

GENERAL SALES CONDITIONS – International -  
February 2022

**PREAMBLE**

1. These General Conditions for sales and deliveries (hereinafter: General Conditions) shall apply exclusively; the Contractor or seller (hereinafter: Contractor) protests against the validity of any opposing or deviating general terms and conditions of the customer, unless the Contractor explicitly consents to their validity in Writing. These General Conditions shall also apply, if the Contractor fulfills the order without reservation in the knowledge of opposing or deviating terms of the Purchaser. All agreements that have been made between the Contractor and the Purchaser with respect to the performance of this Contract are included in this Contract in Writing. These General Conditions shall only apply, if the Purchaser is an entrepreneur in the meaning of § 14 BGB (German Civil Code) and the Contract is made within his entrepreneurial business, or if the Purchaser is a legal person or a trust under public law in the meaning of § 310 para. 1 BGB (German Civil Code). These General Conditions shall also be valid for any future business transactions with the Purchaser

**DEFINITIONS**

2. In the General Conditions the following terms shall have the meanings herein assigned to them:

**"Contract"** shall mean the written Contract between the parties concerning (i) the supply or (ii) the supply and erection or (iii) the erection of the Plant, and all appendices, including agreed amendments and additions to the said documents.

**"Plant"** shall mean all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract.

**"Works"** shall mean the Plant including the erection and other work to be carried out by the Contractor under the Contract. If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

**"Contract Price"** shall mean the payment to be made for the Works. If erection is to be carried out on a time basis and has not been completed, the Contract Price shall be the price for the Plant with the addition of 10 per cent or of any other percentage that may have been agreed by the parties.

**"Site"** shall mean the place where the Plant is to be erected, including as much of the surrounding areas as is necessary for unloading, storage and internal transport of the Plant and erection equipment. "In Writing" shall mean either by document signed by the parties or by letter, telefax, telegram or telex, identifying the sender.

**"Gross Negligence"** shall mean an act or omission implying in a particularly high extent either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission

**PRODUCT INFORMATION**

3. All information and data contained in product brochures and price lists are binding only to extent that they are by reference expressly included in the Contract. Such information and data, however, shall not be considered as guarantees; guarantees require an explicit confirmation by the Contractor in any case.

**DRAWINGS AND DESCRIPTIONS**

4. All drawing and technical documents relating to the Works submitted by one party to the other prior or subsequent to the formation of the Contract shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than erection of the Plant and commissioning, operation or maintenance of the Works. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party
5. The Contractor shall, if so requested by the Purchaser, free of charge provide information and drawings, which are necessary to permit the Purchaser to commission, operate and maintain the Works. Such information and drawings shall be supplied in the number of copies agreed up or at least one copy of each. The Contractor shall not be obliged to provide manufacturing drawings for the Plant or spare parts.

**TEST BEFORE SHIPMENT**

6. If tests before shipment are provided for in the Contract they shall, unless otherwise agreed, be carried out at the place of manufacture during the normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.
7. The Contractor shall notify the Purchaser of these tests in sufficient time to permit the Purchaser to be represented at these tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted by him as accurate.
8. If the tests show the Plant not to be in accordance with the Contract, the Contractor shall without delay remedy any deficiencies in order to ensure that the Plant complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.
9. The Contractor shall bear all costs for tests carried out at the place of manufacture. The Purchaser shall however bear all traveling and living expenses for his representatives in connection with such tests.

**PREPARATORY WORK AND WORKING CONDITIONS**

10. The Contractor shall in good time provide drawing showing the manner in which the Plant is to be erected, together with all information required for preparing suitable foundations, for providing access to the Plant and any necessary equipment to the point where the Plant is to be erected, and for making all necessary connections to the Works.
11. The Purchaser shall in good time provide all installations, and make available the conditions necessary for the erection of the Plant and for the correct operation of the Works. This shall not apply to preparatory work which according to the Contract shall be performed by the Contractor.
12. The preparatory work shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 10. The work shall be completed in good time. In any case the Purchaser shall ensure that the foundations are structurally sound. If the Purchaser is responsible for transporting the Plant to the Site, he shall ensure that the Plant is on the Site in good time.
13. The cost of any necessary remedial work that is due to errors or omissions in the drawings or information referred to in Clause 10 shall be borne by the Contractor. The warranty period as set forth in Clause 54 shall apply.
14. The Purchaser shall ensure that the following conditions are satisfied
  - a) The Contractor's personnel shall be able to start work in accordance with the agreed time schedule and to work during normal working hours. Such work may be performed outside normal working hours to the extent deemed necessary by the Contractor, provided that the Purchaser has been notified hereof within a reasonable time period
  - b) Before erection is started the Purchaser shall inform the Contractor of all relevant safety regulations in force at Site. The erection shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall be taken before erection is started and shall be maintained during erection;
  - c) The Contractor's personnel shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the Site and shall have access to internationally acceptable hygiene facilities and medical services;
  - d) The Purchaser shall free of charge make available to the Contractor at the proper time on the Site all necessary cranes, lifting equipment and equipment for transport on the Site, auxiliary tools, machinery, materials and supplies (including fuel, oil, grease and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) as well as the measuring and testing instruments of the Purchaser available on the Site. The Contractor shall specify in Writing his requirements concerning such cranes, lifting equipment, measuring and testing instruments and equipment for transport on the Site at the latest one month before the start of the erection;
  - e) The Purchaser shall make available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration for the Plant, for the tools and equipment

required for erection, and for the personal effects of the Contractor's personnel;

f) The access routes to the Site shall be suitable for the required transport of the Plant, of parts and equipment

#### **PURCHASERS DEFAULT**

15. If the Purchaser anticipates that he will be unable to comply with his obligations under Clauses 11, 12 and 14 or to receive the Plant on Site and/or to allow the Works to be completed in time, he shall forthwith notify the Contractor in Writing, stating the reason and, if possible, the time when he will be able to comply with his obligations. The provisions of Clause 16 shall apply.
16. If the Purchaser fails to comply with his obligations under Clauses 11, 12 and 14, he shall compensate the Contractor for any resulting costs. The Purchaser shall pay any part of the Contract Price which but for such failure would have become due. In such cases the Contractor may, where practicable, choose to ensure compliance himself at the Purchaser's expense, provided he does so in a reasonable manner. The Contractor shall, after notification in Writing to the Purchaser, be entitled to spend completion of the Works for the duration of the Purchaser's failure. If the Plant is not yet on Site, the Contractor shall arrange for storage of the Plant at the risk and expense of the Purchaser. The Contractor shall also, if the Purchaser so requires, insure the Plant at the Purchaser's expense.
17. Unless completion of the Works is prevented by any such circumstance as mentioned in Clause 62, the Contractor may by notice in Writing require the Purchaser to remedy his default within a final reasonable period. If for any reason for which the Contractor is not responsible, the Purchaser fails to remedy his default within such period, the Contractor may by notice in Writing terminate the Contract. The Contractor shall then be entitled to compensation for the loss he suffers because of the Purchaser's default.

#### **LOCAL LAWS AND REGULATIONS**

18. The Contractor shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works if this has been expressly agreed between the Contractor and the Purchaser. If required by the Contractor, the Purchaser shall provide the relevant information on these laws, regulations and rules.
19. The Contractor shall carry out any variation work caused by changes in laws, regulations and rules referred to in Clause 18, or in their generally accepted interpretation, occurring between the dates of submission of the tender and taking-over. The Purchaser shall bear the extra costs and other financial consequences resulting from such changes, including variation work.
20. If the parties are unable to agree on the extra costs and other consequences of changes in laws, regulations and rules referred to in Clause 18, the Contractor shall be compensated on a time basis for any variation work until the dispute has been settled.

#### **VARIATIONS**

21. Subject to the provisions of Clause 25, the Purchaser is entitled to require variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may suggest such variations in Writing.
22. Requests for variations shall be submitted to the Contractor in Writing and shall contain an exact description of the variation required.
23. As soon as possible after receipt of a request for a variation or after having himself made a proposal for a variation, the Contractor shall notify the Purchaser in Writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and other terms of the Contract. The Contractor shall also give such notice to the Purchaser when variations are required as a result of changes in laws, regulations and rules referred to in Clause 18.
24. If completion of the Works is delayed as a result of disagreement between the parties on the consequences of variations, the Purchaser shall pay any part of the Contract Price which would have become due if the Works had not been delayed.
25. The Contractor shall not be obliged to carry out variations required by the Purchaser until the parties have agreed on - 3 - how the variations will affect the Contract Price, the time for completion and other terms of the Contract.

#### **PASSING OF RISK**

26. The risk of loss or damage to the Plant shall pass to the Purchaser in accordance with any agreed trade term, which shall be interpreted in accordance with the INCOTERMS in force at the date of formation of the Contract. If no trade term has been agreed upon, the INCOTERMS "Ex Works" shall be deemed to apply. Any risk of loss or damage to the Works not covered by the first paragraph of this Clause shall pass to the Purchaser on taking-over of the Works.

Any loss or damage to the Plant and Works after the risk has passed to the Purchaser shall be at the risk of the Purchaser, unless such loss or damage results from the Contractor's negligence.

#### **TAKING OVER TESTS**

27. When erection has been completed taking-over tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract. The Contractor shall notify the Purchaser in Writing that the Works are ready for taking-over. He shall in this notice give a date for taking-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests. The Purchaser shall bear all costs of taking-over tests. The Contractor shall bear all costs relating to his personnel and other representatives.
28. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other material required for the taking-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labor or other assistance necessary for carrying out the taking-over tests.
29. If, after having been notified in accordance with Clause 27, the Purchaser fails to fulfill his obligations under Clause 28 or otherwise prevents the taking-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for taking-over tests stated in Contractor's notice.
30. The taking-over tests shall be carried out during normal working hours. If the Contract does not specify the technical requirements, the test shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the Purchaser's country.
31. The Contractor shall prepare a test-report of the taking over tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the taking-over tests after having been notified in accordance with Clause 27, the test report shall be accepted by him as accurate.
32. If taking-over tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires in Writing without undue delay, new tests shall be carried out in accordance with Clauses 27-31. This shall not apply when the deficiency was insignificant.

#### **TAKING-OVER**

33. Taking-over of the Works takes place:
  - a) when the taking-over tests have been satisfactorily completed or regarded under Clause 29 as having been satisfactorily completed, or
  - b) where the parties have agreed not to carry out taking-over tests, when the Purchaser has received a Contractor's notice in Writing that the Works have been completed, provided that the Works are as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over.
34. The Purchaser is not entitled to use the Works or any part thereof before taking-over. If the Purchaser does so without the Contractor's consent in Writing, he shall be deemed to have taken over the Works. The Contractor shall then be relieved of his duty to carry out taking-over tests.
35. As soon as the Works have been taken over in accordance with Clauses 33 or 34, the period referred to in Clause 54 shall start to run. The Purchaser shall at the Contractor's request in writing issue a certificate stipulating when the Works have been taken over. The Purchaser's failure to issue a certificate shall not affect taking-over according to Clauses 33 and 34.

#### **COMPLETION CONTRACTORS DELAY**

36. The Works shall be considered as completed when they are taken over in accordance with Clause 33 or 34.
37. If, instead of specifying the date for completion, the parties have specified a period of time on the expiry of which completion shall take place, such period shall start to run on the date when the Contractor receives the Purchaser's order or on the date of formation of the Contract, whichever is the later.
38. If the Contractor anticipates that he will not be able to complete the Works in time, he shall forthwith notify the Purchaser in Writing, stating the reason, and, if possible, when completion can be expected.
39. The Contractor shall be entitled to an extension of the time for completion if delay occurs:
  - a) because of any of the circumstances referred to in Clause 62, or

- b) as a result of variation work under Clause 19, or
  - c) as a result of variations under Clauses 21-25, or
  - d) by an act or omission on the part of the Purchaser, or
  - e) as a result of suspension under Clauses 16, 47 or 65. The extension shall be reasonable having regard to all the circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for completion.
40. The Contractor is in delay when the Works are not completed at the time for completion as defined in Clauses 36, 37 and 39.
41. In case of any delay in delivery by the Contractor, the Purchaser - if he can show probable cause that he has incurred damage as a result hereof - shall be entitled to claim a lump sum compensation for default in the amount of 0.5% of the delivery value per completed week, not however more than 5% of the delivery value in total. The right to any further claims for damages and compensation of the Purchaser based on delay in delivery shall be excluded. This shall not apply insofar as the delay in delivery has been caused by a breach of essential contractual obligations and insofar as there is a mandatory liability in case of intentional or grossly negligent actions, or in case of damages to life, body or health of persons; this does not imply a change of the burden of proof to the disadvantage of the Purchaser.
42. The statutory right of rescission of the Purchaser shall remain unaffected, but shall only be given if the Contractor is responsible for the delay. Upon request of the Contractor, the Purchaser shall be obliged to declare within an adequate time period whether - after expiration of the time period - he rescinds the Contract because of the delay in delivery and/or claims damages instead of performance or compensation for expenses, as the case may be, or insists on performance of the delivery.

#### PAYMENT

43. Unless otherwise agreed, payment shall be made as follows: 30 % of the agreed price when the order is confirmed, 70 % of the agreed price at delivery, both without any deductions.
44. When erection is carried out on a time basis the following items shall be separately charged:
- a) all traveling expenses incurred by the Contractor in respect of his personnel and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
  - b) cost of boarding and lodging and other living expenses, including any appropriate allowances, of the Contractor's personnel for each day's absence from the homes, including non-working days and holidays;
  - c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night will be charged at special rates. The rates shall be as agreed in the Contract or, failing agreement, as normally charged by the Contractor. Save as otherwise provided, the hourly rates cover the wear and the tear of the Contractor's tools and light equipment;
  - d) time necessarily spent on:
    - preparation and formalities incidental to the outward and homeward journeys;
    - the outward and homeward journeys and other journeys to which personnel are entitled in accordance with applicable laws, regulations or collective agreements in the Contractor's country;
    - daily travel between lodgings and the Site if it exceeds half an hour each way and there are not suitable lodgings closer to Site;
    - waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract; all at same rates as referred in lit c) above;
  - e) any expenses incurred by the Contractor in accordance with the Contract in connection with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;
  - f) any taxes or dues levied on the invoice and payable by the Contractor in the country where erection takes place.
45. When erection is to be carried out for a lump sum, the quoted price shall be deemed to include all the items mentioned in clause 44 lit a) to e). If the erection is delayed due to a cause for which the responsibility rests with the Purchaser or any of his contractors other than the Contractor, the Purchaser shall compensate the Contractor for:
- a) waiting time and time spent on extra journeys;
  - b) costs and extra work resulting from the delay, including removing, securing and setting up erection equipment;

- c) additional cost, including costs as a result of the Contractor having to keep his equipment at the Site for a longer time than expected;
- d) additional costs for journeys and board and lodging for the Contractor's personnel;
- e) additional financing costs and costs of insurance;
- f) other documented costs incurred by the Contractor as a result of changes in the erection program.

46. Whatever the means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully and irrevocably credited.
47. If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties have not agreed on the rate of interest, it shall be 8 per cent above the applicable base interest rate per annum under § 247 BGB (German Civil Code). In addition the Contractor may, after having notified the Purchaser in Writing, suspend his performance of the Contract until he receives payment. If the Purchaser has not paid the amount due within three months, the Contractor shall be entitled to terminate the Contract by notice in Writing to the Purchaser and to claim compensation for the loss he has incurred.

#### RESERVATION OF TITLE

48. The Contractor reserves his title and ownership in the Plant until full payment of any claims resulting from the business connection with the Purchaser. In any case of conduct of the Purchaser not in conformity with the Contract, namely in the case of default of payment, the Contractor shall be entitled to take back the Plant. The taking back of the Plant or the claiming of reservation in title, respectively, does not require a rescission by Contractor. These actions or the seizure of the Plant by the Contractor shall not be considered as a rescission of Contract, unless the Contractor explicitly declares so in Writing. After taking back the Plant, the Contractor shall be entitled to its exploitation. The proceeds of exploitation shall be credited against the liabilities of the Purchaser - however deducting adequate costs of exploitation. The Purchaser shall be obliged to treat the Plant with care and, upon request of the Contractor, to effect an insurance in a sufficient amount for the duration of the reservation of title. Claims against the insurer are herewith assigned by the Purchaser to the Contractor in advance. In case of a seizure or other encroachment measures by third parties, the Purchaser shall immediately notify the Contractor in Writing, so that the Contractor may start an action in accordance with § 771 ZPO (German Procedural Code). Insofar as the third party is not able to compensate the Contractor for his court fees and other costs of an action in accordance with § 771 ZPO (German Procedural Code), the Purchaser shall be liable for such loss of the Contractor. The Purchaser shall be entitled to sell the Plant within the ordinary course of business; he herewith assigns to the Contractor in advance all claims against his buyers or third parties arising from the sale up to the amount of the final invoice amount (including VAT), irrespective of whether the Plant has been sold before or after processing. The Purchaser shall remain entitled to collection of such claims, provided that the right of the Contractor to collect the claims on his own behalf shall remain unaffected. However, the Contractor shall be obliged not to collect such claims, as long as the Purchaser complies with his payment duties from the proceeds collected, he is not in default of payment and in particular no motion for opening of insolvency proceedings against his assets has been made and he did not cease payments. If the obligation to not collect is cancelled, the Contractor may claim that the Purchaser informs the Contractor about any assigned claims and their debtor, about any details required for the collection, hands out to him the respective documentation and notifies the debtors of the assignment. The Contractor, upon request of the Purchaser, shall be obliged to release the security insofar as the realizable value of the security exceeds the claims secured by more than 10%; the Contractor may choose which security to be released. Insofar as the legal system in which the Plant is situated does not allow a reservation of title, the Contractor may execute all rights that he would be able to reserve with regard to the Plant. The Purchaser is obliged to co-operate with regard to measures that the Contractor wishes to take to secure his title and ownership or to secure - instead of the title or ownership - another security interest in the Plant.

#### LIABILITY FOR DEFECTS

49. The Contractor shall effect performance in compliance with the state of technology applicable at the date of the order, as well as with the applicable legal provisions, and shall use due care as usual in the business branch.
50. Insofar as the performance of the Contractor shows a defect as to quality or a defect of title (hereinafter: defect), which cause already existed at the time of passing of risk, the Purchaser shall be entitled to claim performance either by way of cure of defects or renewed

delivery, at the choice of the Contractor. The expenses necessary herefor, such as e.g. wages, material, transportation and travel costs shall be borne by the Contractor, insofar as these expenses are not increased by the fact that the Plant has been transferred to another place than the business seat of the Purchaser, unless such transfer is in accordance with the appropriate use. Parts replaced shall become the property of the Contractor and must be restituted to him.

51. In the case of failure of renewed performance, the Purchaser shall be entitled at his own choice – irrespective of possible claims for damages and compensation under Clause 58 – to reduce the payment or – insofar as the breach of obligations by the Contractor is not only immaterial – to demand rescission of the Contract.
52. The Contractor shall only be liable for defects under the conditions precedent that a) such defects are not caused by inappropriate or improper use, by defective assembly or installation by the Purchaser or by third parties, by natural wear and tear, by defective or careless treatment, by inappropriate supplies, by substitute materials, by defective construction works, by chemical, electrochemical or electric influences – insofar as these circumstances are not caused by intentional or negligent conduct of the Contractor; b) the Purchaser duly complied with his obligations concerning inspection and notification of defects. Defects must be notified in Writing within two weeks after delivery of the Plant at the destination or, if defects were not recognizable upon due inspection, within two weeks after discovery of such defects; c) the Purchaser is not in default of payment – taking into account an appropriate deduction for warranty under Clause 55.
53. The Purchaser shall, upon understanding with the Contractor, grant the time and opportunity required for the performance of any repair works and replacements which are necessary at the reasonable discretion of the Contractor. Otherwise the Contractor shall be released from his liability for any damages incurred because the Purchaser did not grant the time and opportunity required to perform the necessary repair works or replacements. The repair of defects in principal shall be done at the Site; however the Contractor shall be entitled at his discretion to have the defective part or the Plant sent back to him for the purpose of repair or replacement. The Contractor shall be obliged to dismantle and re-install the Plant, insofar as this is necessary and requires special knowledge. Only in urgent cases in which the industrial safety is endangered and for the purpose of defence against disproportionately high damages – in which cases the Contractor shall be notified immediately – or if the Contractor is in default with the cure of a defect, the Purchaser shall be entitled to cure the defects by himself or by third parties and to claim compensation for the costs necessary from the Contractor.
54. The limitation period for warranty claims shall be 12 months. With regard to replacement or cure of defects, the Contractor shall be liable until expiration of the limitation period applicable to the original Plant.
55. Upon a notification of a defect, the Purchaser may withhold payment to an extent in a proportion appropriate to the defects appeared only if the claims of the Purchaser have uncontested or have been recognized by declaratory judgments. If the notification of defects has been made wrongfully, the Contractor shall be entitled to claim compensation for the costs and expenses incurred from the Purchaser:

#### **LIABILITY FOR DAMAGES AND COMPENSATION; LIMITATION**

56. The Contractor shall be liable in accordance with the legal provisions, insofar as the Purchaser asserts claims for damages or compensation (hereinafter: claims for damages) based on intentional or grossly negligent actions – including intentional or grossly negligent actions of his representatives or his vicarious agents (Erfüllungsgehilfen).
57. The claim for damages shall be limited to cases of a liability by mandatory law such as e.g. a mandatory liability for damages to life, body or health of persons or resulting from guarantees assumed. Insofar, the limitation period for claims for damages shall be 12 months.
58. Apart from the aforementioned cases, claims for damages – irrespective of the legal basis of the claim asserted – shall be excluded. The Contractor namely shall not be liable for damages incurred other than in the Plant itself (Folgeschäden), such as e.g. lost profit, loss of production or other financial loss of the Purchaser.
59. The mandatory provisions of the Product Liability Act of Switzerland (Produkthaftungsgesetz) shall remain unaffected.
60. Compensation claims for expenditures of the Purchaser shall be limited to the amount equaling the interest of the Purchaser in the performance of this Contract.
61. Insofar as the liability of the Contractor is excluded or limited, this shall also apply to the personal liability of his employees, collaborators, representatives and vicarious agents.

#### **FORCE MAJEURE**

62. Either party shall be entitled to suspend or pause performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonable onerous by any of the following circumstances in particular: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restriction in the use of power and defects, epidemics or pandemic situations and their consequences and in particular, but not limited to, the resulting global material shortages and defective or delayed deliveries by subcontractors and suppliers due to these or other circumstances referred to in this Clause. A circumstance referred to in this Clause which had occurred prior to the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.
63. The party claiming to be affected by Force Majeure shall notify the other party in Writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Contractor for expenses incurred in securing and protecting the Works.
64. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in Writing to the other party if performance of the Contract is suspended under Clause 62 for more than 12 months.

#### **ANTICIPATED NON-PERFORMANCE**

65. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the condition that the circumstances show beyond doubt that the other party will not perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof in Writing.

#### **SETOFF WITH COUNTERCLAIMS**

66. There shall be no setoff with counterclaims, or the assertion of a right of retention with respect to the claims of the Contractor, except where claims are uncontested, have been recognized by declaratory judgment or are close to being finally decided.

#### **MISCELLANEOUS**

67. Should individual provisions be or become invalid, the validity of the remaining provisions shall not be affected. The invalid provisions shall then be replaced by such valid provisions as come closest to the economic meaning and intention of the invalid provisions.
68. The place of venue for all disputes arising from the Contract shall be, to the extent permitted by law, the main office of the Contractor at any one time. However, the Contractor shall be entitled to assert claims against the Purchaser at any other place of venue provided by law.
69. This Contract shall be governed by the material laws of Switzerland under exclusion of the provisions of the UN Sale Convention (CISG) and the provisions concerning conflict of laws.

**eldec Induction GmbH, February 2022**