

## General Terms and Conditions

### ASSAG SWITZERLAND

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Any relationship and/or contract between **ASS AG** (« **ASSAG** ») and the Buyer (the « **Buyer** ») related to the design, implementation, manufacture, supply and sale of a ASSAG component, module, system or service (the « **Product** ») shall be governed solely by these General Terms and Conditions.

#### 1. General

- 1.1 The contract shall be deemed to have been concluded as soon as ASSAG's written acknowledgement stating acceptance of the order has been sent. Tenders which do not stipulate an acceptance period shall not be binding.
- 1.2 These general conditions of supply shall be binding if declared applicable in the tender. These general terms and conditions are handed over to the Buyer with the tender. The Buyer has been able to take note of these general terms and conditions. Any conditions stipulated by the Buyer which are in contradiction to these General Terms & Conditions of Supply shall only be valid if expressly acknowledged by ASSAG in writing.
- 1.3 All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.
- 1.4 The nullity of a particular clause of these general terms and conditions does not entail the nullity of the whole general terms and conditions. Should a provision of these General Terms & Conditions of Supply prove to be wholly or partly invalid, the parties shall jointly seek an arrangement which has a legal and economic effect as similar as possible to the invalid provision.

#### 2. Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. ASSAG shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

#### 3. Plans and technical documents

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

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

- 4.1 The Buyer shall, at the latest when placing the order, draw the attention of ASSAG to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.
- 4.2 Unless otherwise agreed in accordance with Clause 4.1, the supplies and services shall comply with the regulations and standards at ASSAG's place of business. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

## 5. Prices

- 5.1 Unless otherwise agreed, all prices shall be deemed to be net ex works ASSAG according INCOTERMS 2020, excluding packing, in freely available Swiss francs or any agreed currency without any deductions whatsoever.

Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the Buyer. Likewise, the Buyer shall bear any and all taxes, fees, levies, customs duties and the like as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged ASSAG or to persons employed or appointed by ASSAG to perform any of his obligations, they shall be refunded by the Buyer upon presentation of the receipts.

- 5.2 ASSAG reserves the right to adjust the prices in case the wage rates or the raw material prices vary substantially between the submission of the tender and the contractually agreed performance.

In addition, an appropriate price adjustment shall apply in case

- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
- the nature or the scope of the agreed supplies or services has changed, or
- the material or the execution has undergone changes because any documents furnished by the Buyer were not in conformity with the actual circumstances, or were incomplete, or
- an amendment has been made to laws, regulations or the principles of interpretation or application.

## 6. Terms of payment

- 6.1 Payments shall be made to ASSAG by the Buyer within thirty (30) days from date of invoice with no deductions for cash discount, expenses, taxes or dues of any kind, in accordance with the conditions stated in the confirmation of order. Any deviation from the terms must be specifically agreed in writing by the parties.

Payment shall be deemed to be effected when Swiss francs or agreed currency have been made freely available to the ASSAG at ASSAG's domicile. If payment by bills of exchange or Letter of Credit is agreed, the Buyer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of issuing, notifying and confirming the Letter of Credit.

- 6.2 **Payments shall be made and the payment deadline in accordance with Clause 6.1 must be observed even if transport, delivery, installation, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond ASSAG's control, or if unimportant parts are missing, or if post-delivery work is to be carried out which does not prevent the supplies from being used.**

- 6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, ASSAG shall be entitled to adhere and execute the contract or to terminate the contract, and shall in both cases be entitled to claim damages.

If the Buyer, for any reason whatsoever, is in delay with a further payment, **or if ASSAG is seriously concerned that he will not receive payments in total or in due time because of circumstances having taken place since entering into the contract**, ASSAG, without being limited in his rights provided for by law, shall be entitled to refuse

further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until ASSAG will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or if ASSAG does not receive adequate securities, ASSAG shall be entitled to terminate the contract and to claim damages.

- 6.4 If the Buyer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the Buyer's domicile, but not less than five per cent. The right to claim further damages is reserved.

## 7. Reservation of title

- 7.1 **ASSAG shall remain the owner of all supplies until he has received the full payments in accordance with the contract.**

**This reservation of title agreement may be registered in the register of reservation of title agreements at the request of ASSAG, in particular in the event of non-payment of a due date by the Buyer or in the event of presumed or real financial difficulties of the Buyer.**

- 7.2 **The Buyer shall cooperate in any measures necessary for the protection of ASSAG's title. In particular, upon entering into the contract he authorises ASSAG to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the Buyer's expense.**
- 7.3 **This article shall constitute authorisation for the registration of this retention of title agreement with the competent register of retention of title agreements in accordance with Art. 4 para. 4 of the Ordinance on the Registration of Retention of Title Agreements (VORO, SR. 211.413.1).**
- 7.4 **During the period of the reservation of title, the Buyer shall, at his own cost, maintain the supplies and insure them for the benefit of ASSAG against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that ASSAG's title is in no way compromised or rescinded.**
- 7.5 **In the event of seizure or any other infringement of ASSAG's rights by a third party, the buyer shall be obliged to inform the third party of the retention of title and to inform ASSAG immediately in writing of the relevant fact.**
- 7.6 **As long as the full purchase price has not been paid by the Buyer, the latter undertakes to inform ASSAG of any change of address within one month of the change of address.**

## 8. Delivery

- 8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time ASSAG has sent a notice to the Buyer informing him that the supplies are ready for dispatch.
- 8.2 Compliance with the delivery time is conditional upon the Buyer's fulfilment of his contractual obligations.
- 8.3 The delivery shall be reasonably extended:
- a) if the information required by ASSAG for the performance of the contract is not

received in time, or if the Buyer subsequently changes it thereby causing a delay in the delivery of the supplies or services;

- b) if hindrances occur which ASSAG cannot prevent despite exercising the required care, regardless of whether they affect ASSAG, the Buyer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
- c) if the Buyer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the Buyer fails to observe the terms of payment.

- 8.4 The payment of liquidated damages for late delivery can only be imposed when it has been expressly agreed upon in writing. In any case, liquidated damages for delayed delivery shall not exceed  $\frac{1}{4}$  per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the ex-works contract price of the part of the supplies in delay. No damages at all shall be due for the first (2) two weeks of delay.
- 8.5 In case a specific date is fixed instead of a delivery period, this date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.
- 8.6 Any delay of the supplies or services does not entitle the Buyer to any rights and claims other than those expressly stipulated in this Clause 8. This also applies to persons employed or appointed by ASSAG to perform any of its obligations. This limitation does, however, not apply to unlawful intent or gross negligence on the part of ASSAG.

## 9. Packing

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

## 10. Passing of benefit and risk

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

## 11. Forwarding, transport and insurance

- 11.1 ASSAG shall be notified in good time of any special requirements regarding forwarding, transport and insurance.  
Transportation shall be at the Buyer's expense and risk.
- 11.2 Objections regarding forwarding or transport shall be immediately submitted by the Buyer to the last carrier upon receipt of the supplies or of the shipping documents.
- 11.3 The Buyer shall be responsible for taking out insurance against damage of any kind.

## 12. Inspection of the supplies and services

- 12.1 Inspection of the goods before shipment is carried out in accordance with ASSAG's inspection procedures. Additional procedures must be agreed specifically in the contract specification and shall be charged to the Buyer unless included in ASSAG's offer or contract price.
- 12.2 The Buyer shall inspect the supplies and services immediately and shall immediately notify ASSAG in writing of any deficiencies. If within ten (10) days after arrival of the goods the Buyer fails to do so, the supplies and services shall be deemed to have been accepted.
- 12.3 After being notified of deficiencies in accordance with Clause 12.2, ASSAG shall remedy them as soon as possible, and the Buyer shall give ASSAG the possibility to do so.
- 12.4 Buyer shall have no other rights in case of any deficiency, in particular to claim damages and to cancel the contract.

## 13. Cancellation, change, reduction in amount or suspension of orders

Orders are not subject to cancellation, change, reduction in amount, or suspension of deliveries except with ASSAG's consent and upon terms which indemnify it against loss. In the event Buyer cancels any purchase order or portion thereof, or fails to meet any obligation hereunder causing cancellation or re-scheduling of any purchase order or portion thereof, or requests a rescheduling or schedules shipments and such request is accepted by ASSAG, Buyer agrees to pay at ASSAG's option, cancellation or reschedule charges as follows :

- 13.1 Any and all partial preparation charges then due or which may become due;
- 13.2 For all accumulated costs (preparation costs, raw material, tooling, partial production, etc.);
- 13.3 Finished goods will be shipped and billed to prior scheduled delivery.
- 13.4 In the event that the Buyer does not accept shipment on the total purchase quantity within twelve (12) months ARO (After Receipt of Order), ASSAG reserves the right to :
- 13.4.1 Adjust unit price applicable to this shipped quantity and to invoice the Buyer for the accumulated differences.
- 13.4.2 Charge re-scheduling fees. One re-schedule per purchase order will be allowed at no administrative fee during the initial twelve (12) months ARO, thereafter a CHF. 250.- charge per line item shall apply to each schedule change.

## 14. Guarantee, liability for defects

### 14.1 *Guarantee period*

Unless otherwise agreed, the guarantee period is 2500 hours of operation or 12 months (first reached applies). It starts when the supplies leave ASSAG's works. If taking-over is delayed due to reasons beyond ASSAG's control, the guarantee period shall end not later than 18 months after ASSAG's notification that the supplies are ready for dispatch.

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

The guarantee expires prematurely if the Buyer or a third party undertakes modifications or repairs or if the Buyer, in case of a defect, does not immediately take

all appropriate steps to mitigate the damage and give ASSAG the possibility to remedy the defect.

#### 14.2 *Liability for defects in supply*

Upon the written request of the Buyer, ASSAG may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective. Replaced parts shall become ASSAG's property if he does not explicitly renounce this. Under restriction of proportionality, ASSAG shall bear the costs of remedying the defective parts only.

#### 14.3 *Liability for express warranties*

Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant characteristics.

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

If these improvements fail completely or in part, the Buyer may claim compensation as agreed beforehand for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such significance that they cannot be remedied within a reasonable time and provided that the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the Buyer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for him and he communicates this immediately, to terminate the contract. In this case ASSAG can only be held liable for reimbursing the sums which have been paid to him for the parts affected by the termination.

#### 14.4 *Exclusions from the liability for defects*

All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by ASSAG, or resulting from other reasons beyond ASSAG's control are excluded from ASSAG's guarantee and liability for defects.

#### 14.5 *Supplies and services of subcontractors*

For supplies and services of subcontractors requested by the Buyer, ASSAG assumes the guarantee and liability for defects, only to the extent of the subcontractors' guarantee and liability obligations.

#### 14.6 *Exclusivity of guarantee claims*

With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the Buyer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.

If the Buyer reports a defect and no defect is found for which ASSAG is liable, the Buyer is responsible for compensating ASSAG for the work undertaken and other expenses and costs.

#### 14.7 *Liability for additional obligations*

ASSAG is only liable for unlawful intent or gross negligence for claims arising out of inadequate advice and the like or out of breach of any additional obligations. Non-performance, bad performance and their consequences

In all cases of bad performance or non-performance not expressly covered by these general conditions of supply, in particular if ASSAG, without valid reasons, starts the execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if execution contrary to the terms of the contract can be clearly foreseen due to ASSAG's fault, or if the supplies and services have been executed contrary to the terms of the contract due to ASSAG's fault, then the Buyer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to ASSAG's fault, the Buyer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

- 14.7 In such case, Clause 20 shall apply with regard to any claims for damages on the part of the Buyer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.

#### 15 **Termination of the contract by ASSAG**

The contract shall be adapted appropriately, by agreement between the parties, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of ASSAG, or if performance subsequently becomes impossible. If such an adaptation is economically not justifiable, ASSAG shall be entitled to terminate the contract or the parts affected thereby.

If ASSAG wishes to terminate the contract he shall immediately inform the Buyer; this applies even if an extension of the delivery time has been agreed beforehand. In case of termination of the contract, ASSAG shall be entitled to payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the Buyer because of such termination are excluded.

#### 16 **Export control**

The Buyer recognises that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or reexport permit of the competent authority. The Buyer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

#### 17 **Data protection**

- 17.1 In the context of their contractual relations, the parties undertake to comply with the regulations in force applicable to the processing of personal data and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable from 25 May 2018.
- 17.2 All personal data that ASSAG collects comes from the information that the buyer provides when concluding the management mandate contract (last name, first name, address, bank details, etc.).
- 17.3 Information about personal data

In accordance with the GDPR, ASSAG informs the Buyer of the following:

- Purpose of the processing of personal data  
ASSAG is entitled to process the personal data of the Buyer in order to perform the contract. Furthermore, the Buyer consents in particular to ASSAG transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the parties.
- Retention of personal data. ASSAG undertakes to retain the Buyer's personal data for no longer than is necessary for the purposes for which the personal data is processed. A periodic review is carried out to determine whether data storage is still justified or not, in which case the data will be deleted immediately. In any case, personal data is deleted 5 years after the end of the contractual relationship.
- Transfer of personal data
- Buyer's rights :  
In accordance with Articles 12 to 22 of GDPR, the Buyer has rights regarding his personal data, which he may exercise by writing to ASSAG at the following postal address: ASS AG - Hauptstrasse 51 – CH-3186 Düringen/Switzerland

These rights concern in particular opposition, access, rectification, deletion, limitation of processing and portability of personal data.

## 18 **Software**

If the supplies and services delivered by ASSAG include software, the Buyer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The Buyer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Buyer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of ASSAG. In case of infringement, ASSAG may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as ASSAG, may also assert a claim in the event of infringement.

## 19 **Exclusion of further liability on ASSAG's part**

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the Buyer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In the event that claims



of the Buyer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the Buyer. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the Buyer be entitled to claim damages other than compensation for the costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the Buyer for infringements of intellectual property rights.

This exclusion of further liability on ASSAG's part does not apply to unlawful intent or gross negligence on the part of ASSAG, but does apply to persons employed or appointed by ASSAG to perform any of his obligations. This exclusion of liability does not apply as far as it is contrary to compulsory law.

20 **Right of recourse of ASSAG**

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

21 **Installation**

The specific conditions of installation of ASSAG shall apply.

22 **Jurisdiction and applicable law**

22.1 **The place of jurisdiction for both the Buyer and ASSAG shall be at the registered office of ASSAG. The article 32 of Swiss Civil Procedure Code is reserved.**

However, ASSAG also reserves the right to appeal to the competent court in the Buyer's country.

22.2 The contract shall be governed by Swiss substantive law. The application of the United Nations convention on Contracts for the International Sale of Goods is excluded.

This Agreement is made in English, French and German. In the event of a dispute as to the terms of this Agreement the English version shall prevail.

March 2020