

General Terms and Conditions of Sale and Delivery

1 General

- 1.1 The legal relationship between INSYS AG (hereinafter referred to as “Supplier”) and the Buyer shall be governed exclusively by these General Terms and Conditions of Sale and Delivery as well as by other agreements which are duly signed by INSYS AG.
- 1.2 The contract shall be deemed to have been entered into upon receipt of Supplier’s written acknowledgement stating its acceptance of the order. Tenders of the Supplier which do not stipulate an acceptance period shall not be binding.
- 1.3 These General Terms and Conditions of Sale and Delivery shall be binding if declared applicable in the Supplier’s tender or in the order acknowledgement. Any conditions stipulated by the Buyer which are in contradiction to these General Terms and Conditions of Sale and Delivery shall only be valid if expressly acknowledged by the Supplier in writing and duly signed.
- 1.4 All other legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations.
- 1.5 Should a provision of these General Terms and Conditions of Sale and Delivery prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

2 Scope of supplies and services

- 2.1 The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. The Supplier shall be entitled to make any technical changes which lead to improvements provided such changes do not result in a price increase.
- 2.2 Each technical change proposed by Buyer shall be specified in writing and delivered to Supplier in the framework of an amendment. The amendment has to be approved by Supplier in writing to obtain effectiveness. The cost adjustment shall be made according to clause 5.2.

3 Technical documents

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in technical documents are only binding as far as having been expressly stipulated as such.
- 3.2 Each party to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognizes these rights and shall - without previous written consent of the other party - not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4 Regulations in force in the country of destination and safety devices

- 4.1 The Buyer shall draw the attention of the Supplier to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the safety of personnel before placing the order.
- 4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the Buyer about which the Supplier has been informed under clause 4.1. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon in writing.

5 Prices

- 5.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, in freely available Swiss francs without any deduction whatsoever (EXW Incoterms 2020).

Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the Buyer. Likewise, the Buyer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract or shall refund them to the Supplier against adequate evidence in case the Supplier is liable for them.

- 5.2 The supplier reserves the right to adjust the prices in case:
 - a. the delivery time has been subsequently extended due to any reason stated in clause 8.3, or
 - b. the nature or the scope of the agreed supplies or services has changed, or
 - c. the material or the execution has undergone changes because any documents furnished by the Buyer were not in conformity with the actual circumstances or were incomplete.

6 Terms of payment

- 6.1 Payments shall be made by the Buyer at Supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
Unless otherwise agreed upon, the price shall be paid in the following installments:
- a. 30% down payment within one (1) month after receipt of
 - b. the order acknowledgement by the Buyer,
 - c. 60% on expiry of two thirds of the agreed delivery time,
 - d. 10% within one (1) month after the final taking-over (Site Acceptance Test).
- Payment shall be deemed to be effected as far as Swiss francs have been made freely available to the Supplier at Supplier's domicile. The payment shall be made via wire-transfer.
- 6.2 In case the parties agree to a payment of installments after issuing an invoice, the duty of payment shall be deemed as performed when the Supplier has the amount invoiced at its free disposal within 30 days after the invoice date.
- 6.3 The dates of payment shall also be observed if transport, delivery, erection, commissioning or final taking-over of the supplies or services is delayed or prevented due to reasons beyond Supplier's control, or if unimportant parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.
- 6.4 If the Buyer, for any reason whatsoever, is in delay with a further payment, or if the Supplier is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, the Supplier, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until the Supplier will have received satisfactory securities.
- 6.5 If such an agreement cannot be reached within a reasonable time, or in case the Supplier does not receive adequate securities, the Supplier shall be entitled to terminate the contract and to claim damage.
- 6.6 If the Buyer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the Supplier's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.
- 6.7 Any order cancelled by Buyer will subject Buyer to a cancellation charge as follows:
- a. 30% of the contract price if the cancellation occurs within seven (7) days since receipt of Supplier's written order acknowledgement (see clause 1.2).
 - b. 60% of the contract price if the cancellation occurs more than seven (7) days but less than 31 days since receipt of Supplier's written order acknowledgement (see clause 1.2).
 - c. 100% of the contract amount if the cancellation occurs later.

7 Reservation of title

The Supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract.

The Buyer shall cooperate in any measures necessary for the protection of Supplier's title. In particular upon entering into the contract it authorizes the Supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at Buyer's cost.

During the period of the reservation of title, the Buyer shall, at its own cost, maintain the supplies and insure them for the benefit of the Supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the Supplier's title is in no way prejudiced.

8 Delivery time

- 8.1 The delivery time shall start as soon as the Buyer has received the written order acknowledgement (see clause 1.2), all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, the down payment has been made, any agreed securities given and the main technical points and project deadlines settled. The delivery time shall be deemed to be observed if by that time the Supplier has sent a notice to the Buyer informing that the supplies are ready for dispatch.
- 8.2 Compliance with the delivery time is conditional upon Buyer's fulfilling of its contractual obligations.
- 8.3 The delivery time is reasonably extended:
- a. if the information required by the Supplier for performance of the contract is not received in time, or if the Buyer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
 - b. if hindrances occur which the Supplier cannot prevent despite using the required care, regardless of whether they affect the Supplier or the Buyer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilization, war, revolution, serious breakdown in the works, accidents, labor conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products or components, the need to scrap important work pieces, official directives, actions or omissions by any state authorities or public bodies, delay in customs clearance, natural catastrophes, acts of God;
 - c. if the Buyer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the Buyer fails to observe the terms of payment.

- 8.4 The Buyer shall be entitled to claim liquidated damages for delayed delivery as long as it can be proved that the delay has been caused through the fault of the Supplier and that the Buyer has suffered a loss as a result of such delay.
If substitute material can be supplied to accommodate the Buyer, the latter is not entitled to any damages for delay.
Damages for delayed delivery shall not exceed 0.3 per cent for every full week's delay and shall in no case whatsoever altogether exceed 3 per cent of the contract price (excluding costs of packing, installation and transport) of the part of the supplies in delay. No damages at all shall be due for the first two (2) weeks of delay..
- 8.5 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; clauses 8.1 to 8.4 apply by analogy.
- 8.6 Any delay of the supplies or services does not entitle the Buyer to any rights and claims other than those expressly stipulated in clause 8.4. This limitation does, however, not apply to unlawful intent or gross negligence on the part of the Supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the Supplier to perform any of its obligations.

9 Factory Acceptance Test

The following is relevant in case the Supplier and the Buyer have agreed to accomplish a Factory Acceptance Test:

- 9.1 The Buyer will send qualified personnel to the Supplier's plant for a specified period of time for training and acceptance runs. The Buyer will have the opportunity to inspect the equipment and assess the equipment's performance. If the equipment meets the specifications contained in the Supplier's quotation, as modified by changes per clause 2, then Buyer is obliged to approve the equipment for shipment to the Buyer's location.
- 9.2 The Buyer shall provide the Supplier with an appropriate number of product components and pre-assembled components in accordance with the Buyer's specifications notified to the Supplier at the time of conclusion of the contract, which are identical with the series parts and which are necessary and suitable for the fine tuning and test runs of the ordered equipment, free of charge for test purposes. The Supplier shall determine the appropriate number of product components and pre-assembled components. If requested by the Buyer, the product components and pre-assembled components shall be returned to the Buyer EXW Incoterms 2020 from the place of manufacture. The Supplier is not responsible for damaged, stolen or lost Product components and pre-assembled components. Any disposal of the Product components or pre-assembled components shall be paid for by the Buyer.
- 9.3 The Supplier will provide a production run during eight (8) successive hours at the Supplier's plant. At the Buyer's request, the Supplier will also provide one (1) week production run at the Supplier's plant using outside laborers at the Supplier's current labor rates. The Supplier will also charge for its machine builder's assistance for setup and supervision at the Supplier's standard rates.

10 Packing

- 10.1 Packing shall be charged for separately by the Supplier and shall not be returnable. However, if it is declared as Supplier's property, it shall be returned by the Buyer carriage paid, to the place of dispatch.

11 Passing of benefit and risk

- 11.1 The benefit and the risk of the supplies shall pass to the Buyer by the date of their leaving the works.
- 11.2 If dispatch is delayed at the request of the Buyer or due to reasons beyond Supplier's control, the risk of the supplies shall pass to the Buyer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the Buyer.

12 Forwarding, transport and insurance

- 12.1 The Supplier shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at Buyer's expense and risk.
- 12.2 Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the Buyer to the last carrier.
- 12.3 The Buyer shall be responsible for taking insurance against risks of any kind.

13 Site Acceptance Test

- 13.1 The Buyer shall inspect the supplies and services within a reasonable period and shall immediately notify the Supplier in writing of any deficiencies. If the Buyer fails in doing so, the supplies and services shall be deemed to have been taken over.
- 13.2 Having been notified of deficiencies according to clause 13.1 the Supplier shall as soon as possible remedy them, and the Buyer shall give the Supplier the possibility of doing so.
- 13.3 After delivery of the equipment the Buyer shall have seven (7) days to schedule a date that is mutually convenient to the Supplier and the Buyer for conducting site acceptance testing. In case of a succeeded remediation of deficiencies according to clause 13.2, the date shall be scheduled within seven (7) days as of the remediation's termination.
- 13.4 It is Buyer's obligation to supply the Supplier with an adequate supply of product components and subassemblies that meet Buyer's design specifications disclosed at conclusion of the contract which are relevant for the site acceptance testing. A lack of an adequate supply of product components and subassemblies at the time of site acceptance tests or a lack of product components and subassemblies that meet design specifications at the time of site acceptance testing, shall constitute the system passing site acceptance testing.

- 13.5 A final taking-over (Site Acceptance Test) report shall be prepared which shall be signed by both the Buyer and the Supplier or by their representatives. Such report shall either state that the taking-over (Site Acceptance Test) has taken place, or that it has taken place under reservations, or that the Buyer has refused the acceptance. In the last two cases, the deficiencies shall be listed individually in the report.
- 13.6 In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the Buyer shall not be entitled to refuse the acceptance of the supplies or services and the signature of the final taking-over (Site Acceptance Test) report.
The Supplier shall remedy such deficiencies without delay.
- 13.7 In case of substantial deviations from the contract or of serious deficiencies the Buyer shall give the Supplier the possibility of remedying these within a reasonable time. Thereafter a further taking-over test (Site Acceptance Test) shall take place.
Final taking-over shall be deemed completed,
- if the final taking-over test (Site Acceptance Test) cannot be carried out on the date provided for due to reasons beyond Supplier's control;
 - if the Buyer refuses the final taking-over (Site Acceptance Test) within 30 days as of delivery without being entitled to do so;
 - if the Buyer refuses to sign the final taking-over (Site Acceptance Test) report prepared in accordance with clause 13.5 as soon as the Buyer uses the supplies or services.
- 13.8 Deficiencies of any kind in supplies or services shall not entitle the Buyer to any rights and claims other than those expressly stipulated in clauses 13 and 14 (warranty, liability for defects)

14 Warranty, liability for defects

14.1 Warranty period

The warranty period is 12 months or 2,500 machine operation hours, whichever occurs first. It starts when the supplies are being shipped from Supplier's plant or, if the Supplier undertakes the erection, upon completion thereof.

If dispatch or final taking-over or erection is delayed due to reasons beyond Supplier's control, the warranty period shall end not later than 30 months after shipment from Supplier's plant.

For replaced or repaired parts the warranty period starts anew and lasts 6 months after replacement or completion of the repair or final taking-over, but not longer than the expiry of a period being double to the warranty period stipulated in the preceding paragraph.

The warranty expires prematurely if the Buyer or a third party undertakes inappropriate modifications or repairs or if the Buyer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the Supplier the possibility of remedying such defect.

14.2 Liability for defects in material, design and workmanship:

Upon written request of the Buyer, the Supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become the Supplier's property if he does not renounce explicitly. The Supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in Supplier's works, the Buyer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

14.3 Liability for express representations and warranties.

Express representations and warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express re-presentation or warranty is valid until the expiry of the warranty period at the latest.

If a final taking-over test (Site Acceptance Test) has been agreed, the representations and warranties shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.

If the express representations and warranties are not or only partially achieved, the Buyer may first of all require the Supplier to carry out the improvements immediately. The Buyer shall give the Supplier the necessary time and possibility of doing so.

If such improvements fail completely or in part, the Buyer may claim such compensation as has been agreed before for such case, or, if such an agreement has not been made, a reasonable reduction of price.

If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the Buyer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract.

In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

14.4 Exclusions from the liability for defects and express representations and warranties.

Excluded from Supplier's warranty and liability for defects and express representations and warranties are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the Supplier, or resulting from other reasons beyond Supplier's control.

14.5 Supplies and services of subcontractors.

For supplies and services of subcontractors, the Supplier assumes warranty and liability for defects and express representations and warranties only to the extent of such subcontractors' warranty and liability obligations.

14.6 **Exclusivity of warranty claims**

With respect to any defective material, design or workmanship as well as to any failure to fulfill express representations and warranties, the Buyer shall not be entitled to any rights and claims other than those expressly stipulated in clauses 14.1 to 14.5.

14.7 **Liability for additional obligations**

The Supplier is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations is concerned.

15 Non-performance, bad performance and their consequences

15.1 In all cases of bad performance or non-performance not expressly covered by these General Terms and Conditions of Sale and Delivery - in particular if the Supplier, without valid reasons, starts execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to Supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to Supplier's fault - then the Buyer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance.

If such additional period lapses due to Supplier's fault, the Buyer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

15.2 In such case clause 17 shall apply with regard to any claims for damages on the part of the Buyer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price (excluding costs of packing, installation and transport) for the supplies and services affected by the termination.

16 Termination of the contract by Supplier

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the Supplier, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, the Supplier shall be entitled to terminate the contract, or the parts affected thereby.

If the Supplier wishes to terminate the contract it shall -after having recognized the consequences of the event - immediately inform the Buyer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract the Supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the Buyer because of such termination are excluded.

17 Exclusion of further liability on the Supplier's part and limitation of the Supplier's overall liability

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the Buyer, irrespective on what ground they are based, are exhaustively covered by these General Terms and Conditions of Sale and Delivery of supply and overall limited to 100% of the contract price (excluding costs of packing, installation and transport). In particular, any claims not expressly mentioned for damages, reductions of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the Buyer be entitled to claim damages other than compensation for cost of remedying defects in the supplies.

This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of the Supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the Supplier to perform any of its obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

18 Right of recourse of the Supplier

If, through actions or omissions of the Buyer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the Supplier, then the latter shall be entitled to take recourse against the Buyer.

19 Jurisdiction and applicable law

The place of jurisdiction for both the Buyer and the Supplier shall be at the registered office of the Supplier.

19.1 The Supplier shall, however, be entitled to sue the Buyer at the latter's registered address.

19.2 The contract shall be governed by Swiss substantive law to the exclusion of conflict rules of the applicable law.

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