



## General conditions of sale

### 1 Validity

The present general conditions of sale (hereafter «GC») apply to all deliveries and performance of Dietrich Engineering Consultants sa (hereafter «Dec»). The client's general conditions which would be in contradiction with the present general conditions of sale, as well as any change or oral agreement are valid only upon the written confirmation of Dec. In the event that a clause shall be deemed to be null and void, the remaining clauses shall remain in force.

### 2 Offers and conclusion of the contract

Offers made without the setting of a time-limit for their acceptance are not binding. The acceptance of this kind of offer constitutes a counter-offer which has to be accepted to be binding as a contractual agreement.

When the offer is made with the setting of a time-limit, its acceptance within such time-limit is binding as a contractual agreement. In the case of an order, the contract is concluded when Dec has declared in writing that such order is accepted.

### 3 Extent and execution of delivery

It is Dec's confirmation of the order which determines the extent, the terms and the execution of delivery. The material or performance which are not expressly mentioned, as well as any subsequent change asked for by the client will be invoiced separately.

### 4 Technical documents

**4.1** Dec's technical documents such as drawings, descriptions, similar reproductions as well as any eventual indication of weight constitute mere indications, without any guarantee that they are exact, unless Dec provides for a specific written guarantee in this respect. Dec reserves the right to modify or adapt such documents, according to the latest techniques.

**4.2** All the documentation supplied to the client, particularly the documents and the technical data, must be treated by the client and its personnel with the strictest confidentiality. Such documents and/or data must under no circumstances be copied, photocopied, reproduced without Dec's express written consent. In particular, such documents and/or data must not be communicated, in any way, to third parties nor used for the execution of the object of the contract or of the spare parts related thereto. The client avers that its personnel is subjected to the same confidentiality obligations and is liable for any damages suffered by Dec in this regard.

### 5 Prescriptions at the place of destination

The client is bound to draw Dec's attention to any legal, administrative and/or other requirements in force at the place of destination and that must be complied with when executing the contract, notably all provisions concerning importation into the country of destination as well as any security provisions mandatory or recommended by the competent authorities of such country. The extra spare parts or material which will be necessary in order to meet such security requirements will only be delivered with Dec's written consent and will be invoiced separately.

### 6 Prices

**6.1** The prices mentioned in the offer or in the confirmation of the order are net prices and are payable without any deductions. Unless differently decided by the parties or provided for in the confirmation of the order, prices are net factory prices, without packing, without transportation costs and without other incidental expenses, in Swiss francs.

**6.2** All bank expenses in relation with letters of credit, bank guarantees, cash against documents, stamp duties etc, are payable by the client.

**6.3** Prices are based on the cost of production at the time of the conclusion of the contract. Dec reserves the right to review the prices in the following cases:

- the delivery period is extended for one of the reasons listed in paragraph 9.2;
- the scope of the agreed deliveries or performance has been modified subsequently by the client;
- Dec's scale of wages or the price of materials have increased between the entry into force of the contract and the delivery;
- the deliveries or performance have changed because the documents supplied to Dec did not correspond to the real conditions or were not complete.

### 7 Payment conditions

**7.1** Payments must be made by the client according to the conditions provided for and agreed upon, in Lausanne and without any deduction (such as discounts, expenses, taxes etc.). No interest is paid on advance payments. In case the client breaches the contract or in the event of cancellation of an order by the client, the advance payments or the installments already paid are deemed to be liquidated damages (art 160 of the Swiss Code of Obligations) and are acquired to Dec, without prejudice to

Dec's claim for damages exceeding the amount of the aforesaid advances or installments.

**7.2** The terms of payments must be met even if the transport, the delivery, the assembly and the putting into service or the taking of the delivery are delayed or made impossible for reasons which are not attributable to Dec. The client is not entitled to retain or reduce payments for reason of claims which have not been acknowledged and accepted by Dec. In particular, payments must be made even in the event that spare parts which are not essential are missing, if this does not render impossible the use of the delivery.

**7.3** If the client is late to make its payments, it shall pay without formal notice and from the date when payment is due a penalty interest at 8% per annum. Payment of a penalty interest does not discharge the client of its obligation to make payments according to the terms of the contract. If the client is late in making payments, Dec reserves the right to withhold delivery. For installment payment transactions, if payment of two consecutive or non consecutive installments is not made according to the terms fixed by the contract, Dec's claim is immediately due in its entirety.

### 8 Retention of title and insurance

**8.1** The delivery becomes the property of the client only after it has been fully paid. Until then, the client is not entitled to sell or to pledge the material which has been delivered. The client undertakes to carry out the necessary formalities to have Dec's retention of title on the material duly registered in the official register, according to the applicable legal provisions.

**8.2** The client is obliged to take the appropriate measures to protect Dec's property rights on the delivered material and to participate in such protection, when necessary, at its own cost. The client undertakes to subscribe to all necessary insurance to this effect (including property insurance). Any eventual claim of the client against the insurer must be assigned to Dec until the delivery has been paid in full. The insurer must be duly informed.

**8.3** If the client is in default, notably in case it does not pay the agreed installments, Dec has the right to recover possession of the delivered material and the client must return such material upon first demand. The costs arising thereof are payable by the client only. Dec has the right to compensate such costs with any incidental payment that the client would have made. The fact that Dec exerts its right to recover possession of the material does not imply under any circumstances the termination of the contract.

### 9 Terms of delivery

**9.1** The term of delivery starts to run on the date when

- the contract has been concluded (see par. 2), **and**
- all the official formalities, such as the authorization of importation and of payment, have been fulfilled, **and**
- the agreed advance payment, installment, and/or other incidental guarantees at the time of the order have been provided; **and**
- Dec has received all the necessary information and documents to execute the order (namely technical specifications, plans, indication on the operating mode etc.).

The above conditions must be fulfilled in full.

The term of delivery is considered respected if, when it expires, the material is finished and ready to be collected from the factory for delivery.

**9.2** The term of delivery is extended in the following cases:

- a) Dec has not received on time from the client the necessary information for the execution of the order or the client has modified such information at a later date,
- b) When difficulties arise outside Dec's sphere of influence and that it can not avoid despite its best diligence, whether the difficulties occur at Dec, the client or at the place of a third party. Such obstacles are, for example epidemics, terrorist acts, military mobilization, war, riots, strikes, use of lock-out, important disturbances in the company (particularly following damages due to the elements, accidents, scarcity of energy), difficulties of transport, late or lack of delivery of the raw materials and of the necessary pieces, measures imposed by the authorities etc.
- c) If the execution of works or tasks of which Dec is not responsible are delayed or if the client is late in complying with its contractual obligations, notably if it does not comply with the conditions and the terms of payment.

In case of late delivery for which the client is not responsible, Dec will keep it informed, as far as it is possible, of the date when delivery is likely to take place.

**9.3 In case of late delivery the client is not entitled to claim any damages nor indemnity and can in no event claim the termination of the contract.**

**9.4** A penalty may however be agreed by the parties. Such a conventional penalty for late delivery must be provided for in a special written agreement. If such an agreement exists, the penalty will be of ¼ % maximum for each entire week of delay but in any event not more than 5% in total, calculated on the sale price ex-works of the part of the late delivery. The penalty can only be claimed if it has been proven that the delay is attributable to Dec and that the client can prove that it has suffered a damage due to the

delay. If the client receives a substitute delivery, its right to claim a penalty is deemed to be extinguished. For terms of delivery exceeding 6 months, no penalty is due for the first two weeks of delay.

**9.5** Dec has the right to effect partial deliveries and to put them on account.

## **10 Examination and receipt of delivery**

**10.1** Dec's internal verification of the delivery prior to its shipping is effected at Dec's costs and according to Dec's conditions of manufacturing.

**10.2** The client shall examine without delay the quality of the delivery upon reception at the place of destination. Any defects shall be immediately notified in writing. If the client fails to so examine upon delivery and notify, the delivery is deemed to have been accepted, even if expressed representations or expected qualities are lacking. In this case, the client is not entitled to any compensation, indemnification or price reduction. If the delivery was to be found not to conform to contractual specifications, the client must give Dec immediately the possibility to cure the defects.

**10.3** The putting into service of the deliveries executed by Dec, as well as of the assembled installations, shall be made, whenever possible, in the presence of a representative of Dec. All the costs related to the preliminary checking and testing carried out to this effect shall be borne by the client. The client shall also provide at its own cost the materials which are necessary for this purpose, as well as the appropriate personnel. If during such checks and tests the delivery was to be found not to conform to contractual specifications, the client must give Dec immediately the possibility to cure the defects.

**10.4** After reception of the delivery by the client, Dec is discharged of all obligations, except for the guarantee provided for at paragraph 15 of the present GC and for the incidental guarantees specifically agreed by the parties.

## **11 Incoterms (International commercial terms)**

The interpretation of the causes of the contract such as EXW, FCA, CPT, DDU etc. correspond, at the time of the conclusion of the contract, to the commercial contractual usage as established by the International Chamber of Commerce in Paris (INCOTERMS), without prejudice to the provisions which may be contrary as found in these GC and in particular in paragraph 12 below.

## **12 Transfer of property and risks**

**12.1** The property and the risks of the delivered material pass to the client when the delivery leaves the factory, even if Free Delivery, EXW, FCA, CPT, DDU etc. or a similar condition which has been agreed upon. If shipping is delayed or has become impossible because of circumstances for which Dec is not responsible, delivery shall be at the client's own cost and risk.

**12.2** Paragraph 8 here-above is reserved.

## **13 Shipping and insurance**

**13.1** Default terms are EXW Ecublens. Special requests of the client in relation to shipping, customs clearance and insurance must be communicated to Dec at the conclusion of the contract. If no special agreement has been concluded or if the instructions concerning the shipping, customs clearance or the insurance of the goods do not reach Dec on time, Dec has alone the right to decide of the type of shipping, based on its own judgement.

**13.2** Insurance against damage of any and all nature due to the shipping is the responsibility of the client, even in the event that Dec undertakes to subscribe an insurance, such insurance is deemed to have been concluded for the client and at client's own risk. All disputes in relation to the shipping must be immediately notified to the carrier by the client. Dec must be informed simultaneously.

**13.3** If, following to unforeseeable events, the delivery can not be dispatched as planned, Dec has the right, in the client's interest, to have the delivery re-routed, at the client's cost.

**13.4** The client must take care of the transfer and of the unloading of the material at the place of destination, as well as of its stocking and unpacking by qualified personnel, with the necessary technical knowledge: to this effect the client must take all measures of precaution and diligence.

## **14 Assembling**

If Dec takes care of the assembling, the GC of assembling apply.

## **15 Guarantee**

**15.1** During the period of guarantee, Dec undertakes, upon client's written request, to repair or replace, at its discretion and as quickly as possible, all the parts of the delivery which will be proven by the client to be defective or unusable because of bad raw materials, default in the construction or defective execution. The parts which are replaced become the property of Dec and must therefore be returned without delay.

**15.2** Dec will only pay the costs arising out of the reparation or the replacement of the defective parts in its own factories or in the ateliers which Dec will name. Dec will also bear the transportation costs between the atelier and the place of destination, as long as the buyer does not insist on having transportation by plane. Transportation is made at the client's own risks. All customs' duties, taxes etc. in relation with the work carried out under guarantee are also borne by the client.

**15.3** The duration of the guarantee is 12 months. It becomes operative when the material is ready to leave Dec's factories, or when the assembling is completed if Dec is responsible also for the assembly. If the dispatch or the assembling are delayed for reasons for which Dec is not responsible, the guarantee expires at the latest 18 months from the moment when the material is ready to be dispatched.

A new period of guarantee of 12 months is granted for the replaced parts, starting from their delivery. Such guarantee does not interrupt nor extend the period of guarantee of the main delivery and expires at the latest 24 months after the guarantee for the main delivery becomes operative.

**15.4** All damages are excluded from the guarantee which are caused by the fair wear and tear or by damaged parts, as well as for other reasons for which Dec is not responsible, notably because of deficiency of the maintenance service, non-observance of factory directions, excessive use, use of inappropriate working means, chemical or electrolytic influences, defective works of civil engineering or of assembling which have not been executed by Dec, water containing sand or other impurities or producing furring, insufficient lubrication, late or negligent revision of the parts of the machine or of the installation, wrong or incomplete indications of the client e.g. with regard to the raw materials to be processed within the technology of industrial process in relations with the machines and installations.

**15.5** The guarantee expires if the client or a third party modifies or repairs the material delivered without Dec's written consent, if the components or spare parts which are not recommended by Dec are used or if, in case of damage, the client does not take immediately the appropriate measures in order to avoid its aggravation and to allow Dec to cure the faults.

**15.6** If the client does not pursue its claim in writing before the expiry of the guarantee period, Dec is released from all its obligations of guarantee.

**15.7** The client is not entitled to make any claim under guarantee unless it has complied itself with its own contractual obligations, notably if it has made its payments according to the conditions provided for in the contract.

**15.8. Beside the above guarantee, the client is not entitled to make a claim, notably for damages, for payment of compensation or for price reductions. In addition the client does not have the right to terminate this contract.**

## **16 Responsibility**

Dec undertakes to deliver material according to the present contractual provisions and provides to the client the guarantee provided for at paragraph 15 here-above. Except for this case, Dec is not bound by any other responsibility and cannot be held responsible of any damage.

## **17 Safety prescriptions**

**17.1** The client undertakes to observe scrupulously the operation instructions and the information concerning the safety provided by Dec. The client must instruct its personnel accordingly, in order that safety while operating the machines and installations is guaranteed at all times. Article 5 here-above is reserved.

**17.2** Safety devices already existent and warnings concerning possible dangers mentioned on the material delivered must not be removed. In case they are damaged, they must be replaced immediately.

**17.3** All technical modifications of the material delivered are strictly forbidden, unless Dec has agreed in writing to such modifications. If the modifications were not agreed in writing, Dec is not liable for any defects, malfunctions, incidents and/or accidents which may occur and the guarantee of paragraph 15 above is null and void.

**17.4** The client undertakes to inform Dec without delay and in writing of any accident occurred on the objects delivered or if their use creates a danger.

## **18 Place of execution**

The place of execution for both parties is Lausanne, even if delivery is not made in Lausanne. If Dec has the responsibility of assembling the goods, the place of installation is considered to be the place of execution only for Dec's obligations concerning the assembling.

## **19 Place of jurisdiction and applicable law**

**19.1** The exclusive place of jurisdiction for both Dec and the client is Lausanne. Dec reserves however the right to commence proceedings at the place of business of the client, notably to exert its rights according to paragraph 8 above. The client must in any event commence proceedings in Lausanne.

**19.2** The present agreement is governed by Swiss law.