

# General Terms and Conditions of Sales and Delivery

## 1. Offers

Prices, payment terms, dates of delivery mentioned in our offers are not binding and are of informative character only. Price and delivery date shall be determined, after all technical details regarding the order have been settled and when we are in position to accept the order after having been in a position to examine it under all points of view e.g. with respect to free production capacity, problems regarding remittance of currency, official permits, etc.

## 2. Documents

Illustrations, drawings and printed matter relating to our offer, are meant to be for guidance only and are not binding, unless specifically otherwise stipulated. Quotations and their supporting literature as well as our instructions for operation of our equipment remain our property they are entrusted to the Buyer for his personal use only and are not to be copied, reproduced, divulged or made known to third parties. Our wiring diagrams, drawings, publications, etc. are not to be passed on to third parties and shall not be used for manufacturing purposes. Copyrights and other industrials property rights relating to such documents or matters referred to therein, remain vested exclusively in us. Any violation of the above obligations by the Buyer shall entitle us to cancel immediately the contract and to claim damages.

## 3. Price

Our price is understood to be "ex plant", for unpacked material and payable, without any deductions, in free Swiss Francs in **Orpund-Biel**, Switzerland. Any additional costs such as, but not limited to, insurance premiums and costs for authentication, are at the expense of the Buyer. In the event, we have assumed such costs in our confirmation of an order and if their rates should change considerably, we are entitled to adapt our charges accordingly. In case of changes of regulations or procedures regarding import, export, production or wages we shall be entitled to amend the contracts at any time and adapt them to the new regulations. We shall be entitled to adjust our prices, if wages or price of material change between the date of our offer and the date of delivery.

## 4. Regulations at the place of delivery

The Buyer shall draw our attention to legal provisions and other regulations which are applicable with respect to delivery, assembly, electrical and other connections, operation and prevention of accidents.

## 5. Delivery

Periods of delivery stipulated, indicate the time required for manufacture and completion of the equipment in our plant and are not binding, unless expressly otherwise agreed upon. Periods of delivery are calculated from the date of determination of all technical details regarding the order, of written approval by the Buyer of the layout-drawings and of receipt by us of the down payment if such a payment is called for in the contract.

In case that one or several of the following events occur, the term of delivery will be extended accordingly – in case of paragraph c for the continuance of the event and its consequences – whereby the conditions in our plant at the time of taking up production shall be taken into account:

- If the Buyer is in arrears with work to be performed by him or if he fails to perform his obligations under the contract, in particular if he does not comply with the terms of payment
- If indications required for the manufacture of the equipment are not submitted in good time or if the Buyer modifies such indications later and thereby causes a delay in the delivery.
- If circumstances beyond our or beyond the control of our subcontractors occur which hinder due performance by us or our subcontractors, such circumstances being but not limited to:

Force majeure, epidemics, shortage of labour, mobilization, war, riots, strikes, blockades and lockouts, embargos, failure of a major part of the equipment, shortage of electric power, late supply or late completion of vital or not easily obtainable parts of the equipment, factory breakdowns, transportation difficulties and/or damages, governmental import-, export- or transit-suspensions or restrictions.

Delay in delivery does not entitle the Buyer to cancel the contract or to claim damages directly or indirectly attributable to such delay.

In case of delayed delivery, a penalty can be claimed by Buyer only if it has been expressly stipulated in writing and if the delay can be proved to be due to our fault and if Buyer proves that he has incurred a damage due to such delay. The penalty, if stipulated, shall be for each full week of delay in the maximum ¼ percent and shall in total not exceed 5 percent of the contract price of the part not delivered in time. Where delivery terms of more than 5 months have been agreed upon, the Buyer is not entitled to a penalty for the first two weeks of delay. The Buyer has no claim of any nature for damages which exceed the amount of the penalty stipulated.

## 6. Extent of supply

The extent of our supply shall be determined in our confirmation of order. Performances not contained therein shall be charged separately.

Power requirements and type of starting employed shall be specified in our offer and/or confirmation of order. It is Buyer's responsibility to make sure that our equipment complies with local electrical power company's regulations and to obtain all permits necessary (see also clause 4 above).

Specifications of weights of material and packaging are quoted free of obligation. The included documentation is in accordance with Zumbach standards and corresponds to the language defined in the standard offer.

Diagrams (electrical or mechanical) are not included in the shipment of supply. Other documentation or languages (not defined in the offer/order confirmation) upon agreement only, subject to additional charge.

## 7. Tests and acceptance of equipment

The equipment shall be tested by us during its manufacture and, if possible, before it is shipped. If the Buyer demands additional tests, they must be so agreed in writing and the costs of such tests shall be paid separately by Buyer.

Buyer must examine the equipment within a reasonable period of time and notify us immediately in writing of any defects. Failing such notification the equipment is deemed to be accepted.

A test of acceptance is only made where the Buyer asks for it and where it is agreed upon in writing. If the tests of acceptance cannot be made within the period determined for reasons beyond our control, it is understood that the qualities to be tested are deemed to be met. If the equipment does not comply with the contract, the Buyer shall let us without delay make the necessary adjustments as soon as possible. In case of delivery of defective equipment any other claims of the Buyer, in particular claims for damages or an action to cancel the contract are excluded.

## 8. Risks and transportation

The moment the equipment is shipped from our plant, Buyer assumes all risks regarding it, in particular but not limited to the risk for damage, loss, theft, attachment or confiscation: this applies also, if delivery takes place under the following or similar stipulations, cif, fob or franco, or if delivery includes also assembly, if transportation takes place under guidance of our personnel or if the equipment has been insured by us.

We are liable only for damages which can be proved to have been caused by gross negligence of our personnel.

The insurance against damages of any kind shall be provided by Buyer; such insurance shall also cover the tools and other objects of our assembly or service personnel. If the insurance for transportation and/or for assembly or putting into operation should be contracted by us, such insurance shall be deemed to be contracted on behalf and for the account and the risk of Buyer.

Complaints regarding damages incurred during transport are to be notified upon to receipt by Buyer to the receiving railroad station or to the last carrier.

The Buyer shall provide for sufficient access to the assembly site.

If equipment which is ready for shipment is to be kept back on instructions of Buyer or if shipment cannot be effected for reasons beyond our control, the equipment will be stored at Buyer's expense and risk at prevailing storage rates. Should the necessary storage space not be available at our plant, we are entitled to store the equipment elsewhere at Buyer's expense and risk.

## 9. Terms of payment

Payments shall be made as stipulated at our domicile without any deductions in particular without deductions for discount, expenses or taxes of any kind. The payments are due as a rule:

- 1/3 at the date Buyer's order is accepted,
  - the remaining 2/3 during manufacturing of the equipment in our plant
- If the equipment is delivered in parts, payment shall be made in conformity with the parts delivered.

The Buyer's obligation to pay does not cease until the full contract price has been actually remitted to us at our free disposal in Switzerland in Swiss Francs or currency of contract.

If due to circumstances beyond our control, delivery, assembly, putting into operation or acceptance of finished equipment are delayed, the terms of payment shall remain unchanged as if the equipment had been delivered and had started operation at the originally prescribed date. Non-delivery of not essential parts which does not prevent the use of the equipment or repairs and/or replacements to be made under our warranty after the beginning of operation, do not affect or alter either the terms of payment or the period of warranty agreed upon.

If Buyer does not comply with the terms of payment, interest shall be charged without further notice on all overdue payments at the current interest rate applied in the country in which Buyer is domiciled. The rate shall be, however, not less than 6% p.a. Payment of such interest does not relieve Buyer from his obligations, especially not from his obligation to make payments on their due dates.

Buyer shall not retain or reduce payments because of fault-findings, claims or counter-claims not recognized by us in writing.

If Buyer did not comply with the agreed terms of payment or became insolvent, bankrupt or if liquidated, we shall be entitled to ask for immediate payment of all outstanding amounts – irrespective of whether they are due or not and not withstanding any other rights we may have under the contract. All collecting costs shall be charged to the Buyer.

## 10. Reserve of title

Title to all equipment or, if delivered separately, parts thereof supplied by us shall remain all due payment is received by us. The Buyer shall assist us in any measures or actions necessary for the protection of our property.

## 11. Warranty

As far as practically possible and in our opinion deemed necessary, each part of the equipment is tested for its proper working condition prior to shipment. Additional tests are to be agreed upon before confirmation of the order, always provided that conditions prevailing at our plant at time of shipment permit the carrying out of these tests.

For a period of 12 months (6 months, if the equipment is operated day and night, even if day and night operation occurs only occasionally), to be calculated from the day when the equipment is ready to be shipped at our plant (in cases where we undertake assembly and/or putting into operation, from the day of putting into operation), we guarantee good working of the equipment delivered, and we commit ourselves at our option to repair or replace as quickly as reasonably possible any parts which are proved to be faulty in design, material or workmanship. If, during operations and within the period of warranty any discrepancy appears between the equipment contracted for and actually supplied by us, we shall bear the costs incurred at our plant for adjustments or replacements.

Both ways freight and costs of packing shall be borne by the Buyer. If the size of the parts does not allow their return to our plant, we shall supply and ship at our expense "ex plant" the replacement material necessary for carrying out the adjustments under this warranty on the site and we shall pay the salary and wages of our employees but the Buyer shall pay for their time spent with travelling and their transportation and living expenses, provided always that the equipment is put at our disposal for a reasonable period of time. Our liability is limited to direct damages. Any further liability on our part for any other kind of damages is excluded. Buyer cannot rescind the contract or cancel an order.

Our warranty is conditional upon Buyer's strict fulfillment of his obligations, particularly as regards terms of payment. Any replaced part or parts become our property.

Any additional work or supply of individual parts during the warranty period, as well as additional work or supplies within the framework of our warranty, the delivery or execution of which is deferred on Buyer's instructions, shall not affect the agreed terms of warranty and payment.

Our obligations under this warranty cease without prior notice, if the equipment supplied by us is not put, within the warranty period, by Buyer at our disposal for a period of time sufficient to make the necessary repairs or replacements, or if without our prior written consent, alterations or repairs have been made by Buyer or by third parties, or if Buyer does not take all reasonably measures without delay in order to avoid further damage and in order to enable us to perform our warranty.

Our warranty shall not cover replacements or repairs which are due to normal wear and tear, faulty or negligent maintenance, disregard of operation instructions, overloading of machinery, use of unsuitable fuel, faulty construction of buildings, incorrect assembly work, faulty electrical or other connections, force majeure, and any other causes beyond our control.

For products supplied but not manufactured by us, our supplier's terms and conditions apply as regards warranties and penalty for not meeting delivery dates.

## 12. Data protection

The purchaser acknowledges and agrees that, Zumbach processes data from the business relationship solely for the purpose of executing the contract. How Zumbach itself as the owner of the collected data processes and uses such personal data, and to what rights the ordering party has in this context, can be found in the data protection policy at: <https://zumbach.com/privacy-policy/>.

## 13. Place of performance, applicable law

The place of performance is **Orpund-Biel**. Our contracts shall be governed by Swiss law as to their validity as well as to their effects and in particular also with respect to the contents and interpretation of offers and contracts.

## 14. Jurisdiction

Any and all disputes arising from orders placed or contracts entered into with us shall be subject exclusively to the jurisdiction of the competent courts of the Canton of Berne, the appeal to the Swiss Federal Supreme Court being reserved.

## 15. Validity of terms and conditions

The present general terms and conditions of sale shall be applicable with respect to all matters which have not been otherwise agreed upon in writing. General and special Buyer's conditions which are contrary to our general terms and conditions are valid and applicable only and in so far as they have been accepted by us expressly and in writing.