to that stated in paragraph G of the Appendix shall apply, under the same terms and conditions as those applicable to the original Product, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Product, the Guarantee Period of which shall be extended only by a period equal to the period during which the Product is out of action as a result of a defect covered by this Clause.
- 9.8. In order to be able to avail himself of his rights under this Clause, the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
- 9.9. On receipt of such notification, the Vendor shall remedy the defect forthwith and, save as mentioned in paragraph 10 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfillment by the Vendor of his obligations under this paragraph in respect of such defective part.
- 9.10. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Product is situated and one of the following points:
- (i) the Vendor's works if the Contract is ex works or F.O. B.;
 - (ii) the port from which the Vendor dispatched the Product if the Contract is F.O.B., F.A.S., C.I.F. or C. & F.;
 - (iii) in all other cases the frontier of the country from which the Vendor dispatched the Product.
- 9.11. Where, in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.
- 9.12. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.
- 9.13. If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in a reasonable manner.
- 9.14. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.
- 9.15. The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Product has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.
- 9.16. Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Product has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract or of loss of profit, unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.
- 9.17. "Gross misconduct" does not comprise any and every lack of proper care or skill but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.
- 10. RELIEFS**
- 10.1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g., fire, mobilization, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.
- 10.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.
- 10.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 7 and 8 Save as provided in paragraphs 7.5., 7.7. and 8.7.
- If, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.
- 10.4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined through an agreement between the parties.
- 10.5. In default of an agreement, it shall be determined by the arbitrator which party has been prevented from performing his obligations and that party shall bear the whole of the said expenses. Where the Purchaser is required to bear the whole of the expenses and has before termination of the Contract paid to the Vendor more than the amount of the Vendor's expenses, the Purchaser shall be entitled to recover the excess. If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case.
- 10.6. For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred, after both parties shall have mitigated their losses as far as possible. Provided that as respects Product delivered to the Purchaser the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.
- 11. LIMITATION OF DAMAGES**
- 11.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.
- 11.2. The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.
- 12. RIGHTS AT TERMINATION**
12. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.
- 13. PROCESSING OF PERSONAL DATA (Privacy)**
- 13.1. In the performance of this Sales Contract, the Parties undertake to process personal data in full compliance with the applicable data protection legislation, in particular Regulation (EU) 2016/679 (GDPR) and Legislative Decree No. 196/2003, as amended by Legislative Decree No. 101/2018.
- By signing the Contract, pursuant to Article 13 of the GDPR, the Parties acknowledge that they have mutually provided one another with adequate information regarding the personal data processing activities connected with the execution of the Contract. Each Party warrants that personal data will be processed in accordance with the principles of lawfulness, fairness and transparency, as well as by adopting appropriate technical and organizational security measures pursuant to Article 32 of the GDPR. With reference to the processing of personal data carried out within the framework of the Contract, the Parties shall, as a general rule, act as independent Data Controllers. However, where the performance of specific contractual services requires the appointment of one Party as Data Processor (or Sub-processor), the Parties undertake to regulate such relationship by means of a separate written agreement pursuant to Article 28 of the GDPR, which shall form an integral part of this Contract.
- The Parties further undertake to indemnify and hold each other harmless from any damages, claims, penalties and/or expenses, including legal fees, arising from any breach of the obligations set out in the applicable data protection legislation, insofar as attributable to each Party.
- The Data Controller SARO S.r.l. shall process personal data in compliance with the applicable legislation, as detailed in the privacy notice provided pursuant to Article 13 of the GDPR, available at the following link:
<https://sa.ro.it/informative-privacy/>
- 14. ARBITRATION AND LAW APPLICABLE**
- 14.1. Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.
- 14.2. Unless otherwise agreed, the Contract shall be governed by the law of the Vendor's country.
- 14.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as amiable compositeurs.

APPENDIX

(To be completed by parties to the Contract)

CLAUSE

A.	Percentage to be deducted for each week's delay:	7.3	0,5 per cent.
B.	Maximum percentage which the deductions above may not exceed:	7.3	7,5 per cent.
C.	Maximum amount recoverable for non-Delivery:	7.5	(in the agreed currency).
D.	Maximum amount recoverable on termination by Vendor for failure to take delivery or make payment:	7.7 and 8.7	(in the agreed currency).
E.	Rate of interest on overdue Payments:	8.7	7 per cent per annum.
F.	Period of delay in payment authorizing termination by Vendor:	8.7	months.
G.	Guarantee Period for original Product and parts replaced or renewed:	9.2 and 9.7	12 months.
H.	Maximum extension of Guarantee Period:	9.5	months.
I.	(1) Daily use of Product:	9.6	hours/day.
	(2) Reduction of Guarantee Period for more intensive use:	9.6	

SUPPLEMENTARY CLAUSE PRICE REVISION

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the contract, the agreed prices shall be subject to revision based on the following formula:

$$P1 = P0/100 (a + b M1/M0 + c S1/S0)$$

where:

P 1 = final price for invoicing

P0 = initial price of goods, as stipulated in the contract and as prevailing at the date of (1).

M1 = mean (2) of the prices (or price indices) for (type of materials concerned) over the period (3).

M0 = prices (or price indices) for the same materials at the date stipulated above for P0.

S1 = mean (2) of the wages (including social charges) or relevant indices (4) in respect of (specify categories of labour and social charges) over the period (3)

So = wages (including social charges) or relevant indices (4) in respect of the same categories at the date stipulated above for Po.

a, b, c, represent the contractually agreed percentage of the individual elements of the initial price, which add up to 100.

(a + b + c = 100)

a= fixed proportion =

b= percentage proportion of materials =

c= percentage proportion of wages = (including social charges)

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b1, b2, b3.....) as there are variables considered (b1 + b2 + bn= b).

DOCUMENTATION

To determining the values of materials and wages, the parties agree to use the following documents as sources of reference:

1. Materials: (type of materials)
a. prices (or price indices)
b. published by
c. under the headings

2. Wages: (including related social charges)
a. wages (or relevant indices)
b. published by
c. under the headings (5)

Rules for applying the Clause. In the case of partial deliveries which are invoiced separately, the final price shall be calculated separately for each such delivery.

Period of application of the Clause. The revision clause shall cover the delivery period fixed in the contract, together with any extension thereof granted under Clause 7.2. but shall in no case apply after the date on which manufacture is completed.

Tolerances. Prices shall not be revised unless the application of the formula produces a plus or minus variation of (6)

Saving Clause. If the parties wish the revision formula to be adjusted or replaced by a more accurate method of calculation when the plus or minus variation exceeds a certain percentage, they shall expressly so agree.

The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT", published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

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- (1) It is recommended that the parties should, as far as possible, adopt as the initial price the price prevailing at the date of the contract and not at an earlier date. This is normally the contract price less cost of packing, Transport and Insurances.
- (2) Arithmetical or weighted.
- (3) Specify the datum period, which may be defined as part or the whole of the delivery period.
- (4) If legal social charges are covered by the index, they need not be taken into account again.
- (5) Indices relating specifically to the engineering and electrical industries should be used as far as possible.
- (6) State the percentage plus or minus variation which must be exceeded before the formula is applied.

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