

**1 General**

- 1.1 These Terms & Conditions of Supply shall apply to all quotations and order confirmations issued by Eugen Seitz AG (hereinafter called "Supplier"). Any other conditions stipulated by the party ordering goods from the Supplier (hereinafter called "Customer") shall only be valid if expressly acknowledged by the Supplier in writing.
- 1.2 A contract for the supply of goods shall be deemed to have been entered into upon receipt of the Supplier's written acknowledgement stating acceptance of the purchase order (order confirmation). Quotations which do not stipulate a time limit for acceptance shall not be binding.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in written text which are transmitted by, or recorded on, electronic media shall equate to written declarations if agreed in writing by the parties.
- 1.4 Should individual provisions of these Terms & Conditions of Supply be invalid or inoperable or become invalid or inoperable after conclusion of contract then this shall not affect the validity of the Terms & Conditions of Supply for the rest. Any invalid or inoperable provisions shall be replaced by such valid and operable provisions as most closely reflect the commercial objectives which the Supplier had in mind when including the invalid or inoperable provisions.

**2 Scope of supplies and services**

The goods and services provided by the Supplier shall be specified in full in the order confirmation and in any appendices thereto.

**3 Plans and technical documents**

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Specifications set out in technical documents shall only be binding if expressly stipulated as such.
- 3.2 It is the Customer's responsibility to ascertain the suitability of the ordered goods for the intended purpose or application. Any assurances given by the Supplier must be confirmed in writing to be valid.

**4 Intellectual property rights**

Under these Terms & Conditions of Supply or a contract governed by them, the industrial property rights of the Supplier, or the existing industrial property rights to the supplied goods, shall not pass to the Customer (industrial property rights might specifically include patents, prototypes, copyrights, trademark rights, database rights, know-how and proprietary information, but this list is not exhaustive). Any designs, drawings and goods provided by the Supplier may not be duplicated, circulated, copied or subjected to a reverse engineering process without the prior written consent of the Supplier. Nor may the Customer remove, conceal, cover or alter trademarks, labels or other distinguishing marks which are stamped, printed or otherwise placed on the supplied goods without the prior consent of the Supplier.

**5 Confidential information**

No confidential information of any kind may be disclosed or made accessible to third parties except for the purpose of making and purchasing the goods pursuant to these terms and conditions, unless the receiving party obtains the written consent of the disclosing party to do so. The duty to maintain confidentiality shall apply at all times during the term of any contract governed by these Terms & Conditions of Supply and for a period of 5 years following expiry or cancellation of the contract. It shall cease to apply in respect of information which was public knowledge at the time of its disclosure, without any negligence on the part of the receiving party, or information which is disclosed by order of law or official directive. The disclosing party shall be entitled to ask the receiving party in any given case to return all confidential information in its possession immediately following expiry or prior cancellation of the contract (irrespective of the reason).

**6 Prices**

- 6.1 All prices are quoted strictly net ex works, excluding Swiss Value Added Tax (VAT), where applicable, and excluding packing, without any deduction whatsoever.
- 6.2 The Supplier reserves the right to add an appropriate amount to the agreed prices if the delivery time is subsequently extended for one of the reasons set out in subsection 9.3 or if the documents furnished by the Customer were not in conformity with the actual circumstances or were incomplete..

**7 Terms of payment**

- 7.1 Payments shall be made strictly net at the Supplier's domicile, without any deduction for cash discounts, expenses, taxes, levies, fees, duties and suchlike.
- 7.2 Unless agreed otherwise in writing, payments must be made within 30 days of invoice date.
- 7.3 If the Customer defaults on payment, the Supplier may, without prejudice to any other rights or claims which may ensue, choose not to supply the goods or to cancel the contract and charge the Customer interest on the overdue amounts at an annual interest rate set at 4 percentage points above the 3-month Swiss franc (CHF) LIBOR rate applicable to the period in which these amounts are overdue.

**8 Reservation of title**

- 8.1 Title to the goods (with the exception of software) shall pass to the Customer as soon as the Customer has paid the Supplier for the goods in full. Upon entering into the contract, the Customer, if based in Switzerland, shall effectively authorise the Supplier to enter the reservation of title in the official register and to comply with all the necessary formalities in this regard at the Customer's expense.
- 8.2 Notwithstanding the above, the risk of loss or damage of the goods shall pass to the Customer on their delivery. The Customer shall receive the goods in acceptable condition and shall duly insure the full purchase price of the goods in the name of the Supplier and provide proof of said insurance cover on request.
- 8.3 Until such time as the title passes to the Customer, the latter shall act as bailee of the goods on behalf of the Supplier and shall clearly indicate that they are the property of the Supplier. If the Customer is behind schedule with payment or otherwise in breach of contract, and if the Supplier exercises the right to withdraw from the contract, then the Supplier may ask for the goods supplied under the contract to be surrendered at any time until the title to the goods passes to the Customer. Should the Customer fail to comply with the surrender request within 8 days then the Supplier may resume possession of the goods (without prejudice to any further rights and claims)

**9 Term of delivery**

- 9.1 Unless agreed otherwise in writing, deliveries shall be made "Free Carrier" (FCA Wetzikon), Incoterms 2010. The Supplier shall be entitled to make part deliveries. Agreed delivery dates are to be interpreted as approximate dates unless fixed deadlines are agreed in writing in connection with a fixed-date trading transaction. If no deadline is specified for the delivery then the delivery shall be made within an appropriate period of time.
- 9.2 The term of delivery shall commence as soon as the relevant contract has been signed, all the official formalities have been completed, payments due on placement of the order have been made, any agreed securities have been deposited, and the main technical points have been clarified. The delivery deadline shall be deemed to have been met if the Customer has received notice by the agreed date that the goods are ready for dispatch.
- 9.3 The delivery time shall be duly extended in the following cases:
  - a) If the information required by the Supplier for performance of the contract is not received in time, or if the Customer subsequently changes the specifications,

thereby causing a delay in the delivery of the goods or services;

b) If hindrances arise which the Supplier cannot avert despite using the required care, regardless of whether they arise at the place of business of the Supplier, Customer or a third party. Such hindrances might include epidemics, mobilisation, war, riots, serious disruptions to operations, accidents, labour conflicts, late or incorrect deliveries by subcontractors of the required raw materials, semi-finished or finished goods, the need to scrap important work pieces, official actions or omissions by public authorities, and natural disasters;

c) If the Customer or a third party is behind schedule with its work or with the performance of its contractual obligations, especially if the Customer fails to observe the terms of payment.

## 10 Inspection and acceptance of goods and services

10.1 The Supplier shall inspect the goods and services to the customary extent before dispatch. Any further inspections requested by the Customer must be the subject of separate agreements and paid for by the Customer.

10.2 The Customer is required to inspect the goods and services within a reasonable period of time and to give the Supplier immediate written notice of any deficiencies. If the Customer fails to do so, the goods and services shall be deemed to have been accepted.

10.3 Having been notified of the deficiencies as set out in subsection 10.2 above, the Supplier shall remedy them as quickly as possible, and the Customer shall allow the Supplier time and opportunity to do so.

10.4 A separate agreement shall be required to set out the terms and conditions governing the final inspection and acceptance procedure.

10.5 Deficiencies of any kind in goods or services shall not entitle the Customer to any rights and claims other than those expressly specified in paragraphs 10 and 11 (warranty, liability for defects).

## 11 Warranty, liability for defects

11.1 The warranty period is 12 months, or 6 months in the case of a multiple shift system. The period shall commence when the goods leave the works. If dispatch is delayed for reasons beyond the Supplier's control, the warranty period shall be extended to a maximum of 18 months after notification that the goods are ready for dispatch.

In the case of replaced or repaired parts, the warranty period shall restart and shall run for a term of 6 months after replacement or completion of the repair.

The warranty shall expire prematurely if the Customer or a third party makes inappropriate modifications or incorrect repairs or if the Customer is faced with a defect but does not immediately take all the appropriate steps to mitigate the damage and allow the Supplier time and opportunity to remedy said defect.

11.2 Upon the written request of the Customer, the Supplier undertakes to act as quickly as possible if any parts of the supplied goods are shown to be defective or become unfit for use due to poor material, faulty design or poor workmanship before the expiry of the warranty period, choosing to repair or replace said goods. Replaced parts shall become the Supplier's property in the absence of any explicit relinquishment of ownership.

11.3 Warranted characteristics shall be strictly and expressly identified as such in the specifications. The undertaking shall apply until the expiry of the warranty period and no longer.

If the undertakings as to quality are not met or are only partially met, the Customer shall have recourse to immediate rectification by the Supplier in the first instance. The Customer shall allow the Supplier the necessary time and opportunity to make amends. If the measures taken do not fully make amends or only go some way towards making amends, the Customer may claim a reasonable reduction in price. If, however, the defects are so serious that

they cannot be remedied within a reasonable time, and if the goods and services are not fit for their specified purpose, or the extent to which they can be used for their specified purpose is considerably reduced, then the Customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such cases the Supplier can only be held liable for reimbursing the payments made for the parts affected by the termination.

11.4 The Supplier shall not accept liability for, or extend warranty on, defects which cannot be proved to have their origin in poor material, faulty design or poor workmanship, e.g. defects resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the Supplier, or other reasons beyond the Supplier's control.

11.5 The Customer shall not be entitled to any rights and claims in respect of defective material, design or workmanship and absence of warranted characteristics, other than in the cases expressly specified in subsections 11.1 to 11.4.

## 12 Exclusion of further liability on the Supplier's part

All cases of breach of contract and the relevant legal consequences, and all the rights and claims of the Customer, irrespective of their legal ground, are covered in full by these Terms and Conditions of Supply. In particular, claims for damages, reduction of price, termination of contract or withdrawal from the contract shall not be accepted except in the cases explicitly stated. No claims may be made by the Customer for compensation for damage which does not affect the goods themselves, such as production downtimes, loss of use, loss of orders, loss of profit and other direct or indirect consequential damages. Irrespective of any other provisions, the total liability of the Supplier towards the Customer for claims of any kind for financial losses and other damages based on performance or breach of contract by the Supplier, pursuant to this and all other contracts under these Terms & Conditions of Supply in any one calendar year, shall be limited in any case to 50% of the value of the goods supplied to the Customer in the calendar year. This exclusion of liability shall not apply in respect of unlawful intent or gross negligence on the part of the Supplier, but shall apply in respect of unlawful intent or gross negligence on the part of auxiliary persons. The above exclusion of liability and limitation of liability shall not apply if opposed by conflicting mandatory provisions of law.

## 13 Jurisdiction and applicable law

13.1 The registered domicile of the Supplier shall be the place of jurisdiction for the Customer and the Supplier. However, the Supplier shall be entitled to prosecute the Customer at the latter's registered domicile.

13.2 Legal relations shall be governed by substantive Swiss law to the exclusion of conflict of laws provisions. The United Nations Convention on "Contracts for the International Sale of Goods", signed in Vienna in 1980, shall not apply.

Wetzikon, December 2013