

# INDAG

## General Terms And Conditions of Sale

### 1. Applicability

1.1 These General Terms and Conditions shall apply when the parties (the Purchaser and the Supplier) have agreed in writing or otherwise. Deviations from these General Terms and Conditions must be agreed upon in writing to become effective. Thus, the Purchaser's own delivery terms are only accepted if the parties have expressly agreed on it. If the Supplier has undertaken installation, service and maintenance of the Product or development, the Special Terms and Conditions Installation, Special Terms and Conditions Service and Maintenance, and Special Terms and Conditions Development shall be applicable, in addition to these General Terms and Conditions.

1.2 In these General Terms and Conditions, the Product(s) shall mean the components which the Supplier contractually undertakes to sell to the Purchaser, and which are set forth in detail and specified in the Agreement.

1.3 In these General Terms and Conditions, the Agreement shall mean every individual agreement between the Purchaser and the Supplier for the sale and purchase of Products. These General Terms and Conditions shall constitute an integral part of any such Agreement.

### 2. Blueprints, descriptions, other documents, and software

2.1 Information in marketing materials, price lists and other product information is not binding to the parties, unless the Agreement expressly refers to such information.

2.2 Blueprints, descriptions, software, and other technical documentation which has been provided to a party by the other party may not be used for any other purpose than the purpose for which it was provided. The material may not be copied or otherwise reproduced without the consent of the providing party.

2.3 The Supplier shall no later than upon delivery, without right to compensation, provide the Purchaser with one, or the otherwise agreed amount of, copy(ies) of the blueprints and/or other technical documentation, which is provided by the Supplier to enable the Purchaser to conduct assembly, commissioning, operating and maintenance (including recurring reparations) of the Product. Upon agreement to that effect, the Supplier shall provide other documentation, such as measuring protocols and certificates. The Supplier is entitled to compensation for providing such documentation. The Supplier is not obliged to provide blueprints and documentation for the manufacturing of a Product or spare parts. The Supplier may perform the above obligations by making the relevant documentation available on the Internet.

### 3. Testing prior to delivery (acceptance test)

3.1 Agreed acceptance tests shall be conducted at the premises of the manufacturer of the Product at the Purchaser's expense, unless otherwise agreed in writing.

3.2 If the parties have not specifically agreed on technical requirements and the manner of conducting the acceptance test, the acceptance test shall be conducted in accordance with industry practice of the relevant industry in the manufacturer's country. The Supplier shall keep a record of the acceptance test and shall provide said record to the Purchaser. Acceptance tests shall be approved in the record. If the Purchaser has not raised legitimate objections in writing within five (5) business days of a conducted acceptance test, the Purchaser shall be considered to have accepted the acceptance test. If the Product is not in conformity with the Agreement, the Supplier shall as soon as possible ensure that necessary corrections are performed, unless the non-conformity is without significance for the use of the Product. Thereafter, the Purchaser is entitled to a new acceptance test.

### 4. Prices and payment

4.1 The price of the purchase shall be set to the price which the Supplier applies at the time of receiving the order from the Purchaser, unless the parties have expressly agreed otherwise. Unless otherwise expressly agreed, prices and any other costs are set excluding VAT and other public charges, which shall be paid by the Purchaser. Upon variations after the time of the order exceeding 2 % (i) of public charges underlying the calculation of the prices set by the Supplier or agreed between the parties or (ii) in exchange rates, the Supplier may, up to the time of invoicing of the Product, adjust the indicated prices accordingly. For the avoidance of doubt: The Supplier's right to adjust the prices shall also apply when a certain price has been agreed upon by the parties.

4.2 Payment must be made upon invoicing and no later than the date set forth in each invoice, unless otherwise expressly agreed. The Purchaser shall under no circumstances, such as due to delays or defects, be entitled to withhold payment. Upon delays in payment, interest on overdue payments shall accrue, from the maturity date until payment has been made to the Supplier, with the from time-to-time applicable basic rate of interest of the German Central Bank (Deutsche Bundesbank), with an addition of nine (9) percentage points. If the Purchaser does not pay on time, the Supplier may further, after having given the Purchaser notice in writing thereto, suspend its performance of the Agreement until payment has been made.

4.3 If the conduct or the financial circumstances of the Purchaser are such that there is reason for the Supplier to suspect that the Pur-

chaser will not make full payment, the Supplier may suspend its performance of the Agreement and demand advance payment or adequate security to resume its performance. If the Supplier has already dispatched the Product, and it turns out that the circumstances referred to in the previous sentence exist on the part of the Purchaser, the Supplier may prevent the delivery of the Product to the Purchaser. The Supplier shall urgently notify the Purchaser in writing of its decision to suspend its performance of the Agreement.

- 4.4 The Supplier may cancel the Agreement with immediate effect if the Purchaser has not paid within three (3) months after the maturity date. Without prejudice to the right to interest on overdue payments, the Supplier shall in such case be entitled to recover damages.

## 5. Delivery and delivery time

- 5.1 Delivery clauses shall be interpreted in accordance with INCOTERMS in the applicable wording on the date the Agreement was entered into. If no delivery clause has been agreed upon, delivery "Ex Works" shall apply.
- 5.2 If delivery is to be made within a certain period, the period shall begin on the date the Agreement was entered into, unless otherwise expressly agreed in writing. However, the delivery term shall under no circumstances begin before the Supplier has received (i) payment, if such is due prior to the commencement of manufacturing of the Product or otherwise has been agreed upon, and (ii) the Supplier has received required licenses, authorizations, technical data, and instructions.
- 5.3 If the delivery is delayed due to any circumstance that constitutes grounds for relief pursuant to item 11.1 or due to any act or omission by the Purchaser, the delivery period shall be extended for a period which is reasonable considering the circumstances. If the delay occurs after the end of the agreed delivery period, the period shall nevertheless be extended. Item 11.2 shall apply accordingly.
- 5.4 If the Supplier does not deliver on time, the Purchaser may demand delivery within a reasonable final time, by giving written notice to the Supplier. Should the Supplier not deliver within this time, the Purchaser is entitled to cancel the Agreement by giving the Supplier written notice to that effect.
- 5.5 If the Purchaser cancels the Agreement pursuant to item 5.4, it is entitled to compensation from the Supplier for the direct additional costs for procuring a corresponding Product from someone else, however the right to such compensation is limited to 7.5 % of the price of the Product. If the Purchaser does not cancel the Agreement, it is not entitled to any compensation for the Supplier's delay.
- 5.6 Should the Purchaser fail to receive the Product on the established delivery date, payment shall nevertheless be made as if the Product was delivered in accordance with the Agreement, and the Purchaser shall compensate the Supplier for its direct additional costs caused by such failure of the Purchaser.

## 6. Liability for defects

- 6.1 A Product which does not conform with the specifications agreed between the parties shall be considered defective if the non-conformity is material for the intended use of the Product. Subject to the exceptions in item 7.3, the Supplier's liability for other defects is limited to defects caused by defective construction, materials, or workmanship.
- 6.2 Information regarding the use of the Product or other information about the Product, which is not expressly part of the agreed specification or the assembly instruction, and which is provided by the Supplier, regardless of the form in which the information is provided, shall only be regarded as recommendations or general information. The Supplier is not liable for such information.
- 6.3 The Supplier is only liable for defects which manifest within one (1) year from the date on which the risk for the Product passed to the Purchaser (warranty period). However, the warranty period does not include wear components which normally have a durability of less than one (1) year. The Supplier is not liable for defects which are caused by inaccurate, ambiguous, or incomplete information from the Purchaser. Further, the Supplier is not liable for defects which are caused by circumstances which occur after the risk for the Product has passed to the Purchaser, such as, but not exclusively, defects caused by ordinary wear or deterioration. The Supplier shall not be liable for defects resulting from excessive use by the Purchaser. Such excessive use shall be deemed to occur if the Purchaser uses the Product for more than 1,760 hours of operation within a one-year period from the date on which the risk for the Product passed to the Purchaser, unless the Parties have agreed to other limits on the number of operating hours.
- 6.4 The Supplier undertakes to, at its own discretion, during the warranty period, to remedy the defect or deliver a new Product as replacement for a defective Product. The Supplier is not liable to pay for replacement media or replacement fluids, such as e.g., refrigerating media. Remedying may occur either at the Supplier's premises or at the Purchaser's premises, depending on which the Supplier determines most appropriate. Replacement products or replacement parts, which the Supplier has provided to the Purchaser, are subject to the warranty period set out in item 6.3. Should the Supplier claim ownership of a Product or part of a Product which has been replaced, the title of ownership to such Product or part of a Product shall pass to the Supplier. Potential demolition cost shall be paid by the Purchaser.
- 6.5 The Purchaser shall bear the cost and risk of transportation of a defective Product or part of a Product to the Supplier. The Supplier shall bear the cost and risk of transportation of the replacement Product or part of a Product to the place of delivery. Should the Supplier choose to remedy the Product at the premises of the Purchaser, the Purchaser shall pay travel costs and allowance for expenses for the travel and work time of the Supplier's staff. Further, the Purchaser shall bear the additional costs which arise from the Product being situated somewhere other than the place of delivery.
- 6.6 If the Supplier does not deliver the replacement product or remedy the defect within a reasonable time after the Purchaser has

complained in writing, the Purchaser may cancel the Agreement in respect of the defective Product by written notice to the Supplier. Upon cancelling the Agreement, the Purchaser is entitled to compensation from the Supplier for direct additional costs for procuring a corresponding product from someone else, however limited to 7.5 % of the price of the Product.

- 6.7 The Supplier shall be considered to have fulfilled its obligations under this Agreement by delivering an appropriately repaired or replaced Product or Part of a Product to the Purchaser. The Purchaser shall bear the costs for work and additional costs for operation on something other than the Product, upon dismantling or installing the Product or the part of a Product.
- 6.8 The Purchaser shall examine the Product in accordance with good industry practice (sections 377, 381 German Commercial Code (Handelsgesetzbuch)) immediately after delivery.
- 6.9 The Purchaser may not invoke defects which have not been notified to the Supplier in writing within fifteen (15) days from the day the Purchaser notices or ought to have noticed the defect, and in no case later than the time set out in item 6.3 above. Should the Purchaser complain due to a defect, and it turns out that the Supplier is not liable for the defect, the Supplier is entitled to compensation for the costs which have been caused by the complaint.
- 6.10 In the event that the Supplier does not consider either remedying the defect or delivering a replacement Product commercially or technically reasonable, instead of remedying the defect or delivering a replacement Product, the Supplier may choose to repay the purchase price, whereupon the Purchaser shall return the Product in substantially unchanged condition. If this is not possible, the Supplier may be credited with a deduction from the purchase price to an amount corresponding to the value of what has been favored the Purchaser. If the Supplier chooses to repay the Purchase Price, the Purchaser is entitled to compensation from the Supplier for the direct additional costs for procuring a corresponding product from someone else, however limited to an amount of 7.5 % of the price of the Product.

## **7. Liability for damage to property and personal injury**

- 7.1 With the exceptions listed in item 7.3, the Supplier is not liable for damages to immovable or movable property or consequential damages if the damage occurs while the Product is in the possession of someone other than the Supplier.
- 7.2 The Purchaser shall indemnify and hold harmless the Supplier, to the extent that the Supplier is imposed liability for third party damages or losses for which the Supplier is not liable pursuant to item 7.1.
- 7.3 The limitations of the Supplier's liability in item 7.1 do not apply in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the Agreement (Kardinalspflichten) and (iv) obligations arising under the German Product Liability Act (Produkthaftungsgesetz). In the event of a breach of contractual

obligations essential to the Agreement or slight negligence, the Supplier's liability shall be limited to the foreseeable damage.

- 7.4 The Supplier and the Purchaser shall promptly notify the other party in writing of any third-party claim relating to this item 7.
- 7.5 The Supplier and the Purchaser are obliged to comply with summons to a court or arbitration board, which processes claims of damages against any of them if the claim is based on damage or loss alleged to be caused by the Product. However, the relationship between the Purchaser and the Supplier shall always be governed by the Agreement.
- 7.6 In any case other than (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, in the event of a (iii) breach of contractual obligations essential to the Agreement (Kardinalspflichten) and (iv) obligations arising under the German Product Liability Act (Produkthaftungsgesetz), the Supplier's liability for damage caused by the Product to a natural person or immovable or movable property which belongs to the Purchaser or a third party, shall under all circumstances be limited to EUR 500.000 per occurrence of damage. The Purchaser shall indemnify and hold harmless the Supplier for all liability exceeding said amount.

## **8. Liability for damages and limitations of liability**

- 8.1 In case of delay or defect, the Purchaser is entitled to damages pursuant to items 5.5 and 6.6.
- 8.2 If the Supplier has developed a product in collaboration with the Purchaser, under an agreement between the parties and at the Supplier's own cost, the Supplier shall not be liable for any delay or defect of the Product unless stated in such agreement or in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the agreement (Kardinalspflichten) and (iv) obligations arising under the German Product Liability Act (Produkthaftungsgesetz). Further, the Supplier is shall not be liable for any delay or defect of a Product which the Supplier has lent out or transferred to the Purchaser without compensation, unless in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the agreement (Kardinalspflichten) and (iv) obligations arising under the German Product Liability Act (Produkthaftungsgesetz).
- 8.3 The Supplier shall under no circumstances be liable for loss of production, loss of profits or any other consequential economic loss, unless in the event of (i) gross negligence or intent of the Supplier, (ii) damages to life, limb or health, (iii) breach of contractual obligations essential to the Agreement (Kardinalspflichten) and (iv) obligations arising under the German Product Liability Act (Produkthaftungsgesetz).
- 8.4 The Purchaser shall never be entitled to damages exceeding 7.5% of the purchase price for the Product, unless in the events listed in item 7.3. The limitation of liability shall remain in full force and effect upon cancellation of the Agreement.

8.5 The Purchaser may not invoke any other penalties against the Supplier than those expressly set out in the Agreement.

## **9. Ownership reservation**

9.1 The Product shall remain the property of the Supplier until it has been fully paid, to the extent this ownership reservation is valid. The retention of title shall extend to the products resulting from the processing, mixing or combination (within the meaning of sections §§946, 947, 948 and 950 German Civil Code (Bürgerliches Gesetzbuch)) of the Supplier's Product at its full value, whereby the Supplier shall be deemed to be the manufacturer. If, in the case of processing, mixing or combining with goods of third parties, their title remains, the Supplier shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods.

## **10. Confidentiality**

10.1 Neither party may, without the other party's approval, provide third parties with documents or otherwise disclose information of confidential character about the Agreement or the other party, unless disclosure is necessary for the performance of the Agreement or by applicable law. The parties shall enter into non-disclosure agreements with its employees or take other appropriate measures to ensure that confidentiality is maintained. The confidentiality undertaking does not apply to information, which a party can demonstrate was duly brought to its notice other than by the Agreement, or which is commonly known. The confidentiality undertaking shall remain in full force and effect after the cancellation of this Agreement.

## **11. Grounds for relief**

11.1 A circumstance which prevents or substantially obstructs the performance of any of the parties' undertakings under the Agreement, and which the party could not dispose of, including but not limited to stroke of lightning, fire, earthquake, flooding, war, mobilization or major military conscription, uprising or riot, requisition, seizure, currency restriction, public regulation, fuel restrictions, general scarcity of transportation or energy, or strike, blockade, lock-out or other labour dispute, regardless of whether the party is a party to such dispute, and defects or delays in deliveries from sub-suppliers caused by the above mentioned circumstances, shall constitute grounds for relief which entitles the relevant party to appropriate time extensions and relief of liability from conditional fines and other penalties. A party shall notify the other party in writing without unreasonable delay from the day the party realized or ought to have realized the grounds for relief.

11.2 If the performance of the Agreement is delayed for more than six (6) months due to a circumstance set out in item 11.1, each party shall be entitled to terminate the Agreement and shall not be liable to compensate the other party for such termination.

## **12. Export and import licences, certification, etc.**

12.1 The Supplier's obligation to deliver a Product is contingent on obtaining and maintaining necessary export, import and re-export licenses. Should such licenses not be obtained or are valid licenses revoked without the Supplier's negligence, the Supplier is relieved from its obligation to deliver the Product, and the Pur-

chaser may not claim responsibility against the Supplier in such cases.

12.2 The Purchaser undertakes to comply with applicable regulation and, to the extent necessary, co-operate in the obtaining of export and import licenses for the purchased Product, and upon possible re-export of said Product or other product in which the purchased Product is integrated, co-operate in obtaining the necessary authorization.

12.3 Possible certification of the Product shall be paid by the Purchaser.

## **13. Intellectual Property Rights**

13.1 Intellectual Property Rights shall mean all present and future rights, titles, and interests (whether legal or economic and registered or unregistered) in copyright and in all design rights, trademarks, patents, rights, or protection similar to copyright (including all moral rights), topography rights, software, applications, database rights, know-how, company names, trade secrets, inventions and other intangible information.

13.2 Unless the parties agree otherwise, each party or such party's licensors shall have sole ownership of all technology and intellectual property rights existing prior to the Agreement. Further, any Intellectual Property Rights granted by one party to the other party under the Agreement may not be copied, reproduced, transferred, or otherwise distributed to a third-party without the prior written consent of the party providing the Intellectual Property Rights. However, this shall not apply to such rights that are necessary for the Purchaser to acquire ownership of the Products and for the use and redistribution of the Products without limitations.

13.3 The Supplier shall retain all Intellectual Property Rights related to Products developed under the Agreement, whether developed by the Supplier or jointly by the parties.

## **14. Limitation period**

14.1 Claims against the Supplier are statute-barred unless arbitration procedure pursuant to item 15.2 regarding the claim has been initiated within two (2) years of delivery of the relevant Product.

## **15. Governing law and dispute**

15.1 This Agreement shall be governed by German substantive law, without regard to its rules on conflicts of laws and the United Nations Convention on Contracts for the International Sales of Goods (CISG).

15.2 Any disputes arising out of or in connection with the Agreement or its validity shall be finally settled by arbitration proceedings administered by the Arbitration Rules of the German Arbitration Institute (DIS). The Arbitral Tribunal shall be composed out of three arbitrators. The arbitration proceedings shall take place in Frankfurt am Main. The language of the proceedings shall be German.

15.3 The following information shall be regarded as confidential and may not be disclosed: (i) information about past or current ar-

bitration proceedings, which is sufficiently detailed to identify the parties, (ii) written statements in arbitration proceedings, as well as what is orally alleged before the arbitration board and (iii) the arbitration board's decision, to the extent that there is a risk that a party may be identified. Without prejudice to the above, a party which seeks execution is entitled to disclose confidential information to the enforcing authority, to the extent required.

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## **a Special Terms and Conditions of Sale - Installation**

### **a.1 Applicability**

a.1.1 These Special Terms and Conditions are to be applied when the Supplier has assumed a contractual obligation to perform the Installation of the Product or if the parties have agreed this in writing or in some other way. In addition to these Special Terms and Conditions, the Installation is also subject to the provisions in INDAG General Terms and Conditions ('the General Terms and Conditions'), it being understood that that which applies to the Product also applies to the Installation.

a.1.2 Installation means the Supplier's undertaking concerning technical installation, including both hardware and software (depending on what the Product comprises of), of the Product at the Purchaser's premises and, if specifically contracted, commissioning.

a.1.3 Product(s) means that which follows from the applicable General Terms and Conditions.

a.1.4 In these Special Terms and Conditions, the Agreement means each individual agreement between the Purchaser and the Supplier that covers the Installation. These Special Terms and Conditions, and the General Terms and Conditions constitute an integral part of every such Agreement.

### **a.2 Preparation for and implementation of the Installation**

a.2.1 The Purchaser must, at its own expense, perform all necessary preparatory works in accordance with the drawings, descriptions and instructions provided by the Supplier. Unless the parties have agreed otherwise, the Purchaser's works must have been completed no later than one (1) week before the Installation is due to begin.

a.2.2 Unless agreed otherwise in writing, the Installation must be performed during the Supplier's ordinary working hours. For any work that the Supplier, following consultation with the Purchaser, performs at any other time, the Supplier is entitled to charge the amount applied by the Supplier for overtime work in addition to the agreed hourly rate.

a.2.3 The Purchaser must, unless agreed otherwise in writing, place the following at the disposal of the Supplier: (i) the necessary labour, (ii) water and power, (iii) satisfactory changing, laundry and dining rooms as well as the necessary lockable areas, (iv) the necessary equipment for the Installation, and (v) access to the areas in which the Installation is to take place. With a week's notice, the Supplier is to specify its current need for the necessary labour.

### **a.3 Timing of the Installation**

a.3.1 After the Product has been delivered, when the Agreement covers Installation, the Supplier is to perform the Installation within three (3) weeks of a written request thereto from the Purchaser, unless the Agreement specifies otherwise. If the Installation is delayed, the provisions in item a.6 shall apply.

### **a.4 Acceptance test and approval**

a.4.1 The Supplier must notify the Purchaser when it has completed the Installation. Unless the parties have agreed otherwise in writing, the Purchaser is to have raised any justified objections with respect to the Installation within five (5) days of receipt of such notification. If no such objections are raised, the Purchaser is deemed to have approved the Installation. If any objection is raised and the Installation is not as specified in the Agreement, the Supplier must ensure that the necessary corrections are made as soon as possible unless the non-conformity is material for the use of the Product.

a.4.2 The Purchaser is not entitled to start using the Product or any part of it before it has been approved. If, without the written consent of the Supplier, the Purchaser does start using the Product before it has been approved, the Purchaser is deemed to have approved the Installation. Warranty rights shall not apply in the event of unauthorised use.

### **a.5 Payment for Installation**

a.5.1 Unless agreed otherwise, the Purchaser is to pay on a current account basis against monthly invoices in arrears from the Supplier. The following items are charged separately:

(i) Agreed fixed fees.

(ii) All travel expenses for the Supplier's staff, all expenses for the transportation of tools and personal belongings, all expenses for board and lodging and other subsistence expenses for the Supplier's staff during each day of absence from their place of residence, including days off work, weekends, and public holidays.

(iii) Daily allowance according to the rules applied from time-to-time by the Supplier, which must not be excessive.

(iv) Payment for work during ordinary working hours.

(v) Payment for work outside ordinary working hours.

(vi) Payment according to the rate for ordinary working hours for time spent on (a) necessary preparations for outward and return travel (b) outward and return travel and other travel to which the staff are entitled by law or under a collective agreement in the Supplier's country, and (c) daily travel between their lodging and the place of the Installation.

(vii) Expenses for the Supplier for the provision of equipment, including remuneration for the use of the Supplier's own installation equipment and payment for materials as specified in item a.5.3 below

(viii) Payment for waiting time at the rate for ordinary working hours when work is prevented by circumstances for which the Supplier is not responsible under the Agreement.

(ix) Taxes and charges payable on the amount invoiced which must be paid by the Supplier.

a.5.2 The Supplier is entitled to propose to the Purchaser changes to the agreed hourly rates every six (6) months, starting six (6) months after the Agreement has been entered into. If the Purchaser does not object to such proposal in writing within two



(2) weeks of the receipt of such proposal, the proposal shall be deemed accepted with immediate effect. If the Purchaser objects to such proposal in writing within two (2) weeks, the Supplier may cancel the Agreement with two (2) weeks' notice.

- a.5.3 If the Supplier incurs costs for materials etc., that are attributable to the Installation, the Supplier is entitled to separate compensation for them.
- a.5.4 If the Purchaser does not meet its payment obligation, the Supplier is entitled to stop all work or part thereof, and all deliveries of materials without penalty. The Supplier may also immediately issue an invoice for any work that has been performed up until that point in time but not yet invoiced with terms of payment being ten (10) days after receipt of the invoice, notwithstanding other provisions in these Special Terms and Conditions and notwithstanding any other agreements on payment terms. If the Purchaser is in default more than thirty (30) days after the Supplier has requested in writing payment of the amount due, the Supplier may give written notice of termination of the Agreement with the Purchaser with immediate effect.

#### **a.6 The Supplier's liability for the Installation**

- a.6.1 Pursuant to item a.1.1 above, the Supplier's liability also covers defects that are due to the Supplier having performed the Installation defectively, and the Supplier is liable for this as specified in the General Terms and Conditions. Delivery of the Product and the consequences of delays in relation to the Product are governed solely by the General Terms and Conditions, while delays to the Installation are governed by these Special Terms and Conditions. However, the applicable penalty items concerning delays in the General Terms and Conditions are to apply.
- a.6.2 It is noted in particular that any damages paid or compensation for delays in respect of the Installation must be calculated only on the basis of payment made for the Installation which the claim concerns and not the price of the Product or any other calculation basis.
- a.6.3 With the amendment to the General Terms and Conditions (item 6.3), the Supplier is liable for defects in the Installation for one (1) year from that which follows from item a.4.1 of these Special Terms and Conditions concerning approval and not from the date on which the risk for the Product passed to the Purchaser.

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## **b Special Terms and Conditions of Sale - Service and Maintenance**

### **b.1 Applicability**

- b.1.1 These Special Terms and Conditions shall apply when the Purchaser instructs the Supplier to perform Service and Maintenance or if the parties have agreed in writing or otherwise. In addition to these Special Terms and Conditions, Service and Maintenance are hereby subject to what is stated in INDAG General Terms and Conditions ('the General Terms and Conditions'), it being understood that that which applies to the Product also applies to the Service and Maintenance.

- b.1.2 The Supplier's maintenance obligation under these Special Terms and Conditions includes troubleshooting only if this has been specifically agreed by the parties.

- b.1.3 Service and Maintenance means the service and maintenance measures identified and specified in detail in each Assignment.

- b.1.4 Assignment means the Assignment received by the Supplier to perform Service and Maintenance.

- b.1.5 For the purposes of these Special Terms and Conditions, the Agreement means any individual agreement between the Purchaser and the Supplier covering Service and Maintenance. These Special Terms and Conditions as well as the General Terms and Conditions form an integral part of any such Agreement.

### **b.2 Scope of the Assignment**

- b.2.1 The Supplier undertakes, in accordance with the provisions of these Special Terms and Conditions, to perform Assignments for Service and Maintenance on specified equipment, including accessories ('the Product') supplied by the Supplier.
- b.2.2 The Assignment may only be changed after written agreement between the parties. If either party believes there is a need to change the scope of the Assignment, they are to notify the other party in writing as soon as possible.

### **b.3 Implementation of the Assignment**

- b.3.1 The parties shall each designate a contact person. Designated contact persons are entitled to make decisions binding on the parties within the framework of the Agreement and to change the Assignment. However, the contact person is not entitled to amend the terms of these Special Terms and Conditions.
- b.3.2 The Supplier must perform its Service and Maintenance obligations with care and in an otherwise professional manner.
- b.3.3 Unless agreed otherwise, the Supplier is not under any obligation to provide the materials required for the performance of the Assignment.
- b.3.4 The Purchaser must grant the Supplier access to the premises, information, documentation, equipment, and materials required for the Assignment and otherwise perform the agreed measures. The Purchaser is responsible for ensuring that the information provided to the Supplier is accurate, complete, and unambiguous. If the Purchaser fails to meet its obligations, the Supplier is entitled to compensation for the additional costs caused by such failure.
- b.3.5 If the parties have agreed that the Purchaser shall provide supplementary services, the Purchaser is responsible for ensuring that they are performed within the agreed time or, unless a specific time has been agreed, within such time that the Supplier's work is not delayed.
- b.3.6 The Purchaser must perform periodic maintenance of the Product in accordance with the Supplier's instructions.
- b.3.7 During the term of the Agreement, the Supplier has the exclusive right to perform Service and Maintenance of the Product

in accordance with these Special Terms and Conditions. If the Purchaser, without the Supplier's consent, performs these works himself or through another party, the Supplier is entitled to terminate the Agreement with immediate effect. However, such on-going care and inspection that the Purchaser itself shall perform is not covered by the exclusive right.

- b.3.8 Unless agreed otherwise in writing, the Assignment must be performed during the Supplier's ordinary working hours. For any work that the Supplier, following consultation with the Purchaser, performs at any other time, the Supplier is entitled to charge the amount applied by the Supplier for overtime work in addition to the agreed hourly rate.
- b.3.9 The Supplier must maintain the Product according to the procedures specified in these Special Terms and Conditions or, where no such procedures are specified, according to the procedures applied by the Supplier from time to time.
- b.3.10 Unless the parties agree otherwise, the Assignment will be performed at the Purchaser's premises.
- b.3.11 During the performance of the Assignment and for a period of one (1) year after its completion, the Purchaser undertakes not to solicit any of the Supplier's employees or otherwise engage any of the Supplier's employees as a consultant in any other company.
- b.3.12 Subject to a written agreement thereto with the Purchaser, the Supplier is entitled to assign its rights and/or obligations under this Agreement to another service provider.
- b.3.13 The Supplier is responsible for ensuring that the Assignment is performed according to the agreed timetable if such a timetable has been drawn up by the parties. In the event of any delay caused by the Purchaser or any circumstance on the Purchaser's side, the Supplier is entitled to the necessary extension of the agreed performance time. The Supplier is also entitled to the necessary extension if the Assignment is changed or increased in scope or if an extension is required to ensure that staff receive leave or annual leave as prescribed by law or another statutory instrument.
- b.3.14 All transport to and from the Supplier's premises in connection with repair and replacement will be at the Purchaser's expense and risk.

#### **b.4 Payment**

- b.4.1 For payment, the General Terms and Conditions (item 4) apply with the following additions. Unless otherwise agreed, the Purchaser shall pay on a current account against a monthly invoice in arrears from the Supplier.
- b.4.2 The Supplier is entitled to propose to the Purchaser changes to the agreed hourly rates every six (6) months, starting six (6) months after the Agreement has been entered into. If the Purchaser does not object to such proposal in writing within two (2) weeks of the receipt of such proposal, the proposal shall be deemed accepted with immediate effect.

b.4.3 If the Supplier incurs costs for materials etc., that are attributable to the Assignment, the Supplier is entitled to separate compensation for them.

b.4.4 If the Purchaser does not meet its payment obligation, the Supplier is entitled to stop all work or part thereof, and all deliveries of materials without penalty. The Supplier may also immediately issue an invoice for any work that has been performed up until that point in time but not yet invoiced with terms of payment being ten (10) days after receipt of the invoice, notwithstanding other provisions in these Special Terms and Conditions and notwithstanding any other agreements on payment terms. If the Purchaser is in default more than thirty (30) days after the Supplier has requested in writing payment of the amount due, the Supplier may give written notice of termination of the Agreement with the Purchaser with immediate effect.

b.4.5 The Purchaser is not entitled to withhold payment pending remedying of faults or defects.

#### **b.5 Supplier's responsibility regarding the Assignment**

b.5.1 The Supplier's liability covers also defects due to the Supplier having performed the Assignment defectively, and the Supplier is liable for this as specified in the General Terms and Conditions. Delivery of the Assignment and the consequences of delays in relation to the Assignment are also governed exclusively by the General Terms and Conditions.

b.5.2 It is noted in particular that any damages paid or compensation for delays in respect of the Assignment must be calculated only on the basis of payment made for the Assignment which the claim concerns and not the price of the Product or any other calculation basis.

b.5.3 With the amendment to the General Terms and Conditions (item 6.3), the Supplier's liability for defects relating to the Assignment applies for six (6) months from the date of delivery of the Service and Maintenance and not from the date the risk for the Product passed to the Purchaser.

#### **b.6 Ownership**

b.6.1 Ownership of parts installed belongs to the owner of the Product. Unless otherwise agreed, ownership of replaced parts belongs to the Supplier.

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### **c Special Terms and Conditions of Sale - Development**

#### **c.1 Applicability**

c.1.1 These Special Terms and Conditions shall apply when the Supplier has entered into an agreement in writing or otherwise with the Purchaser to provide Customer-Specific Development for the Purchaser. In addition to these Special Terms and Conditions, the Customer-Specific Development is also subject to the provisions of the General Terms and Conditions ('the General Terms and

Conditions'), whereby what applies to the Product also applies to the Customer-Specific Development unless otherwise expressly agreed between the parties.

- c.1.2 For the purposes of these Special Terms and Conditions, Customer-Specific Development means the work performed by the Supplier when developing a specific solution, function, or product for the Purchaser, as specified in detail in each Agreement.
- c.1.3 In these Special Terms and Conditions, Assignment means the Assignment that the Supplier has received to perform Customer-Specific Development.
- c.1.4 In these Special Terms and Conditions, the Agreement refers to any individual agreement between the Purchaser and the Supplier that includes Customer-Specific Development. These Special Terms and Conditions and the General Terms and Conditions form an integral part of any Agreement.

## **c.2 Scope of the Assignment**

- c.2.1 The Supplier undertakes, according to the provisions of these Special Terms and Conditions, to perform Assignments for Customer-Specific Development as agreed between the parties.
- c.2.2 The Assignment may only be changed after written agreement between the parties. If either party believes there is a need to change the scope of the Assignment, they are to notify the other party in writing as soon as possible.

## **c.3 Performance of the Assignment**

- c.3.1 Each party shall designate a contact person. The designated contact persons are entitled to amend the Assignment and make binding decisions for the parties within the framework of the Agreement. However, the contact persons are not entitled to change these Special Terms and Conditions.
- c.3.2 The Supplier shall perform the Customer-Specific Development with care and in a professional manner. The Supplier shall also carry out the Customer-Specific Development in the manner specified in the Agreement.
- c.3.3 The Supplier is not obliged to provide the material required to perform the Assignment, unless otherwise agreed.
- c.3.4 The Purchaser must grant the Supplier access to the premises and the information, documentation, and equipment as well as the materials needed to perform the Assignment and the otherwise agreed measures. The Purchaser is responsible for ensuring that the information provided to the Supplier is accurate, complete, and unambiguous. If the Purchaser fails to fulfil its obligations, the Supplier is entitled to compensation for the additional costs arising from this. The Purchaser is responsible for all permits and notifications required to allow the Purchaser's use and receipt of the Customer-Specific Development.
- c.3.5 If the parties have agreed that the Purchaser shall provide supplementary services, the Purchaser is responsible for ensuring that they are performed within the agreed time or, unless a specific time has been agreed, within such time that the Supplier's work is not delayed.

- c.3.6 Unless the parties agree otherwise, the Assignment will be performed at the Supplier's premises.

- c.3.7 During the performance of the Assignment and for one (1) year after the Assignment's completion, the Purchaser undertakes not to solicit any of the Supplier's employees.

- c.3.8 Subject to a written agreement thereto with the Purchaser, the Supplier is entitled to assign its rights and/or obligations under this Agreement to another service provider.

- c.3.9 The Supplier is responsible for ensuring that the Assignment is performed according to the agreed timetable if such a timetable has been drawn up by the parties. In the event of any delay caused by the Purchaser or any circumstance on the Purchaser's side, the Supplier is entitled to the necessary extension of the agreed performance time. The Supplier is also entitled to the necessary extension if the Assignment is changed or increased in scope or if an extension is required to ensure that staff receive leave or annual leave as prescribed by law or another statutory instrument.

## **c.4 Payment**

- c.4.1 For payment, the General Terms and Conditions (item 4) apply with the following additions. The parties may agree in writing that the payment for the Customer-Specific Development shall be limited to the Purchaser fulfilling agreed minimum commitments for the purchase of products or services from the Supplier during a certain period of time. If the Purchaser does not fulfil the agreed minimum commitments, the Supplier shall notify the Purchaser of the breach of contract, which shall be regarded as a material breach of contract. After receiving such notification, the Purchaser shall remedy the breach within thirty (30) days. If the Purchaser does not remedy the breach within thirty (30) days of receipt of the notification, the Supplier has the right to invoice the outstanding amount with the requirement that payment be made no later than ten (10) days after receipt of the invoice, without the obligation to provide additional products or materials, and may terminate the Agreement with immediate effect.

- c.4.2 If the Supplier incurs costs for materials etc., that are attributable to the Assignment, the Supplier is entitled to separate compensation for them.

- c.4.3 If the Purchaser does not fulfil its payment obligation, the Supplier has the right to stop all or part of the work and all deliveries of materials, without any liability for compensation arising from this being incurred by the Supplier. The Supplier is also entitled, in addition to and notwithstanding any other provisions of these Special Terms and Conditions and other agreements on payment terms, to immediately issue an invoice for all work performed up to then and not yet invoiced, requiring payment to be made ten (10) days after the invoice date.

## **c.5 Supplier's responsibility regarding the Assignment**

- c.5.1 The Supplier is liable for defects caused by the Supplier performing the Assignment in violation of the terms of the Agreement, in accordance with the General Terms and Conditions and item c.3.2 above. The delivery of the Assignment and the conse-



quences of delays in connection with the Assignment are exclusively governed by the General Terms and Conditions.

- c.5.2 It is noted in particular that any damages paid or compensation for delays in respect of the Assignment must be calculated only on the basis of payment made for the Assignment which the claim concerns and not the price of the Product or any other calculation basis.

#### **c.6 Intellectual Property Rights**

- c.6.1 Ownership of all Intellectual Property Rights arising as a result of Customer-Specific Development shall accrue to the Supplier. The Supplier grants the Purchaser a worldwide, non-exclusive, unlimited license to use the results of the Customer-Specific Development.
- c.6.2 The Supplier makes the Customer-Specific Development and any intellectual property rights vested therein available to the Purchaser without any warranties of any kind, express or implied, with regard to non-infringement of third-party intellectual property rights or freedom to operate.
- c.6.3 The Purchaser acknowledges and accepts that third-party software and/or materials provided as part of or together with the Customer-Specific Development may be subject to separate terms and conditions. The Supplier makes no warranties or representations about the functionality of such software and/or third-party materials and shall under no circumstances be liable in relation to such software and/or third-party materials.

#### **c.7 Processing of personal data**

- c.7.1 To the extent that the Supplier processes personal data on behalf of the Purchaser, the Purchaser shall be the data controller and the Supplier shall be the data processor. In addition, the parties shall enter into a data processing agreement that regulates the Supplier's processing of personal data on behalf of the Purchaser. Processing of personal data may only take place in accordance with applicable law, in accordance with the Purchaser's instructions and as specified in the data processing agreement.
- c.7.2 If the terms of these Special Terms and Conditions conflict with the data processing agreement, the provisions of the data processing agreement shall take precedence with regard to the processing of personal data.