



**APPENDIX I : GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY  
SPARE PARTS AND ACCESSORIES  
(DECEMBER 2005)**

**1. Introduction**

The present General Terms and Conditions are binding, subject to changes made by mutual written consent of the parties. They take precedence over all General Terms and Conditions printed on documents issued by the Buyer.

**2. Conclusion of the Contract**

2.1. The Contract is deemed to have been concluded if, after receipt of an order, the Seller confirms in writing that he accepts to execute the order within the period of time stipulated by the Buyer.

2.2. If, upon making an offer, the Seller lays down a time limit for the acceptance of the offer, the Contract is deemed to have been concluded if the Buyer has made his intention to accept the offer known in writing before the expiration of this time limit, on the understanding that no Contract is concluded if no such notice is received within one week after the expiration of this time limit.

2.3. Any changes made to the offer of the Seller are only valid if they are confirmed in writing. All orders made through an intermediary must be confirmed by the Seller directly to the Buyer.

**3. Prices**

3.1 All our prices are ex works without packaging.

3.2. All costs for packaging and shipment are to be paid by the Buyer. The packaging meets the usual standards.

3.3 The prices stated in the above-mentioned Contract are based on the values of salaries and materials at the time on which the Contract is drawn up. If these values undergo unforeseeable changes, for instance on account of government decisions, we reserve the right to adjust the Contract accordingly, until the time of delivery.

**4. Term of delivery**

4.1 Terms of delivery are only indicated by way of information and are not binding for the Seller. Any delays in the delivery do not give rise to any right to compensation, nor to the dissolution or cancellation of the Contract.

4.2. If the Buyer does not take receipt of the goods at the moment at which they are put at his disposal by the Seller, he is not entitled to postpone the due date for the payments to be made in connection with the delivery. The Seller stores the goods at the Buyer's expense and risk. If requested by the Buyer, the Seller takes out an insurance for the goods at the Buyer's expense.

4.3. If non-delivery or late delivery is caused by non-delivery or late delivery by the supplier of the Seller, industrial conflicts and any other circumstances such as force majeure, war, either declared or not, fire, mobilisation, seizure, embargo, riots, interruption of transport possibilities, general shortage of raw materials and other materials, production standstill, limitations on energy consumption, the Buyer waives any recourse against the Seller. Moreover, the Seller reserves the right to terminate the Contract without having to pay any compensation.

4.4. The Seller reserves the right to regard the Contract dissolved by operation of law and without any formal notice in case of bankruptcy or apparent insolvency of the Buyer, as well as in case of any change in the legal situation of the Buyer.

**5. Transfer of risks**

5.1. The goods are sold Ex W.

5.2. The Seller must inform the Buyer in writing of the date on which he is to take receipt of the goods. This notice should be given in time, in order to give the Buyer the opportunity to take the necessary measures.

5.3. If the Seller acts as an intermediary in order to provide the Seller with wagons or any other means of transport or to facilitate customs formalities, he cannot be held liable in this respect; all ensuing costs will be charged at cost price.

5.4. The goods travel at the Buyer's risk.

**6. Payments**

6.1 All payments are made in in the currency agreed in the Contract; the prices are net and free of discount.

6.2. Objections to invoices must be raised in writing within 8 days after the date of the invoice. The Buyer is requested to always indicate the invoice date and number.

6.3 Unless stipulated otherwise, the goods are payable in cash at the Seller's registered office.

6.4 The presentation of a bill of exchange does not alter the place of payment and cannot be deemed to constitute a novation.

6.5 In case of lack of payment in accordance with the payment conditions or in case of non-payment on the due date, the balance of all accounts, including bills of exchange, becomes payable immediately. In addition, the Seller reserves the right to suspend any further deliveries and to regard the Contract as dissolved by operation of law and without any formal notice of default, either entirely or for the part that has not yet been executed, without prejudice to the right to demand payment of a compensation by the defaulting Buyer.

6.6 Any amount that is unpaid on its due date yields interests at a rate of 12 % per year, by operation of law and without any formal notice of default, even if an instalment scheme or a delay is granted. In addition, any amount that is still unpaid on its due date is increased by a compensation amounting to 12 % of the unpaid amount, with a minimum of € 125.-, by operation of law and provided that a formal notice of default is given, even if an instalment scheme or a delay is granted. Costs relating to unpaid bills of exchange or cheques as well as other collection costs are not included in this fixed compensation and are charged separately to the Buyer. The fact that interests are charged does not imply that amounts are not exigible on their due date.

6.7 Under no circumstance can payments of amounts agreed in the Contract be delayed or postponed on account of complaints. The Buyer is not allowed to settle his payment obligation by way of set-off with claims of its own against the Seller.

6.8. All current and future taxes of any kind are payable by the Buyer.

6.9. The Seller is entitled to withhold delivery if after the conclusion of the Contract the financial situation of the Buyer materially deteriorates, or if a deterioration in the financial situation of the Buyer incurred before the conclusion of the Contract becomes known to the Seller only thereafter. In addition, the Seller is entitled at its option to ask either for prepayment or for the provision of a security. If such request is not complied with, after an appropriate grace period, the Seller has the right to refuse performance of the Contract and to claim damages instead. The Seller is entitled to keep advance payments as a security for its damage claims.

**7. Avoidance clause**

If an invoice is not paid on its due date, the Contract will automatically be dissolved by the simple fact that the Seller makes his intentions in this respect known by simple registered letter and without prior notice of default. In such a case, the Seller is entitled to take back the supplied goods without intervention of any courts. In addition, a compensation equalling 12% of the price, with a minimum of € 125.-, will be payable.

**8. Retention of title**

8.1 The Seller is the owner of all goods delivered until the date of full payment of the price (including interests and costs, if any) by the Buyer.

8.2 Nevertheless, the Buyer bears the risk of loss, damage or destruction of the goods (cf. article 5). The Buyer agrees to insure at their purchase price all goods delivered under the present Contract against all risks, including fire, war, strikes, riots and civil disobedience.

8.3 The Seller reserves the right to affix his identifying mark, trademark, serial number or company name on all goods delivered by the Seller.

8.4 The Buyer agrees not to integrate the goods delivered in his immovable property, sell them or transfer them to third parties before full payment has been made.

**9. Complaints – guarantees**

9.1 The Buyer has the obligation to report in writing any visible defects or any visible variations compared to the goods that were ordered to the Seller within eight days after delivery. After this date, the Seller is no longer liable and the goods are not taken back.

9.2 The Seller agrees to remedy any hidden defects of the goods supplied by the Seller which cannot be disputed and which are not the consequence of force majeure or of improper use by the Buyer or by third parties, either by replacing or by repairing these goods. The burden of proof for compliance with the instructions of use lies upon the Buyer.

The obligation to replace or repair the goods only applies to defects that become apparent during a period of six months after the date of the invoice and which defects are notified by the Buyer to the Seller without undue delay. The Seller becomes the owner of the replaced parts. The costs of replacement and return of the parts are paid by the Buyer.

If a notification of defect is made, although no defect can be established for which the Seller would be liable, the Buyer has to compensate the Seller for the costs thereby incurred.

9.3. Save the obligations stipulated in paragraphs 9.1 and 9.2 above, the Seller does not have the obligation to provide any further guarantee or compensation. The Seller will in particular have no obligation to pay any compensation for damage that may have been caused to goods used within the framework of the Buyer's operations nor for losses relating to the professional activities of the Buyer or to the employees for which he is held responsible.

9.4. Furthermore, the Seller will not have the obligation to provide a compensation for such damage on grounds that are not related to the contract.

Where bodily injuries and damage to private goods are concerned, the Seller will not have the obligation to provide a compensation if :

- it cannot be proved that the defects existed at the moment on which the goods were brought into circulation;
- the Seller could not have been aware of the presence of the defects, given the state of the art;
- if the defects are due to the design of the object in which the goods are incorporated or to the instructions of the Buyer;
- the damage is caused through the fault of the Buyer, of the injured person himself or of any person for whom the injured person is responsible (e.g. incorrect manoeuvres, incorrect manipulation, transformations made by the buyer or third parties, etc.)
- the defects are the consequence of the compliance of the goods with imperative provisions of public authorities;
- if the damage is caused by a lack of maintenance or to maintenance carried out without observing the prescriptions contained in the maintenance manual or the maintenance instructions drawn up by the Seller;
- if the damage is caused by the intervention of a third party that is not recognised by the Seller.

9.5. The Buyer will indemnify the Seller against all legal actions instituted by the Seller by third parties on account of the damage described in paragraph 9.4.

If the goods are manufactured in accordance with a plan supplied by the Buyer, the guarantee will in each case be limited to a strict execution of the order in accordance with the plan concerned.

**10. Assembly and commissioning**

10.1. The assembly and commissioning of the delivered goods are not included in the selling price. However, the Seller may agree, under special conditions, to put specialised workers or mechanics at the disposal of the Buyer, at his request. In that case, these workers or mechanics carry out their work under the supervision, at the expense and on the responsibility of the Buyer, who will have to pay the insurance costs in this respect.

10.2 The Buyer has the obligation to provide all assistance, materials and equipment required for the assembly.

**11. Intellectual property rights**

The Buyer acknowledges that the Seller has, with regard to the goods, the processes for their production as well as the prospectuses, catalogues, instructions for use and other technical documents, intellectual property rights such as copyrights (in particular publication, multiplication, modification and realization rights), trademarks, design rights and patents as well as substantial know-how. The said intellectual property rights and the rights relating to know-how are not affected by The Contract and remain, without any restriction, the property of the Seller, except to the extent the Buyer explicitly granted specified utilization rights.

**12. Regulations in destination or transit country**

The goods will be produced by the Seller in accordance with the relevant provisions under the law of the country of the Seller. The Buyer has to inform the Seller, at the latest with his order, of any differing or additional legal, governmental or other regulations and standards which have to be respected with respect to the goods and/or the operation of the goods in the country of destination and/or in the transit country. Failure to do so entails the forfeiture of any warranty or damage claims against the Seller based on the non-compliance with such regulations or standards; it also entails the liability of the Buyer to indemnify the Seller for any related third party claims as well as for costs thereby incurred.

**13. Transfer of the Contract**

Unless the prior written consent of the Seller is obtained, the rights relating to this Contract cannot be transferred to third parties.

**14. Validity of the Contract and the General Terms and Conditions**

Any invalidity or nullity of any of these conditions does not affect the applicability of the other conditions.

**15. Other conditions**

15.1 Weights, dimensions, capacities, output and any other indications in catalogues, brochures, advertisements and illustrations are given by way of information only. They are only binding for the Seller if this is explicitly mentioned in the Contract.

15.2 Plans, drawings and technical documents delivered to the Buyer before or after the conclusion of the Contract are not binding. The Seller reserves the right to make the changes which he deems appropriate before the delivery.

15.3 All such documents remain the exclusive property of the Seller and cannot be reproduced, copied, duplicated or passed on to third parties.

15.4 At the request of the Buyer, the Seller provides illustrated manuals for the adjustment and the maintenance of the goods, as well as spare part catalogues, free of charge. These documents are of a confidential nature and are subject to the limitations described in article 13.3.

15.5 The Seller reserves the right to make changes to the goods in production, without having the obligation to make the same changes to machines delivered in the past.

**16. Disputes**

The Contract is governed by the substantive law of the Supplier's country, with the exclusion of the United Nations Convention on Contracts for the International sale of Goods (CISG). In case of disputes the courts of the registered office of the Seller, have jurisdiction. However, the Supplier shall be entitled to initiate litigation against the Buyer at the latter's domicile or place of business.