



ENVIROTEC®

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General Delivery Conditions

I. Offer

1. First offers are, as a rule, submitted free. All further offers and draft work are free of charge only, if the supply agreement is constituted as a valid contract remaining in force as such.
2. Any illustrated matter, drawings, weights, dimensions and other data included in the offer constitute an approximate guide and shall not be binding save to the extent that they are expressly so described. Likewise, the dimensions and weights included in prospectuses shall, in detail, not be binding with respect to the performance of delivery and erection, as they are subject to the improvements in design that the Vendor shall be allowed to make during execution of the order.
3. The Vendor shall be entitled to retain ownership of the property and the copyright in all estimates, drawings, plans and other data, including those owned by the firm ENVIROTEC Gesellschaft für Umwelt- und Verfahrenstechnik m.b.H.; they may not be made available to a third party, especially competitors, and must be returned to the Vendor without delay, if the order is not placed with him.
4. The Vendor, on the other hand, undertakes not to transmit or communicate to a third party drawings or technical documents, that have been described by the Purchaser as confidential, without his consent.

II. Extent of Delivery

1. The extent of delivery shall be governed by the Vendor's written confirmation of order. Any additional understandings and alterations are subject to the Vendor's confirmation in writing.
2. Unless otherwise agreed in writing, the delivery conditions of the Vendor shall apply exclusively, even if the order has been placed in accordance with the buying conditions of the Purchaser.
3. The safety devices attached to machines and other parts delivered by the Vendor comply with the statutory provisions. Any additional safety devices will only be supplied with the machines, if it is expressly so agreed.

III. Price and Payment

1. The offers submitted by the Vendor shall be without engagement.
2. Unless otherwise agreed, prices shall be deemed to apply from the Vendor's works in Hasselroth. The cost of packing, loading, erection and starting of the machines shall be borne by the Purchaser as well as any increase in prices which is due to a change in the price of materials and wages, public charges or taxes, and has taken place after the offer has been made by the Vendor.
3. Unless otherwise expressly agreed, payment shall be made net cash and free to the Vendor's paying agent in the manner hereinafter described:

- (a) If delivery is effected within the Federal Republic of West Germany:

Payment on account of $\frac{1}{3}$ of the amount payable under the Contract, after receipt of the confirmation note, $\frac{1}{3}$ of the amount payable under the Contract, after notice has been given by the Vendor that the machines are ready for dispatch,

the balance within one month after delivery has been made. If shipment is delayed as defined in section V,

paragraph 3 hereof, payment of the purchase price still unpaid will, if cash payment has been agreed, become due when the goods are ready for shipment, whereas in the case of delivery on account, the time of storing the goods is deducted from the period of the credit.

- (b) If the goods are sold abroad:

Payment on account of $\frac{1}{2}$ of the amount payable under the Contract, after receipt of the confirmation note,

$\frac{1}{2}$ of the amount payable under the Contract before shipment is made, by way of an irrevocable confirmed letter of credit opened in favour of the Vendor. Payment of all accounts covering the expenses of erection shall be made immediately after receipt of such accounts.

- (c) Cheques and bills - bills only if expressly agreed upon by the parties - will be taken in fulfilment only. Any discounts, collection and other expenses shall be borne by the Purchaser.

4. Any delay by the Purchaser in making any payment shall be subject to banking interest on arrears which will be charged by the Vendor. This interest shall be two per cent (2 %) above the official rate of discount of the German Central Bank, in any case not less than five per cent (5 %), without any actual notice the Purchaser being required.

5. The Purchaser shall not be permitted to retain or set off any amount payable for the purpose of setting any possible counter-claims that have been disallowed by the Vendor.

6. The assignment of his claims by the Vendor shall not be excluded.

7. If the Purchaser delays in fulfilling an obligation arising out of a contract, especially in respect of payments, the Vendor shall be entitled to refuse to fulfil his own obligations under all agreements entered into between the Purchaser and the Vendor until such payment has been made by the Purchaser, or he may terminate the Contract.

8. Provided that if an information on the Purchaser's situation should prove insufficient after the Contract has been entered into, the Vendor may either refuse the fulfilment of his own obligations until payment is made or security given for it, or he may terminate the Contract.

9. In the case of grace terms being used, the Vendor reserves the right of refinancing the credit to be granted through a bank and offering a credit bank such credit for coverage. All demands resulting therefrom, e.g. information on the financial condition of the Purchaser, securities which may be necessary to ensure that payment will be received by the Vendor, the issue of statements required by a bank for refinancing purposes as well as the provision of bonds shall be deemed to be a substantial obligation of the Purchaser under the Contract. If the Purchaser fails or refuses to fulfil these obligations for any reason whatever, the Vendor's right of non-performance of his obligations as defined in paragraph 7 hereof shall apply accordingly.

IV. Delivery Period

1. The delivery period shall run from the date on which the confirmation note has been mailed by the Vendor, but shall not commence before all documents, approvals and releases have been furnished by the Purchaser and all payments in advance provided for in the Contract have been received by the Vendor.

2. The delivery period shall apply from the Vendor's works in Hasselroth. Delivery shall be deemed to have been effected in due time after the goods have left the Vendor's works or notice has been given to the Purchaser that the goods are ready for dispatch.

3. The delivery period shall be reasonably extended in the case of any unforeseen circumstances which are beyond the control of the Vendor (no matter whether this happens in the Vendor's works or to his suppliers), e.g. Acts of God, mobilization, war, insurrection, wearing away of an important workpiece or other delays in the completion of essential parts which are not due to a fault of Vendor, delay in transit, down times, strikes and lockouts, as well as any delay in the delivery of essential raw and building materials for which the Vendor cannot be held liable, provided that all the circumstances mentioned above prove to have a strong bearing on the completion or delivery of the goods to be supplied under the Contract.

Likewise, the Vendor shall not be liable for any of the said circumstances, if they intervene during an already existing delay. The Purchaser shall, as soon as possible, be given notice of the intervention and on the cessation of any such circumstance.

4. Should delay in delivery be caused by an actor omission of the Vendor or any reasons other than those named above, and if the Purchaser has suffered a loss, he shall, to the exclusion of any other remedy, be entitled to claim damages for the loss suffered by reason of the Vendor's failure to deliver in due time. This claim can be set up after the extension of the delivery period of 14 days, which was fixed by registered letter, has expired, and if the delay exceeds one month commencing on the expiration of this additional period agreed upon. The amount of damages shall be ½ per cent for each complete week of delay; but shall not exceed a total of 3 per cent of the price payable for that portion of the goods supplied, which could not, in consequence of the failure, be put to the use intended.

In all cases where delivery has been delayed, such payment of damages shall be to the exclusion of any other remedy of the Purchaser, even after the additional period, which may have been granted by the Purchaser, has expired. This provision shall be without prejudice to the right of the Purchaser to terminate the Contract as defined in section X hereof.

5. If the Purchaser requires dispatch of the goods to be postponed, he will be charged with the cost of storing the goods in the Vendor's premises, commencing one month after notice has been given to the Purchaser that the goods are ready for dispatch. The minimum of such cost will be ½ per cent of the invoice amount for each month's delay.

After the futile lapse of a reasonable period having been fixed, the Vendor shall be entitled to avail himself of the goods at his option and make delivery to the Purchaser within a reasonably extended period.

6. The Vendor's performance of this obligation to deliver in due time shall be subject to the Purchaser's performance of his obligations under the Contract.

V. Passing of the Risk and Acceptance

1. Every risk shall pass to the Purchaser, after the goods have been dispatched. This shall also apply to any partial deliveries or where delivery is made free of freight or on terms F.C.B. and C.I.F. as well as in all cases where any additional obligations, e.g. transport to the building site and erection, etc. have been incurred by the Vendor.

2. Provided that if the Purchaser so stipulates, the Vendor shall, at the cost of the Purchaser, insure the goods against damage in transit.

3. If delay in dispatch is due to any circumstance beyond the Vendor's control, the risk shall pass to the Purchaser at the

date the goods are ready for dispatch. However, if required by the Purchaser, the Vendor shall insure the goods at the cost of the Purchaser.

4. Any objects delivered, even those showing some minor defects, shall be accepted by the Purchaser without prejudice to any of his rights as defined in section IX hereof.

5. Unless otherwise agreed, the goods shall be packed in a normal and useful way. The net cost of such packing, which is not returnable, shall be borne by the Purchaser.

6. Partial deliveries shall be permissible.

VI. Erection

The Vendor, if required by the Purchaser, shall place one or more mechanics at the disposal of the Purchaser for erection and starting of the machines supplied. Any such erection shall be subject to the special conditions of erection laid down by the Vendor.

All accounts covering the cost of erection of the plant will be rendered at the Vendor's option weekly or monthly or after assembly has been completed.

VII. Taking Delivery

If the Vendor has not received any reasonable complaint by registered letter within 8 days after delivery of the goods, provided that they comprise spare parts only, has been taken by the Purchaser, acceptance of such goods shall be deemed to be binding on the part of the Purchaser. Where acceptance certificates are issued, particularly in respect of complete plants, the day of acceptance shall be that date which has been registered by the representative of the Vendor.

VIII. Retention of Title

1. The Vendor retains ownership and title to all goods delivered, until the Purchaser has satisfied all claims of the Vendor. These to include extra claims and compensation claims.

2. The Vendor is entitled to insure the goods against theft, breakage, fire, water and other damage. This insurance to be paid by the Purchaser, unless the Purchaser himself has taken out such insurance, which must be confirmed.

3. The Purchaser may use the goods in combination with other goods to ensure normal technical operation. The Vendor acquires joint ownership of the products of such operation as specified in this section. Purchaser will transfer joint ownership to the Vendor. Should the Purchaser acquire exclusive rights to the resulting development it is agreed that he will transfer proportional joint ownership to the Vendor. The extend of the Vendor's joint ownership is related to the value of the equipment supplied and to the value of products resulting from such joint operation. The Purchaser agrees that all costs arising from the joint ownership will be to the account of the Purchaser.

4. The Purchaser is entitled to sell the goods under normal commercial conditions. The Purchaser assigns to the Vendor any claims arising from the resale of goods with reservation of title, including extra titles, independent of processing of the goods. The Purchaser is entitled to call up the assigned claims. Should the Purchaser fail to meet his contract obligations, particularly regarding payment delay, the Vendor is entitled to cancel this right to call up. In this event, the Purchaser is obliged at Vendor's request to provide all information necessary for call up immediately. In particular this includes information as to whom he resold the goods and to which claims he is entitled to resulting from this resale. The Purchaser must allow the Vendor to check the existence of assigned claims using the Vendor's qualified accountant. The Purchaser will notify the debtor of the situation

5. The Purchaser must not pledge any goods supplied by the Vendor to a third party or pledge them as security. In case of any distraint, requisition and similar intervention of a third party to the goods or to the above assigned claims, the Purchaser shall notify the Vendor without delay and provide all necessary documentation and assist in any negotiations.

6. Should the Purchaser fail to make his payments on time or fail to meet the agreed conditions of the contract, the Ven-

dor is entitled to take back the goods, without necessarily terminating the contract. To do this he is entitled to use the Purchaser's premises. Should the vendor take up reservation of title, take back or pledge the goods, this shall only be deemed to be a cancellation of the contract if the Vendor so informs formally in writing. Having given notice with an appropriate deadline, the Vendor may then take possession of the goods. Any costs involved to be to the account of the Purchaser less agreed costs borne by the Purchaser in cancelling the contract. Any application to commence an insolvency procedure entitles the Vendor to cancel the contract and ask for immediate return of the goods.

7. At the Purchaser's request and choice the Vendor must release the securities, to which he is entitled by the reservation of title, providing its realizable value exceeds the secured claims by more than a total of 10 %.

8. Until the balance of payments due to the Vendor at the end of each year has been cleared, the Purchaser shall notify the Vendor without delay of any distraint, requisition and similar intervention by a third party in respect of the Vendor's right to the property and shall bear the cost of such intervention, if any.

IX. Warranty for Defects in the Goods

After the conditions of payment agreed by the parties have been fulfilled, the Vendor shall be liable, as hereinafter set forth, for any defect that as appeared in the goods delivered, inclusive of any warranted qualities missing, such liability being to the exclusion of any other remedy of the Purchaser.

1. The Vendor shall at his cost and in the manner as to him seems fair and reasonable repair all parts or supply parts in replacement thereof, which within a period of 6 months (or 3 months, if the goods are used more intensively) from the date they have been put into operation or the date stated in the certificate of acceptance (if any) have become defective or substantially vitiated and which can be proved to have been put in such damaged state due to a cause existing before the risk has passed, e.g. faulty design, materials and workmanship. The Purchaser shall notify the Vendor in writing without delay of any such defects that have appeared.

Any parts which have been replaced by new ones shall become the property of the Vendor and shall be returned free to the station Langensfeld.

2. If dispatch, erection or starting of the plant is delayed without the Vendor's fault, the liability of the Vendor shall expire at least 9 months after the risk in the plant has passed.

3. The Vendor's liability in respect of outside products shall be limited to the assignment of claims the Vendor may have on the supplier of such outside products.

4. The right of the Purchaser to set up a claim in respect of defects shall become barred within 6 months from the date the defect has been duly notified, but not earlier than the guarantee period has expired.

5. The liability of the Vendor does not cover any defects which are due to the following causes:

Unsuitable and improper use, faulty erection and/or starting by the Purchaser or a third party, wear and tear, incorrect or careless operation - particularly excessive load -, unsuitable working materials, substitute materials, faulty construction work, unsuited building site, chemical, electrochemical or electrical effects that cannot be referred to a fault on the Vendor's part.

6. After agreement with the Vendor the Purchaser shall give the latter sufficient time and opportunity to remedy the defective parts or to supply parts if replacement thereof in a manner as to him seems fair and reasonable, failing which the Vendor shall be under no liability in respect of defects. Where any remedy of defects by the Purchaser himself or a third party should be urgently required for reliability of operation or the Vendor delays in remedying the defect, the Purchaser, upon notifying the Vendor in writing without delay of any such necessity, shall be entitled to act in the said way and recover from the Vendor a reasonable amount for the expenses thus incurred.

7. The direct cost of repair and/or parts supplied in replacement of defective parts, the Purchaser is entitled to claim from the Vendor - provided that such claim proves to be legitimate -, shall comprise the cost of any replacement parts delivered, including dispatch as well as the due cost of removing or installing such parts, and furthermore all the expenses of placing mechanics or assistants, if any, at the disposal of the Purchaser if this can be reasonably required with regard to the circumstances of the particular case. All costs in addition to those stated above shall be borne by the Purchaser.

8. The liability of the Vendor in respect of the goods delivered under the Contract shall equally apply to those parts which are supplied in replacement of defective parts or have been repaired by the Vendor. The guarantee period granted by the Vendor in respect of the goods supplied shall be extended by the time such goods, in consequence of the repairs which had to be carried out, could not be put to the use intended.

9. The Vendor may refuse to remedy the defects detected, if the Purchaser fails to fulfil his obligations under the Contract.

10. If any alterations or repairs have been executed on the part of the Purchaser or a third party without the written consent of the Vendor, the latter shall be under no liability in respect of the consequences resulting therefrom.

11. Such liability of the Vendor as specified herein before shall be to the exclusion of any other remedy of the Purchaser, especially in respect of any claims based on a loss or defect which has not appeared in the plant itself.

X. The Purchaser's Right of Termination

1. The Purchaser shall be entitled to terminate the Contract, if the Vendor is finally prevented from effecting delivery to the full extent agreed under the Contract before the risk has passed. The Purchaser may further terminate the Contract, if goods of the same kind have been ordered, the Vendor, however, is prevented from delivering the whole quantity and the Purchaser has a legitimate interest in refusing delivery or only part thereof; if not, the Purchaser may reduce the price payable under the Contract accordingly.

2. If delivery is delayed by the Vendor as defined in section IV hereof and the Purchaser, in such case, grants the Vendor an additional period, stating expressly that he will refuse to accept delivery after such extension has expired, and the Vendor fails to deliver within such time, the Purchaser shall be entitled to terminate the Contract.

3. Provided that if the Vendor's inability to deliver occurs during the time acceptance is delayed or is to a cause arising from a fault of the Purchaser, the latter shall be under a duty to effect the performance of his obligations.

4. The Purchaser shall be further entitled to terminate the Contract, if the Vendor has been granted by the Purchaser a reasonable extension of the delivery period, but fails to remedy or improve, within such time, a defect for which he is liable under the Contract. The reasonable extension of the delivery period as aforesaid shall commence not prior to the date the defect and the Vendor's liability therefore have been accepted by the Vendor and demonstrated to him.

5. Such right to terminate the Contract shall be to the exclusion of any other remedy of the Purchaser, particularly in respect of any kind of damage, i.e. also of such damage which did not appear in the goods themselves.

XI. The Vendor's Right of Termination

In all cases of unforeseen circumstances as defined in section IV hereof, provided that they cause a substantial change in the commercial prominence or the substance of the performance or have a strong bearing on the Vendor's works, and if delivery proves subsequently impossible, the Vendor shall have the right to terminate the Contract in whole or in part. Such termination of the Contract by the Vendor shall be to the exclusion of any remedy of the Purchaser in respect of damages.

The Vendor's right of termination shall apply in the same manner to the cases in section III, para 6, 7 and 8 hereof. If the Vendor avails himself of his right to terminate the Con-

tract, he shall, when being aware of the bearing of such an event, notify the Purchaser without delay of his intention as aforesaid, even if an extension of the delivery period has been agreed with the Purchaser.

XII. Jurisdiction

The place of performance shall be Hasselroth; the court in Gelnhausen shall have jurisdiction. In the case of litigation arising out of the Contract, the action may as well be brought before the district court in Hanau, irrespective of the value of the matter in issue. The Vendor expressly reserves the right to institute an action also before the court of the Purchaser's principal place of business. The Vendor shall be further entitled to request that any disputes on technical matters be settled by arbitration in accordance with §§ 1025 - 2048 of the ZPO (Common Law Procedure Acts of West Germany),

disbarring legal proceedings. The place where the court of arbitration is to meet shall be fixed by the Vendor.

In addition, the Vendor reserves the right to request that any dispute which may arise 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.

XIII. Law Applicable

Unless otherwise agreed, all goods delivered abroad shall be governed by German law.

XIV. Force of the Contract

This Contract shall be binding on the parties hereto, notwithstanding the legal invalidity of some particular points of the provisions stipulated hereunder.