



## General Conditions of Supply and Delivery for Products and Services for Electronical Industry valid for Precitec KG, Gaggenau/Germany

### I. Scope of supplies or services

1. The scope of supplies or services shall be governed by mutual declarations in writing. Where an agreement has been entered into without such mutual declarations either the written order confirmation by the Supplier or Performer (in the following; the Supplier) shall govern, or where such order confirmation has not been issued the written order of the Purchaser.
2. Protective devices will be supplied to the extent required by law or expressly agreed upon.
3. All supplies or services shall be governed by the rules of the Verband Deutscher Elektriker (Association of German Electrical Engineers) insofar as safety of supplies or services is concerned. Deviations are permissible if the same safety standard will be achieved by different means.
4. Supplier reserves all titles and property rights and rights originating from copyright on cost estimates, drawings and other documents; such may not be disclosed to third parties without the prior consent of Supplier. All drawings and other documents pertaining to quotations shall immediately be returned on request if the order is not placed with the bidder. Foregoing sentences 1 and 2 shall apply accordingly to documents of Purchaser. The may, however, be made available to those third parties, which perform services or supplies for the Supplier in cases where this is permitted.
5. Additional agreements shall not be binding unless confirmed in writing.
6. The deliveries take place from the factory in Gaggenau (EXW Incoterms 2000). Partial deliveries are permissible.

### II. Prices and Conditions of Payment

1. Where supply offered does not include erection or installation, prices quoted are ex works, excluding packing.
2. Payments shall be made free paying-office of Supplier.
3. Purchaser may set off only such claims as are undisputed or finally determined.
4. The price is payable without any deduction "free paying office" of the seller within the term of payment listed in the invoice to the bank account listed in the invoice.
5. If the buyer defaults in payment for more than 30 days, the seller may revoke the contract in writing and is entitled to claim damages.
6. The prices quoted are from the seller (EXW Incoterms 2000).
7. If the payment is not performed in a timely manner the seller is entitled to interest up to 3 % per annum above the discount rate of EZB. Furthermore he may suspend the fulfilment of the contract.
8. The company Precitec KG, is authorized to check the customer's financial standing with all usual means. Moreover, should doubts arise concerning the customer's financial standing and should circumstances as well as information indicate that the customer is in a bad economical situation, Precitec KG is entitled to cancel all granted terms of credit and confirmed dates of delivery and will proceed further orders for that customers only by cash before delivery.

### III. Retention of title

Title to all goods is retained by Supplier until each and every claim of Supplier against Purchaser originating in the business relations has been duly satisfied. Prior to this event goods may not be pledged or given as security and may only be re-sold by resellers in the normal course of business, against payment from their Customers. Any costs incurred in connection with interventions following this Section shall be borne by Purchaser. If the value of the sureties accruing to the Supplier in

claims by more than 20%, Supplier shall upon request release a respective part of the sureties.

All claims resulting from a resale are assigned to the seller until payment of the full purchase price is complete. The purchaser shall support the seller in all legally admitted measures and actions which are necessary to protect the seller's property in the country in question. If products for which we have exclusive ownership are processed with other products not belonging to us, we maintain the right of co-ownership of the new object in relation of the purchase value plus appropriate taxes of our product to the other processed materials at the time of processing.

### IV. Period for supply of deliveries or services

1. The period for supply of deliveries and services shall be governed by the mutual written declarations. Section 1 No. 1 Sentence 2 shall apply accordingly. Timely supply is conditioned upon timely receipt of all documents to be furnished by Purchaser, necessary licenses and releases, timely clarification and approval of plans and observance of the terms of payment agreed upon and all other obligations. If these conditions are not timely fulfilled, the period for supply shall be appropriately extended.

2. Above period shall be deemed to have been met:

- a) Where supply does not include erection of installation, if the goods, ready for operation, have been delivered to the carrier or picked up within the agreed period. If delivery is delayed for reasons for which the Purchaser is responsible, supply shall be deemed timely, if notice that goods are ready for shipment has been given within the agreed period.
- b) Where supply includes erection or installation, if such erection or installation has been completed within the agreed period.

3. If the period for supply of deliveries or services can be proven to have been exceeded because of mobilisation, war, riot, strike, lock-out or in the event of unforeseeable circumstances, such period shall be adequately extended.

If such period is exceeded for reasons other than those stated in subsection 3 paragraph 1, the Purchaser - insofar as he can establish credibly that he has suffered damage owing to the delay - may claim liquidated damages of 1/2% for every completed week's delay up to an overall total of 5% of the value of that part of supplies or services which could not be taken into useful operation owing to individual components thereof not having been furnished in time.

Purchaser shall likewise be entitled to liquidate damages in case of circumstances as described under sub-section 3 paragraph 1 arising only after period of supply of deliveries or supplies originally agreed upon has been culpably exceeded by Supplier. All further damages for delays as may be claimed by Purchaser exceeding the margin of 5% as ruled under paragraph 2 are expressly excluded even if an additional period of time as may have been granted to Supplier has expired. This does not apply where in cases of intent or gross negligence Supplier's liability is enforced by law.

The right of Purchaser to cancel the Contract after an additional period of time granted to the Supplier has ineffectively expired shall remain unaffected.

4. If shipment or delivery is delayed at Purchaser's request, storage costs to the sum of 1/2% of the invoiced amount may be charged for every month commenced beginning one month after notice has been given that goods are ready for shipment. Such charge shall be limited to an overall total of 5% unless costs incurred can be proven to be higher.

Delivery schedules are stated without obligations under the provision that all Precitec suppliers will supply in time. Subsection 3, paragraph 1, is replaced by chapter XVI



Subsection 1 of the supplement.

#### VI. Transfer of risk

Risk shall pass to Purchaser, even if freight delivery paid has been agreed upon;

a) Where supply offered does not include erection or installation: Whenever goods ready for operation have been delivered to carrier or pick up. Every care shall be taken in packing. Shipment shall be carried out to the best of Supplier's judgement. At the request and expense of Purchaser, goods shipped will be insured by Supplier against breakage, damages in transit or fire.

b) Where supply offered includes erection or installation: the day Purchaser has taken over goods for operation; insofar as a test run has been agreed upon, whenever such run has been satisfactory completed. Assumption hereto is that the test run or taking over for operation shall take place immediately following erection or installation declared ready for operation.

If Purchaser fails to accept the offer of a test run or to take over for operation, risk for the period of delay arising there from shall pass to Purchaser after a period of 14 days following such offer.

c) If shipment delivery, commencement or execution of erection or installation is delayed at the request of Purchaser or for reasons within Purchaser's responsibility, risk shall pass to Purchaser for such period of delay. Supplier however undertakes to effect at Purchaser's expense such insurances as requested by Purchaser.

#### VII. Erection and installation

A.

Insofar as nothing to the contrary has been agreed upon in writing the following provisions shall apply to erection and installation of any kind.

a) Purchaser shall provide at his expense and in due time:

1. In sufficient number, auxiliary personnel such as labourers and, if necessary, bricklayers, carpenters, fitters, crane operators and other skilled labour along with the required tools;
2. All earth work, foundations, civil engineering, mortising, scaffolding, plastering, painting and other work not usual in Supplier's trade including the necessary materials;
3. Such objects and materials as are necessary for erection and putting into operation, e.g. props, wedges, bases, cement, cleaning and sealing materials, lubricants, fuel etc. furthermore scaffolds, lifting gear and other devices;
4. Power, water including the necessary connections up to point of use, heating and general lighting;
5. Suitable and dry rooms of sufficient size at the site which can be locked for storage of machinery-parts, equipment, materials, tools etc. as well as adequate working rooms and accommodation for Supplier's personnel including reasonable sanitary installations. Furthermore Purchaser must follow the same provisions for safeguarding the property of Supplier and erection personnel at the site as he would for his own;
6. Protective clothing and protective devices which are necessary owing to particular conditions at the site and which are not usual in Supplier's trade.

b) Before commencement of erection work, Purchaser must make available of his own accord necessary information concerning all concealed electric cabling, gas- or water-pipes and the like as well as necessary information on static.

c) Before commencement of erection or installation, the parts required for initiating the work must be at hand and all masonry, carpentry and other preparatory work must be so far advanced that erection or installation may begin immediately upon arrival of erection or installation personnel and proceed without interruption. In particular, the approach roads and the site for erection or installation itself must be level and clear, foundations must be dry and set, foundation walls erected and backfilled, and in the case of indoor work, the rendering of walls and ceilings must be complete and especially, doors and windows must have been fitted.

d) If installation, erection or commencement of operation is delayed owing to circumstance particularly at the site the Supplier may not be held responsible for. Purchaser shall bear

the reasonable costs for stand-by time and any additional travelling expenditure of erection or installation personnel.

e) Working hours shall be certified at weekly intervals to erection or installation personnel by Purchaser to the best of his knowledge. Moreover, Purchaser shall immediately confirm in writing to erection or installation personnel completion of erection or installation work.

f) Supplier shall not be liable for any work executed by his erection or installation personnel or other agents that is not related to supplies and erection or installation or insofar as it has been initiated by Purchaser.

B.

If Supplier has undertaken to provide erection or installation on an actual cost basis, the following conditions shall apply in addition to those as under A:

1. Purchaser shall make payments to supplier according to rates of charge for working hours agreed upon at time of order together with premiums for overtime-, night-, Sunday- or holiday work, work under unusually difficult conditions, planning and supervision.

2. Moreover, the following costs shall be paid separately:

- a) Travelling expenditures, costs for transport of tools and personal luggage.
- b) Daily allowance for working hours as well as for off-days and holidays.

#### VIII. Acceptance

1. Goods delivered shall be accepted by Purchaser even if they show minor defects.

2. Partial deliveries are admissible.

3. The purchaser bears the costs for storage, insurance and measures of protection arising from a late acceptance. In case the purchaser does not accept the goods on time of delivery, the seller may lay down in writing a reasonable time limit for the acceptance. The seller's right to claim the purchase price remains unaffected.

4. After expiration of term the seller may revoke the contract, in whole or in part, in written form. Further he is entitled to claim damages to the amount of the deliverance's value which has not been accepted.

#### IX. Liability for faults

The Supplier shall be liable for faults including failure to achieve assured characteristics as under:

1. The Supplier shall at his discretion repair or replace such part or perform anew such services free of charge as have become of no use or markedly impaired in usefulness within 12 month after transfer of risk - regardless of actual operating time - owing to circumstances prior to transfer of risk, particularly such as faulty design, materials or workmanship.

Supplier must be informed in writing of such faults immediately after they have been noticed. Beyond that subsection 1 is valid for mechanical as well as electronic components.

2. Purchaser has to comply with contractual obligations, in particular with the agreed conditions of payment. If complaint in respect to a fault is made Purchaser may withhold payments to an extent, which is fair and reasonable in respect to the faults occurred.

However, if the Contract is entered into in pursuance of Purchaser's line of business payments may only be withheld under the condition that the complaint in respect to a fault is justified beyond any reasonable doubt.

3. Purchaser shall grant the Supplier such adequate time and opportunity as Supplier deems reasonable to remedy the faults. In case of refusal Supplier's liability shall be waived.

4. If Supplier lets expire an adequate extension of time as set by Purchaser without remedying the fault. Purchaser shall have the right to cancel the contract (cancellation) or claim a reduction of price (reduction).

5. Right of Purchaser to lodge claims owing the faults shall in any case be barred after a period of 12 months has expired beginning from the date of above complaint. If no agreement is reached within this period of time, Supplier and Purchaser may agree to an extension of said period.



6. Liability for faults does not cover natural wear and tear nor were damage arising after transfer or risk owing to faulty or negligent handling, excessive strain, unsuitable materials for operation, deficient civil engineering work, unsuitable soil conditions, and such chemical, electrochemical or electrical influences not assumed at the time of the Contract.

7. All liability for consequences of any inexpert alterations or repairs carried out by Purchaser or a third party shall be waived.

8. Period of liability for faults in repairs shall be 3 months, for replacements or renewals 6 months. However, above period shall run at least until expiry of warranty period as originally provided for in respect of the contractual goods.

If parts of supplies cannot be put into efficient operation owing to an interruption of work caused by repairs, replacements or corrected services, period of liability for faults for such parts shall be extended by same period of interruption.

9. The provisions concerning periods of liability for faults under paragraphs 1,5 and 8 shall not apply where longer periods are enforced by law.

10. Supplier or Supplier's agents shall in no event be liable to Purchaser for any further claims, particularly claims for damages not affecting the goods themselves. This shall not apply where liability is enforced by law as in cases of personal injury or of damage to private property pursuant to the Product Liability Act or as in cases of intent, gross negligence, or failure in assured characteristics.

The seller can not be held liable for lack of conformity with the contract and damages beyond the terms set in chapters V and IX. This applies to all damages including production loss, loss of profit and other indirect damages (damages which have not emerged at the supply item itself). The seller is obliged to pay damages for the breach of an essential contract condition up to the amount of 15% of the purchase price.

At any rate, the seller can be held liable for gross negligence of the business manager or other directorial personnel and in particular the seller bears liability for any defects in specified characteristics of the product from which the purchaser should be protected. The seller is further liable for physical injury and material damage in accordance with the German or foreign Product Liability Act.

11. Sub-section 1 to 10 shall apply accordingly to claims of Purchase concerning repair, replacement or damages originating from proposals or advice given within the scope of the Contract or originating from a breach of secondary contractual obligations.

#### 12. Examination and Complaint

The buyer loses the right to invoke lack of conformity with the contract if he does not promptly indicate, in written form, any specific problems with the delivery. After an agreement the purchaser is obliged to take care of the security of all evidence.

#### 13. Handling and storing

After the delivery of the goods the seller is not liable for damages caused by lack of careful treatment or proper storing.

#### 14. Statutory Product Liability

The purchase is obligated to indicate to the seller all inherent dangers in the goods that surface during the use of the delivered goods.

In case a claim is enforced against the seller in accordance with a foreign Product Liability act, he (the seller) must fulfil the rightful damage claims up to the amount of Euro 1,022,583.-- per loss, up to a maximum of Euro 2,556,459.--, whereas the purchaser has to bear any costs in excess of the insurance and reimbursement. The purchaser has to take out insurance at his own expenses accordingly.

15. The Contractor's liability is limited to defects in the Works which appear within a period of one year from taking-over. Precitec does not assume any liability for any damages or defects caused through improper use, storage, operation, faulty or negligent handling. The warranty will become null and void if the client carries out any non-authorized work or repair himself or if such work or repair is carried out by any person that has not been authorised by us. If the daily use of the Works exceeds that which is agreed, this period shall be reduced proportionately. If taking-over has been delayed for reasons for which the Purchaser

is responsible, the Contractor's liability for defects shall not, except as stated in Clause 16, be extended beyond 18 months after delivery of the Plant.

16. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 15 shall be extended only by a period equal to the period during which the Works have been out of operation as a result of the defect.

17. The Purchaser shall without undue delay notify the Contractor In Writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in Clause 15.

#### X. Impossibility of performance; adjustment of Contract

1. If Supplier or Purchaser are unable to perform their supplies or services, general legal principles shall apply, subject to the following conditions:

If Supplier may be held responsible for inability, Purchaser is entitled to claim damages. However, liability of supplier shall be limited to 10% of the value of the part of services or supplies which, owing to the inability, cannot be put into useful operation. Damages of Purchaser exceeding said margin of 10% are excluded. This does not apply where liability is enforced by law in cases of intent or gross negligence. The right of Purchaser to cancel the Contract shall remain unaffected.

2. Insofar as unforeseen events as described under Section V, Sub-section 3 paragraph 1 materially affect the economic consequences or substance of supplies or services or have a major effect on Supplier's business, the contract shall be adjusted reasonably with good faith. If this is not justifiable from an economic point of view Supplier may cancel the Contract. If he wishes to exercise this right of cancellation, he shall inform Purchaser of such intention immediately after recognizing the significance of the event; this shall apply even where in the first instance an extension of delivery period has been agreed upon with the Purchaser.

#### XI. Further claims for damages

Claims for damages on the parts of the Purchaser arising from breach of secondary contractual obligations, obligations during the stage of contractual negotiations and tort are excluded. This does not apply where liability is enforced by law as in cases of personal injury or of damage to private property pursuant to the Product Liability Act or as in cases of intent or gross negligence. This limitation shall apply accordingly in respect of the Purchaser.

Unless discussed explicitly in this contract, all further contractual or statutory claims especially for dissolution of contract, reduction in price or value or damages of any kind (also damages which have not emerged at the supply item itself) are to be excluded.

Chapter no. IX 10 shall apply accordingly.

#### XII. Place of jurisdiction

1. If Purchaser is a company or business man, exclusive place of jurisdiction in case of all litigations arising directly or indirectly out of this contract shall be at the discretion of supplier the domicile of Supplier's head or branch office.

All litigation arising from or in connection with this contract is subject to the jurisdiction of Rastatt. The restriction to companies or trades people does not apply.

2. Contractual relations shall be governed by German law.

3. The seller is also entitled to take legal action before the local governmental courts of the purchaser's domicile. In this case the local jurisdiction according to Chapter XII.1 does not apply.

4. Unless otherwise specified the place of performance is the location of the seller's concern

As an exception to the paragraphs no. 1-4 the following applies for deliveries outside the EWR:

1. The legal relationship between the contractor and us is subject to the laws of the Federal Republic of Germany. The UN purchase law does not apply.



2. If paragraph 1 is not applicable, all litigation arising from or in connection with this contract are subject to rules of conciliation and the Arbitration Institute of the Stockholm Chamber of Commerce and therefore are to be decided by arbitrators appointed in accordance with the above mentioned rules. The parties may not have recourse to other legal action. Place of arbitration is the seller's domicile.

### **XIII. Validity of Contract**

If any provision of this Contract is void the remaining part of the Contract shall remain unaffected. This shall not apply if adherence to the Contract should mean an unreasonable hardship to any one Party.

### **XIV. Alteration of contract**

Alteration and supplements to this contract require written form. Chapter I.1 is to be applied accordingly. Any consequences for the price or date of delivery arising from alterations after its formal conclusion are to be borne by the purchaser.

The Purchaser is entitled to require variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may suggest such variations in writing.

Requests for variations shall be submitted to the Contractor In Writing and shall contain an exact description of the variation required.

As soon as possible after receipt of a request for a variation or after having himself made a proposal for a variation, the Contractor shall notify the Purchaser in writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and other terms of the Contract.

If completion of the Works is delayed as a result of disagreement between the parties and the consequences of variations, the Purchaser shall pay any part of Contract Price which would have become due if the Works had not been delayed.

### **XV. Responsibility for secondary obligations**

The seller assumes responsibility for the contractual and preliminary contractual secondary obligations solely under the applicable provisions no. V, IX, and XVI.

### **XVI. Force majeure**

1. A party must not answer for a failure to perform one of his contractual obligations if the non-performance is caused by an impediment which is beyond his control, particularly if based on one of the following reasons:

Fire, natural disaster, destruction of his domicile by other causes, mobilization for war, war, riot, seizure, general raw material shortage, energy saving or labour disputes.

A party is also relieved of contractual responsibilities if the lack of conformity with the contract by a subcontractor is based on one of the above mentioned reasons.

This regulation applies to all contractual obligations including liability for damages.

2. Each party may revoke the contract in writing if the performance has not been possible under chapter XVI.1 for more than 6 months.

### **XVII. Limitation of action**

A purchaser's claim for lack of conformity with the contract becomes statute-barred within a period of 6 months after the transfer of risk (chapter VI).

The seller's responsibility is limited to those occasions lack of conformity with the contract that occurs within this period.

The purchaser loses the right to invoke lack of conformity with the contract after the expiration of this period.

### **XVIII. Disposal of waste electrical and electronic Equipment**

1. The Customer accepts the responsibility to properly dispose of the delivered products at the end of their useful life at his own expense and in compliance with the legal regulations and thus exempts Precitec from the obligation according to §10.2 ElektroG (obligation of the supplier to take back delivered products) and associated claims.

2. The Customer has to contractually obligate commercial third parties to whom he resells the delivered products to properly dispose of them at the end of their useful life at their own expense and in compliance with the legal regulations, and to impose a corresponding transmission of obligation in case of another transfer.

3. If the Customer neglects to contractually obligate third parties to whom he transfers the delivered products to accept the disposal obligation and to transmit this obligation to possible other third parties, the Customer has to take back the delivered products at the end of their useful life at his own expense and to properly dispose of them in compliance with the legal regulations.

4. The statute of limitation of the manufacturer's claim to the transmission of the obligation/exemption by the Customer is 2 years after the final end of product utilization. The limitation period begins at the earliest from the date the manufacturer receives the Customer's written notice about the final end of utilization.

### **XIX. Observance of the laws**

1. The seller is responsible for the observance of the governing German security regulations if no other written agreement has been concluded.

2. The purchaser bears responsibility for the observance and performance of the Foreign Trade and Payments regulations, other laws of his country and laws of the country to which the seller shall deliver. The purchaser has to indicate to the seller the particularities that originate from those regulations.

### **XX. Product information**

1. All Information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

2. All drawings and technical documents relating to the Works submitted by one party to the other prior or subsequent to the formation of the Contract shall remain the property of the submitting party.

### **XXI. Sundry matters**

1. With the exception of assignments of purchase price claims to banks or insurance companies of the seller, the party's rights and duties are not assignable.

2. The business correspondence is to be conducted in English.

3. The purchaser may use or register the producer's trademark, commercial names or other registered marks only with the seller's written authorization and only in his interest.

4. If one term of these conditions is or is becoming null and void, all other terms or arrangements remain unaffected and legally binding

Subject to change without notice

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