

GENERAL CONDITIONS - EXPORT

These general conditions shall apply to the supply of equipments and related services by **CLEXTRAL** to the **BUYER**, in the absence of additional or different terms expressly agreed upon in writing between the parties.

1. DEFINITIONS

The following definitions shall apply herein :

- "**Contract**" shall mean the contract between **CLEXTRAL** and the **BUYER**. The Contract is composed of the following documents :
 - . the special conditions,
 - . these general terms and conditions,
 - . the technical requirements,
 - . the technical and administrative prescriptions which define the procedures to be respected by the parties, if any.

In the event of any discrepancy or conflict within or between any of these applicable documents, the former shall supersede the latter.

- "**Equipments**" shall mean the equipments to be supplied by **CLEXTRAL** under this Contract.
- "**Services**" shall mean the services to be performed by **CLEXTRAL** under this Contract.
- "**Site**" shall mean the premises where the Equipments are to be operated.

2. FORMATION OF CONTRACT

- 2.1. The Contract concluded between **CLEXTRAL** and the **BUYER** results only from a written offer made by **CLEXTRAL**. **CLEXTRAL** shall not be bound by any verbal offer.
- 2.2. Offers shall only remain open for the period indicated in **CLEXTRAL**'s offer or, in the absence of any indication, at the latest sixty days from the date of submittal.
- 2.3. The parties shall be deemed to have entered into the Contract upon execution of the Contract by both parties, or, in case of an order from the **BUYER**, upon written acceptance of such order by **CLEXTRAL**.

3. COMING INTO FORCE OF THE CONTRACT

The Contract shall become effective on the date on which the following conditions have been fulfilled :

- obtaining by **CLEXTRAL** and the **BUYER** of any requisite approval of competent Government authorities, and
- receipt of the agreed down payment provided in the Contract, and
- receipt of the contractually compliant documentary credit, if required by the Contract, and
- obtainment of coverage of the french export credit insurance.

If all the hereabove conditions are not fulfilled within 45 days from the date of execution of the Contract, the Contract shall be deemed null and void.

4. LICENSES, PERMITS AND AUTHORIZATIONS

BUYER shall be responsible, except in France, for obtaining and maintaining in full force and effect the required licenses, permits and authorizations related to the Equipments and the related Services.

5. CHANGES

- 5.1. **BUYER** shall have the right to make reasonable changes to the Contract, provided that if such changes are such as to cause any increase in **CLEXTRAL** costs or in delays of delivery or in any other pertinent provisions of the Contract, an equitable adjustment in the price, time for performance and other pertinent provisions will be made and the Contract shall accordingly be modified by a written amendment signed by both parties.

CLEXTRAL shall be obliged to implement the change, as described in 5.1. hereabove, only after signature of a change notice mutually agreed upon by the parties.

- 5.2. **CLEXTRAL** reserves the right to propose changes. Any change proposed by **CLEXTRAL** shall be subject to **BUYER**'s approval.

6. TIMES OF DELIVERY

- 6.1. Delivery times are stipulated in the Contract. Time limits for delivery shall start from the date of coming into force of the Contract.

- 6.2. Delivery times shall be binding to **CLEXTRAL** only if the **BUYER** has fulfilled its own obligations in due time (such as, but not limited to supply in due time of clearances, documents, permits, informations, machinery or tools necessary for the performance of the Contract).
- 6.3. Delivery times shall be automatically postponed or extended in case of occurrence of a Force Majeure event, as defined in clause 17 hereunder, or in case of delay not due to **CLEXTRAL**.

7. PRICE - PAYMENT

7.1. Prices

Prices for the Equipments are firm and not subject to revision. Prices are calculated for unpacked Equipments delivered Ex works.

If the beginning of the performance of the Services is delayed for more than three months after the stipulated time, **CLEXTRAL** reserves the right to increase the prices for the Services.

7.2. Payment terms

- 7.2.1. Payment terms are defined in the Contract. In the absence of specific provisions in the Contract, all payments for the Equipments and the related Services shall be made by means of an irrevocable, transferable and divisible documentary credit equal to the total price of the Contract, to be opened in favour and at no cost to **CLEXTRAL** within 30 days from the signature of the Contract, and to be confirmed by a first class French bank, which will be advised by **CLEXTRAL** upon receipt of the order.

This documentary credit shall be payable at view in France with the confirming bank as follows :

- (i) For the Equipments : 1/3 thereof as advance payment upon signature of the Contract, and 2/3 thereof upon Ex Works delivery, prorata deliveries effected.

In case of FOB delivery, the shipping documents shall include forwarder's certificate of receipt (if any) or warehouse receipt accompanied by **CLEXTRAL**'s written declaration that transport has not been made available by the **BUYER**.

- (ii) For the Services : Payments shall be made monthly for Services performed the previous month.

7.2.2. Payments shall be free of all deductions, withholdings, set-offs or other charges. Payments shall not be refused, postponed or interrupted by reason of any claim the Client may have.

7.2.3. Should the **BUYER** fail to make any payment when due pursuant to the Contract, all sums under the Contract shall become immediately and automatically due, and the **BUYER** shall pay an additional charge thereon at a rate equal to 3 points higher than the prime rate of the interbank rate quoted at the Banque de France in Paris, France, without prejudice to **CLEXTRAL**'s other rights.

7.3. Invoices

Equipments, including partial delivery, will be invoiced by **CLEXTRAL** upon notification of the readiness of the Equipments for delivery.

Services will be invoiced by **CLEXTRAL** based on the Services performed.

8 . **BUYER'S OBLIGATIONS**

8.1. **BUYER** shall supply to **CLEXTRAL**, as necessary for the performance of the Contract, all complete, clear and correct drawings, plans, documents or informations. **BUYER** shall at its own expenses carry out any alteration or remedial work necessitated by any error, omission or discrepancies therein.

8.2. **BUYER** shall give **CLEXTRAL** access to the Site on the date specified in the Contract for the performance of the Services. **BUYER** shall obtain all work permits and visas for **CLEXTRAL** personnel required for the Services. **BUYER** shall inform **CLEXTRAL** of the Site regulations and of all resulting obligations for **CLEXTRAL**.

BUYER shall provide **CLEXTRAL** free of charge with (i) the installations and services (including but not limited to, offices, commodities, energy, water, telephone, and telex) and (ii) the use of tools and equipments available on Site, which are necessary for the performance of the Services. After completion of the Services, all said tools and equipments shall be returned to the **BUYER**, and **CLEXTRAL** shall not be held liable for their normal tear and wear.

9. **FACTORY TESTS - DELIVERY**

9.1. The Equipments manufactured by **CLEXTRAL** will be mechanically tested in **CLEXTRAL**'s factory prior to delivery, according to **CLEXTRAL**'s standard test procedure.

BUYER shall have the right to participate, at its own costs and risks, to such factory tests, provided it has informed **CLEXTRAL** of its intention to do so at least three months before the delivery date.

Upon completion of such tests, a "factory test certificate" shall be issued by **CLEXTRAL**. In the event of the **BUYER** participating to the factory tests, the certificate shall be signed by both parties.

With respect to Equipments not manufactured by **CLEXTRAL**, **CLEXTRAL** will use its best efforts to arrange for factory tests with its main sub-contractors, on the same conditions as provided in this sub-article.

- 9.2. Unless otherwise provided in the Contract, the Equipments are delivered "Ex-Works" according to International Chamber of Commerce Incoterms 1990, which shall be likewise applicable to any other delivery type stipulated in the Contract.

CLEXTRAL shall notify to **BUYER** that the Equipments are ready for delivery.

If loading is delayed for any reasons beyond **CLEXTRAL**'s control, the terms of payment shall not be affected and **CLEXTRAL** shall be entitled to store the Equipment at **BUYER**'s expenses and risk.

10. RESERVATION OF TITLE

Title to the Equipments shall pass to **BUYER** when effective payment of the full price of all the sums due under the Contract have been made to **CLEXTRAL**.

11. TAXES AND DUTIES

The prices, as well as all amounts to be paid in connection with the Contract (including those resulting from an arbitration decision), do not include any taxes, levies, duties, charges, fees or withholdings of any kind, which may be levied by all authorities in connection with the Contract, in particular custom duties and/or VAT, except those applicable in France. In the event **CLEXTRAL** is to pay such taxes, duties, or rates, prices and rates indicated in the Contract will be increased accordingly.

In case of EEC transaction, the **BUYER** undertakes to provide **CLEXTRAL** with all information and documents which could be required for VAT purposes.

12. COMMISSIONING

- 12.1. As soon as the Equipments have been erected on Site, and no later than three months after **CLEXTRAL**'s notification of the readiness of the Equipments for delivery, the Equipments shall be commissioned. Partial commissioning for defined separate units shall be allowed.

Such commissioning shall be performed according to the test procedure defined in the Contract, or, if no such procedure has been defined in the Contract, according to **CLEXTRAL**'s standard test procedure.

- 12.2. The necessary raw material, chemical products and utilities (electrical power and miscellaneous fluids) shall be made available by the **BUYER**, as needed, to the date and during the period foreseen in the Contract for those start up tests. **BUYER**'s personnel shall be available in due time for the tests.
- 12.3. Immediately upon completion of the commissioning, a "commissioning certificate" shall be issued and signed by both parties. If, for reasons beyond **CLEXTRAL**'s control, such commissioning cannot be performed within the time specified in sub-article 12.1 hereabove, then the Equipments shall be deemed commissioned for all purposes of the Contract.
- 12.4. Minor defects which do not substantially jeopardize the performance and the use of the Equipments shall not prevent the issuing of the commissioning certificate. Failure, for reasons due to **CLEXTRAL**, to reach the performances expressly guaranteed in the Contract does not justify cancellation or termination of the Contract.

13. WARRANTY

- 13.1. **CLEXTRAL** warrants that the Equipments will be free from any defect due to faulty materials or workmanship which render the Equipments unfit for the purpose specified in the Contract.

The period of warranty shall be 12 months from the starting up of the Equipments as defined in article 12, and no later than 15 months from the date of **CLEXTRAL**'s notification of readiness of the Equipments for delivery.

If spare parts are included in the Equipments, the period of warranty for such spare parts shall be limited to 6 months from the putting into service of the spare parts and no later than 15 months after the date of notification by **CLEXTRAL** that the spare parts are ready for delivery.

- 13.2. If any such defect appears within the warranty period, the **BUYER** shall, promptly after being aware of it, inform **CLEXTRAL** thereof, stating in writing the nature of such defect.
- 13.3. **CLEXTRAL** shall correct any defect by repairing, replacing or modifying, at its option, any part of the Equipments shown not to conform with this warranty. Repair, replacement or modification of the defective part of the Equipments shall be at **CLEXTRAL**'s expenses, as well as the transportation cost of said defective parts and of the replaced or repaired parts to and from **CLEXTRAL**'s factories.

All labor expenses (including travel and living expenses) incurred by **CLEXTRAL** to effect on Site repair, replacement or modification shall be at **BUYER's** charge. **BUYER** shall, at its own expenses, make the Equipments available for correction and/or provide access to the defective parts of the Equipments.

All such remedies are subject to the limitation of article 14 below.

13.4. Parts replaced or repaired under this article shall be warranted for a period of 6 months from the date of replacement and/or repair ; such six months warranty period shall be extended until the end of the original warranty period if said original warranty period is not yet expired. Such warranty does not modify the original warranty period.

13.5. The warranties set forth herein shall not apply to :

- defect due to design specified by the **BUYER**, or to raw materials supplied by the **BUYER**,
- normal wear and tear of the Equipments, including wear parts (screws, barrels, ...),
- defect due to improper or unsuitable receipt, handling, storage, installation, operation, maintenance or misapplication of the Equipments,
- defect due to alterations, modifications or repairs carried out by the **BUYER** or third parties.

13.6. **CLEXTRAL** shall not be bound under any warranty obligation in case of (i) the starting up of the Equipments not being performed by **CLEXTRAL** or under **CLEXTRAL's** supervision, or (ii) spare parts not of **CLEXTRAL's** manufacture being placed on the Equipments.

13.7. **CLEXTRAL's** sole liability, and **BUYER's** sole and exclusive remedy, with respect to this warranty shall be limited to the remedies set forth above. No other warranty or remedy of any kind, whether statutory, written, oral, express or implied shall apply.

14. **LIABILITY**

14.1. In no event and under no circumstances, whether arising under contract, tort (including negligence), strict liability or otherwise, shall **CLEXTRAL** be liable for loss of anticipated profits, loss by reason of plant or other facility shutdown, non operation or increased expense of operation, service interruption, cost of purchased or replacement equipment, claims of the **BUYER's** customers, subcontractors, vendors or suppliers, governmental fines or penalties against the **BUYER**, loss of capital or revenue, cost of money, of for any special, indirect, incidental or consequential loss or damage of any nature arising at any time from any cause whatsoever.

BUYER shall waive all recourses against **CLEXTRAL** and shall hold **CLEXTRAL** harmless and indemnify it for all claims made by third parties resulting from such losses or damages.

14.2. The total cumulative liability of **CLEXTRAL**, its employees and subcontractors whether in contract, tort (including negligence), strict liability, or otherwise, for damages caused to property shall not exceed the total payments received by **CLEXTRAL** pursuant to the Contract at the time a claim as aforesaid is made by the **BUYER**.

14.3. In the event penalties are specified in the Contract, such penalties shall be construed as liquidated damages and not as penalties, and shall be exclusive of and in lieu of all other claims resulting from non obtention of performance or delay.

15. **INSURANCE**

Wherever a specific insurance covering loss of and damages to the Equipments on Site is subscribed by the **BUYER**, then **BUYER** shall procure that the subrogations rights of the insurer against **CLEXTRAL** and its sub-contractors are waived.

16. **CONFIDENTIALITY and PROPRIETARY INFORMATION**

16.1. All datas, drawings, designs, specifications, informations, know-how or documents of any kind supplied to **BUYER**, or coming to **BUYER**'s knowledge by way of performance of the Contract, shall remain the property of **CLEXTRAL**. Any such document, as well as **CLEXTRAL**'s offer to **BUYER**, shall be considered by the **BUYER** as private and confidential.

BUYER warrants **CLEXTRAL** that itself, its employees, agents, suppliers or any other third party, shall not, without **CLEXTRAL**'s prior written consent, directly or indirectly, copy, reproduce, publish, use or disclose such information except as may be necessary for the performance of the Contract and then only on a confidential basis.

16.2. Drawings and technical documents supplied by the **BUYER** to **CLEXTRAL** for the purpose of the Contract shall remain the property of the **BUYER**, and shall not, without **BUYER**'s consent, be copied or communicated to a third party otherwise than as necessary for the performance of the Contract.

16.3. The commitments set forth hereinabove shall not apply to any information which (i) was or becomes part of the public domain otherwise than through any act or omission on the part of the receiving party, (ii) was already in the possession of the receiving party at the time of receipt without any restrictions on disclosure, (iii) was acquired from a third party without any undertaking of confidentiality imposed by the disclosing party.

16.4. As soon as one of the parties have knowledge that the execution of the Contract might constitute an infringement of third parties patents and other industrials rights, or as soon as an infringement claim is raised by a third party, such party shall immediately inform the other one and communicate any information and elements which might defeat such action or claim.

17. FORCE MAJEURE

17.1. **CLEXTRAL** shall not be liable for any delay or non performance of the Contract, in case such non performance or delay is caused by an event of Force Majeure.

17.2. Force Majeure shall mean any cause existing or future which is beyond **CLEXTRAL**'s reasonable control and which **CLEXTRAL** cannot reasonably overcome, including, but not limited to, acts of God, storm, fire, strike, lock-out or any combination of workmen, equipment failures, interruptions of/or delay in transport, power or energy failures, steelworks stoppages, shortages of raw materials, embargo, prohibition of trade, interference by civil or military authorities, acts (including delay or failure to act), regulations or orders of any governmental authority, acts of war (declared or undeclared).

17.3. Promptly upon the discovery of the occurrence of any of such event, **CLEXTRAL** shall give to the **BUYER** written notice thereof and contractual delivery dates will be postponed to the extend which is necessary to overcome the consequences of such Force Majeure event. **CLEXTRAL** shall be entitled to the reimbursement of costs and expenses incurred as a result of the delay.

17.4. If, by reason of any Force Majeure event, the execution of the Contract is prevented for a continuous period of 120 days or more, then the parties shall meet and promptly discuss methods to resolve the difficulties arising from the Force Majeure event. If no agreement is reached within a period of 45 days, either party may terminate forthwith the Contract by giving written notice thereof to the other party.

Upon such termination, the **BUYER** shall pay to **CLEXTRAL** the value of the Equipments, or parts thereof, completed and the Services rendered at the date of termination. **CLEXTRAL** shall also entitled to be paid the cost of materials and goods already ordered for the Equipments and which have been delivered to **CLEXTRAL** or for which **CLEXTRAL** is legally liable to accept delivery.

Such Equipments, or parts of Equipments, shall become the property of the **BUYER** when paid for by the **BUYER**.

18. SUSPENSION AND TERMINATION

- 18.1. In the event of the **BUYER** failing to pay any sum due to **CLEXTRAL** under the Contract at any time, **CLEXTRAL** shall have the right to suspend the performance the Contract. Suspension may be prorogated until full payment of the concerned invoice has been made. In such event, any additional cost incurred by **CLEXTRAL** by reason of such suspension, as well as the interests on overdue payment as per article 7.2.3, shall be added to the Contract price.

Time for completion of **CLEXTRAL**'s obligations shall be extended consequently.

If the suspension has lasted for more than 60 continuing days, **CLEXTRAL** shall be entitled to terminate the Contract as per article 18.2 hereunder.

- 18.2. Either party may terminate the Contract at any time, with immediate effect and without prior resort to arbitration, in the event that the other party is in substantial breach of its obligation under the Contract, and thereafter fails to diligently take steps to remedy such breach within thirty (30) days following the receipt by the defaulting party of written notice to that effect.
- 18.3. Either party may at any time terminate the Contract by giving written notice with immediate effect if the other party becomes bankrupt or insolvent or if its financial position is such that legal actions leading towards bankruptcy may be taken against it by its creditors.

19. COMPLIANCE WITH LAWS AND STANDARDS

- 19.1. The regulations, codes and standards applicable to the performance of the Contract shall be those applicable in France or as otherwise expressly specified in the Contract.
- 19.2. If the cost of performance of **CLEXTRAL**'s obligations under the Contract is to be increased after the date on which the Contract has come into force, by reason of the enactment of any law, regulation or order that affect **CLEXTRAL** in the performance of its obligations, the amount of such increase shall be notified to the **BUYER** and added to the price set forth in the Contract.

20. ASSIGNMENT AND SUB-CONTRACTING

BUYER shall not, without **CLEXTRAL**'s prior written consent, transfer or assign this Contract, either in whole or in part, nor set up an association with another company for its fulfilment.

CLEXTRAL shall have the right to sub-contract any part of the Equipments and the Services to one or more sub-contractors.

21. LAW AND DISPUTES

Any disputes arising from or in connection with the Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said rules, rules which the parties recognize that they know. The place of arbitration shall be Paris, France.

The arbitrators shall apply the Swiss Federal Code of Obligations to the merits of the dispute and in all cases shall decide in accordance with the terms of the Contract.