

GENERAL COMMERCIAL CONDITIONS

for the Purchase of
Plants, Plant Components and Services

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1 DEFINITION OF TERMS

1.1 The following definitions apply in these General Commercial Conditions:

PU	=	Purchaser (name of company and address in order)
CO	=	Contractor who is the legal entity responsible for the provision of supplies and services in accordance with the order
FC	=	Final Customer to whom the entire plant is supplied
Entire Plant	=	the entire system or plant, technically or contractually deemed a unit, intended for the Final Customer; the supplies/services to be provided by the Contractor form part of the entire plant
Customer Contract	=	contract between the Final Customer and the Purchaser for the supply of the entire plant
Order	=	contract between the Purchaser and the Contractor with regard to the supplies and services to be provided by the Contractor.
Supplies/Services	=	all supplies and services to be provided by the Contractor in accordance with the order. The term "service" shall also be understood to refer to supplies (deliveries) and services.

1.2 The following definitions shall apply with reference to the step-by-step acceptance of a plant or parts thereof:

Completion of Erection = Completion of the erection of the entire plant, including the no-load test.

The no-load test shall be deemed to be completed at the time the entire facility has been tested without utilities in individual and in full interlocking operation, etc., and all systems, plant components as well as controls and safety installations, etc., have been functionally tested and appropriately set to target values. Furthermore, all control circuits shall be functionally tested and pre-adjusted.

Start of Trial Run = start up = beginning of hot tests = runup of the entire plant under operating conditions.

Performance Test = performance test of the entire plant under continuous full load for a time period specified in the customer contract.

Positive Performance Test = achievement of all specified performance parameters of the entire plant and confirmation of plant operation in accordance with the requirements set out in the customer contract provided that the supplies/services comply with the requirements set out in the contract and are free of defects.

Acceptance = the Final Customer's written confirmation that the entire plant including the Contractor's supplies and services has been completed in accordance with the customer contract and is free of defects. This includes proof that all performance parameters (e.g. capacity, quality of the product, consumption, emissions) have been achieved in a performance test.

2 GENERAL

2.1 Order

The date of the order shall be the date the order is sent. Delivery and service periods begin to run on that day.

The order shall be either confirmed or rejected in writing within 10 days. In the event the Contractor does not confirm the order within 10 days by means of an unconditional order confirmation or commences with the execution of the order, the order shall be deemed as unconditionally confirmed. Notwithstanding the above, the Purchaser may declare withdrawal from the contract before receipt of the aforementioned unconditional order confirmation without the Contractor being entitled to make claims under this title against the Purchaser.

2.2 Significance of Supplies and Services of the Contractor

The supplies and services to be provided by the Contractor shall become an integral part of the complex plant to be erected. Malfunctions in individual services generally cause disturbances to the organisation of the entire project, thus resulting in additional costs, for example in connection with delays that affect the project schedule, claims of third parties, disturbance of logistics, delayed acceptance of the plant by the Final Customer, idle time, etc. The financial consequences are particularly serious for plants erected overseas. For this reason the Contractor shall exercise utmost care in the fulfilment of the contract in order to properly deal with such circumstances. This includes, but is not limited to, the responsibility for collecting all information required to ensure due completion of the order, in particular with regard to transport and conditions at the site and the integration of supplies and services in the plant.

2.3 Quality Assurance

2.4 Pure engineering orders

The Contractor assures that in providing the supplies and services he and his sub-suppliers and subcontractors will apply the principles of

- quality assurance in compliance with the relevant quality standard ISO 9001 and the harmonised EU product standards (such as EN 1090-2, EN 12100, EN 13480, EN 13489,..)
- occupational safety and environmental standards according to the local requirements, standards and laws applicable at each place of supply.

The Contractor has proven expertise and employee competence with regard to

- the EN 1090 series of relevant standards of the Eurocode
- N 9100 in special customer requests from that industry (in case of orders from the aviation and space industry)

and will promptly prove this to the Purchaser and/or Final Customer upon request e.g. by providing references.

2.4.1 For Orders that Include Products and Services

The Contractor generally undertakes to implement the orders in the framework of a QA system and assures that he will apply a QA/QM system in compliance with the following minimum standards:

- ISO 9001, ISO 45001 certification
- EN 1090-1 conformity for the relevant EXC including ISO 3834 certificate
- Procedure instructions (WPQR) according to EN ISO 15612, EN ISO 15613, EN ISO 15614
- Process descriptions for special processes such as e.g. welding, heat treatment

- Welding procedure specifications (WPS) according to EN ISO 15609
- Welding supervisors according to ISO 14731
- Welders according to EN ISO 9606-1
- NDT personnel according to EN ISO 9712 Level 2
- For orders in the field of aviation and space industry, knowledge of EN 9100
- For orders in the field of transformer construction, knowledge of EN 15085 - CL1

2.4.2 Terms and Conditions that Apply to All Orders

The Contractor undertakes to contractually impose all the aforementioned requirements relating to a QA/QM system on his sub-suppliers and subcontractors and to inform the Purchaser thereof in writing before engaging a subcontractor.

The Contractor must submit, on his own initiative, all the relevant QA documents (records) relating to the provision of services to the Purchaser before providing the respective services. The Contractor undertakes to submit to the Purchaser the documentation required for production approval before the start of production and to disclose the persons involved in QA.

Availability of shipment must be advised no later than one week before shipping to ensure that the shipment can be accepted at the premises of the Contractor. Before carrying out a shipment the Declaration of Performance according to BPV (Bautechnische Prüf- und Versuchsanstalt) and CE marking according to MSV (regulations for machine safety) plus the documentation in the official EU language versions required for the project must be submitted. The Purchaser will issue the delivery approval on that basis.

The Purchaser and the Final Customer shall have the right to inspect the quality assurance system, the quality assurance regulations, the quality assurance plan and the production status of the Contractor and his subcontractors at their premises at any time.

Any nonconformity that has an impact on the product quality and cannot be fully corrected despite attempted repair must be immediately disclosed to the Purchaser in writing; the course of action to be taken must be agreed with the Purchaser.

For any nonconformity that has no impact on the product quality the Contractor must obtain a special approval from the Purchaser for which he must submit a written application to the Purchaser. Agreed approaches and approvals issued by the Purchaser do not in any way relieve the Contractor of his contractual obligations, responsibilities and liabilities.

2.5 Validity of the General Commercial Conditions

The subject General Commercial Conditions shall govern the relationship between the Contractor and the Purchaser to the extent that the order does not stipulate any deviations for individual cases.

Any terms and conditions of the Contractor (such as offers, conditions of sale) shall apply only in the event that they have been expressly recognised in written form by the Purchaser. Reference made in the order placed by the Purchaser to offers from the Contractor does not automatically entail recognition of the commercial conditions of the Contractor. The subject General Commercial Conditions shall be considered accepted with the commencement of the execution of the order by the Contractor at the latest.

2.6 Validity of Statements

Any statement made by the Purchaser regarding orders or amendments or additions thereto shall be legally binding on the Purchaser only to the extent that they have been issued in writing by the responsible purchasing department. The Contractor may refer to statements

made by other persons only after immediately informing the responsible purchasing department and the purchasing department has issued a confirmation.

2.7 Clarification of Inconsistencies

The following order of precedence shall apply in the event of inconsistencies in the terms of the contract between the Contractor and the Purchaser:

- the written order
- the annexes mentioned in the written order, particularly the minutes of meetings
- the subject General Commercial Conditions.

To the extent this order of precedence does not give clarification, the best suitability of the Contractor's supplies and services for the purpose intended shall be decisive as pertaining to the scope of supplies and services.

In the event of uncertainty as regards contract performance, the Contractor shall immediately inform the Purchaser. The Purchaser and Contractor shall mutually determine a solution. The Contractor shall undertake to immediately inform the Purchaser of any inconsistencies in the specification.

Headings exclusively serve the purpose of orientation and shall have no bearing on the interpretation of respective articles.

2.8 Contract Language

In the event the contract language is not specifically mentioned in the order, the contract language shall be German.

The Contractor shall ensure that his managerial staff (in any event the management, the project manager and the site manager) speak and write the contract language fluently.

2.9 Statutory Claims

Nothing contained in the subject General Commercial Conditions shall diminish the Purchaser's statutory (legal) rights and claims.

3 PRICES

3.1 Definition of Prices

Unless expressly otherwise stated in the order the prices in the order are understood to be fixed prices that do not include value-added tax and that cover all expenditures of the Contractor as they relate to the provision of the subject-matter supplies and services. This particularly includes all costs for transport, insurance, packing, taxes, customs fees and other charges in connection with the provision of the supplies and services in those countries in which these supplies and services are actually provided. The Purchaser shall be held liable exclusively for costs that are specified in the order as the express responsibility of the Purchaser. The conditions of the main order shall apply to any amendments and additions to the order as well as orders for spare and wear parts.

All costs incurred by the Contractor in connection with capacity utilization, handling, coordination and in the course of project meetings are also included in the fixed, all-inclusive price.

3.2 Basis of Prices

Unless stipulated otherwise in the order, the prices shall be quoted “Delivered Duty Paid” (DDP), in accordance with Incoterms 2020. The price shall include all costs for related documentation, technical inspection, painting, corrosion protection, marking, labelling, etc. The costs and responsibilities for export customs clearance (with the Contractor’s own documentation) for supplies to foreign countries shall also be borne by the Contractor.

4 TERMS OF PAYMENT

4.1 Invoicing

Invoices shall be submitted to the Purchaser (company name and address as on the order) together with all documentation necessary for identification, such as the order number, etc, in a single copy.

In addition to providing the legally required information, Contractors from member states of the European Union shall indicate the following information on all invoices:
the applicable tax rate or reference to tax-exemption status and the movement of goods

- date of issue
- number of invoice
- the VAT identification number of the Contractor/Purchaser

Incomplete or otherwise non-auditable invoices may be rejected.

The rejection of invoices shall imply that respective payment periods are not effective and shall not become effective until the respective invoice has been resubmitted.

4.2 Payment

The agreed (partial) payments shall be made within the agreed period of payment after receipt of the invoice and after all requirements set out in the order, including, but not limited to, the provision of documentation as required, have been fulfilled.

Money transfers shall be conducted in such a way that the fees of the commissioning bank shall be paid by the Purchaser and those of the receiving bank shall be paid by the Contractor (receiver).

Payment shall not be understood as recognition of orderly provision of the supplies and services and does not represent a waiver of the rights of the Purchaser to demand fulfilment, warranty, claims to damages, contractual penalties, etc.

4.3 Retention

The Purchaser shall be entitled to retain agreed monies as a non-interest bearing security to cover any claims for the proper fulfilment of the contract, guarantee or warranty claims as well as claims to damages for up to 45 days after termination of the guarantee period. The same shall apply in the event of insolvency proceedings against the Contractor.

4.4 Final Invoice

The final payment shall not be effected prior to the Contractor’s presentation of a final invoice for the supplies and services performed in accordance with the order as well as the related claims.

By presenting the final invoice the Contractor declares that any and all claims in connection with the respective contract have been asserted and that no further claims will be raised.

4.5 Offset

The Purchaser shall be entitled to offset claims of the Contractor/supplier against claims that companies in which the HABAU Group has a direct or indirect holding of at least 50 % have against the supplier or the Contractor. Furthermore, the Purchaser shall be entitled to offset his claims against counterclaims which the supplier or the Contractor has against one of the companies in the HABAU Group. All the companies which use the registered trade mark, i.e. the word-and-design mark, of the HABAU Group are in any case members of the HABAU Group.

4.6 Retention of Payment

Furthermore, the Purchaser shall reserve the right to retain payment at any time in the event the Contractor does not fulfil his contractual obligations (such as pertaining to quality, schedule, function, etc.) or as long as the Contractor does not remedy errors. The retention of payment shall not authorise the Contractor to interrupt or cease execution of the order.

5 SUBCONTRACTS

5.1 Approval

Entrusting third parties (also Group companies or affiliates or companies/business establishments associated on the basis of a partnership or economic links) with the execution of the whole or parts of the agreed scope of work shall be subject to the prior written approval of the Purchaser.

In the case of subcontracting, the Contractor shall be obliged to pass on all the relevant conditions to the sub-supplier. Upon request, the Contractor shall provide the Purchaser with a copy of each order.

In the event of non-compliance with these obligations, the Contractor shall fully indemnify the Purchaser of all consequences which may arise. Such consequences may result from

- Quality
- deadline risks
- compensation requirements
- technical cross-standardisation
- subcontracting requirements set by the Final Customer
- customs regulations concerning temporary admission, transit, import and transportation

In the event a subcontract has not been approved by the Purchaser, the Purchaser shall, irrespective of any other rights, be entitled to terminate the contract in whole or in part.

Approval of a subcontract by the Purchaser shall not limit the obligations of the Contractor in any way. Even in the event that subcontracts have been assigned, the Contractor shall remain fully responsible to the Purchaser for fulfilment of the entire order. The Contractor shall be held liable for the actions and omissions of his subcontractors as if they were his own actions or omissions.

The Purchaser has the right to settle claims of subcontractors or of suppliers of the Contractor directly and – without having to renounce other rights – may retain these claims on payments due to the Contractor. In such cases, the Purchaser shall inform the Contractor.

5.2 Origin of Supplies/Services

The minimum value of supplies/services from a certain country and the relevant regulations pertaining to certificates of origin required under the regulations of the *Österreichische Kontrollbank* (ÖKB) or other financial or insurance institutions, as stated in the order, shall be strictly adhered to and proven to the Purchaser.

The Purchaser, ÖKB or the respective financial or insurance institution abroad shall be entitled to request verification from the Contractor at any time with such verification being provided free of charge. In addition to the transfer of the exporter's liability to the Contractor by way of a back guarantee to the Purchaser (if agreed upon), the latter shall in case of a breach of the above obligation be fully indemnified by the Contractor with respect to

- additional cost caused by loss of a government-backed export credit for the entire financing period
- the consequences arising, in the event of loss, from withdrawal of the insurance coverage for the commercial or political non-payment risk.

5.3 Inquiries/Countertrade

The Contractor shall send inquiries for items contained in the product/service portfolio of the companies of the HABAU Group to the relevant companies.

Fulfilment of time schedules or any other conditions of the order shall not be affected.

6 DOCUMENTATION

6.1 Significance of Documentation

Documentation includes all written, drawn or otherwise created documents relating to the Contractor's supplies and services and serving to assist the Contractor and the Purchaser in fulfilling their obligations toward their respective contracting partners and the involved authorities in due time and in the most economical manner. Such documentation may be related to manufacture, quality control, potential risks, safety instructions, dispatch, transport, export, transit, import, customs clearance, excise, identification of parts, logistics, storing, erection, commissioning, training, accounting, invoicing, operation, repair, maintenance, procurement of spare parts, etc.

Should the Purchaser make an electronic platform (e.g. Microsoft Sharepoint) available for storing documents, it is obligatory to use it. Any violation or non-observance of this obligation shall be deemed to be a material breach of this agreement.

The preparation and delivery of the documentation shall form an essential part of the Contractor's supplies and services.

The Purchaser shall be granted the right to use the documentation and, *inter alia*, shall be entitled to pass on any documentation received from the Contractor or subcontractors to other contracting partners of the Purchaser and/or to the Final Customer.

6.2 Scope

The documentation shall be submitted to the Purchaser as specified in the order. To the extent not specified in detail, the documentation shall be adequate for the respective case regarding volume, quality standard and due availability and shall be in the prescribed language. All documentation shall be "Delivered Duty Paid" (DDP) to the Purchaser in accordance with Incoterms 2020, unless agreed otherwise.

6.3 Shipping Documents

EINKAUF

Shipping documents shall be in accordance with the Purchaser's shipping and packing instructions. The documents shall clearly state the correct and complete order number, identification number, position and item number as well as the designation of the goods for clear identification of the applicable customs tariffs. The designations of individual items shall be maintained throughout the documentation. In particular, the designations used in the drawings, parts lists, packing lists and shipping documents shall be exactly the same.

6.4 Documentation of Origin

The Contractor shall enclose, free of charge, valid evidence of entitlement to preferential tariff treatment (movement certificate, preferential certificate of origin, certificate of origin, confirmation of origin, declaration of origin, etc.) with the goods supplied across frontiers, as necessary for preferential clearance for import in the country of destination of the goods.

In particular, the certificate shall also include the order number and project number of the Purchaser. The value of goods shall not be indicated.

Unless agreed otherwise, the country of the Contractor shall be the country of origin.

Certificate of Origin

At the request of the Purchaser, the Contractor shall provide at his own cost a certificate of origin certified by the competent chamber of commerce and the competent consulate or embassy, respectively.

Confirmation of Origin

In the event the certificate of origin is made out by the Purchaser, the Contractor shall provide at the request of the Purchaser a confirmation of origin for each single part of his supplies and shall specify the manufacturer (including the exact address) and/or the country of origin.

All fees, duties and extra charges resulting from failure to submit such documents, or from incorrect statements, shall be borne by the Contractor.

6.5 Inspection Documents

To the extent required in each individual case, the inspection documents to be provided by the Contractor shall consist of reports on quality control, test certificates, etc., as well as time schedules and progress reports.

6.6 Erection Documents

In order to ensure orderly and economical erection, the required documents shall be provided in accordance with the time schedule and the actual progress of the erection activities.

6.7 CE Labelling

The Contractor shall be obligated to mark with a CE label all supplies and services which require or permit a CE label and/or a declaration of conformity and submit to the Purchaser all necessary declarations of conformity in the language prescribed for the documentation.

6.8 Recalibration of Testing and Measuring Instruments

If faults are located in testing and measuring instruments during the recalibration procedure, an investigation and documentation of potential negative impacts on preceding measuring procedures is required. If such impacts are identified, the technical project manager in charge at MCE must be informed without delay and the further course of action must be agreed.

7 INSPECTIONS, TESTS, MONITORING

7.1 Tests and Inspections

The Contractor shall allow personnel authorised by the Purchaser or by the Final Customer to carry out inspections on items/activities in connection with the order at any time. This includes the inspection of plans and/or the production insofar as quality and time schedules are concerned, the taking of samples, packaging inspections regarding quality and conformity of the packing list with the contents of the various packages, loading inspections, etc. For this purpose the Contractor shall admit representatives of the Purchaser or of the Final Customer to offices and workshops of the Contractor and subcontractors, make available all records in connection with the contract and shall keep the Purchaser informed of the progress at any time. Possible changes in the time schedule are to be advised immediately.

The Contractor shall carry out a complete inspection program on his own and make available a detailed list of test results (test reports, measuring logs, etc.) before final inspection by the Purchaser's inspection team. At the request of the Purchaser, the Contractor shall be present at the final inspection. The Contractor shall provide free of charge services, material, labour, interpreters, energy, suitable test equipment, testing media, skilled and unskilled workers for moving packages, opening and closing cases/crates, etc., in order to ensure orderly and efficient inspection.

The Contractor shall ensure that all equipment/components are easily accessible and shall take adequate safety precautions. The equipment and components thereof presented for inspection shall be unpainted and pre-assembled, unless specifically requested otherwise. An inspection, whether carried out or waived by the Purchaser, shall not limit the Contractor's obligations and shall in no case be construed as a waiver of any of the Purchaser's rights, including but not limited to penalties, damages, guarantee/warranty claims, etc., even if a respective reservation has not been asserted.

Defects determined in the course of an inspection or test shall be immediately rectified by the Contractor at his own cost.

7.2 Inspection documents

For inspection the required inspection documents, and for packaging inspections the relevant packing lists, shall be provided by the Contractor. Incomplete or incorrect documents may necessitate repeated inspections.

All inspection documents shall be presented to the Purchaser's inspector during inspection and the requested number of copies shall be handed over or sent within an agreed period. In the event an inspection is waived, all documents shall be sent to the Purchaser immediately or within the agreed time limit or at the latest before dispatch of the respective equipment/components.

The inspection documents shall be divided according to position numbers in a clear and logical order with a corresponding index and shall be placed in a file/folder.

7.3 Costs

The Contractor and the Purchaser/Final Customer shall each bear the respective costs for their own personnel and inspection teams.

Should an inspection not be satisfactorily completed for reasons attributable to the Contractor, the Contractor shall bear all costs incurred by repeated inspection.

7.4 Coordination

The Contractor's scope of work includes in any case the ongoing coordination activities with the representatives of the Purchaser and, upon the Purchaser's request, participation in project meetings with the Final Customer.

7.5 Accompanying Activities

If the Purchaser or the Final Customer sees or expects a risk that deadlines or the quality requirements for the provision of supplies/services by the Contractor will not be met, the Purchaser shall inform the Contractor thereof and grant a reasonable grace period, depending on the project, to remedy faulty workmanship and provide evidence thereof to the Purchaser and the Final Customer. Should the Contractor be unsuccessful in this endeavour, the Purchaser shall have the right to take action himself, at the expense of the Contractor, to ensure compliance with deadlines and quality assurance or at least minimise the negative impacts. In case of imminent danger, the Purchaser may do that without granting a grace period. The costs of such measures must be borne by the Contractor.

8 DISPATCH

8.1 Shipping Instructions

The Contractor shall adhere to the Purchaser's shipping and packing instructions.

The Purchaser reserves the right to revise the shipping instructions during implementation of the project if it is deemed necessary. All cost arising from non-compliance with the Purchaser's instructions, e.g. special transportation (air freight) requiring special packing, shall be borne by the Contractor.

8.2 Export Clearance

If the price term contains "cleared for export", the Contractor shall be responsible for customs clearance, using his own documents, and for payment of all associated costs and fees.

8.3 Part Deliveries

Unless otherwise agreed, the Contractor shall deliver or prepare for collection the supplies ordered in complete loads. Incomplete part deliveries are only to be executed or planned after prior agreement with and written approval of the Purchaser. All additional costs/expenses (e.g. transportation and packaging costs, obstructions to assembly, handling fees, etc.) arising due to part deliveries which were neither agreed upon nor approved by the Purchaser shall be borne by the Contractor.

9 DEADLINES

9.1 Delivery Date

For the documentation and engineering services, the date of delivery shall be the date shown in the "received" stamp of the Purchaser or in the taking over certificate of the Purchaser, provided that the documentation and engineering services have been submitted completely and correctly in accordance with the order.

For supplies and services, the date of delivery shall be the date on which all of the Contractor's respective obligations pursuant to the order (including those regarding complete and correct documentation) have been completely fulfilled and all supplies and services are free of defect.

9.2 Delays

The Contractor shall immediately advise the Purchaser in the event it becomes known that the agreed deadlines cannot be met. A full written report of the reasons and expected extent of such delays shall be sent immediately to the Purchaser.

In the event the contract requires the Purchaser to take action by a certain date, the Contractor shall notify the Purchaser verifiably in due time. In the event the Contractor does not request compliance by the Purchaser and comes into delinquency as a result, the Contractor may not hold the Purchaser responsible for default. In the event the Contractor is hindered in duly fulfilling his commitments under the contract as a result of the Purchaser's late delivery despite due notification, the agreed dates and periods shall be extended by no more than the number of days of delay caused by the Purchaser. The Purchaser shall not be held liable for any additional cost. The original contractual dates/periods extended by such delays shall be the new due dates, e.g., for the calculation of penalties, etc.

In the event of possible or actual delays, the Contractor shall be required to minimise such delays by taking all constructive measures, regardless of the cause of such delays.

9.3 Storage

In the event the delivery dates set out in the order are changed for reasons not attributable to the Contractor, the Contractor shall provide adequate storage of the goods at his own risk and his own cost for a period of up to 3 months.

Due payments incurred by such storage may be made against a warehouse certificate or certificate of transfer of property and/or bank guarantee, etc.

In case of storage, shipments in whole or in part shall only be carried out in the event the release has been confirmed in writing by the Purchaser.

9.4 Premature Fulfilment

Deliveries/services prior to the due date shall only be accepted where approved in writing by the Purchaser and shall not advance agreed payment dates.

10 CONTRACTOR'S LIABILITY

10.1 Liability

The Contractor shall in any event be unrestrictedly liable to the Purchaser pursuant to the provisions of the law. The Contractor shall indemnify and hold MCE GmbH harmless in respect of any claims directly or indirectly caused by himself or his employees or any of his subcontractors or performing agents or persons working for him (including consequential damage such as downtime costs, penalties, damaged products, loss of profit) that are made by the customer of MCE and/or third parties. The Contractor shall at all events be liable at least to the extent and for the period MCE is liable to third parties, particularly under the title of damages or warranty or product liability.

10.2 Penalties for Delay

In the event the Contractor does not comply with the agreed time periods, nor meet the intermediate or final deadlines set forth in the order, the following penalties, in each case to be calculated from the total contract value, shall apply for the time that passes until the actual date of delivery. Such penalties may also be deducted from the Contractor's account receivable or any open invoices.

- Supplies and services (including engineering services)
- 1% per week or part thereof for delay, up to a maximum of 10% of the total order value.
- Documentation
- 0.5% per week or part thereof for delay, up to a maximum of 5% of the total order value.

The obligation to pay a penalty for delay, whether through the Contractor's fault or not, shall arise for the Contractor upon occurrence of the delay. The Purchaser shall not be required to prove damage.

The contractual penalty shall be due in the event the Contractor defaults with a partial service or only minute or unimportant defects hinder takeover (acceptance). The basis for calculation of the penalty shall be the respective total order value.

The Purchaser shall reserve the right to assert claims to actual damages above and beyond the contractual penalty.

In the event of a defective supply or service, the time between takeover and the official complaint by the Purchaser shall not be subject to a contractual penalty. Reservations of the Purchaser upon acceptance of the delivery shall not be required to maintain a claim for contractual penalty.

The payment of a contractual penalty shall not relieve the Contractor from his obligation of contract performance and any related liabilities.

11 GUARANTEE

11.1 General

The Contractor is liable not only for the conditions/qualities expressly specified or promised in any other way or to be reasonably expected but also for completeness of his supplies and services and their best suitability for the specific purpose intended. This guarantee particularly covers the suitability of the Contractor's supplies/services for continuous operation of the plant under the operating conditions prevailing at the site, conformity with all standards and regulations applicable at the site (such as safety, environmental protection), uninterrupted availability with adequate performance and consumption data, easy erection, maintenance and repair. The design and manufacture shall represent the most modern state of the art at the time of contractual execution by the Contractor.

Each advertising statement made by the Contractor about his product/services shall be understood as a guaranteed expression of the characteristics of the respective product/service.

11.2 Guarantee Period, Remedy of Defects

Unless a longer period is stated in the order the guarantee period ends 24 months after the date of acceptance of the entire plant, however 36 months at the latest from the date of final delivery in accordance with the order. For steel structures and corrosion protection, the guarantee period ends 60 months from the date of acceptance of the entire plant.

The guarantee period shall be extended by any downtimes caused by defects attributable to the Contractor. In the event of replacement or repair of a part, a new guarantee period equal to the one for the original supply shall apply and shall commence on the date of installation of the new part or completion of the repair.

The Contractor shall not be released from guarantee and warranty obligations by reason of the Purchaser refraining to issue a notification of defects. A notification of defects can be issued by the Purchaser while maintaining full guarantee and warranty obligations of the

Contractor up until six months following the end of the guarantee period. The limitation period pursuant to the contract or provided by law for instituting legal proceedings against the Contractor with respect to guarantee claims shall commence upon expiry of the guarantee period.

The Purchaser shall have no obligation whatsoever to inspect the supplies and services of the Contractor before the agreed functional and performance tests are carried out.

In the event of any defects, including serial defects, even in the event a defect has not yet occurred in all supplies of the same kind, that arise before or within the guarantee period, the Contractor shall carry out all necessary repair on site within the shortest possible time or shall replace the defective item on site in accordance with the Purchaser's instructions. All related services shall be carried out by the Contractor or at the Contractor's expense and any additional costs, such as for transportation, customs, dismantling and erection, shall be borne by the Contractor.

In the event of minor defects (up to approximately EUR 10,000.00 for each individual case) or if immediate repair is imperative (in critical stages such as trial runs), the Purchaser shall be entitled to remedy or have remedied any such defects immediately and without prior notification of the Contractor. Such work shall be carried out at the expense of the Contractor and shall not affect the Purchaser's rights or other claims. The same shall apply in the event the Contractor fails to remedy defects in time, despite having been requested to do so.

11.3 Non-compliance with Guaranteed Characteristics

Even in the event the order includes contractual penalties for defects, non-met guaranteed characteristics or other guarantees (such as performance penalties), the Contractor shall be obligated to ensure that his supplies and services meet the respective intended requirements.

11.4 Liability for Documentation

The Contractor declares that he is aware of the special significance of meeting his obligations with respect to the documentation and that for this reason he is held liable for the consequences of any defaults and defects.

11.5 Liability for Engineering

The Contractor shall guarantee correctness and completeness with respect to engineering services, consultations and documentation.

Specifications regarding the design provided by the Purchaser are not binding and shall be monitored by the Contractor accordingly. Information regarding the design provided by the Purchaser shall not release the Contractor in any way from his obligations to perform his respective services. The Contractor is particularly obligated to inform himself about the actual conditions on site and to consider these accordingly.

The Contractor shall take special note that the information regarding the design provided by the Purchaser relates solely to unbinding concepts geared toward project completion and has not been structurally nor statically nor technically evaluated as to its implementation. The Contractor shall be held fully responsible for his own activities and supplies in spite of the information regarding the design provided by the Purchaser.

11.6 Product Liability

In case of any claim against the Purchaser in connection with the violation of safety regulations or on the basis of domestic and foreign product liability laws/regulations the Contractor shall indemnify and keep the Purchaser harmless and shall be fully liable for all losses and damages

incurred by the Purchaser as a result of such claim provided such claim is based on or ascribable to defects or failures in the supplies and services of the Contractor.

The Contractor shall be obligated to insure himself sufficiently against all risks arising from product liability and, upon request, shall present the Purchaser with the respective insurance policy.

The purchase of this insurance shall in no way limit the obligations and liability of the Contractor, even in the event the Purchaser makes no objection to the presented insurance policy.

11.7 Spare Parts

In the event not otherwise agreed, the Contractor guarantees that the mutually selected spare, wear and exchange parts completely suffice in non-stop operation for a period of 2 years from the time the plant is started up. In the event of any shortages of parts during this period, the Contractor shall supply additional parts "Delivered Duty Paid" (DDP), place of destination to be specified by the Purchaser (in most cases the site) in accordance with Incoterms 2020, free of charge, including packaging. The guarantee period ends 24 months from the date of installation and startup of these parts. The Contractor guarantees availability of spare, wear and exchange parts for a period of 10 years from the end of the guarantee period.

12 ACCEPTANCE

12.1 Performance Test

Generally, the supplies/services will be examined as to their conformity with the contract in the course of the acceptance procedure of the plant as a whole, by performance testing, if appropriate. However, the Purchaser shall be entitled to carry out additional specific tests in order to examine the supplies/services.

12.2 Delay of Acceptance caused by the Contractor

In the event a performance test fails or acceptance is hindered by other defects, the Purchaser shall grant the Contractor adequate time (under due consideration of the consequences for the entire plant) to carry out the necessary repairs/improvements. All costs for labour, material, media, etc. incurred by the Purchaser as a result of the Contractor's unsuccessful performance test shall be borne by the Contractor.

In the event the plant is not accepted within a reasonable time as a result of causes attributable to the Contractor, the Purchaser shall be entitled to the penalties stipulated in the order and/or to a price reduction or to terminate the contract while reserving the right to claim damages.

13 EXPORT LICENCE

The Contractor shall obtain at his own expense all export licences required for the export of the supplies and services, in particular for export to the Final Customer's country.

The Contractor guarantees that, at the time the order is placed, the complete performance of all supplies and services is ensured and not inhibited by any administrative or other restrictions. The Contractor shall indemnify the Purchaser and/or the Final Customer against any damage or loss resulting from any such inhibition or restriction. After the order is placed, the Contractor shall inform the Purchaser in due time of any new export restrictions/inhibitions which may arise and submit details of alternative solutions free of charge.

The Contractor shall be obligated to obtain at his own cost the export licence in due time from the responsible agency at the time that goods/products/manufacturing documentation subject to community export legislation for dual-use goods are transported to a third country.

14 INDUSTRIAL PROPERTY RIGHTS

14.1 Ownership

The Contractor assures that the products delivered, including the documentation, are not subject to any reservation of title by the Contractor or third parties and the products, including the documentation, pass into unrestricted ownership of the Purchaser upon delivery; if this is not the case, the Contractor shall be obliged to pay damages. The Contractor is aware that upon their integration into the plant (products) of the customer of MCE the products become part of a larger object and thus of ownership in the larger object. Therefore, the Contractor expressly guarantees that he will not prevent or obstruct the use of the plant (products) by the customer by claiming any ownership rights and/or limitations on the use whatsoever.

14.2 Third Parties' Rights

The Contractor shall ensure that the use of its supplies and services is not affected in any way by claims of third parties regarding trademarks, copyrights, patents, protected territories, etc., and that no boycott clauses, black lists, etc., are violated.

The Contractor shall immediately inform the Purchaser of any infringement of third parties' rights or any violation of boycott clauses or black lists, etc.

In the event any such infringement or violation is claimed, the Contractor shall fully indemnify and hold the Purchaser and/or the Final Customer harmless against any claims of third parties and shall guarantee the Purchaser and/or the Final Customer unlimited use of the supplies and services, or shall provide other acceptable alternatives free of charge to the Purchaser/Final Customer.

14.3 Obligation of Secrecy

Without the Purchaser's written consent, the Contractor shall neither forward to third parties nor disclose to the public or use for advertising or any other purposes any information related to the order or to the project or any other information obtained directly or indirectly from the Purchaser or the Final Customer, including all information developed and delivered by the Contractor on the basis thereof. In particular, engineering documents provided by the Purchaser and the documentation shall be treated in strict confidence and shall not be used for any purpose other than for executing the respective order. This obligation of secrecy shall also be imposed by the Contractor on any person who receives such information. In the event of a breach of this obligation of secrecy, the Contractor shall also indemnify the Purchaser against third parties' claims.

14.4 Copyright

The property and the exclusive right of use for all drawings, information and know-how made available by the Purchaser to the Contractor remains with the Purchaser. The Contractor acknowledges the Purchaser's exclusive copyright thereof.

14.5 Inventions and Improvements

The Contractor is obligated to inform the Purchaser about inventions and improvements made by the Contractor or the Contractor's staff in connection with the implementation of the order on the basis of information and documentation provided by the Purchaser and at the Purchaser's request in accordance with the applicable provisions of the relevant patent law to

make use of the inventions. The Contractor shall transfer without reservation the invention (patent) with all rights and obligations to the Purchaser against reimbursement of the inventor's compensation and of the cost incurred by the Contractor resulting from the patent application.

The utilisation of the invention, the application for a patent and the determination of reimbursement to which the inventor is entitled by law will be agreed upon mutually by the Contractor and the Purchaser, in the course of which the Contractor shall take all necessary measures.

The Contractor shall ensure that its subcontractors will take on a similar obligation in favour of the Purchaser.

14.6 Follow-up Orders

In order to protect the know-how obtained by the Contractor from the Purchaser in connection with the contract and to ensure optimal operation of the entire plant also after expiration of the warranty period, the Contractor shall not conduct any direct business with the Final Customer or its representatives for a period of 10 years with respect to follow-up orders for the plant from the date of final delivery. The Contractor shall not submit direct nor indirect offers to the Final Customer with respect to spare and wear parts without agreement of the Purchaser as a marketing partner.

15 FORCE MAJEURE

The Contractor shall be released either fully or partially from his obligation to meet deadlines in fulfilment of the contract in the event he is hindered by force majeure.

Events of force majeure are limited to fire, acts of God, war and riot.

In the event the Contractor is impeded by an event of force majeure, he shall only be entitled to claim force majeure if he submits to the Purchaser immediately, or within 5 days at the latest, by registered mail a certificate issued by the authorities or the chamber of commerce of the Contractor's country, confirming the reasons, the commencement date and the expected duration and consequences of the event.

The Contractor shall make every effort to remove or minimise the hindrance caused by force majeure and any consequential damages as well as to continually inform the Purchaser of the current status of affairs.

Dates and deadlines which cannot be kept as a result of force majeure shall be postponed/extended by the duration of the effects of force majeure.

In the event force majeure exceeds 4 weeks, the Purchaser shall have the right to terminate the contract in whole or in part.

The Purchaser shall not be liable to the Contractor for any consequences resulting from negative impacts on contract performance due to force majeure; this applies particularly also to termination by the Purchaser as mentioned in the previous paragraph.

16 TERMINATION OF CONTRACT

16.1 Breach of Contract

In the event of a serious breach of contract that is not remedied by the Contractor after having been granted a reasonable grace period (2 weeks max.), the Purchaser shall have the right to terminate the contract in whole or in part.

The Purchaser reserves the right to terminate the contract without granting a grace period under the following conditions:

- The Contractor receives a reminder requesting fulfilment of contractual obligations and is given a reasonable grace period, even though the reminder does not expressly set a grace period or threaten with termination.
- In the event the Purchaser has reason before the respective due date to assume that the Contractor is not or will not be willing or able to fulfil essential contractual obligations in due time.
- If the Purchaser holds the opinion that granting a grace period e.g. due to the general scheduling situation of the project or imminent danger is not reasonable or appropriate.
- If the Contractor violates his obligations of confidentiality, anti-corruption and antitrust legislation (including, but not limited to, according to article 17.13), the Code of Practice applicable to contractors of the Purchaser, as amended from time to time, the provisions of article 5.1 (approvals relating to subcontracting) or the provisions of article 17.3 (delegation of orders, assignment).

Delays or imminent delays with respect to intermediate or final deadlines or defects that would jeopardise the fulfilment of the Purchaser's obligations toward his contracting partners shall particularly be considered cause for termination of contract, even in the event a respective penalty is attached.

In such cases the Purchaser shall reserve the right to execute the deliveries and services not performed or insufficiently performed by the Contractor at the cost of the Contractor or to have them executed. The costs incurred in this respect can be either directly invoiced by the Purchaser with an agreed payment period of 45 days after invoicing or deducted from the next due payment made by the Purchaser to the Contractor.

The Contractor shall immediately reimburse the amounts already paid by the Purchaser for supplies and/or services not performed, including all related financing costs incurred by the Purchaser.

In the event that substituted services require access to equipment or materials at the Contractor or sub-suppliers, the Contractor shall be obligated to provide this equipment and/or materials to the Purchaser.

In the event that substituted services require access to protected privileges, to documentation (such as workshop drawings, calculations) or other information, the Contractor shall be obligated to provide the required privileges, documentation or information to the Purchaser.

Right of Use

In case of termination or cancellation of the contract the Purchaser and/or the Final Customer has the right to use the supplies and services of the Contractor free of charge until acceptance of an alternative solution.

16.2 Credit-Worthiness of the Contractor

In the event of bankruptcy or insolvency proceedings imminent or instituted against the Contractor or its sub-suppliers, or in the event of changes to the status of ownership of the Contractor, the Purchaser shall be fully informed by written notice without delay. In the event of bankruptcy or insolvency proceedings against the Contractor, or in the event of changes to the status of ownership of the Contractor, the Purchaser may immediately take over the products/services stored with and being processed by the Contractor and/or his sub-suppliers and/or terminate the contract in whole or in part.

16.3 Transferral of Goods for Use

In the event of cancellation in accordance with articles 16.1 and 16.2 of the subject General Commercial Conditions, irrespective of his other contractual or legal claims, the Purchaser shall reserve the right to use the tools and the erection equipment such as cranes, scaffolding, etc., of the Contractor for the completion of the activities to be carried out by the Contractor in accordance with the contract. The use of this equipment shall be reimbursed in an adequate amount which shall be deducted by the Purchaser from claims to damages or other valid claims against the Contractor. The Contractor expressly agrees at this time to the above transferral of goods for use.

16.4 Cancellation

The Purchaser reserves the right to cancel the contract either partially or in full without any reason attributable to the Contractor. In this case the Purchaser shall be obliged to pay the Contractor that portion of the contract value which corresponds to the supplies and services already delivered, plus verified direct cost related to work in progress plus compensation payable to its subcontractors, excluding any further claims. After the Contractor has received notice of cancellation, he must make every effort to minimise all cost reimbursable by the Purchaser and, upon request, hand over the supplies/services stored or being processed by him or his sub-suppliers.

16.5 Suspension

The Purchaser shall have the right to call for a suspension of the work at any time. In such case the Contractor shall specify in detail to the Purchaser all the consequences resulting therefrom and suggest the best possible and most economical scheduling alternatives available for the further implementation of the project. The Contractor shall not claim any damages resulting from an interruption period of up to a maximum of 3 months.

17 OTHER TERMS AND CONDITIONS

17.1 Transfer of Risk

For transfer of risk the regulations contained in Incoterms 2020 shall apply. However, in the event the erection of the supplies is included in the scope of work of the Contractor the risk shall transfer to the Purchaser upon acceptance.

17.2 Transfer of Property

The transfer of property to the Purchaser shall take place simultaneously with the transfer of risk.

17.3 Erection Equipment

Equipment for erection and commissioning, etc., required for temporary use at the site shall remain the property and within the full responsibility of the Contractor. The Contractor shall particularly indemnify the Purchaser against any costs arising from the export and import of such equipment.

17.4 Insurance

Unless otherwise agreed in particular, the Contractor shall be responsible for obtaining all insurance coverage considered to be necessary. Such insurance coverage obtained by the Contractor shall contain a waiver of subrogation in favour of the Purchaser and the Final Customer.

Unless the order contains any alternative provisions, the following applies: where the order value is above EUR 10,000.00, the Contractor must maintain business liability, product liability and planning liability insurance in accordance with international standards for the order, ensuring minimum coverage of the equivalent of EUR 10,000,000.00 per claim for damage to property and for financial loss including purely financial loss, maximised at least 2x a year i.e. EUR 20,000,000.00/year until the order has been fulfilled, and to provide evidence thereof upon request of the Purchaser within 3 days.

In the event the Contractor is co-insured or otherwise covered by an insurance policy taken out by the Purchaser, the Contractor shall accept the respective insurance conditions as binding on himself. The Contractor shall therefore also adhere to all respective obligations, such as providing all the required information, following instructions, complying with stipulations, etc.

17.5 Power of Attorney

The Contractor shall be obligated to name those persons at the time of order confirmation at the latest who are authorised to make and receive legally binding declarations. In the event the Contractor fails to name such persons, those who actually act on his behalf shall be deemed as duly empowered.

17.6 Liability toward the Contractor

The Purchaser shall not be liable for losses or damages caused by the Final Customer or any third party.

17.7 Third Parties' Claims

The Contractor shall fully indemnify the Purchaser for all claims of third parties caused by defects in, or improper execution of, the Contractor's supplies and services.

17.8 Transfer of Order/Assignment

A transfer of the order placed by the Purchaser in whole or in part to one or more other suppliers or third parties shall require the explicit agreement of the Purchaser. The Contractor may assign receivables under the contract. The Contractor shall be required to inform the Purchaser of the intended assignment of receivables in writing at least 4 weeks before the assignment.

In the case of assignment, a fee for increased administrative expenses and other associated disadvantages for the Purchaser at a rate of 2 % of the contract amount but at least € 500.00 plus VAT will be withheld or charged. The same shall apply where insolvency proceedings are instituted.

17.9 Changes to Services

The Contractor shall notify the Purchaser of any possible improvements to the supplies and services that come to his attention and offer such improvements to the Purchaser. However, any changes to the supplies and/or services under the contract shall require an additional order.

17.10 Statutory Liens/Rights of Retention

The Contractor shall not create or do anything which would result in the creation of any statutory lien, encumbrance, right of retention or any other kind of security on the free-issue parts provided by the Purchaser or on the supplies/services or any part thereof.

The Contractor shall ensure that a similar provision is included in each of his subcontracts.

17.11 Reorganisation

The Contractor must inform the Purchaser without delay of the initiation, annulment or cancellation of reorganisation proceedings in accordance with the company reorganisation law or a similar procedure or any procedure taking place prior to insolvency proceedings or preventing insolvency proceedings under the laws applicable at his registered office, and report on the status of the reorganisation to the Purchaser at monthly intervals during the reorganisation proceedings.

17.12 Severability Clause

In the event that individual stipulations of the subject General Commercial Conditions become invalid, ineffective, illegal or unenforceable, this shall have no influence on the validity of the remaining stipulations.

In such an event the Contractor and the Purchaser are obligated to mutually agree on a stipulation that will replace the stipulation that has become invalid, ineffective, illegal or unenforceable. The mutually agreed stipulation shall come as close as possible within the bounds of the law to the economic intent of the original stipulation.

17.13 Anti-corruption Clause and Code of Practice

The Contractor assures and undertakes that he will neither directly or indirectly offer third parties any advantages nor directly or indirectly accept for himself or for others any gifts or payments or obtain or promise or solicit any other advantages that are or could be considered illicit practices or bribe.

The Contractor shall be required to pass on the above declaration and undertaking to his subcontractors and suppliers.

In the case of infringement of this obligation the Purchaser shall have the right to terminate the contract with immediate effect. Additionally, the Contractor must fully indemnify and keep the Purchaser harmless in this respect.

Moreover, the Contractor shall be required to ensure compliance with the Code of Practice for subcontractors and suppliers.

17.14 Data Protection

The Contractor explicitly agrees to the electronic storage, processing and transfer of his data within the Group of the Purchaser.

18 APPLICABLE LAW AND PLACE OF JURISDICTION

18.1 Applicable Law

The order and these General Commercial Conditions as well as the contract based thereon are subject to the laws of Austria excluding its conflict of law rules and excluding the UN Convention on Contracts for the International Sale of Goods of 1980.

18.2 Place of Jurisdiction

Any dispute directly or indirectly arising out of the order and these General Commercial Conditions and the contract based thereon shall be settled by the competent court in Linz.

For the Purchaser

For the Contractor

.....
Date/Signature

.....
Date/Signature