

General Terms of Sale and Supply (TRANSLATION)

1. General

- 1.1. These General Terms of Sale and Supply of *INNOVAR Christian Käsermann, Studenmatt 14, CH-1791 Courtaman* (hereinafter "Supplier") are valid for all sales, deliveries and services by the Supplier to the Customer.

The conclusion of a contract between Supplier and Customer or the Customer's order or acceptance by the Customer of deliveries or services from the Supplier are deemed to be an acknowledgement by the Customer of the following General Terms of Sale and Supply. Agreements which deviate from them only have validity if they are made in writing. The Customer relinquishes the right to enforce his own general terms and conditions of business.

- 1.2. Any tenders by the Supplier are made entirely without obligation.
- 1.3. A contract between the Supplier and the Customer is completed by signature of the contract document by both parties or, in the absence of such signature, by the provision of the Supplier's written confirmation that he accepts the Customer's order (order confirmation).

2. Scope of deliveries and services

- 2.1. The goods and services to be provided by the Supplier are defined conclusively in the order confirmation. Any goods or services not so defined must be additionally agreed in writing.
- 2.2. Statements contained in instructions for operation and use, in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists etc. concerning weight, dimensions, capacity, prices, services and the like are only binding if they have been expressly certified to the customer in writing.
- 2.3. The agreed goods and services, specifically the fittings, dimensions and weight of products, may display minor discrepancies as compared with the contract or the order confirmation. Such discrepancies do not constitute a breach of contract, provided they do not impair essential properties of the goods and services and/or do not deviate from the parameters with relation to volumes delivered by more than +/- 10 %.

3. Drawings, technical documentation, samples and prototypes

- 3.1. The Supplier reserves all rights, in particular all intellectual property rights and copyrights in drawings, technical documentation, samples, prototypes etc. developed by him or on his instructions. The Customer acknowledges these rights and will not, without the Supplier's prior written authorisation, allow third parties to have either to-

tal or partial access to any of the Supplier's drawings, technical documentation, samples, prototypes etc., nor use them for any purpose other than that for which they have been passed on to him. The use of the Supplier's drawings, technical documentation, samples and prototypes etc. for the purpose of obtaining competitive tenders is forbidden. Should a contract be concluded, the drawings etc. must be returned to the Supplier on request.

4. Prices

The prices applicable are those quoted in the written order confirmation. All expenses, taxes, charges, fees, customs duties and the like are payable by the Customer. The Supplier expressly reserves the right to pass on to the customer immediately any fluctuations in the price of metals.

5. Payment terms

- 5.1. The Supplier's accounts are to be settled at the Supplier's business address, net without deduction of discount, expenses, taxes, charges, fees, customs duties and the like within 30 days from the invoice date, subject to other payment conditions that may arise from the order confirmation.
- 5.2. On expiry of the payment period penalties for default take effect automatically, i.e. without further warning. From that point in time the Customer will be charged interest on the overdue payment at the rate of 9% p.a. and the Supplier is entitled immediately to suspend his deliveries and services under all contracts concluded with the Customer. Furthermore, if payment has not been made within a further 30-day grace period the Supplier reserves the right to withdraw from any or all contracts concluded with the Customer and to assert a claim for damages. In such cases the Customer will also be responsible for any outlay by the Supplier for material ordered in advance specifically for the fulfilment of the contract.
- 5.3. The offsetting of sums claimed by the Customer from the Supplier against sums due to the Supplier is not permitted without the written consent of the Supplier.
- 5.4. Complaints by the Customer about defects do not release the Customer from his obligation to pay. Any rebates will be given in the form of credit-notes and not paid in cash.

6. Retention of title and right of realisation

- 6.1. The Supplier remains the owner of all the goods supplied by him, until he has received full payment in accordance with the contract. By concluding the contract the Customer authorises the Supplier to enter his retention of title in the official register and to complete all the associated formalities, at the Customer's expense.

For the duration of this retention of title the Customer will handle the supplied items with care and maintain them in the prescribed manner at his own expense, as well as insuring them adequately against theft, breakage, fire, water damage and other normal risks. In addition he will take all steps to ensure that the Supplier's claim to ownership is neither diminished nor nullified.

In the event of the goods being mixed with those of the Customer, the Supplier acquires joint ownership according to the relative value of the component parts.

- 6.2. Should the Customer fail to meet his obligations to accept delivery and/or make payment even after the expiry of the 30-day grace period, the Supplier is entitled to withdraw from the contract in question and from the other contracts concluded with the Customer and to assert a claim for damages.

The amount of compensation for damages is:

- a) 100% of the agreed price of contractual services and of items delivered, if the item has been newly developed for the Customer, has been manufactured individually, or specially ordered or equipped for the Customer;
- b) 50 % of the agreed price for all other forms of item supplied.

Where the agreed price is not compensated for in full and where the deliveries are already with the Customer, the latter must immediately return these to the Supplier's premises free of freight charges. In addition, the Customer must pay the Supplier for the costs of installation, dismantling, travel and transport to and from the Customer's premises, insurance and any other expenses that may be incurred.

The Customer acknowledges the appropriateness of the above regulation. The Supplier expressly reserves the right to demonstrate and assert a claim for contingent damages.

- 6.3. Where the Supplier is entitled to withdraw from the contract under 6.2 above, he may freely and without hindrance sell to third parties the products ordered by the Customer regardless of any protected rights the Customer may be entitled to (e.g. patents, company names, trademarks, sample rights, model rights and copyrights).

7. Delivery date

- 7.1. Where the delivery date is not fixed by contract, the delivery period begins as soon as all technical and commercial details have been established and the payments due no later than on placing the order have been made, or agreed securities have been provided.
- 7.2. The delivery period may be extended appropriately:
- a) if the Customer does not punctually give the Supplier the information he requires for the performance of the contract or if the Customer alters the information retrospectively;

- b) if hindrances occur, which the Supplier, despite applying the requisite care, is unable to avert, regardless of whether they arise on his side, on the Customer's side or with a third party. Such hindrances include, for example, epidemics, mobilisation, war, riots, major plant breakdowns, accidents, labour disputes, delayed or defective inward deliveries of the necessary raw materials, semi-finished or finished manufactures, spoilage or rejection of important workpieces, official measures or omissions, natural occurrences and other instances of *force majeure*;
- c) if the Customer or third parties or have fallen behind schedule with works to be carried out or with the fulfilment of their contractual obligations, in particular if the Customer is not observing the terms of payment.

- 7.3. Failure by the Supplier to meet the delivery dates does not entitle the Customer to compensation for damages, but does entitle him to withdraw from the contract after an appropriate grace period of at least 90 days has expired without remedy.
- 7.4. Delay in delivery of goods or performance of services does not give the Customer any rights or claims except for those expressly named in this Section 7. In addition, the exclusion of liability under Section 12 applies.

8. Tools and moulds

- 8.1. Tools and moulds, including accessories, remain the property of the Supplier, even if the Customer has paid a share of the costs of their manufacture.
- 8.2. After completion of the order the Supplier is free to make use of the relevant tools and moulds, unless some other arrangement has been agreed in writing.

9. Transfer of benefit and risk

- 9.1. Benefit and risk are transferred to the Customer at the moment provided for in law but at the latest when shipments leave the factory or, as the case may be, when the services have completed.
- 9.2. If there is any postponement of the handover, or of dispatch, if dispatch has been agreed, at the request of the Customer or for other reasons which the Supplier is not responsible for, the risk is transferred to the Customer at the moment provided for in law, but no later than the time originally fixed for the handover or dispatch, and in the case of services, on completion of the service. From that point onward the goods are stored at the expense and at the risk of the Customer.

10. Examination and acceptance of the goods and services

- 10.1. The Supplier will examine the goods and services to the customary extent prior to dispatch. Should the Customer require more detailed scrutiny, this must be specifically agreed and paid for by the Customer.

- 10.2. The Customer must examine the deliveries and services immediately after receipt of the goods and completion of the services, and within 10 days inform the Supplier in writing of any shortages or defects. Should he fail to do this, the deliveries and services are deemed to be approved.
- 10.3. The Supplier must as rapidly as possible remedy the shortages or defects reported to him under 10.2 above, subject to his right of choice under 11.2 below, and the Customer must give him the opportunity to do so.
- 10.4. Deficiencies of whatever kind in the Supplier's deliveries or services do not give the Customer any rights or claims except for those expressly named in this Section 10 and in Section 11 below (Warranty, liability for defects). Also applicable is the exclusion from liability under Section 12.

11. Warranty, liability for defects

- 11.1. The Supplier's warranty lasts for 12 months from delivery of goods or from completion of services. Where an acceptance procedure has been agreed, the warranty period runs from the confirmation of acceptance. Should the Customer refuse to carry out the acceptance procedure, the warranty period runs from the moment when the goods or services are ready to be accepted.

The warranty period of 12 months applies to machinery and plant that is operated for up to 8 hours per day. If these operating hours are exceeded, the warranty period is shortened proportionally to the excess hours.

Claims under warranty may only be made by the Customer if the Customer, for his part, has fulfilled his contractual obligations, in particular his payment obligations. The Customer's claims under warranty lapse prematurely if the Customer or third parties carry out modifications or repairs to the goods or services supplied, or if, in the event of a defect, the Customer does not immediately take all appropriate steps to minimise the damage and does not give the Supplier the opportunity to remedy the defect.

- 11.2. Up till the expiry of the warranty period, the Supplier undertakes, upon written demand by the Customer, as rapidly as possible and in the manner the Supplier chooses, either to make good or replace any elements of the goods and services he has supplied which are demonstrably harmful or unserviceable as a result of poor material, errors in design or faulty manufacture, or to reimburse that proportion of the purchase price or paid working-time that is accounted for by the defective elements. The costs of dismantling, transport and re-assembly are charged to the Customer in the absence of any written agreement to the contrary. Replaced parts become the property of the Supplier.
- 11.3. Excluded from the warranty and Supplier's liability is damage that has not demonstrably arisen as a result of poor material, errors in design or defective manufacture, but is due, for example, to natural wear and tear, inappropriate storage or handling, inadequate maintenance, failure to observe operating instructions, excessive load-

ing, unsuitable operating resources, chemical or electrolytic influences, assembly work not carried out by the Supplier, or due to any other reasons that the Supplier is not responsible for.

11.4. Deficiencies of whatever kind in the Supplier's deliveries or services do not give the Customer any rights or claims except for those expressly named in 11.2 above. Also applicable is the exclusion from liability under Section 12.

12. Exclusion of further liabilities on the part of the supplier

All instances of breaches of contract and their legal consequences and all claims by the Customer against the Supplier, no matter on what legal grounds they are asserted, are definitively settled by these terms and conditions. Excluded in particular are all claims, not expressly mentioned, on the part of the Customer against the Supplier for damages, reduction of purchase price, cancellation of the contract or withdrawal from the contract. The Supplier's liability is restricted to the value of his delivered goods and services. The Supplier is not liable for damages to items owned by the Customer or third parties, which have been handed over to him to be worked on or stored. In no case can the Customer assert claims for compensation for damage which has not been caused to a delivered item itself, such as, specifically, loss of production, loss of use, loss of orders, loss of profit and any other indirect or direct damages.

This exclusion of liability does not apply to unlawful intent or gross negligence by the Supplier, it does however apply to unlawful intent or gross negligence by auxiliary persons. Furthermore, this exclusion of liability does not apply where it is opposed by mandatory law.

13. Protected rights

Where the Supplier is required to supply goods or services on the basis of sketches, drawings, models or samples, which have been provided to him by the Customer, or on the basis of other forms of information from the Customer, the Customer warrants that no protected rights of third parties are infringed by the manufacture and supply of these products or the performance of these services. The Customer indemnifies the Supplier from all damage that is incurred if the protected rights of third parties are infringed as a result of instructions from the Customer.

14. Prohibition of assignment

The Customer is not entitled to assign his claims against the Supplier to third parties without the Supplier's written consent.

15. Version of contract / translations

The present contract has been drafted in its original form in the German language. Any translations are to be interpreted exclusively with reference to the original German text.

16. Place of jurisdiction and applicable law

- 16.1. For all disputes between the parties the exclusive place of jurisdiction is the *Handelsgericht* [commercial court] of the Canton of Bern, Switzerland. This agreement as to the place of jurisdiction does not apply where it is opposed by mandatory law.
- 16.2. The contracts between Supplier and Customer are exclusively governed by Swiss law to the exclusion of the United Nations Convention on Contracts Concerning the International Purchase and Sale of Goods (Vienna Law of Purchase) of 11 April 1980.

Last updated : February 2007