



## GENERAL CONDITIONS FOR SERIES PROCESSING

Brussels, December 1999

### PREAMBLE

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract, hereinafter referred to as "the Contract", modifications of or deviations from them must be agreed in writing.

"In writing" shall mean : by letter, fax, telex, electronic data interchange or by any other means agreed by the parties.

In these General Conditions the parties are referred to respectively as the Processor and the Customer.

### INFORMATION AND DATA

2. All information and data contained in brochures and price lists are binding only to the extent that they are expressly included by reference in the Contract.

### OBJECT OF THE CONTRACT

3. The object of the Contract is the work to be undertaken by the Processor for the Customer according to the technical specifications agreed upon and hereinafter referred to as "the Work".

The material supplied to the Processor and subject to processing shall hereinafter be referred to as "the Material".

The Material including the Work performed, shall hereinafter be referred to as "the Products".

### TECHNICAL DOCUMENTATION

4. Unless otherwise agreed, the Customer shall provide the Processor with the technical documents and information necessary for the Work as soon as possible and at the latest 15 calendar days after the formation of the Contract.

All drawings and technical documents and information relating to the Material, the Work or the Products submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

### VARIATIONS

5. Either party is entitled to propose a variation to the Work by submitting to the other party such proposal in writing outlining the consequences foreseen on the price, the quantities and the delivery schedules.

The other party shall respond in writing within 15 calendar days.

Any variations to the agreed specification of, or method of performance of the Work or other provisions of the Contract shall not be effective unless agreed by the parties in writing.

### CONFIDENTIALITY

6. The parties shall keep confidential and shall ensure that their respective employees and agents shall at all times during execution and after expiry or termination of the Contract keep confidential all drawings, technical documents and information provided or disclosed under the terms of the Contract by the other party.

This shall, however, not apply to:

- a) information which is already known to that party (otherwise than by disclosure in confidence by the other party), and
- b) information which is public knowledge at the time of disclosure or becomes public knowledge otherwise than by the fault of the party receiving the information.

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 purposes than those for which they were handed over. The same applies to any work to be done by subcontractors agreed upon by the Customer, and then only if copied, disclosed, or furnished under a similar obligation of confidentiality.

### THE MATERIAL

7. The Customer shall deliver the Material within the time agreed.

8. As soon as possible after receipt of the Material, the Processor shall subject the same to a reasonable examination and shall inform the Customer forthwith of any defects in or damage to such Material or shortages which were apparent upon such inspection. The Customer shall replace such defective or damaged Material or make good shortages within a reasonable time after such notification in order to maintain the agreed time schedule.
9. The Material and the Products are the property of the Customer and shall be at the Customer's risk except to the extent that any loss or damage is caused by the negligence or breach of the Contract by the Processor or his subcontractors whilst the Material is or the Products are in his or their possession.
10. Save as provided for in Clause 38, the Processor shall store the Material and the Products at his own cost, mark it as the Customer's property and keep it separate from other material and products in accordance with the Customer's instructions or, where no such instructions are given, in accordance with the common practice of the industry concerned.
11. To the extent requested by the Customer, the Processor shall insure the Material and Products whilst in the Processor's possession against such risks as the Customer specifies. The cost of such insurance shall be borne by the Customer.
12. The Material or Products shall not be used by the Processor for any other purpose than the performance of the Contract.
16. Patterns, tools and equipment belonging to the Customer shall remain at the Customer's risk while in the possession of the Processor.
17. Patterns, tools and equipment belonging to the Customer shall be stored in an appropriate manner at the Customer's expense.
18. To the extent requested by the Customer, the Processor shall insure such patterns, tools and equipment whilst in the Processor's possession against such risks as the Customer specifies. The cost of insurance shall be borne by the Customer.
19. The Processor shall not, without the Customer's consent, use the Customer's patterns, tools or equipment for any other purpose than fulfilment of the Contract nor shall such patterns, tools or equipment be handed over to or otherwise be brought to the knowledge of a third party.
20. The Customer shall bear the risk and expense of all transport of patterns, tools and equipment to and from the Processor.
21. The Customer shall indemnify and hold the Processor harmless against all claims based on infringement of patents, registered models, trademarks or other intellectual property rights, where such claims result from the processing of the Material by using a specification, drawing, sample, pattern, tool or equipment provided by the Customer.
22. All the Processor's obligations regarding patterns, tools and equipment shall finally cease three years after the last delivery under the Contract has been completed. Where practicable, the Processor shall inform the Customer before disposing of any patterns, tools and equipment.

## **PATTERNS, TOOLS AND EQUIPMENT**

13. Unless otherwise agreed, patterns, tools and equipment provided by the Processor to be used exclusively for fulfilment of the Contract, shall be paid for by the Customer and shall, when fully paid, become his property.

The Processor shall clearly mark patterns, tools and equipment belonging to the Customer as such.

Patterns, tools and equipment provided by the Customer, shall remain the Customer's property. The Customer shall pay the Processor the cost for any work necessary to adapt or supplement such patterns, tools and equipment.

14. When the Processor shall provide patterns, tools or equipment, the Customer shall reimburse the Processor's costs for replacement or repair of these due to normal wear and tear or other causes for which the Processor is not responsible.

15. The Processor shall be entitled to retain patterns, tools or equipment that he has provided under the Contract, when it can be reasonably concluded that his proprietary technical know-how will otherwise be disclosed and that the disclosure will cause significant loss to the Processor. The Processor shall in such case reimburse the Customer the value of that which he retains.

## **PERFORMANCE OF THE WORK**

23. If the Processor during the performance of the Contract discovers defects in the Products as a result of defects in the patterns, tools, equipment or Material provided by the Customer under Clause 13, or errors or omissions in the technical documents and information provided by the Customer, he shall forthwith inform the Customer. The Customer shall correct such defects, errors and omissions.  
Any extra costs incurred by the Processor in remedying defects in the Work, or in processing additional Material for this reason, shall be reimbursed by the Customer's, except if such defects were apparent on a reasonable examination at the delivery of the patterns, tools, equipment or Material, documents and information and if the Processor had failed to notify the Customer. In this case, the Processor shall bear the costs himself.

## **TOLERANCES**

24. Unless otherwise agreed a waste tolerance of 2 pieces per 100 in each individual delivery is acceptable. The Customer will not be reimbursed for the material costs of any items which become waste within this tolerance. If required by the Customer, the Processor will deliver waste material to the Customer at the Customer's expense.

## INSPECTION

25. The Customer may during normal working hours inspect the Processor's test facilities to be used in the performance of the Contract, and inspect the Work and test the Products. The Customer shall give the Processor one week's notice of the inspection. Inspections and tests shall not unduly interfere with the performance of the Work.

If during such inspections, the Customer discovers that the Work is, or the Products are defective, he shall immediately send a written notice to the Processor by which he shall give him a reasonable period of time to remedy the defects discovered. If the Processor fails to do so within the said period, the Customer may terminate the Contract and claim damages limited in the same way as set forth in Clauses 51-54.

## ACCEPTANCE TESTS

26. Unless otherwise agreed, acceptance tests provided for in the Contract shall be carried out at the place of processing during normal working hours. If not otherwise specified in the Contract, the tests shall be carried out in accordance with general practice in the Processor's branch of industry in the country of processing.
27. The Processor shall notify the Customer of any agreed acceptance tests in sufficient time to permit the Customer to be represented at the tests. If the Customer is not represented, a test report shall be sent to the Customer and shall be accepted as accurate.
28. If the acceptance tests show that the Products deviate from the requirements of the Contract, the Processor shall, unless the Customer accepts the deviation, without delay ensure that the Products comply with the Contract. New tests shall then be carried out at the Customer's request, unless the deviations were insignificant.
29. The Processor shall bear all costs for any agreed acceptance tests carried out at the place of processing. All travelling and living expenses for the Customer's representatives in connection with such tests shall be borne by the Customer.

## PACKING AND TRANSPORT

30. Unless otherwise agreed, the Processor shall at his expense ensure that the Products are appropriately packed. The cost of insurance or special packing required by the Customer shall be charged extra.

Unless otherwise agreed, any packaging and transport equipment provided by the Customer shall be returned to the Customer at his expense.

31. Transport of Material to the Processor and of Products from the Processor to the Customer or to such a place as the Customer may direct, shall be for the account and at the risk of the Customer.

## TIME FOR DELIVERY - DELAY

32. Deliveries shall take place according to the schedule agreed between the parties. If the parties have not agreed upon a schedule, the delivery period shall start to run on the date on which the Material has been received by the Processor, provided he has received the technical documentation.

33. Unless otherwise agreed the Customer shall submit to the Processor at least 4 weeks in advance a forecast for each successive period of 12 weeks, indicating the part of the Work to be performed during that period with an indication of the schedule of delivery. Unless otherwise agreed the Customer shall, during each period, be obliged to order a minimum quantity\*for each individual type of Product, which shall be 75 % of the forecast.

If the Processor anticipates that he will not be in a position to comply with the forecast, he shall forthwith notify the Customer thereof in writing.

34. Orders by the Customer shall be issued at least six weeks before delivery and shall refer to the Contract and the forecast and specify the quantities, applicable prices and characteristics of the Work, as well as destinations for the Products and required delivery dates.
35. Unless otherwise agreed the Processor is entitled to refuse to deliver in so far as the part of the Work ordered exceeds the forecast for the current period by more than 10 % for each individual type of Product.
36. If the Customer orders less than the minimum quantity referred to in Clause 33 the Processor is entitled to be paid liquidated damages equal to 5 % of the difference between the price of what has been ordered and that of the minimum quantity for each individual type of Work or type of Product.

If the Customer orders less than 50 % of any minimum quantity set forth in Clause 33, the Processor is entitled - in addition to liquidated damages - to terminate the Contract by giving notice in writing.

37. If, after the receipt of the order, the Processor anticipates that he will not be able to deliver the Products at the agreed time for delivery, he shall forthwith notify the Customer thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.
38. If delay in delivery is caused by any of the circumstances mentioned in Clause 57 or by an act or omission on the part of the Customer, including suspension under Clause 44, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

When such a delay occurs, the Processor shall store any Material and Products in his possession.

The Customer shall reimburse any additional costs for storage, handling and insurance of Material and Products incurred by the Processor due to such delay.

39. If delivery is delayed for reasons due to the Processor, his subcontractors or agents, the Processor shall pay the Customer liquidated damages at the rate of 0,15 % per calendar day of the Contract price of the Work delayed, but such damages shall in no case exceed 7,5 % of the Contract price of the Work in delay. Subject to the provisions of Clause 40, such damages shall be in full and final settlement of the Processor's liability for delay.
40. If the delay in delivery of any portion of the Products is such that the Customer is entitled to the maximum of the liquidated damages under Clause 39, and if that portion of the Products is still not delivered, the Customer may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Processor does not deliver within such final period and this is not due to any circumstance for which the Customer is responsible, then the Customer may by notice in writing to the Processor, terminate the Contract in respect of the part of the Work in delay. The Customer shall also be entitled to recover from the Processor any loss suffered by the Customer by reason of the failure of the Processor as aforesaid up to an amount not exceeding the Contract price of the Work in delay.

## PAYMENT

41. The price for the Work is that stipulated in the Contract. Unless otherwise stated it is exclusive of sales and excise duties, VAT or similar taxes.
42. Unless otherwise agreed, the Processor shall be paid at the latest 30 days after submission of the invoice for each delivery in accordance with Clauses 32-40 but not before delivery of the Products has taken place.
43. Whatever the means of payment used, payment shall not be deemed to have been effected before the Processor's account has been fully and irrevocably credited.
44. If the Customer fails to pay by the due date, the Processor shall without notice 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 fail to agree on the rate of interest, it shall be 8% above the main refinancing facility of the European Central Bank in force on the due date of the payment.

In case of late payment the Processor may, after having notified the Customer in writing, suspend his performance of the Contract and retain Material and Products, patterns, tools and equipment in his possession until he receives payment.

If the Customer has not paid the amount due within three months the Processor shall be entitled to terminate the Contract by notice in writing to the Customer and to claim compensation for the loss incurred.

## LIABILITY FOR FAULTY PROCESSING

45. The Processor shall carry out the Work in accordance with the Contract and in a proper and workmanlike manner.

Pursuant to the provisions of Clause 46 to 53 inclusive, the Processor shall remedy any defect resulting from faulty workmanship or faulty processing.

46. The Processor's liability is limited to defects which appear within a period of one year from delivery of the Products.
47. The Customer shall without undue delay notify the Processor in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 46. The notice shall contain a description of the defect.

Where the defect is such that it may cause damage, the notice shall be given immediately.

If the Customer does not notify the Processor in writing of a defect within the time limits set forth in this Clause, he shall lose his right to have the defect remedied.

Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from the Processor in connection with the remedying of defects for which the Processor is liable shall be at the risk and expense of the Customer. The Customer shall follow the Processor instructions regarding such transport.

48. The Processor shall at his option repair, reprocess or process new Material supplied by the Customer, and provide compensation for any Material damaged or unusable as a result of faulty workmanship or faulty processing. Faulty processed Material shall be returned to the Customer at his request.
49. When a defect in a part of the Products has been remedied, the Processor shall be liable for defects in the repaired or reprocessed parts of the Products for a period of one year under such terms and conditions as to offer the same warranty as that which applied to the original Work.

## EXCLUSION OF LIABILITY

50. Except as provided in Clauses 45-53, the Processor shall not be liable for defects in items processed or for damage or loss resulting from such defects or from any service and advice rendered in connection therewith unless caused by the gross negligence of the Processor.

In these general conditions "gross negligence" shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious Processor would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

## LIMITATION OF LIABILITY

51. Unless otherwise agreed, the Processor's obligation to provide compensation shall be limited to three times the price of the Work related to the defective Products.
52. The Processor's obligations under Clauses 45-53 shall apply only to defects or damage which occur under conditions of normal use and which could reasonably not have been detected at the acceptance tests under Clauses 26-29, or, where no such acceptance tests were held, at the time of delivery.
53. If, within a reasonable time, the Processor does not fulfil his obligations under Clauses 45-49 and 51-53 inclusive, the Customer may, by written notice, fix a final time for completion of the Processor's obligations.

If the Processor fails to fulfil his obligations within such final time, the Customer shall be entitled to terminate the Contract, and, subject to Clauses 48, 51 and 54 receive compensation from the Processor.

54. Save as elsewhere stated in these conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of agreements or for any consequential, economic or indirect loss whatsoever.

## ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCTS

55. The Processor shall not be liable for any damage to property caused by the Products after their delivery and whilst they are in the possession of the Customer. Nor shall the Processor be liable for any damage to products of which the Products form a part.

If the Processor incurs liability towards any third party for such damage to property as described in the preceding paragraph the Customer shall indemnify, defend and hold the Processor harmless.

If a claim for damages as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

The Processor and the Customer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Products.

The limitation of the Processor's liability in the first paragraph of this Clause shall not apply where the Processor has been guilty of gross negligence as defined in Clause 50.

## SUBSTANTIAL BREACH

56. Each party may, without prejudice to any other remedy terminate the Contract forthwith by notice in writing, if the other party commits a substantial breach of contract and fails to remedy the same within 15 calendar days after notice in writing so to do.

## FORCE MAJEURE

57. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war,\* whether declared or not, extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by subcontractors caused by any such 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.

58. 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 Customer from fulfilling his obligations, he shall compensate the Processor for expenses incurred in securing and protecting the Material and the Products.

59. 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 57 for more than three months.

## RETURN OF DOCUMENTS AND TOOLS

60. Save as provided for in Clause 44, each of the parties shall promptly return to the other party, upon any termination of the Contract, all drawings, technical documents, patterns, Material, tools and equipment supplied by the other party pursuant to the Contract together with any copies thereof. The Processor shall also hand over to the Customer patterns, tools and equipment referred to under Clause 13, and which have been paid in full by the Customer.

## DISPUTES AND APPLICABLE LAW

61. All disputes arising in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.
62. The Contract shall be governed by the substantive law of the Processor's country.

## ORGALIME PUBLICATIONS

All publications are available in English, French and German unless otherwise stated.

### Model Forms

- Agency contract - International agency on an exclusive basis.
- Exclusive agreement with distributors abroad.
- International technology licence agreement (EU/EEA version).
- International technology licence agreement (outside EU/EEA)
- Original equipment manufacturer contract (OEM contract).<sup>(1)</sup>
- Maintenance contract.
- Consortium agreement.

### Guides

- Bank guarantees.<sup>(3)</sup>
- Commercial agency law in Europe.<sup>(1)</sup>
- For preparing a know-how contract.<sup>(3)</sup>
- Pressure Equipment Directive
- For drawing up an international development contract<sup>(3)</sup>
- Security for payment in credit sales<sup>(3)</sup>

### Conditions of contract

- General conditions for the supply of mechanical, electrical and associated electronic products - S 92<sup>(4)</sup>
- General conditions for the supply and erection of mechanical, electrical and associated electronic products - SE 94<sup>(4)</sup>
- General conditions for the supply of specially designed and manufactured components - SC 96
- General conditions for series processing – SP99<sup>(5)</sup>
- Conditions for the provision of technical personnel abroad.
- International conditions of contract for the repair of machinery and equipment.

### Other publications

- Law on general conditions in Western Europe<sup>(2)</sup>
- Drawings and technical documents - Ownership and protection against improper use.

(1) *English & French only*

(2) *English & German only*

(3) *English only*

(4) *Also in Spanish, Italian & Russian*

(5) *Also in Spanish*

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