

General conditions of contract for the supply of plant and machinery

1. **Writing in order**
 - 1.1 The contract shall be deemed to have been entered into upon receipt of Amax AG written acknowledgement stating its acceptance of the order.
 - 1.2 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. E-Mail and Telefax are accepted as writing.
2. **Technical documents**
 - 2.1 Each party to the contract retains all rights to technical documents provided to the other.
 - 2.2 Such documents shall either not be available to any third party, nor be used for purposes other than those for which they were handed over. If one of the parties break this rule, she has to be liable for damages.
3. **Terms of payment**

The dates of payment shall also be observed if transport, delivery, erection, commissioning or 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 postdelivery work is to be carried out without the supplies being prevented from use.
4. **Reservation of title**
 - 4.1 Amax shall remain the owner of all supplies until having received the full payments in accordance with the contract.
 - 4.2 Amax is entitled to notify the reservation of title in public registers, books or similar records for deliveries at Swiss Customers. In respect of retention of title for deliveries at German Customers the German law is to apply. Its cause the notify in a register is not required.
5. **Delivery time**
 - 5.1 The delivery time shall start as soon as the contract is entered into, payments due with the order have been made and the main technical points settled. The delivery time shall be deemed to be observed if by that time Amax has sent a notice to the customer informing that the supplies are ready for dispatch.
 - 5.2 The fixed delivery time is based upon the foreseeable conditions of Amax by the order.
 - 5.3 The delivery time is reasonably stopped or extended if hindrances occur which Amax cannot prevent despite using the required care, regardless of whether they affect Amax or the customer or a third party. Such hindrances include for example:
 - a. Information required by Amax for performance of the contract is not received in time
 - b. Late delivery of sample parts by the customer
 - c. Subsequently changes by the customer
 - d. Late or deficient delivery by semifinished or finished products
 - e. Serious breakdown in the works, accidents, labour conflicts, natural phenomenon
 - 5.4 The customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of Amax, that the customer has suffered a loss as a result of such delay and if its written defined in the contract.
 - 5.5 Delay of delivery or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clause 5.
6. **Passing of benefit and risk**

The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.
7. **Taking-over in Amax's works**
 - 7.1 The deliveries and services are tested with a taking-over in Amax's works before dispatch.
 - 7.2 Amax shall advise the customer in time of the execution of the taking-over test so that the customer or its representative can attend.
 - 7.3 A taking-over report shall be prepared which shall be signed by both the customer and Amax or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused the acceptance. In the last two cases, the deficiencies shall be listed individually in the report.
 - 7.4 In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse the acceptance of the supplies or services and the signature of the taking-over report. The supplier shall remedy such deficiencies without delay.
 - 7.5 In case of important deviations from the contract or of serious deficiencies the customer shall give Amax the possibility of remedying these within a reasonable time. Thereafter a further taking-over test shall take place.
 - 7.6 If the deviations and deficiencies appearing during such test 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 such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract.
 - 7.7 In such case Amax can only be held liable to reimburse the sums which have been paid to it for the parts affected by the termination.
 - 7.8 Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. The warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.
 - 7.9 Taking-over shall also be deemed completed
 - a. if the taking-over test cannot be carried out on the date provided for due to reasons beyond Amax control;
 - b. if the customer refuses the acceptance without being entitled to do so;
 - c. if the customer refuses to sign the taking-over report prepared in accordance with Clause 7.3;
 - d. as soon as the customer uses the supplies or services.
 - 7.10 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 7.3 and 9 (guarantee, liability for defects).
8. **Taking-over in customer's works**
 - 8.1 As far as being normal practice, the Amax shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
 - 8.2 As far as an additional taking-over test at the customer's works has been agreed upon in the contract, all legal procedures connected to the taking-over test shall start only with the taking-over test at the customer's works.
 - 8.3 Clauses 7.2 to 7.10 are also valid for the taking-over in customer's works.
9. **Guarantee, liability for defects**
 - 9.1 Amax ensures the efficient work for her services.
 - 9.2 Upon written request of the customer, Amax undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Amax shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in Amax works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, traveling, living, dismantling and reassembly of the defective parts.
 - 9.3 Excluded from Amax guarantee and liability for defects 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 Amax control.
 - 9.4 The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Amax the possibility of remedying such defect.
 - 9.5 For supplies and services of subcontractors Amax assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.
 - 9.6 With respect to any defective material, design or workmanship, the customer shall not be entitled to any rights and claims other than those expressly stipulated in clause 9.
10. **Exclusion of further liability on Amax AG**

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs 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.
11. **Jurisdiction and applicable law**
 - 11.1 The place of jurisdiction for both the customer and Amax shall be Burgdorf.
 - Amax shall, however, be entitled to sue the customer at the latter's registered address.
 - 11.2 The contract shall be governed by Swiss substantive law.

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