

General Conditions for supply on the basis on an ESTIMATE

I- PREAMBULE

These General Conditions represent the business uses of the professions gathered within the syndicat des équipements pour construction, infrastructure, sidérurgie et maintenance (CISMA). They are deposited with the Bureau des Usages de the Greffe du Tribunal de Commerce de Paris (Clerk of the Commercial Court of Paris). These General Conditions for supply on the basis of an estimate apply to contractual relationships between CHAUVIN SAS hereinafter referred to as the « supplier » and the purchaser company hereinafter referred to as the « purchaser ».

These clauses may be completed by specific conditions specific to certain materials or activities and, if necessary, by Specific Conditions. In accordance with article L 441-6 of French Code of Commerce the general conditions of supply on the basis of an estimate must be the basis of the negotiation in order to prevent any discrimination between purchasers and to comply with antitrust law. Any exception to the general conditions will have to be the subject of an express approval by the supplier.

These general conditions are governed by law applicable to supply of services. They apply to the manufacturing of equipment on the basis of a schedule of conditions.

II- OFFER

In its offer, the supplier shall specify the conditions applicable to the supplies on the basis of an estimate subject of the purchaser's request. Therefore, the purchaser will have to precisely define its needs in a schedule of conditions. It will have to provide all complete, precise and reliable information relative not only to its needs, its operating and environmental conditions, but also to the specificities of the products it will have to process with the equipment. These information are necessary to the setting-up of the supplier's technical and commercial offer. The price indicated in the offer corresponds to the conditions specified in the offer. The value given to the quotes is supplied for information purpose only ; they may in no case be a ground for any claims or price reduction when the equipment is supplied at a fixed-price. Any change of the purchaser's request may give rise to a revision of the offer and the related price. In the absence of any specific provision, offers and quotes shall remain valid during one month.

III- AGREEMENT

1. **Contractual documents**
The agreement includes the following contractual documents, in descending order of importance:
- the contract or the specific conditions agreed by and between the parties, and/or the order expressly accepted
- the supplier's offer
- these general conditions

2. **Formation of the contract**
The agreement shall enter into force as soon as the contract is executed or when the supplier has expressly accepted the purchaser's order and in any case after the cashing of the partial payment which may have been provided for.
The time for performance shall only start after effective cashing of the partial payment at order which may have been provided for in the contract. The nature of deadlines specified in the contract must be clearly precised (mandatory or indicative deadline, availability period, deadline of presentation for acceptance, deadline for delivery, deadline for legal acceptance, etc.).

3. **Performance of the agreement – sub-contracting**
The supplier reserves the right to sub-contract all or part of the materials subject of the agreement. In such case, it will guarantee a performance in compliance with the contract.
4. **Amendment to the contract**
Amendments and additions to the contract, notably as to the delivery deadlines, the quantities or the products, are subject to the express approval of the supplier who shall hold the purchaser informed of the conditions and the consequences on the business terms. These amendments shall be the subject of an amendment agreement to the contract.

5. **Cancellation of the contract**
Any contract expressly the parties' consent as being irrevocable. Any cancellation may only occur with the express consent of the other party. Should the supplier accept such cancellation, the purchaser shall indemnify him of all expenses incurred and for all direct and indirect consequences deriving there from. In any case, the supplier shall keep all partial payments and down payments already made.

6. **Termination of the contract**
In the case of a substantial breach of its contractual obligations by one of the parties, the other party will be entitled to terminate the contract by a one month notice remained without effect as from its receipt, without prejudice of all damages which one or the other party may claim according to law or to the contract.

IV – SURVEYS - INTELLECTUAL PROPERTY - ADVERTISING - CONFIDENTIALITY

1. **Surveys**
The supplier is the owner of all projects, surveys and documents of all kind delivered or sent to the purchaser. These may neither be communicated by the purchaser to third parties nor be used for any other purpose without the supplier's written consent. Except as expressly agreed, the supplier shall in no case be bound to deliver to the purchaser, together with the file of offer, any drawings of sets or sub-sets, nor the calculation notes relating to the material.

2. **Cooperation of the parties**
The creation of equipment, as being made to satisfy specific needs of the purchaser as a competent professional in his speciality, is a tricky task which may only be carried through with a close cooperation between the parties.

Such cooperation shall be based on the definition by the purchaser of its needs and of the objective aimed at, as well as the communication thereof to the supplier who shall act with all necessary diligence under its obligation of information and advice. Therefore, the purchaser undertakes to provide him with all complete, precise and reliable information, not only as to its needs, its operating and environmental conditions, but also as to the specificities of the products it will have to process and the methods it will have to use with the equipment. In particular, the purchaser is bound to proceed notably to the geological and climatically surveys of the place and to communicate all necessary information to the supplier. The satisfaction of its needs will largely depend on the information provided by him.

3. **Confidentiality**
The parties mutually undertake to be bound by a general obligation of confidentiality relating to any oral or written confidential information, whatever it may be and whatever its data carrier may be (negotiation reports, plans, exchange of computer data, activities, installations, projects, know-how, products, etc.) exchanged in the frame of the preparation and the performance of the contract except for information usually known at large or those which will become so other than as a result of a mistake or of one of the parties' doing.

4. **Advertising**
The business relationships existing between the supplier and the purchaser shall give no right to the purchaser on the commercial data carriers, trademarks or any other of the supplier's distinctive signs. Any use by the purchaser of these elements requires the supplier's previous written consent. Any breach of the above provisions will be likely to entail, at the supplier's option, the suspension of deliveries, the challenging of the contract and/or a compensation for all damages suffered.

5. **Intellectual property**
The supplier shall keep the whole intellectual property and know-how included in its technical documents, projects, software, designs and drawings as well as supplied equipments, even in the event of entering into a contract of study between the parties. Any transfer of the intellectual property rights shall be the subject of a written agreement between the parties.

6. **Guarantee of counterfeiting and unfair competition**
The parties mutually guarantee to each other that at the time of entering into the contract, the content of the plans and technical documents and their implementation conditions do not use any intellectual property rights or know-how held by a third party. They warrant being able to use them freely without breaching any contractual or legal obligation. They shall mutually indemnify each other for the direct and indirect consequences resulting of any liability claim deriving notably from an action taken on the ground of counterfeiting or unfair competition.

V – DEADLINES

1. **Deadlines**
The required time-periods shall run from the latest of the following dates :
- date of the order's acknowledgement of receipt
- date of effective cashing of the partial payment at order
- date of receipt of all raw materials, materials, equipments, tools, performance details, documents, owed by the purchaser for the beginning of the performance of the contract
- date of performance of preliminary legal or contractual obligation owed by the purchaser.

2. **Delays**
Time for delivery and time for performance are defined by the parties according to a schedule setting out the performance steps of the contract. Delays may in no case justify the cancellation of the order.

3. **Force majeure**
In the event of a late delivery compared to the deadline specified at order, penalties may only be applied if the agreement provides for it. In any case, they may not exceed 0.5% for each whole week of delay as from the end of the third week, with a maximum aggregate of 5% of the related value (in assembly shop or factory), taxes excluded, of the equipment of which the delivery is late. In every case, such penalty shall be a lump sum, in full discharge from debt and exclusive from any other compensation on the same ground.
No penalty may be applied unless the delay has been exclusively caused by the supplier and if it has created an actual damage assessed after hearing both parties. No penalty may be applied unless the purchaser has confirmed, at the provided time for delivery, its intent to apply such penalty.

4. **Change of schedule**
In the event of a delay attributable to the purchaser, the supplier shall notify the purchaser of such delay and will be entitled to require a change of schedule. Besides, the supplier shall specify to the purchaser the possible financial consequences which could result from such delay.

5. **Force majeure**
In such case, such as in the event of occurrence of a force majeure event, as defined in Clause XII hereof, a new schedule will be set up between the parties and the purchaser shall not be entitled to require any penalty from the supplier on the ground of such change of schedule.

VI- SHIPMENT - CUSTOMS - INSURANCE

Unless otherwise agreed, all insurance operations shall be at the purchaser's expense and costs, as well as operations relative to transport, customs, loading and shipment of goods to the purchaser's premises according to the EX Works (EXW) Incoterm of the International Chamber of Commerce, in force at the execution date of the contract. The purchaser will be bound to deliver to the supplier, upon request, copy of the documents certifying that it is secured by an insurance covering these risks.

7. **Incoterms**
In accordance with art L133-3 of French Code de Commerce the purchaser is bound to control the shipments at arrival and to take, if necessary, all actions which he is entitled to against the carriers, even if the shipment has been made franco.

8. **Incoterms**
In case of shipment by the supplier, the shipment shall be effected carriage to pay, at the lowest fees, except as expressly required by the purchaser, in which case supplementary costs of transport shall be passed on to the purchaser.

9. **Incoterms**
The written indication « packing » shall not affect the carrier's rights and will not be admitted as a reservation. In the case where the purchaser has called on a forwarding agent or carrier for the collection of the products subject of the agreement, the purchaser shall incur all financial consequences of any direct action taken by the carrier against the supplier.

VII- RESERVE OF TITLE AND PASSING OF RISKS

1. **Reserve of title**
The default of payment of any of the instalments will be likely to entitle the supplier to claim for the return of the products. The purchaser shall nevertheless incur, as from the delivery, the risks of loss or deterioration of its products as well as a liability for the damages they could cause.

2. **Ownership**
The supplier shall keep the ownership of the supplied products until effective payment of the whole price in principal and incidents. When the purchaser's usual business is the resale of materials (as distributor, agent etc.), it will be entitled, as an exception to Article 1599 of the French Code of Civil, to resale the material on the basis of a written agreement with the supplier.

3. **Resale**
Such resale shall then be made with reserve of title to the benefit of the initial seller who will have full title on the debts arising out of such resale in case of late payment or cessation des paiements of the resaler.

VIII – DELIVERY - TESTS AND TAKING OVER

1. **Delivery of materials**
Except as otherwise provided, delivery is deemed to have been performed by notice of availability at the supplier's factories or shops (EXW – ICC Incoterms in force at the execution date of the agreement). The passing of risks shall thus occur at delivery even if the contract includes services such as transport, assembling, commissioning,...

2. **Acceptance**
If the collection has been delayed at the purchaser's request, for any reason whatsoever, independent from the supplier's will, and if the supplier agrees thereto, the material shall be stored and kept at the purchaser's costs and risks. These provisions shall not affect in any way the payment obligations relating to the material and shall not constitute any novation.

3. **Storage**
If shipment is included in the contract price, the purchaser shall be bound to provide the supplier with all indications for the packagings as they have to be made, taking notably into account the conditions of transport, the geographical and climatically conditions of the destination country as well as the storing conditions. In any case, the purchaser shall endeavour to procure that the storage of the delivered equipments be made in conditions guaranteeing good preservation and safety.

4. **Assembling - Tests**
Assembling and commissioning shall be, unless otherwise provided, carried out by the supplier who will be entitled to delegate all or part thereof, to any person of his choice. Contractual tests after completion will be possibly provided for in a specific agreement, but in the absence of any express or clear provision, they shall not be included in the contract and shall justify a supplementary cost. At the time of the assembling and the making available of the equipment, the supplier shall carry out tests (such as tests of counterfeiting, safety) at the purchaser's costs and risks. The purchaser shall be bound to provide the supplier with access to the site, to provide him with all access clearances and building site regulations, and to hold him informed of all obligations deriving from the implementation of the regulations applicable to the intervention of enterprises on the site. The purchaser shall supply the installations and services (notably offices, commodities, water, electricity etc.) necessary to the proper performance of the services on site and to the implementation of legal provisions in force relative to healthcare and safety measures. After their use, these installations shall be returned to the purchaser and the supplier shall not be held liable for their normal use or for any damage resulting from their wise use.

5. **Resale**
If the assembling and the commissioning are carried out by the supplier, the purchaser shall put at its disposal, at no cost, all necessary sufficient utilities, raw materials and competent staff in the agreed time.

6. **Operating availability setting out**
The operating availability shall occur at the end of the assembling or the blank tests / tests off load. The supplier shall give the purchaser notice of a date for the implementation of the tests with actual start and end of performance of the equipment.

7. **Reservations**
The operating availability setting out shall give rise to a report executed by both parties setting out the possible reservations. Unless set out as previously indicated, the end of the operating availability setting out shall occur de facto at the latest at the marketing of the product or its industrial use.

Besides, if the results of the various tests are satisfactory and if the equipment may serve to the operating process, even at low rate, the contractual guarantee granted by the supplier shall begin.

8. **Taking over**
The purchaser shall be bound to carry out the legal taking over of the products by which it acknowledges the compliance thereof with the contract. The final taking over shall result in the acknowledgement of absence of apparent defaults. Such taking over shall occur after hearing both parties and be evidenced in a written document.

9. **Reservations**
The parties will be able to agree, in the contract, on the conditions of taking over and notably of :
- steps related taking over during operations such as delivery, assembly, tests or completion of a step of the project
- a temporary taking over also called pre-acceptance or industrial receipt
- a definitive or final taking over

Each of these taking over will be able to be acted with or without reservations. Should the taking over be acted with reservations, the parties shall agree on a deadline for the release thereof.

10. **Reservations**
The supplier shall give the purchaser notice of the date of such taking over which, unless otherwise provided, shall not occur after a maximum time-period of 10 business days as from the receipt of the notice.

11. **Reservations**
If the purchaser, after being required to do so, has not taken the necessary steps or abusively refuses to carry out the taking over, it shall be deemed to have occurred on the fixed day and without any reservations.

12. **Reservations**
The taking over shall also be deemed to have been carried out without reservations if the purchaser uses or puts the equipment into operation (even at low rate) or if he expresses reservations deemed minor as not likely to prevent the use of the equipment in normal conditions regardless of the assessed level of performances.

13. **Reservations**
If the purchaser wishes a taking over or a check-up of the delivered material to be carried out by a third party, it will have to incur the consequences thereof in terms of costs and delays. In this case, such taking over shall be carried out also in the presence of the supplier. Unless otherwise agreed, the following shall remain at the purchaser's costs: technical assistance after taking over relating to the effective implementation and to the rise in production, the training of the operating staff, the maintenance and servicing of the equipments.

IX - TECHNICAL REGULATION

1. **Control on performance of the supply of services**
The purchaser shall control operations to be carried out on the performance of the supplier's services, notably through checking bodies committed by it. It shall incur the whole costs relating thereto. Such control operations shall not cause any delay in the performance of the contract.

2. **Technical regulations**
If the supplier is the equipment manufacturer, it shall be liable for the technical regulations applicable to the design and the first "placing on the market" of this equipment. The purchaser shall be liable for the regulations applicable to the implementation and the use of the equipment. Any user shall be liable for any modification subsequent to the commissioning of the equipment.

3. **Technical regulations**
It is worth to recalled that any modification affecting the material on the purchaser's initiative likely to affect the safety conditions, shall entail the invalidity of the statements provided for in the whole documents certifying the compliance with said regulations, notably the statements of compliance as well as the statements of incorporation or any equivalent documents. The replacement of a part with a non original part, affecting the safety, shall also render void said statement.

X- BILLING PRICES

Prices are expressed exclusive of taxes for material in the supplier's (or its suppliers') factory or shop, net and discountless. They are deemed to take into account the payment terms provided for in the contract. They may be updated and revised in accordance with the provisions hereunder.

11. **Force majeure**
In case of occurrence of an event foreign to the parties' intent compromising the balance of the contract in such a way that it would render the performance of its obligations by one of the parties prejudicial to it, the parties agree to negotiate in good faith an amendment to the contract. The scope of this provision shall be limited to the following circumstances: modification of raw materials quotation, modification of customs duties, modifications of change rates, changes in laws. In the absence of any agreement, the parties shall file a conciliation request with the president of the competent commercial court acting as an arbitrator.

12. **Force majeure**
In the case where supplementary supplies of services are requested, the related price and business terms shall be the subject of a separate agreement between the parties.

XI - PAYMENT TERMS AND TIME FOR PAYMENT

1. **Time for payment**
Payments shall be made, except as otherwise agreed, on the 30th day following the delivery date. Any provision or request aiming at fixing or being granted a time for payment exceeding such 30 days-period, and except for an objective reason justified by the purchaser, will be likely to be deemed as abusive within the meaning of the article L442-6-1 of French Code of Commerce and is liable to a civil penalty up to two millions €.

2. **Partial payments**
Partial payments which may have been provided for in the contract shall always be paid cash upon receipt of invoice and are deductible from the aggregate amount of the contract.

3. **Anticipated payments**
The payment dates contractually agreed may not be unilaterally challenged by the purchaser under any reason whatsoever, including in case of litigation. Anticipated payments shall be made discountless except as otherwise agreed.

4. **Payment in bank draft**
In the event of a payment by bank draft, the bank draft must be sent back with the related acceptance, within 7 days of its sending. Payments shall be made at the supplier's domicile and shall be payable in accordance with the terms set out in the contract.

5. **Repairing, maintenance works**
The payment relating to the making available corresponds either to the complete supply or to the pro rata of the supply of achieved units. Repairing, maintenance works as well as supplementary supplies or supplies delivered in the course of their assembling, shall be monthly invoiced and payable cash, exclusive of taxes.

6. **Late payments**
According to the article L 441-6 al. 12 of the French Code of Commerce amended by law n° 2012-387 published the 22nd March 2012, any late payment will result in the application of hereafter two charges, as starting from the first day following the date of payment as mentioned on the bill :

- delay penalties : calculated on the basis of the refinancing rate of ECB (European Central Bank) with an additional of ten percent
- a 40 € lump sum for recovery costs indemnity.

7. **Indemnity**
This indemnity is due by enforcement of the law dated 22nd March 2012 applicable as from 1st January 2013. The amount is provided by the article D 441-5 of French Code of Commerce. According to art L 441-6 here above mentioned, in case the recovery costs would be higher than this recovery indemnity, the supplier is entitled to require a justified complementary indemnity.

8. **Force majeure**
In addition to those above mentioned indemnities and penalties, any late payment of an instalment shall result, at the supplier's option, in the forfeiture of the contractual time for payment, the whole outstanding sums becoming immediately payable.

9. **Force majeure**
The supplier's taking advantage of the one or the other of these provisions shall not deprive him of its ability to implement the reserve of title clause provided for in Clause VII.

10. **Force majeure**
In case of late payment, the supplier shall benefit from a lien on the equipments.

11. **Change of the purchaser's situation**
In case of deterioration of the purchaser's situation assessed by a financial institution or evidenced by a significant late payment or a delay in the return of the bank drafts or when the financial situation substantially differs from the data made available, the delivery shall only occur in exchange for an immediate payment and/or the suspension of the supplied services.

12. **Assignment**
In the event of a sale, an assignment, the setting-up of a pledge or a contribution of business concern or a substantial part of its assets or its material by the purchaser, the supplier reserves the right, without notice, to :
- declare the forfeiture of the time for payment and thus all sums outstanding for whatever reason immediately payable
- suspend any shipment

13. **Force majeure**
The supplier shall be bound to continue to fulfil the whole current contracts terminated and on the other hand withhold the partial payments received as well as the tools and products hold, until assessment of the possible compensation.

XII – FORCE MAJEURE

None of the parties to the contract shall be held liable for its delay or default in performing any of its obligations under the contract, if such delay or default are the direct or indirect consequence of a force majeure event within a larger meaning than under French case law, such as :

- occurrence of a natural disaster
- earthquake, storm, fire, flood etc.
- war, attacks
- labour dispute, total or partial strike at the supplier's or the purchaser's
- labour dispute, total or partial strike at the suppliers', service providers', carriers', postal services', public services'
- public authorities' mandatory order (import prohibition, embargo)
- operating accidents, machines breaking, explosion.

Each party shall forthwith inform the other party of the occurrence of a force majeure event which it will be aware of and which, according to it, is likely to affect the performance of the contract.

1. **Force majeure**
If the period of impediment exceeds 10 business days, the parties shall consult each other in the shortest time in order to consider in good faith the conditions of termination or confirmation of the contract.

XIII – GUARANTEES

1. **Scope of the contractual guarantee**
The supplier undertakes to remedy any operating defect affecting its equipment, deriving from a defect in the construction, the materials or the performance (including assembling if it is liable for carrying out such operation) within the limits of the provisions hereafter.

2. **Commencement date and duration**
The duration of the guarantee shall be 12 months from the date of the start up of the equipment, or maximum 18 months from the ex-works delivery date. This is set out for a maximum daily use of 10 h, and will be reduced by half in case of more intensive use.

3. **Force majeure**
This guarantee does not cover the wearing parts, especially the screening cloths, and the repair of replacement necessitated by the normal wear of the equipment. The commencement date and the guarantee period shall remain the same in case of replacement of parts or variations made by the supplier under the guarantee. Should a stoppage occur, the parties will be able to provide for an extension of the guarantee period for a duration equal to the immobilization period.

4. **Modes of enforcement**
In order to benefit from the guarantee related provisions, the purchaser shall :
- notify the supplier, without any delay and in writing, of the defects it attributes to the material
- provide all justifications as to their reality
- provide the supplier with all assistance for the assessment of such defects and remedy them.

5. **Force majeure**
The supplier may decide, as a preventive measure, to act at its own costs during the guarantee period. The purchaser shall neither be entitled to oppose it nor to claim any damages. The supplier shall inform the purchaser of this intervention with reasonable notice.

6. **Force majeure**
The guarantee shall consist, at the supplier's option, in the replacement or repair of defective parts for the compliance of the equipment with the contract. The supplier is entitled to require a justified complementary indemnity, if necessary, the equipment devices as to fulfil its contractual obligations.

7. **Force majeure**
Unless otherwise agreed, works resulting from the guarantee obligations shall be carried out at the supplier's premises after the purchaser has sent back to it the defective equipment or parts for their repair or replacement. Nevertheless, in the event that, given the nature of the equipment, the repair can only be made on the erection site, the supplier shall incur the labour costs relating to such repair, excluding extraordinary fees resulting from the conditions of use of or access to such material which shall be the subject of an agreement between the parties.

8. **Force majeure**
Parts replaced under the guarantee shall be made available to the supplier who shall recover full title on them.

9. **Limitation or exclusion of guarantee**
The guarantee shall not apply in cases provided for in Clause XIV. In any case, the guarantee shall be excluded when the purchaser has not complied with the payment terms as provided for in the contract.

XIV – LIABILITY

The supplier shall perform the contract in compliance with the rules of its profession and regulations in force. The supplier's liability shall be limited to the compliance with the provisions of the contract. The supplier shall be held liable for the compliance with the only results and performances defined by the parties in the contract. Any indication likely to be set out in the reports or documentation shall be given for information purpose only.

1. **Force majeure**
The supplier's liability shall be excluded in the following circumstances :
- in the event of defects resulting from the normal use of the equipment
- when the purchaser itself makes repairs or modifications on the equipment, or has it made by a third party
- when deteriorations or accidents are caused by negligence, faulty supervision or maintenance or a non-compliant use with the supplier's instructions and, in particular, with those set out in the explanatory leaflet or if it has not carried out the statutory periodic checking's or those provided for in the explanatory leaflet.

2. **Force majeure**
In the event of defects resulting either from materials supplied by the purchaser or from a concept imposed by him, or from a modification of the equipment without the supplier's consent:
- in the event of a use by the purchaser of non-original parts
- in the event of incidents due to acts of God or force majeure events

3. **Force majeure**
The supplier's liability shall be limited to the direct material damages caused to the purchaser which would result from faults exclusively attributable to the supplier in the performance of the contract. The supplier shall not be bound to indemnify immaterial or indirect damages such as: operating losses, loss of profit, loss of contracts, commercial harm, loss of use or production.

4. **Force majeure**
In any case, the supplier's civil liability, whatever its ground may be, with the exception of bodily damages and fraud or gross negligence, shall not exceed the aggregate amount of the contract. The purchaser and its insurers waive all claims against the supplier and its insurers within the limits and exclusions set out here above.

XV – DISPUTES - APPLICABLE LAW

In the absence of any amicable settlement between the parties, any dispute arising out in connection with the interpretation or the performance of these general conditions shall be settled by the competent court in the jurisdiction of which the supplier's domicile is located, even in the event of enforcement of the guarantee or plurality of defendants.

1. **Force majeure**
The contract shall be governed by French law.

2. **Force majeure**
In the event of a conflict of laws, the United Nations Convention on Contracts for the International Sale of Goods of 1980, known as Convention of Vienna and subsidiary by French law, if any provision of this General Conditions is held to be legal, invalid, or unenforceable by any local applicable law, that provision will be severed from this General Conditions; the remaining provisions will remain in full force and effect; and a similar legal, valid and enforceable provision will be substituted in lieu of the severed provision.