

GENERAL TERMS AND CONDITIONS FOR EXPORT GEORG KESEL GMBH & CO.KG

Part 1

GENERAL TERMS OF DELIVERY

PREAMBLE

1. These general terms and conditions apply exclusively. Any provisions of the Purchaser deviating from our conditions of purchase will only be valid if expressly confirmed by us in written form. In particular we do not acknowledge any exclusion of our rights to retention of title. Retention of title according to section 20 applies in its simple, expanded and extended form even if it is excluded in the general terms and conditions of our contract partner. These general terms also apply in the event that we being aware of conflicting or differing general terms and conditions of the Purchaser perform under the delivery agreement without reservation. When applied to a specific contract, modifications or deviations from the general terms and conditions must be in writing. The same applies in the event of waiving the requirement for written form. The object(s) to be supplied under these general terms and conditions is (are) hereinafter referred to as the „Product“. Wherever these general conditions use the term “in writing”, this means by document signed by the parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties.

PRODUCT INFORMATION

2. All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the contract.

DRAWINGS AND DESCRIPTIONS

3. All drawings and technical documents relating to the product or its manufacture 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 that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

ACCEPTANCE TESTS

4. Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during 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.

5. The Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

6. If the acceptance tests show the Product not to be in accordance with the contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

7. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

DELIVERY. PASSING OF RISK

8. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed, the delivery shall be Ex works (EXW).

If, in the case of delivery Ex works, the Supplier, at the request of the Purchaser, undertakes to send the Product to its

destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial shipments shall be permitted unless otherwise agreed.

TIME FOR DELIVERY. DELAY

9. If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the contract is entered into, all commercial and technical questions are answered, all official formalities have been completed, payments due at the formation of the contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

10. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected. If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

11. If delay in delivery is caused by any of the circumstances mentioned in Clause 38 or by an act or omission on the part of the Purchaser, including suspension under Clauses 19 or 41, 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.

12. If the Product is not delivered at the time for delivery (as defined in Clauses 9 and 11), the Purchaser is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5 per cent of the purchase price for each completed week of delay. The liquidated damages shall not exceed 5 per cent of the purchase price. If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages become due at the Purchaser's demand in writing but not before delivery has been completed or the contract is terminated under Clause 13.

13. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 12 and if the Product is still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week. If the Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to the Supplier terminate the contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties. If the Purchaser terminates the contract he shall be entitled to compensation for the loss he has suffered as a result of the Supplier's delay. The total compensation, including the liquidated damages which are payable under Clause 12, shall not exceed 7.5 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the contract is terminated. The Purchaser shall also have the right to terminate the contract by notice in writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 12 would entitle the Purchaser to maximum liquidated damages. In case of termination on this ground, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 13.

14. Liquidated damages under Clause 12 and termination of the contract with limited compensation under Clause 13 are the only remedies available to the Purchaser in case of delay or non-delivery on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of culpable,

fundamental breach of contract, gross negligence according to clause 14 or willful intent. 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 supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

15. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the delivery time, he shall forthwith notify the Supplier in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery, as if delivery had taken place. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

16. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 38, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period. If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the contract is terminated.

PAYMENT

17. Unless otherwise agreed the purchase price shall be paid with 30 per cent at the formation of the contract, 30 per cent at start of production, 30 per cent when the Product is ready for delivery and 10 per cent after final installation, not later than 30 days after delivery.

18. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been fully and irrevocably credited.

19. If the Purchaser fails to pay by the stipulated date, the Supplier 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 fail to agree on the rate of interest, it shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment. In case of late payment the Supplier 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 Supplier shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the agreed purchase price.

RETENTION OF TITLE

20. The Product shall remain the property of the Supplier until the purchase price including the price for installation of the Product as well as all other claims that the Supplier is eligible to against the Purchaser according to the contract have been paid for in full to the extent that such retention of title is valid under the applicable law. If the combined value of all security interests held by the Supplier exceeds the amount of all secured claims by more than 20%, the Purchaser may request the Supplier to release the excess in value of the security interests. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned. The retention of title shall not *affect* the passing of risk under Clause 8.

The Purchaser is authorized to dispose of the items covered by security interest in the ordinary course of business. He assigns all claims against his customers from these sales to the Supplier, but is authorized to collect on his own behalf unless he fails to meet his payment obligations towards the Supplier. The supplier shall not disclose the assignment to Purchaser's customers unless the Purchaser fails to meet his payment obligations towards the Supplier or unless indications exist about the Purchaser's insolvency or the impairment thereof. The movement of an object under retention of title to a

permanent establishment outside Germany is prohibited without the prior consent of the supplier even in cases where the ownership is not transferred to a third party. A sale by way of Sale-and-lease-back is not considered as disposal in the ordinary course of business. The Supplier's prior consent is required. Notwithstanding this provision any claims accruing for the Purchaser from the sale shall be covered by the assignment stipulated in the preceding paragraph.

LIABILITY FOR DEFECTS

21. Pursuant to the provisions of Clauses 22-36 inclusive, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

22. The Supplier's liability is limited to defects which appear within a period of one year from delivery. If the daily use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

23. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 22 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.

24. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 22. The notice shall contain a description of the defect. If the Purchaser fails to notify the Supplier in writing of a defect within the time limits set forth in the first paragraph of this Clause, he loses his right to have the defect remedied. Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage resulting from his failure to notify.

25. On receipt of the notice under Clause 24 the Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 21-36 inclusive. Repair shall be carried out at the place where the Product is located unless the Supplier deems it appropriate that the defective part or the Product is returned to him for repair or replacement. The Supplier is obliged to carry out dismantling and reinstallation of the part if this requires special knowledge. If such special knowledge is not required, the Supplier has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.

26. If the Purchaser has given such notice as mentioned in Clause 24 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.

27. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the defect.

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

29. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for repair, dismantling, installation and transport as a result of the Product being located in a place other than the destination stated in the contract or - if no destination is stated - the place of delivery.

30. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

31. If, within a reasonable time, the Supplier does not fulfil his obligations under Clause 25, the Purchaser may by notice in writing fix a final time for completion of the Supplier's obligations. If the Supplier fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Supplier. Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs

incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

32. Where the defect has not been successfully remedied, as stipulated under Clause 31, a) the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstance shall such reduction exceed 7.5 per cent of the purchase price, or b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the contract, the Purchaser may terminate the contract by notice in writing to the Supplier. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 7.5 per cent of the purchase price.

33. The Supplier is not liable for defects out of materials provided, or a design stipulated or specified by the Purchaser.

34. The Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of the Product. The Supplier's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. Finally the Supplier's liability does not cover normal wear and tear or deterioration.

35. Notwithstanding the provisions of Clauses 21-34 the Supplier shall not be liable for defects in any part of the Product for more than 12 months from the installation of the Product and/or a maximum of 15 months after delivery for two shift operation.

36. Save as stipulated in Clauses 21-35, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of wilful intent or gross negligence as defined in Clause 14 or of culpable injury to life, body or health.

The limitation of liability does not apply in cases of culpable fundamental breach of contract. In cases of slight negligence the Supplier is only liable for contract specific, reasonably foreseeable damages. Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act for defects of the Product causing death or personal injury, or damage to items of property used privately. Furthermore the said limitation of liability shall not apply in the case of defects the Supplier has fraudulently concealed or whose absence he has guaranteed.

37. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall reimburse, defend and indemnify the Supplier harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, this party shall forthwith inform the other party thereof in writing. The Supplier and the Purchaser 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 Product. The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of gross negligence as defined in Clause 14.

FORCE MAJEURE

38. 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, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after 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.

39. 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 Supplier for expenses incurred in securing and protecting the Product.

40. 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 38 for more than six months.

ANTICIPATED NON-PERFORMANCE

41. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.

CONSEQUENTIAL LOSSES

42. Save as otherwise stated in these General 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 contracts or for any other consequential or indirect loss whatsoever.

The said exclusion of liability shall not apply in the case of intent or gross negligence as defined in Clause 14 or if the Supplier negligently causes injury to life, body or health. Furthermore, the exclusion of liability shall not apply in cases of culpable fundamental breach of contract. In cases of slight negligence the Supplier shall be liable only for contract specific reasonably foreseeable damage. Nor shall the exclusion of liability apply in the cases of strict liability under the Product Liability Act for defects of the Product causing death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of damage attributable to fraudulent concealment or despite specific guarantees.

DISPUTES AND APPLICABLE LAW

43. All disputes arising out of or 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. The language of the arbitration proceedings shall be German.

44. The contract shall be governed by the substantive law of the Supplier's country.

Part 2

GENERAL CONDITIONS FOR THE SUPPLY AND INSTALLATION OF PRODUCTS

PREAMBEL

1. These general terms and conditions apply exclusively. Any provisions of the Purchaser deviating from our conditions of purchase will only be valid if expressly confirmed by us in written form. In particular we do not acknowledge any exclusion of our rights to retention of title. Retention of title according to section 46 applies in its simple, expanded and extended form even if it is excluded in the general terms and conditions of our contract partner. These general terms also apply in the event that we being aware of conflicting or differing general terms and conditions of the Purchaser perform under the delivery agreement without reservation. When applied to a specific contract, modifications or deviations from the general terms and conditions must be in writing. The same applies in the event of waiving the requirement for written form.

DEFINITIONS

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

"Contract" shall mean the written agreement between the parties concerning performance of the Works, and all appendices, including agreed amendments and additions to the said documents. "Contract Price" shall mean the payment to be made for the Works. If installation is to be carried out on a time basis and has not been completed, the Contract Price for the purposes of Clauses 17, 40, 41 and 47 shall be the price for the plant with the addition of 5 per cent or of any other percentage that may have been agreed by the parties.

"Gross Negligence" shall mean an act or omission implying 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.

"In writing" shall mean communication by document signed by the parties, or by letter, fax, electronic mail and by such other means as are agreed by the parties. "Plant" shall mean all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract.

DRAWINGS AND DESCRIPTIONS

3. All drawings 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 that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

TESTS BEFORE SHIPMENT

4. If tests before shipment are provided for in the Contract they shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

"Site" shall mean the place where the Plant is to be erected, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Plant and erection equipment.

"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.

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.

5. The Contractor shall notify the Purchaser in writing of these tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

6. 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.

7. The Contractor shall bear all costs for tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

PREPARATORY WORK AND WORKING CONDITIONS

8. The Contractor shall provide in good time drawings showing the manner in which the Plant is to be erected, together with all information required for preparing suitable foundations, for providing access for 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.

9. The Purchaser shall provide in good time all installations, and ensure that the conditions necessary for the erection of the Plant and for the correct operation of the Works are fulfilled. This shall not apply to preparatory work which according to the Contract shall be performed by the Contractor.

10. The preparatory work shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 8. 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.

11. If an error or omission in the drawings or information referred to in Clause 8 is discovered by the Contractor or notified to him in writing before expiry of the period referred to in Clause 50, the cost of any necessary remedial work shall be borne by the Contractor.

12. The Purchaser shall ensure that:

a) the Contractor's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. Provided that the Purchaser has been given notice in writing in reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Contractor.

b) he has, in good time before erection is started, informed the Contractor In Writing of all relevant safety regulations in force at the Site. The erection shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before erection is started and shall be maintained.

c) the Contractor's personnel are able to obtain suitable and convenient board and lodging in the neighbourhood of the Site and have access to internationally acceptable hygiene facilities and medical services.

d) he has made available to the Contractor free of charge 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, oils, 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) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft and deterioration of the Plant, the tools and equipment required for erection, and the personal effects of the Contractor's personnel.

f) the access routes to the Site are suitable for the required transport of the Plant and the Contractor's equipment.

PURCHASER'S DEFAULT

13. If the Purchaser anticipates that he will be unable to carry out in time his obligations necessary for completion of the Works, including complying with the conditions specified in Clauses 9, 10 and 12, 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.

14. Without prejudice to the Contractor's rights under Clause 15, if the Purchaser fails to fulfil, correctly and in time, his obligations necessary for completion of the Works, including complying with the conditions specified in Clauses 9, 10 and 12, the following shall apply:

a) the Contractor may at his own discretion choose to carry out or employ a third party to carry out the Purchaser's obligations, or otherwise take such measures as under the circumstances are appropriate in order to avoid or alleviate the effects of the Purchaser's default.

b) the Contractor may suspend in whole or in part his performance of the Contract. He shall forthwith notify the Purchaser in writing of the suspension.

c) if the Plant has not been delivered to the Site, the Contractor shall arrange for storage of the Plant at the Purchaser's risk. The Contractor shall also, if the Purchaser so requires, insure the Plant.

d) if performance of the Contract is delayed by the Purchaser's default, he shall nevertheless pay any part of the Contract Price which, but for such delay, had become due.

e) the Purchaser shall reimburse the Contractor for any costs not covered by Clause 42 or 43, which are reasonably incurred by the Contractor as a result of measures under a), b) or c) of this Clause.

15. If completion of the Works is prevented by the Purchaser's default as referred to in Clause 14, and this is not due to any such circumstance as mentioned in Clause 64, the Contractor may also 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. The compensation shall not exceed the Contract Price.

LOCAL LAWS AND REGULATIONS

16. The Contractor shall ensure that the Works are carried out and are in accordance with any laws and regulations which are applicable to the Works. If required by the Contractor, the Purchaser shall provide the relevant information on these laws and regulations in writing.

17. The Contractor shall carry out any variation work caused by changes in laws and regulations referred to in Clause 16, or in their generally accepted interpretation, occurring between the dates of submission of the tender and acceptance. The Purchaser shall bear the extra costs and other consequences resulting from such changes, including variation work.

18. If the parties are unable to agree on the extra costs and other consequences of changes in laws and regulations, referred to in Clause 16, the Contractor shall be compensated on a time basis for any variation work until the dispute has been settled in accordance with Clause 70.

VARIATIONS

19. Subject to the provisions of Clause 23, the Purchaser is entitled to require variations to the scope, design and construction of the Works until the Works have been accepted. The Contractor may suggest such variations in writing.

20. Requests for variations shall be submitted to the Contractor in writing and shall contain an exact description of the variation required.

21. 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 and regulations referred to in Clause 16.

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. Save as provided in Clause 17, the Contractor shall not be obliged to carry out variations required by the Purchaser until either the parties have agreed on how the variations will affect the Contract Price, the time for completion and other terms of the Contract, or the dispute has been settled in accordance with Clause 70.

PASSING OF RISK

24. The risk of loss or damage to the Plant shall pass to the Purchaser in accordance with any agreed trade terms to be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed, the delivery shall be Ex works (EXW). Any risk of loss or damage to the Works, which is not covered under the first paragraph of this clause, shall pass to the Purchaser with the acceptance 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.

ACCEPTANCE TESTS

25. When erection has been completed acceptance tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for acceptance according to the Contract. The Contractor shall notify the Purchaser in writing that the Works are ready for acceptance. He shall in this notice give a date for acceptance tests, giving the Purchaser sufficient time to prepare for and be represented at these tests. The Purchaser shall bear all costs of acceptance tests. The Contractor shall, however, bear all costs relating to his personnel and his other representatives.

26. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the acceptance tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the acceptance tests.

27. If, after having been notified in accordance with Clause 25, the Purchaser fails to fulfil his obligations under Clause 26 or otherwise prevents the acceptance tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for acceptance tests stated in the Contractor's notice.

28. The acceptance tests shall be carried out during 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 Purchaser's country.

29. The Contractor shall prepare a test-report of the acceptance tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the acceptance tests after having been notified in accordance with Clause 25, the test report shall be accepted as accurate.

30. If the acceptance 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 25-29. This shall not apply when the deficiency was insignificant.

ACCEPTANCE

31. Acceptance of the Works takes place:

a) when the acceptance tests have been satisfactorily completed or are regarded under Clause 27 as having been satisfactorily completed, or

b) where the parties have agreed not to carry out acceptance 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 acceptance according to the Contract. Minor deficiencies which do not affect the efficiency of the Works shall not prevent acceptance.

32. The Purchaser is not entitled to use the Works or any part thereof before acceptance. 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 acceptance tests.

33. As soon as the Works have been accepted in accordance with Clause 31 or 32, the period, referred to in Clause 50, shall start to run. The Purchaser shall, at the Contractor's request in writing, issue a certificate stipulating when the Works have been accepted. The Purchaser's failure to issue a certificate shall not affect acceptance according to Clauses 31 and 32.

COMPLETION.

CONTRACTOR'S DELAY

34. The Works shall be considered as completed when accepted in accordance with Clause 31 or 32.

35. If the parties instead of specifying the date for completion, have specified a period of time on the expiry of which acceptance shall take place, such period shall start to run as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

36. If the Contractor anticipates that he will not be able to comply with his obligations within the times specified in the Contract, he shall forthwith notify the Purchaser thereof In Writing, stating the reason, and, if possible, when compliance can be expected. If the Contractor fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

37. 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 64, or
- b) as a result of variation work under Clause 17, or
- c) as a result of variations under Clauses 19-23, or
- d) as a result of suspension under Clauses 14, 45 or 67, or
- e) by an act or omission on the part of the Purchaser.

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.

39. The Contractor is in delay when the Works are not completed at the time for completion as defined in Clauses 34, 35 and 37. The Contractor's delay entitles the Purchaser to liquidated damages from the date on which the Works should have been completed. The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each completed week of delay. The liquidated damages shall not exceed 5 per cent of the Contract Price. If only part of the Works is delayed, the liquidated damages shall be calculated on that part of the Contract Price, which is attributable to such part of the Works as cannot in consequence of the delay be used as intended by the parties. The liquidated damages become due at the Purchaser's request in writing but not before acceptance or termination of the Contract under Clause 39.

39. If the Contractor's delay is such that the Purchaser has become entitled to the maximum liquidated damages under Clause 38 and the Works are still not completed, the Purchaser may demand in writing completion within a final reasonable period which shall not be less than one week. If the Contractor does not complete the Works within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to the Contractor terminate the Contract in respect of such part of the Works which, due to the Contractor's failure, cannot be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he has suffered as a result of the Contractor's delay. The total compensation, including the liquidated damages which are payable under Clause 38, shall

not exceed 7.5 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice in writing to the Contractor, if it is clear from the circumstances that there will occur a delay in completion of the Works which, under Clause 38 would entitle the Purchaser to maximum liquidated damages. In case of termination on this ground, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 39.

40. Liquidated damages under Clause 38 and termination of the Contract with limited compensation under Clause 39 are the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of culpable fundamental breach of contract, wilful intent or gross negligence according to Clause 2.

PAYMENT

41. Unless otherwise agreed, payment shall be made as follows:

a) when erection is carried out on a time basis:

30 % of the agreed price for the Plant at the formation of the Contract, 30 % at the start of manufacture, 30 % when the Contractor notifies the Purchaser that the Plant, or the essential part of it, is ready for dispatch from the place of manufacture and 10 % after installation, at the latest 30 days after dispatch.

Payment for erection shall be made against monthly invoices.

b) when erection is included in the lump sum Contract Price:

30 % of the Contract Price at the formation of the Contract, 30% at the start of manufacture, 30 % when the Contractor notifies the Purchaser that the Plant, or the essential part of it, is ready for dispatch from the place of manufacture, 10 % after installation, at the latest 30 days after dispatch.

42. When erection is carried out on a time basis the following items shall be separately charged :

a) all travelling 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 board and lodging and other living expenses, including any appropriate allowances, of the Contractor's personnel for each day's absence from their 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 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 the personnel are entitled in accordance with current law, 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 no suitable lodgings closer to the Site, waiting when work is prevented by circumstances for which the Contractor is not responsible under the Contract, all at the same rates as referred to in c);

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.

43. 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 42, a) through 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 costs, 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 programme.

44. 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.

45. 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 percentage points above the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

In case of late payment 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. The compensation shall not exceed the Contract Price.

RETENTION OF TITLE

46. The Plant shall remain the property of the Contractor until paid for in full, including payment for the erection of the Plant as well as all other claims that the Supplier is eligible to against the Purchaser according to the contract, to the extent that such retention of title is valid under the applicable law. If the combined value of all security interests held by the Contractor exceeds the amount of all secured claims by more than 20%, the Purchaser may request the Contractor to release the excess in value of the security interests. The Purchaser shall at the request of the Contractor assist him in taking any measures necessary to protect the Contractor's title to the Plant in the country concerned. The retention of title shall not affect the passing of risk under Clause 24.

The Purchaser is authorized to dispose of the items covered by security interest in the ordinary course of business. He assigns all claims against his customers from these sales to the Contractor, but is authorized to collect on his own behalf unless he fails to meet his payment obligations towards the Contractor. The Contractor shall not disclose the assignment to Purchaser's customers unless the Purchaser fails to meet his payment obligations towards the Contractor or unless indications exist about the Purchaser's insolvency or the impairment thereof. The movement of an object under retention of title to a permanent establishment outside Germany is prohibited without the prior consent of the Contractor even in cases where the ownership is not transferred to a third party. A sale by way of Sale-and-lease-back is not considered as disposal in the ordinary course of business. The Contractor's prior consent is required. Notwithstanding this provision any claims accruing for the Purchaser from the sale shall be covered by the assignment stipulated in the preceding paragraph.

LIABILITY FOR DAMAGE TO PROPERTY BEFORE ACCEPTANCE

47. The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom he is responsible in connection with performance of the Contract. Even if the Contractor is not liable for the damage to the Works in accordance with this Clause, the Purchaser may require the Contractor to remedy the damage at the Purchaser's cost.

48. The Contractor shall be liable for damage to the Purchaser's property occurring before acceptance of the Works only if it is proved that such damage was caused by negligence on the part of the Contractor or anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall however under no

circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

LIABILITY FOR DEFECTS

49. Pursuant to the provisions of Clauses 50-63 inclusive, the Contractor shall remedy any defect or non-conformity (hereinafter termed defect(s) in the Works resulting from faulty design, materials or workmanship.

50. The Contractor's liability is limited to defects in the Works which appear within a period of one year from acceptance. If the daily use of the Works exceeds that which is agreed, this period shall be reduced proportionately. If acceptance has been delayed for reasons for which the Purchaser is responsible, the Contractor's liability for defects shall not, except as stated in Clause 51, be extended beyond 18 months after delivery of the Plant.

51. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 50 shall be extended only by a period equal to the period during which the Works have been out of operation as a result of the defect.

52. The Purchaser shall without undue delay notify the Contractor in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 50.

The notice shall contain a description of the defect. If the Purchaser fails to notify the Contractor in writing of a defect within the time-limits set forth in this Clause, he loses his right to have the defect remedied. Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Contractor in writing. The Purchaser shall bear the risk of damage resulting from his failure so to notify.

53. On receipt of the notice under Clause 52, the Contractor shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 49-63 inclusive. Repair shall be carried out at the Site, unless the Contractor deems it appropriate that the defective part or the Plant is returned to him for repair or replacement.

Where remedial work is carried out at the Site, Clauses 14 and 50 shall apply correspondingly. The Contractor is obliged to dismantle the Works to the extent necessary and to re-assemble the Works if this requires special knowledge. If such special knowledge is not required, the Contractor has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly repaired or replaced part.

54. If the Purchaser has given such notice as mentioned in Clause 52, and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he has incurred as a result of the notice.

55. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Works, to the extent that this is necessary to remedy the defect.

56. Unless otherwise agreed, necessary transport of the Plant and/or parts thereof to and from the Contractor in connection with the remedying of defects for which the Contractor is liable shall be at the risk and expense of the Contractor. The Purchaser shall follow the Contractor's instructions regarding such transport.

If the Works are not at the Site, the Purchaser shall bear any resulting additional costs incurred by the Contractor when remedying defects.

57. Defective parts which have been replaced shall be made available to the Contractor and shall be his property.

58. If, within a reasonable time, the Contractor does not fulfil his obligations under Clause 53, the Purchaser may, by notice in writing, fix a final time for completion of the Contractor's obligations.

If the Contractor fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Contractor. Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the Purchaser shall be in full settlement of the Contractor's liabilities for the said defect.

59. Where the defect has not been successfully remedied as stipulated under Clause 58 :

a) the Purchaser is entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstance shall such reduction exceed 7.5 per cent of the Contract Price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may terminate the Contract by notice in writing to the Contractor. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 7.5 per cent of the Contract Price.

60. The Contractor is not liable for defects arising out of materials provided, or a design stipulated or specified by the Purchaser.

61. The Contractor is liable only for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Works. The Contractor's liability does not cover defects which are caused by faulty maintenance or faulty repair by the Purchaser, or by alterations carried out without the Contractor's consent in writing. Finally the Contractor's liability does not cover normal wear and tear or deterioration.

62. Notwithstanding the provisions of Clauses 49-63 the Contractor shall not be liable for defects in any part of the Works for more than 12 months from the installation and/or a maximum of 15 months after delivery for two shift operation.

63. Save as stipulated in Clauses 49-63, the Contractor shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Contractor's liability shall not apply if he has been guilty of wilful intent or gross negligence as defined in Clause 2 or of culpable injury to life, body or health.

The limitation of liability does not apply in cases of culpable fundamental breach of contract. In cases of slight negligence the Contractor is only liable for contract specific, reasonably foreseeable damages. Nor shall the said limitation of liability apply in the cases of strict liability under the Product Liability Act for defects of the Works causing death or personal injury, or damage to items of property used privately. Furthermore the said limitation of liability shall not apply in the case of defects the Contractor has fraudulently concealed or whose absence he has guaranteed.

FORCE MAJEURE

64. 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, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after 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.

65. 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.

66. 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 64 for more than six months.

ANTICIPATED NON-PERFORMANCE

42. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.

CONSEQUENTIAL LOSSES

43. Save as otherwise stated in these General 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 contracts or for any other consequential or indirect loss whatsoever.

The said exclusion of liability shall not apply in the case of intent or gross negligence as defined in Clause 2 or if the Contractor negligently causes injury to life, body or health. Furthermore, the exclusion of liability shall not apply in cases of culpable fundamental breach of contract. In cases of slight negligence the Contractor shall be liable only for contract specific reasonably foreseeable damage. Nor shall the exclusion of liability apply in the cases of strict liability under the Product Liability Act for defects of the Plant causing death or personal injury, or damage to items of property used privately. Neither does the said exclusion apply in the case of damage attributable to fraudulent concealment or despite specific guarantees.

DISPUTES AND APPLICABLE LAW

44. All disputes arising out of or 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. The language of the arbitration proceedings shall be German.

45. The contract shall be governed by the substantive law of the Contractor's country.