

GENERAL CONDITIONS

for the supply of Plant and Machinery for export*

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, March 1953

188

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 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 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 Plant 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 utilised 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 Plant 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 utilised 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 and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. 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 Plant;

(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 Plant before it reaches its destination as stated in the Contract.

5. INSPECTION AND TESTS

INSPECTION

5.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorised 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.

TESTS

5.3. Acceptance tests will be carried out and, unless otherwise agreed, will be made at the Vendor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.

5.4. The Vendor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by the Purchaser.

5.5. If on any test (other than a test on site, where tests on site are provided for in the Contract) the Plant shall be found to be

* The English and French texts are equally authentic. 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.

defective or not in accordance with the Contract, the Vendor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.

5.6. Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.

5.7. If the Contract provides for tests on site, the terms and conditions governing such tests shall be such as may be specially agreed between the parties.

6. PASSING OF RISK

6.1. Save as provided in paragraph 7.6., 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.

Where no indication is given in the Contract of the form of sale, the Plant 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 on which the Purchaser must take delivery of the Plant. 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 licence where such is necessary for the execution of the Contract;

(c) the date of the receipt by the Vendor of such payment in advance of manufacture as is 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 occur 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 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 Plant as cannot in consequence of the said failure 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. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Vendor's failure to deliver as aforesaid.

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 Plant 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 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 Plant 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 Plant 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 Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting 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 Plant 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 whatever 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 Plant 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 Plant.

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 delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant 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 in the Plant, 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 fulfilment 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 fulfilment 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 (hereinafter 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 Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as 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 Plant is ready for despatch from the works. If despatch 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 Plant. 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 Plant and the amount by which the Guarantee Period shall be reduced if the Plant 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 Plant, 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 Plant, the Guarantee Period of which shall be extended only by a period equal to the period during which the Plant 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 fulfilment 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 Plant is situated and one of the following points:
(i) the Vendor's works if the Contract is "ex works" or F.O.R.;
(ii) the port from which the Vendor dispatched the Plant 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 Plant.
- 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 Plant 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 Plant 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 by agreement between the parties.
- 10.5. In default of 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 Plant 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

- 12.1. 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. ARBITRATION AND LAW APPLICABLE

- 13.1. 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.
- 13.2. Unless otherwise agreed, the Contract shall be governed by the law of the Vendor's country.
- 13.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as *amiables compositeurs*.

APPENDIX

(To be completed by parties to the Contract)

	Clause
A. Percentage to be deducted for each week's delay	7.3 per cent
B. Maximum percentage which the deductions above may not exceed	7.3 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 per cent per annum
F. Period of delay in payment authorizing termination by Vendor	8.7 months
G. Guarantee Period for original Plant and parts replaced or renewed	9.2 and 9.7 months
H. Maximum extension of Guarantee Period	9.5 months
I. (1) Daily use of Plant	9.6 hours/day
(2) Reduction of Guarantee Period for more intensive use	9.6

**SUPPLEMENTARY CLAUSE
PRICE REVISION**
General Conditions for the supply of Plant and Machinery for export

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 on the basis of the following formula:

$$P1 = \frac{Po}{100} (a + b \frac{M1}{M0} + c \frac{S1}{S0})$$

where:

P1 = final price for invoicing.

Po = 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 Po.

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)

S0 = 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 taken into account (b1 + b2..... + bn = b).

Documentation. For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference:

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

2. Wages: wages (including related social charges)
(or relevant indices)
published by
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.

- (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 insurance.
- (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.

ANNEX

attached to the ECE General Conditions for the Supply of Plant and Machinery for Export by the German Capital Goods Industry *)

The conditions hereinafter enumerated contain the figures provided for in the "Appendix" of the General Conditions as well as other supplementary stipulations between the Parties to the Contract.

In the case of diverging interpretations of the German and the English texts, the German text shall prevail.

1. Ad Art. 1

All stipulations of the Parties to the Contract must be made in writing in order to be valid.

2. Ad Art. 3

Indications as provided in art. 3 para 1 shall not be binding except where it is so stipulated expressly in the Contract.

3. Ad Art.

Acceptance tests (art. 5 para 3) shall not be carried out except where it is so stipulated expressly.

4. Ad Art. 6

If in the case of a sale "ex works" the Vendor, on demand of the Purchaser, undertakes to send the Plant to its destination, the risk will pass on delivery to the first carrier, provided that this date is prior to the date indicated in art. 6 para 2.

If the Purchaser, on the ground of one of the circumstances referred to in art. 10, fails to take delivery of the Plant, the risk will pass to the Purchaser not later than at the date this circumstance has appeared.

5. Ad Art. 7

It is a further prerequisite of the beginning of the delivery period (art. 7 para 1) that agreement must be reached with respect to all technical questions, clarification of which had been postponed by the Parties, at the time the Contract was entered into, until further negotiations, and that any official authorisation that may be required for fulfilment of the obligations of the Vendor has been issued.

The price reduction (art. 7 para 3, Appendix paras A and B) shall amount to 0.5% for each complete week but shall not exceed a total of 5%.

In the case of art. 7 para 5, Appendix para C, the Parties should come to an amicable agreement. The amount of damages shall correspond with the circumstances of the particular case; it shall keep within the limits of 5 and 25% of the price payable under the Contract, which is properly attributable to the non-delivered portion of the Plant, any further damage will only be compensated in the case of intent, gross negligence or negligent breach of a condition that goes to the root of the contract ("Wesentliche Vertragspflicht") according to Clause 11 of this Annex.

The maximum amount of damages provided for under art. 7 para 7, Appendix para D, shall be 25% of the price payable under the Contract, which is properly attributable to the particular portion of the Plant. The Purchaser shall be entitled to prove that fewer damage has occurred to the Vendor.

6. Ad Art. 8

The Vendor shall be entitled to refuse performance if, due to a circumstance that originated after the formation of the Contract, he has reason to fear that he may not receive the performance of the Purchaser completely and in time (art. 8 para 5).

The rate of interest (art. 8 para 7, Appendix para E) shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment. The additional period is fixed at one month (art. 8 para 7, Appendix para F). The maximum amount of damages (art. 8 para 7, Appendix para D) shall be 25% of the price payable under the Contract, which is properly attributable to the particular portion of the Plant. The Purchaser shall be entitled to prove that fewer damage has occurred to the Vendor.

7. Ad Art. 9

The Purchaser shall inform the Vendor what protective devices he requires against dangers originating from the use of the Plant. They shall be delivered at the Purchaser's own expense if both Parties have agreed on the kind and the scope of the protective devices to be delivered. Failure to deliver other protective devices shall not be deemed to be a defect (art. 9 para 1).

The Guarantee Period (art. 9 para 2, Appendix para G) shall be 12 months, provided that no other period has expressly been agreed upon in the Contract.

The extension of the Guarantee Period (art. 9 para 5, Appendix para H) is limited to 12 months.

The daily use of the Plant (art. 9 para 6, Appendix para 1) is fixed at 8 hours. If the Plant is used more intensively, the Guarantee Period shall be reduced accordingly.

The fresh Guarantee Period (art. 9 para 7, Appendix G) is fixed at 0 months.

The Guarantee Period shall also be inapplicable for goods to be provided by the Purchaser (art. 9 para 14).

All claims of the Purchaser based on defects shall expire – unless otherwise agreed – upon expiry of a period of 12 months following delivery of the Plant (Art. 9 No. 5 sentence 1).

Furthermore, No 11 of this Annex shall apply *mutatis mutandis* (Art. 9 No. 16).

8. Ad Art 11

Delete art. 11 para 1.

9. Ad Art. 13

The Contract shall be governed by German law (art. 13 para 2).

10. Erection

If the Vendor undertakes to erect the Plant the agreements shall apply that have been made expressly with respect to the erection.

11. Exclusion of other claims lodged by the Purchaser

All further claims lodged by the Purchaser, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the Plant itself, shall be excluded, whatever legal ground may be underlying such claims.

The said exclusion of liability shall not apply in the case of intent or gross negligence on the part of the owner or his executives, in the case of negligence causing damage to life, body or health, nor in cases of negligent breach of a condition which goes to the root of the Contract (“wesentliche Vertragspflichten”).

In cases of negligent breach of a condition which goes to the root of the Contract (“wesentliche Vertragspflichten”) the Vendor shall be liable only – except in cases of intent or gross negligence on the part of the owner or his executives – for reasonably foreseeable damage which is intrinsic to the Contract.

Nor does the said exclusion apply in cases of strict liability, under the Product Liability Act (Produkthaftungsgesetz), for defects of the Product causing death or personal injury, or damage to items of property that are used privately. Furthermore, the said exclusion of liability shall not apply in the case of damage due to fraudulent concealment or despite specific guarantees.

*) April 2002

to the General Conditions for the supply of Plant and Machinery for export (LW 188)

The following provisions contain the Information in the "Appendix" of the "General Conditions for the supply of Plant and Machinery for export (LW 188)" and any supplementary agreements between the Parties to this Contract. In the event of discrepancies or different interpretations, the wording of the German language version of this Contract and this Annex shall prevail.

1. Art. 1

All agreements between the Parties shall be in writing. Guarantees and any other warranties, representations or promises have to be explicitly designated as such.

2. Art. 2

In case the acceptance/confirmation of the Seller contains additions, limitations or other modifications of the order, the Buyer shall be deemed to have acknowledged the acceptance and assented to it unless he objects to it in writing without undue delay.

3. Art. 3

Information given according to Art. 3 No. 1 only becomes binding, as far as they have been explicitly designated in the Contract as binding.

4. Art. 5

An acceptance test (Art. 5 No. 3) shall only be conducted, if explicitly agreed upon in the Contract.

5. Art. 6

5.1 If - in case of an ex works sale - the Buyer ask the Seller to undertake delivery, the risk shall nevertheless pass to the carrier as soon as the goods are handed over, as far as the handing over of the goods occurs before the moment mentioned in Art. 6 No. 2.

5.2 If - in case of an ex works sale - the Buyer does not accept the goods due to a circumstance pursuant to Art. 10, nevertheless, the risk shall at latest pass to the Buyer with the occurrence of such circumstance.

6. Art. 7

6.1 The delivery period (Art. 7 No. 1) shall not start before all technical issues, which were subjected to later negotiations, are agreed upon and licenses or official approvals necessary for the performance of the Contract - if any - are granted.

6.2 The price reduction (Art. 7 No. 3, Appendix Pos. A and B) will be 0.2% per week; it cannot exceed 5% in total.

6.3 In the event of Art. 7 No. 5 (Appendix Pos. C), the Parties shall reach an amicable agreement. The amount of damages shall be calculated to the particular circumstances of the transaction and shall range between 5% and a maximum of 25% of the Contract value of the non-delivered item; further damages will only be compensated in case of an exemption of the limitation of liability according No. 11.2 of this Annex.

6.4 The maximum amount of damages to be awarded according to Art. 7 No. 7 (Appendix Pos. D) is limited to 25% of the Contract value of the respective item of the delivered Contract Product.

6.5. If the Seller - in whole or in part - fails to deliver on time, he is entitled to set a new prospective delivery date and to request the Buyer to make known whether he will accept the new delivery date or will rescind the Contract - upon the request - the Buyer does not react or declares that he will not make use of his right to repudiate the Contract, the Buyer is excluded from repudiation up to the new date of delivery as set by the Seller.

7. Art. 8

7.1 The Seller is entitled to refuse performance if he - due to a circumstance occurring after the conclusion of the Contract - has a reason to believe that the Buyer may fail to fulfill his contractual obligations (Art. 8 No. 5).

7.2 The interest rate (Art. 8 No. 7, Appendix Pos. E) is 8% above the prime lending rate (base rate) of the European Central Bank; the additional period for delivery (Art. 8 No. 7, Appendix Pos. F) is one month; the maximum amount of damages (Art. 8 No. 7, Appendix Pos. D) is 25% of the Contract value of the respective item of the delivered Contract Product.

8. Art. 9

Warranties and representations are agreed upon as follows:

8.1 The Buyer shall inform the Seller about any protective devices the Contract Product shall be equipped with - if any. If the Parties agreed upon the type and the extent of the protective devices, the latter shall be delivered with the Contract Product at the Buyers expense. The non-delivery or any absence of protective devices shall not amount to a breach of Contract and shall not be deemed as a defect of the Contract Product (Art. 9.1).

8.2 Subject to any other contractual agreement, the period of limitation (Art. 9 No. 2, Appendix Pos. G) for any claims of the Buyer is 12 months beginning with the delivery of the Contract Product. The extension of the period of limitation (Art. 9 No. 5, Appendix Pos. H) is limited to a maximum of 3 months. The daily operating time (Art. 9 No. 6, Appendix Pos. I) is 8 hrs; if the daily operating time exceeds this limit, the period of limitation shall be reduced accordingly. The new period of limitation shall be 3 months (Art. 9 No. 7, Appendix Pos. G).

8.3 Items or Products supplied by the Buyer for the assembly with Contract Products are excluded from any warranties and representations hereunder (Art. 9 No. 14).

8.4 Any warranty claims of the Buyer shall expire at latest 6 months after the respective claim was made known to the Seller unless the Seller admits the claim or the Buyer has raised a claim for performance before or requested a declaration regarding the validity of the claim from an arbitral tribunal or state court before the expiration of the time limit set hereunder. In any case, they shall not become discharged before the expiry of the agreed upon period of limitation (No. 8.2 above).

8.5 In case a defect of the Contract Products materializes, the Seller - at his option - is entitled to substitute performance by either remedying the defect or substitute supply. If a complaint of the Buyer proves to be legitimate, the Seller shall bear the costs of remedying the defects or a substitute supply as follows:

- The costs of the replacement part including shipping costs, if the latter are - by way of exception according to Art. 9.10 - not to be borne by the Buyer,
- the reasonable costs of disassembly/assembly as reasonable and
- if it can be reasonably expected according to the circumstances of the warranty claim, the costs of technicians, mechanics and support staff - if necessary.

If the Buyer ships the Contract Product in whole or in part to a place other than the originally agreed upon place of delivery where the Contract Product was situated and shipped to, the Buyer shall bear any extra costs resulting from such shipment, in particular, any additional travel expenses of the Seller, if any.

8.6 The Buyer shall have the right to repudiate the Contract within the scope of statutory regulations if the Seller - considering the exemptions allowed by law - allows an additional period of time for remedying the defect or a substitute delivery as fixed by the Buyer to pass without effect. If the defect is only minor, the Buyer shall only be entitled to a price reduction. Otherwise, the Buyer's right to a price reduction is excluded hereby.

8.7 If the use of a Contract Product infringes intellectual property rights, the Seller will at his option and at his own expense either bring about a right of use or modify the Contract Product in a way that intellectual property rights are no longer breached. If the Seller is unable to do so under reasonable commercial conditions or within a reasonable period of time, the Buyer shall be entitled to repudiate the Contract. Subject to the above named prerequisites, the Seller shall likewise be entitled to repudiate the Contract. Subject to No. 11 of this Annex, the aforementioned duties of the Seller are exclusive and final in cases where intellectual property rights are breached. They shall only exist if

- the Buyer - without undue delay - notifies the Seller of an alleged breached of an intellectual property right,
- the Buyer reasonable supports the Seller in his defence against asserted claims or enables the Buyer to modify the Contract Products to remedy such breach - if necessary,
- the Seller retains the right to take any defensive actions, including out-of-court settlements,
- the alleged deficiency in title is not caused by an instruction of the Buyer and
- the breach of an intellectual property right was not caused by the Buyer by either modifying the Contract Product himself or using it in a way other than permitted by the Contract.

8.8 As soon as the risk passes (Art. 6), the Seller is only liable within the limits of this Annex; subject to No. 11 of this Annex this shall also apply to defects, which may arise before the risk passes. If the Seller or his vicarious agent acts with intent or gross negligence, the Seller's liability is unlimited. The same shall apply in cases of injury of life, body or health. In case of a fundamental breach of contract of the Seller or one of his vicarious agents, the Seller's liability is limited to direct contractual damages, reasonably foreseeable at the moment of the conclusion of the Contract. No. 11 of this Annex shall likewise apply (Art. 9 No. 16).

8.9 Other than the warranties and representation as laid down in this Contract and its Annex - in particular, guarantees and assurances - are not agreed upon.

9. Art. 11

Art. 11.1 is not applicable.

10. Art. 13

10.1 This Contract is governed by German law as it applies between domestic parties. The provisions of Private International Law and the United Nations Conventions on the International Sale of Goods dated 11.04.1980 (CISG) shall not apply.

10.2 All disputes arising out off or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules. The seat of the arbitration shall be Düsseldorf; the languages of the arbitral proceedings is German.

11. General limitation of liability

For any damages which do not occur on the delivered item itself, the Seller is - for what ever reason - only liable for:

- intent,
- intent or gross negligence of his shareholders/board members or senior executives,
- negligent or intentional injury, loss of life or damage to health,
- defects which the Seller had maliciously conceded or which absence he has guaranteed,
- for any defects of the delivered item privately used, if liability is mandatory under product liability laws (Produkthaftungsgesetz) for personal injury or physical damage to items of private use.

In case of a fundamental breach of contract, the Seller can also be held liable for any gross or slight negligence of his employees; in the latter case the Seller's liability is limited to direct contractual damages, reasonably foreseeable at the moment of the conclusion of the Contract.

Any further liability - irrespective of its legal basis - in particular, for any consequential damages, is expressly excluded hereby.