

1. General

- 1.1 All agreements and legally binding statements by the contracting parties shall be in writing in order to be valid.
- 1.2. Should any one clause of these general terms and conditions be wholly or partly invalid, the contracting parties shall substitute it with a new clause which shall, as far as possible, have similar legal and economic consequences to the former provision. The remainder of the agreement remains unchanged.
- 1.3. Individual written agreements between the contracting parties (in particular application of the Incoterms 2010) remain unaffected.

2. Conclusion of contract

- 2.1. The agreements related to individual deliveries or accomplishments shall be considered as validly concluded when Spühl AG receives the relative confirmations of order signed by the customer.
- 2.2. Technical documentation, such as drawings, descriptions, specifications, illustrations, user manuals and such shall be considered binding only, if they are declared as integral part of the contract in the confirmation of order. Spühl AG reserves the right to amend the technical documentation any time if it is considered necessary.

3. Extent of the order

- 3.1 Regarding the extent and the execution of a delivery or a service, the order confirmation shall be applicable. The customer may be billed additionally for materials or services not recorded in this document.
- 3.2 Spühl AG is authorized to produce or supply other materials and services than those recorded in the confirmation of order, provided they improve the overall performance without causing any price increases.

4. Intellectual Property Rights

(a) Technical documentation

- 4.1 Rights in the technical documentation (such as drawings, descriptions, illustrations, user manuals and such), in particular copyright, and the rights in the concepts embodied in the technical documentation, in particular patent and know-how rights (in other words, the rights governing publication, reproduction, processing and use of the technical documentation and the concepts embodied therein) are owned by or licensed to Spühl AG. These rights include, without limitation, all worldwide intellectual property rights now existing or hereafter coming into existence.
- 4.2 No rights in the technical documentation or the concepts embodied in them are transferred or licensed to the customer except the right to use the technical documentation and the concepts embodied in them as necessary to fulfill the purpose of this contractual relationship.
- 4.3 The customer agrees not to make any parts of the technical documentation available to a third party, nor to use

them for purposes except as intended by this contractual relationship, without the prior written permission of Spühl AG.

(b) Software

- 4.4 Spühl AG retains exclusive rights in the software, in particular and without limitation, all copyrights, patents and trademarks. The term software includes software in machine code and source code, software description, manuals and related documentation.
- 4.5 Subject to the terms and conditions set forth in these general terms and conditions and the other terms of agreement between the parties, Spühl AG grants the customer a non-exclusive right, for the customer's internal business purposes, to use any software provided under this agreement solely on the equipment on which Spühl AG has installed or embedded it, and solely for so long as the customer has title to the equipment.
- 4.6 The customer shall not copy, cause, attempt, or permit reverse-engineering, disassembly, or de-compilation of the software, modify the software, or create derivative works of the software without the prior written consent of Spühl AG, or as expressly permitted by law for achieving interoperability, whereas in the last case Spühl AG has to be informed in advance. The customer shall not provide access to the software to anyone other than its own employees unless previously agreed to in writing by Spühl AG.

(c) Derivative Works

- 4.7 The customer shall not create or let create derivative works of the equipment delivered, without the prior written consent of Spühl AG.
- 4.8 Spühl AG shall have sole and exclusive rights in any enhancements, modifications, and derivative works of the equipment sold, and of the software embedded in it, including, without limitation, all worldwide intellectual property rights now existing or hereafter coming into existence, also in the event they came into existence in collaboration with the customer. Any future rights that would possibly otherwise arise in the customer or its employees or other auxiliary personnel of the customer are, by this agreement, transferred to Spühl AG. The customer agrees upon request of Spühl AG to take all steps necessary to effectuate such a transfer.

(d) Violation of Third Party Rights

- 4.9 Should a third party allege or prove that the use by the customer of the technical documentation or the concepts embodied in them, or of the software, violates the third party's rights, the customer will immediately notify Spühl AG and support Spühl AG in any defense against such allegations. In any case of alleged infringement, or in any case that Spühl AG believes a third party's rights may have been infringed, Spühl AG has the right, at its option, to provide a work-around or to replace the technical documentation or the software by a substitute that does not violate such

third party rights. Any other rights or remedies of the customer in this context shall explicitly be excluded.

- 4.10 The buyer is solely responsible for ensuring that the machines delivered by the seller are not used to manufacture any products that infringe patents or other third-party property rights. The seller does not assume any liability in this regard.

5. Regulations of the destination country

The deliveries of Spühl AG shall be in compliance with applicable EU directives regarding the CE marking, as well as the guidelines of OSHA. Should it be necessary, in the course of carrying out the delivery as well as for the operation of the object of supply, to abide by different or supplementary regulations and legal or administrative norms of the country of destination, the customer shall inform Spühl AG no later than at the time of ordering. In addition, the customer shall also then inform Spühl AG of the health and accident-prevention regulations and norms in force at the site where the delivered objects are to be used. If the customer omits such information, he is ineligible to claim any warranty rights or compensation for damages due to the breach of such norms, and he shall relieve Spühl AG of all and any liability for any relevant claims that third persons could bring against the same.

6. Prices

- 6.1 Unless otherwise agreed, all the prices of Spühl AG are quoted net, ex works in Swiss Francs, exclusive of packaging, transportation, insurance, any taxes (in particular VAT), duties, fees or customs dues, as well as of assembly, installation and commissioning.
- 6.2 All and any additional costs regarding, for example, transportation, insurance, export permits, transit, importation and other permits or certificates, shall be charged to the customer.
- 6.3 The customer shall also be responsible for all types of taxes, duties, fees, customs dues and such that are pertinent to the agreement or shall refund Spühl AG for the same, on the basis of the relative evidence, should the latter be obliged to perform for this purpose.

7. Terms of payment

- 7.1. Payments shall be made by the customer to the registered office of Spühl AG net of discounts, expenses, taxes and dues of any kind whatsoever. Any other terms of payment shall be specially agreed in writing.
- 7.2 Unless otherwise agreed, the price shall be paid as follows:
 - one third by way of down payment within one month from the conclusion of contract,
 - the balance against a confirmed and irrevocable on-demand letter of credit, to be made one month prior to delivery c/o UBS AG or Crédit Suisse in favor of Spühl AG or

through bank transfer prior to delivery.

7.3 Payment deadlines shall be observed even when the transportation, delivery, assembly, commissioning or acceptance test and final inspection of the supplies or services are delayed or made impossible due to reasons not attributable to Spühl AG or when non-essential parts are missing or if repair work is necessary provided that the delivery can be used anyway.

7.4 Should the down payment or the guarantees to be furnished upon the conclusion of contract not be paid in conformity with the agreement, Spühl AG may continue to abide by the agreement or withdraw immediately and without notice and claim compensation for damages in both cases.

7.5 Should the customer be late with another payment for any reason whatsoever or should Spühl AG, due to circumstances arisen after the conclusion of contract, seriously fear that it will not receive the full or punctual payments from the customer, Spühl AG shall be authorized, without any abridgment of its legitimate rights, to suspend further execution of the agreement and to withhold supplies ready for shipping or agreed accomplishments until new terms and conditions of payment and delivery are agreed upon and Spühl AG has received sufficient guarantees. Should it not be possible to reach such an agreement within a suitable period of time or should Spühl AG not receive suitable guarantees, it shall be authorized to withdraw from the agreement and to claim compensation for damages. Late payment in connection with hired equipment shall entitle Spühl AG to immediately decommission and/or claim back the hired equipment. The customer shall be liable for the costs arising from the revocation. Spühl AG is entitled to retain the down payment to guarantee compensation for damages.

7.6 Should the customer not abide by the agreed-upon payment terms he shall pay, without having to be reminded, interest adjusted to the level of usual interest tax where the customer has its registered office and in any case at least 4% higher than the MLR (minimum lending rate) of the National Bank of Switzerland in force, starting from the moment of the fixed due date. Spühl AG reserves the right to compensation for additional damages.

8. Retention of title

8.1 Spühl AG shall retain ownership of all its materials. This applies to sales until Spühl AG has received payment in conformity with the agreement, except that Spühl AG shall at all times retain sole ownership of any technical documentation, including the concepts embodied in them, and of the software provided to the customer under this agreement, subject only to the limited license set forth in Section 4 of these general terms and conditions.

8.2 The customer agrees to cooperate in applying the necessary measures to protect the ownership of Spühl AG; in

particular, upon the conclusion of contract, Spühl AG is authorized to carry out at the customer's expense the registration or entry of the retention of title in the public records, books or such and to complete all formalities regarding this matter in accordance with the relevant laws of the country. The customer shall, upon request, immediately provide the necessary support.

9. Delivery date

9.1 The delivery date begins at the time the order confirmation that was duly signed by the customer was received, i.e., as soon as the down payment, as stated in paragraph 7.2 has been paid and any technical details have been clarified.

9.2 Observance of the terms of delivery presupposes fulfillment of the customer's contractual obligations. The term of delivery shall be suitably extended:

- if information required for carrying out the order are not sent in good time to Spühl AG or if they are changed afterward by the customer;
- if the payment due dates are not observed, the openings of letters of credit are delayed or if Spühl AG does not receive the necessary import licenses in time;
- if obstacles arise that Spühl AG cannot prevent, despite having exercised due diligence, regardless of whether such obstacles arise at Spühl AG, the customers' or at a third party. Said obstacles include in particular Acts of God, trade disputes, delayed or incorrect delivery of the necessary raw materials, semi-finished products or finished products, unusable workpieces, measures or omissions by the authorities as well as natural events.

9.3 The delivery date is considered to have been kept if the object to be delivered has left the facility of Spühl AG at that date or if the customer has been notified that the merchandise is ready for dispatch.

9.4 Should delivery be delayed upon the customer's request or for other reasons not attributable to Spühl AG, the customer shall be charged the storage costs at the facility of Spühl AG, which shall be equivalent to at least ½ % per month of the invoice value. Storage risks and costs shall be carried by the customer. Upon request by the customer, Spühl AG shall insure the object to be delivered at the expense of the customer. Spühl AG, however, has the right to dispose of the delivery object in another manner, after having set a period that Spühl AG deems suitable and after such period expired unused. Spühl AG is then entitled to be compensated for the damages caused by the non-performance of the customer, which shall be equivalent to at least the amount of the down payment.

10. Delayed delivery

10.1 The customer is entitled to claim solely a lump sum penalty for late delivery, if it has been shown that the delay has been caused by Spühl AG and the cus-

tomers can prove that damage has been suffered due to such a delay. If a replacement is made available to the customer, the right to the penalty for late delivery is forfeited.

10.2 The lump sum penalty amounts to a maximum of ½ % for each complete week of delay, but may not exceed a total of 5 % of the contractual monetary value of the delayed part of the delivery. The first four weeks of delay provide no late delivery penalty entitlement.

10.3 In the event of delayed delivery, the customer's rights are limited to the lump sum penalty as stated in paragraph 10.2. Any other rights of the customer towards Spühl AG in respect to such delays are excluded, unless there is gross negligence by Spühl AG.

10.4 The lump sum penalty becomes enforceable after 30 days when the customer claims it in writing, but in any case not before the delivery is concluded.

11. Delivery, transportation and insurance

11.1 Spühl AG shall, at the expense of the customer, pack the products carefully.

11.2 Special requests regarding shipping and insurance shall be communicated to Spühl AG in a timely manner. The customer shall carry the risks and the expenses for the transportation. The customer shall submit any complaints related to transportation immediately to the last carrier upon receiving the delivery or the shipping documents.

11.3 Insurance against damage of any nature whatsoever is the customer's responsibility and, even if taken out by Spühl AG, is charged to the customer.

12. Transfer of risks and benefits

12.1 The risks and benefits are transferred to the customer at the latest when the ex works delivery leaves the facility of Spühl AG. This shall also apply if Spühl AG installs the equipment in the premises of the customer.

12.2 Should shipping be delayed upon the customer's request or for other reasons not attributable to Spühl AG, then the risk shall be transferred to the customer at the time originally envisaged for shipping from the facility.

13. Inspection and acceptance of the materials and services

13.1 The customer shall inspect the supply within a suitable period, informing Spühl AG in writing of any defects within 10 working days after delivery/installation. If the customer omits to do so, the materials and services shall be considered to be accepted.

13.2 The acceptance test takes place at the customer's premises according to the following principles:

- an inspection or test report is drawn up that the customer and Spühl AG or their representatives shall sign. This document establishes that the acceptance test has taken place or that it has taken place only with reservation or that the customer

has refused acceptance. In the last two cases the claimed defects shall be recorded individually in the report.

- Slight defects, in particular those that do not substantially prevent the functionality of the supplies or the services shall not entitle the customer to refuse the acceptance or to sign the inspection or test report. Such defects shall be eliminated by Spühl AG as quickly as possible.
- 13.3 Acceptance is also understood as having been made when the relative acceptance test is not carried out within the envisaged period due to reasons not attributable to Spühl AG or when the customer refuses acceptance without having the right to do so.
- 13.4 The customer is not authorized to use the delivered object prior to acceptance, otherwise the delivered object of the supply shall be understood to have been accepted, unless Spühl AG had given his consent in writing to use the delivered object prior to acceptance. Spühl AG then shall no longer be obliged to carry out the acceptance test.
- 13.5 Should the delivered object prove not to be in conformity with the agreement during the final inspection or acceptance test, Spühl AG shall eliminate the defect in compliance with paragraph 14 and the customer shall grant the latter this opportunity. After having eliminated the defect, an acceptance test shall take place in compliance with paragraph 13.2 upon request by the customer or Spühl AG.
- 13.6 Except for those mentioned expressly in paragraph 14, the customer is not entitled to any claims or rights arising from defects of any kind relating to the deliveries or the services provided by Spühl AG.

14. Warranty and Liability for Defects

- 14.1 The length of warranty for new machines ("Federkern-Maschinen") from Spühl and Fides is 36 months or 10,000 operating hours, depending on which occurs first. For **all other** new machines/deliveries, the length of warranty is 12 months. The warranty starts on the day of delivery. If shipping, acceptance, or installation are delayed for reasons for which Spühl AG is not responsible, the warranty period shall end at the latest 36 respectively 12 months after notification of readiness for shipment. The warranty for new, individually delivered **components** is 12 months after shipment, provided that this does not involve wearing parts.
- 14.2 The warranty expires prematurely if the customer or third parties undertake inappropriate modifications or repairs, or if the customer, when a defect has been detected, does not immediately take all suitable measures to minimize damage and give Spühl AG the opportunity to correct the defect. Furthermore, the warranty expires prematurely if original spare and wearing parts are not used, unless Spühl has given written consent to this or if the customer

does not comply with predefined maintenance and care instructions. No warranty applies if parts, assemblies or machines are produced according to specifications of the customer on its behalf and at its expense.

- 14.3 The customer must immediately give written notice to Spühl AG of any defect that occurs. If the customer notifies Spühl AG of the defect, but no defect can be detected for which Spühl AG is liable, the customer shall reimburse Spühl AG for the cost incurred through such a claim.

- 14.4 Liability for defects in material, design and workmanship.

Upon written request of the customer, Spühl AG agrees at its option to repair or replace as quickly as possible all parts of the deliveries from Spühl AG that become defective or unusable before the expiration of the warranty period due to poor materials, faulty design, or poor workmanship. Replaced parts shall become property of Spühl AG, provided that they had been the customer's property. Spühl AG shall bear the costs arising from the rework performed in its facilities. If the rework cannot be carried out in the facilities of Spühl AG, the customer shall bear the associated costs (in particular customs duties and similar expenses) to the extent that they exceed the customary costs of transport, personnel, travelling, and living as well as the costs for disassembly and reassembly of the defective parts.

- 14.5 Exclusion of the rights of exchange and withdrawal as well as the rights of reduction

The customer is entitled only to the elimination of defects, and in particular has no right whatsoever of exchange, withdrawal or reduction.

- 14.6 Exclusion of liability for defects

The warranty and the liability of Spühl AG do not include damage that is obviously not a consequence of defective material, incorrect design or defective workmanship, but is due, for example, to: normal wear, use of other than original spare parts, incorrect maintenance, failure to observe operating instructions, excessive loads, use of unsuitable means of production, chemical or electrolytic effects, construction or assembly work not carried out by Spühl AG or damage caused by other reasons that cannot be attributed to Spühl AG.

- 14.7 Subject to the liabilities of Spühl AG set forth in these general terms and conditions, the customer shall appropriately remedy all lacks and defects if the equipment is hired that occur during the hiring term at its own expense.

SPÜHL AG MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS OR AS REQUIRED BY LAW, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FIT-

NESS FOR A PARTICULAR PURPOSE, OR WARRANTIES FROM A COURSE OF DEALING OR USE OF TRADE.

15. Exclusion of other liabilities of Spühl AG

All cases of contractual breach and relative legal consequences as well as all the customer's rights, regardless of their juridical grounds, are governed, in a final way, by these general terms and conditions (paragraph 14 hereinbefore). In particular, all rights that are not expressly quoted and related to compensation for damage, reduction, rescission or withdrawal from the agreement are excluded. Under no circumstances may the customer claim a right to compensation for damage not connected with the object of the supply, especially damage due to the loss of production, additional expenses arising through material or wear parts, damage of products manufactured by the machines, downtime, loss of orders, loss of profits as also other direct or consequential damage. This exclusion of liability is not applicable to malicious intent or gross negligence by Spühl AG, but is applicable to malicious intent or gross negligence by auxiliary personnel.

16. Guarantee against a third party with rights to compensation for damage

- 16.1 Should Spühl AG be sued by a third party for damages, the customer shall indemnify and defend Spühl AG and hold the same harmless.
- 16.2 Should a third person claim rights to compensation for damages from one of the parties, the same shall immediately inform the other party in writing thereof.
- 16.3 The parties are obliged to submit to any legal proceeding or arbitration brought by a third party for the purpose of exercising its rights to compensation for damages, in so far as this is necessary to rebut such rights. In such cases, the parties are obliged to provide mutual assistance.

17. Applicable law and place of jurisdiction

- 17.1 **The agreement is subject to Swiss law, with exclusion of the provisions of Swiss international private law, as well as to the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980.**
- 17.2 **All disputes and proceedings deriving from or connected with the agreement shall be submitted to the Commercial Court where Spühl AG has its place of business.**

Spühl AG is, however, also authorized to summons the customer to appear before the court where the latter has its place of business.