

Sunwell Global

Standard Terms and Conditions Rev. 2 (6/26/23)

1.1 The present General Terms of Sale & Delivery (hereinafter “Terms”) form an integral part of the Contract between the Seller and the Purchaser, are the exclusive terms and conditions for the sale and delivery of Goods, and shall be applicable to all purchase orders issued by Purchaser unless deviations were explicitly agreed in writing by the contractual partners. The purchase order, specifications referenced in the purchase order and these Terms contain the entire contract between Purchaser and Seller and supersedes and cancels all prior agreements, negotiations, drafts, representations and communications, whether oral or written, with respect to or in connection with the subject matter of the contract (hereinafter “Contract”).

1.2 Any offer, acceptance, order, confirmation or other document from either party that contains terms and conditions in addition to or different than those set forth herein are objected to and shall not be binding upon Seller or Purchaser unless acceptance thereof is made in writing by an authorized representative of Seller and Purchaser.

1.3 The present provisions shall likewise apply to supply of spare parts or deliveries effected on basis of warranty claims.

2. Changes and Standards

2.1 Changes to the specifications or Goods description after the purchase order date shall be valid only if in writing signed by authorized representatives of Purchaser and Seller. Such changes must provide for any mutually agreed modification in the price or in time of delivery.

2.2 Prior to entering into the Contract, the Seller and Purchaser shall jointly determine and include in the specifications the standards, regulations and laws applicable to the Goods and to the health and safety of personnel at the place of intended installation of the Goods. Seller will advise Purchaser of any change in price relating to compliance with such standards, regulations and local laws. If such standards, regulations and laws change after entering into the Contract, and there is an impact on price and delivery, Purchaser and Seller shall mutually agree to a revised price and delivery date.

3. Drawings and Documents

3.1 Seller shall provide general and subassembly drawings to Purchaser. Quotations, project documents plus pertinent drawings, descriptions, illustrations, and similar remain seller's intellectual property and must not be copied or reproduced, nor be disclosed to third parties in any way except for the purpose of operating and maintaining the Goods and must neither be used for the manufacture of equipment or components. Upon request, Purchaser shall immediately return such documents if the order is not executed.

4. Prices

4.1 Unless stipulated otherwise in the purchase order, Seller's prices are based on a EXW Seller's plant (Incoterms 2010) delivery and do not include assembly at the end user's site.

4.2. Unless otherwise stated in the purchase order, the Seller's prices do not include any federal, state, or local or foreign tax, duty or tariff of any kind that may be applicable to the sale, purchase use, shipment, delivery, import, export or any other disposition of the Equipment.

4.3 If the relation of the currency stated in the invoice as against the US Dollar changes, in particular as a result of devaluation or revaluation of either currency, the purchase price shall be calculated on the basis of the relation of both currencies at the date of concluding the Contract.

5. Terms of Payment

5.1 All payments to be made as agreed and in the currency stated in the purchase order to Seller's account indicated in the invoice. Purchaser may pay to one of Seller's commercial agencies with debt releasing effect only if the Seller has explicitly approved of this in writing.

5.2 Payment terms shall be stipulated in the purchase order.

5.3 It shall be considered as day of payment that date when the payment is received at the place of payment stated in the invoice.

5.4 Purchaser may withhold payments if Seller has not performed its obligations pursuant to the payment terms or these Terms, but shall release such payments when Seller has performed.

5.5 All delinquent sums due and owing to Seller shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

6. Retention of Title and Risk

6.1 Title of the Goods and risk of loss shall transfer upon delivery of the Goods, EXW Seller's plant (Incoterms 2010).

6.2 Seller reserves a purchase money security interest in the Goods until the purchase price is paid in full. Purchaser agrees that Seller will have the right to file this Agreement or financing statements pursuant to applicable law to evidence or perfect Seller's security interest in the Goods.

7. Delivery Date

7.1 The delivery date shall be stated in the purchase order. The goods shall be delivered EXW Seller's plant (Incoterms 2010).

7.2 The delivery date shall be extended:

7.2.1 if information required for execution of the order does not reach the Seller in time or if such information is subsequently changed by the Purchaser;

7.2.2 if performance obligations hereunder are prevented or delayed by forces beyond a party's control, including, without limitation, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or similar events;

7.2.3 if the Purchaser is in arrears with work to be carried out and such work must be completed prior to Seller commencing its work; or

7.2.4 if Purchaser is in default of meeting his contractual obligations, in particular when the terms of payment are not observed.

7.3 In presence of events such as stated under 7.2, the delivery period shall be extended by that time for which the event in question continues. Should performance be delayed or prevented as per 7.2.2 continue for more than thirty (30) days, the contractual partners shall be entitled to terminate the Contract in writing.

8. Packing

8.1 Packing shall be effected if not explicitly agreed upon otherwise as commercially usual to prevent damage to the Goods during transit considering applicable method and conditions of transportation.

8.2 Purchaser shall inform the seller in time about special wishes for packing at the time of order placement or during order execution via a specification change pursuant to the provisions of 2.1 above.

8.3 Packaging shall be itemized separately on the invoice and shall be non-returnable, if not explicitly agreed upon otherwise.

9. Transport and Insurance

9.1 Unless stipulated otherwise, all transport arrangements are to be effected by the Purchaser at his cost and risk pursuant to EXW Seller's plant (Incoterms 2010). If, as agreed, the carrier is arranged by the Seller on behalf of Purchaser, the Purchaser shall continue to bear the risk.

9.2 Complaints relative to transportation shall be directed by the Purchaser to the last carrier immediately upon inspection of the delivery. Furthermore, the Purchaser engages to immediately assert possible transport damages with the carrier in accordance with the carriage contract and any forwarding terms. Seller to be immediately informed accordingly.

9.3 Unless stipulated otherwise Purchaser undertakes to take out at his expense a transport insurance from door to door corresponding to the value of the Goods delivered. Even if this insurance is agreed to be concluded by the Seller on Purchaser's behalf naming Purchaser as the beneficiary, it shall nevertheless be on Purchaser's account and at his risk. Except if damage was caused by insufficient packing completed by seller, the Seller shall not be liable for transport damages.

10. Delay

10.1 Unless otherwise agreed in a purchase order, while Seller will use commercially reasonable efforts to ship and/or deliver Equipment or complete services by the dates specified in the purchase order, all such dates are approximate and not guaranteed. If an alternative liability and remedy is stated in the purchase order, such liability and remedy shall be sole and exclusive.

11. Warranty

11.1 Seller warrants Goods manufactured by it will be free from defects in workmanship and material under normal use and service. Seller does not warrant the amount or quality of production unless expressly stated in the specifications. Seller warrants that when delivered its Goods will be designed and manufactured to perform the mechanical functions and acceptance or performance criteria expressly stated in the specifications provided the Goods are maintained and operated under proper conditions by competent trained personnel using such raw materials as may be specified. If any part or component of the Goods are found and reported during any lab trial, inspection, installation, commissioning, acceptance trial or thereafter within one year from date of delivery to not meet the above warranties and provided notification in writing is given to Seller, Seller will, at its discretion, either modify, repair or replace such component or part (defects caused by normal wear and tear items, such as screws, barrels, filters, rupture discs, die insulation, belts, knives and roll coverings are excluded from warranty replacement). During repair, risk of loss will remain with Purchaser. Seller's warranty does not cover any labor charges for the replacement of parts, adjustment, repairs, or any other work done by parties other than Seller unless agreed in writing. Replacement of parts manufactured or supplied by others is subject to that manufacturer's or supplier's consent and to

Purchaser's returning the replaced part DAP Seller's plant (Incoterms 2010). No parts or components may be returned without Seller's prior written consent.

11.2 THE FOREGOING WARRANTY EXTENDS TO BUYER ONLY AND NOT TO BUYER'S CUSTOMERS AND IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES (WHETHER WRITTEN, ORAL OR IMPLIED) INCLUDING THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IN OTHER RESPECTS THAN EXPRESSLY SET FORTH IN THIS AGREEMENT.

11.3 Remedies of Purchaser set forth herein are exclusive. Purchaser's sole remedy and Seller's sole liability with respect to the performance or breach of this Agreement in connection with the design, manufacture, sale, delivery, installation, commissioning, acceptance trial or repair of the Goods purchased hereunder, or the technical direction covered by or furnished under this Agreement, is to make within the time period set forth above such modifications as may be necessary to achieve any expressly promised performance contained in this Agreement and to modify, repair or replace defects that have been identified by Purchaser. If Seller is unable to modify, repair or replace as provided above to meet its warranty obligations stated above, including compliance with any acceptance criteria contained in the Contract, Purchaser's sole remedy shall be to pay and Seller's sole liability shall be to accept a mutually agreed price reduction reflecting the difference between the value of the Goods delivered and the value the Goods would have had if they had been as warranted.

11.4 Purchaser will reimburse Seller for the travel expenses and time of any service technician or engineer who travels to Purchaser's plant at Purchaser's request to troubleshoot problems and who identifies improper maintenance or improper operation as the sole cause(s). Any modification or repair to Goods without Seller's prior written approval, improper use of Equipment, whether intentional or unintentional, operation beyond capacity, failure to report to Seller within the warranty period, substitution or addition of parts not approved by Seller, failure or damage due to misapplication, lack of proper maintenance, abuse, improper installation, or abnormal conditions of temperature, moisture, or corrosive matter, or alteration or repair by others in such manner which in Seller's judgment affects the Goods materially and adversely shall void the foregoing warranty. Purchaser shall allow the Seller prompt access to the Goods if field repairs, modifications or replacements are required and will supply a modern quality line for the equipment if requested by the Seller. Should the lack of availability of such a line necessitate a field trip that would otherwise not be required, the Purchaser will be charged for travel time and expenses.

12. Choice of Law and Jurisdiction

12.1 The laws of the State of Washington, USA shall govern the purchase order. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

12.2 If no arbitration court was agreed upon between the contractual partners, all disputes arising from this Contract shall be referred to and settled by the materially competent State or Federal Court in Yakima, Washington State, USA.

13. Liabilities and Remedies.

UNLESS OTHERWISE AGREED IN A PURCHASE ORDER AND SUBJECT TO

MANDATORY LAW, SELLER'S LIABILITIES AND BUYER'S REMEDIES ARE LIMITED TO THOSE CONTAINED IN THIS AGREEMENT AND NEITHER SELLER NOR BUYER SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, MULTIPLE, OR CONSEQUENTIAL LOSS, DAMAGE, EXPENSE OR INJURY OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOSS OF PRODUCTION, OPPORTUNITY, FINANCING, GOOD WILL, USE, BUSINESS REPUTATION, COST OF SUBSTITUTE FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, DEFECTIVE PRODUCT LOSSES, COST OF TESTING MATERIALS, LABOUR COSTS, DEPRECIATION COSTS, INTEREST COSTS, CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES, HOWEVER ARISING. THESE LIMITATIONS OF LIABILITY WILL APPLY WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY(IES).

14. Intellectual Property.

14.1 Seller warrants that none of the Goods infringe any patent trademark or copyright provided that Purchaser will (a) forthwith upon receipt forward to Seller any communication charging infringement, (b) forthwith forward to Seller all process, pleadings and other papers served in any action charging infringement, (c) give Seller the sole right to defend any such actions at Seller's expense, and (d) give Seller the option at any time up to or after judgment at Seller's expense to minimize Purchaser's damage or liability (i) by altering the Goods to make them non-infringing, (ii) by exchanging a non-infringing part which will fulfill substantially the same function for the infringing part which in that case becomes the Seller's property, (iii) by obtaining a license permitting Purchaser's use of any infringing part, or (iv) by repurchasing the infringing Goods at Purchaser straight line depreciated cost. Seller's maximum liability under this warranty shall be (a) to indemnify Purchaser for any money judgment recovered against Purchaser in a court of competent jurisdiction plus Purchaser's reasonable counsel fees if Seller does not undertake the defense and (b) to repurchase at Purchaser's straight line depreciated cost any part held by such a court to be infringing which Purchaser cannot use by reason of adverse judgment, all liability of Seller's part hereunder. No warranty is made as to infringement resulting from compliance with specifications supplied by Purchaser or from any combination of Goods with other equipment not supplied by Seller. As to any Goods furnished by Seller to Purchaser, manufactured in accordance with specifications supplied by Purchaser, Purchaser shall indemnify Seller against all claims, demands and suits brought against Seller for any patent, trademark or copyright infringement.

14.2 Promises and agreements of Seller's or Purchaser's employees shall be binding only if confirmed by Seller's or Purchaser's management.

14.3 The parties acknowledge that they have entered in this Contract in reliance upon their own independent investigation and analysis and neither has been induced to enter into this Contract by virtue of, and is not relying upon, any representations or warranties not set forth in this Agreement.

14.4 No waiver of any provisions of this Agreement shall be binding unless in writing

signed by an authorized representative of the party against whom the waiver is asserted and unless expressly made generally applicable shall only apply to the specific case for which the waiver is given. Failure of either party to insist upon strict performance of this Contract shall not be construed as a waiver of any terms or conditions thereof.

14.5 If one of the foregoing provisions violates compelling law and would hence become invalid when applied, it is agreed that in such a case an admissible regulation shall be applied which comes nearest to the sense of this condition instead of the clause possibly subject to nullification.

14.6 Seller will comply with all trade-related law, including but not limited to export control, embargo and sanctions, anti-boycott and import laws applicable to Seller and its business. Seller warrants that in the performance of its obligations under this Agreement, Seller will not directly or indirectly procure the Equipment or any component or part from a country subject to a U.S. trade embargo, including but limited to Cuba, Iran, Crimea, Syria and North Korea, and will not engage in any transaction with any restricted party appearing on the restricted parties lists of the United States or any other applicable jurisdiction including but not limited to Seller's use of freight forwarders, financial institutions and customs brokers (see http://www.export.gov/ecr/eg_main_023148.asp for U.S. Governments consolidated list of restricted parties). Seller agrees to indemnify and hold Purchaser against any liability caused by reason of Sellers failure to comply with this paragraph.