

## General Conditions of Contract for the Supply of Instruments and electrical Components

### 1. Scope of Application

- 1.1. These General Conditions apply to the supply of instruments and electrical components (hereinafter "the Supply") by ALPHA Elektrotechnik AG (hereinafter ALPHA). They are binding if declared applicable in the offer or in the acceptance (see Clause 2.1) of the order ("Order Acknowledgement").

### 2. General

- 2.1. Offers which do not contain a set term of acceptance are binding for a period of 90 days from the date of offer. The contract shall come into effect upon receipt of the written Order Acknowledgment.
- 2.2. General Conditions of Contract of the customer shall only be valid as an integral part of the contract if expressly accepted in writing by ALPHA.
- 2.3. All agreements and legally relevant declarations must be in writing to be valid.

### 3. Scope of Supply

- 3.1. The Execution and the Scope of Supply by ALPHA is exhaustively set out in the Order Acknowledgement and any appendices thereto. The specifications listed in the Order Acknowledgement are applicable and binding if nothing to the contrary is received from the customer within three (3) days after dispatch of the Order Acknowledgment.

### 4. Technical Documents, Designs and Software

- 4.1. Information and specifications in leaflets, brochures and catalogues shall only be binding if expressly warranted in a written declaration by ALPHA. Information and specification in designs, plans, drawings, technical documents and data in software shall only be binding if declared as an integral part of the contract by the parties involved.
- 4.2. ALPHA retains all rights to plans, drawings, technical documents and data in software that are given to the customer. The customer acknowledges these rights and shall only make such designs, plans, drawings, technical documents and data in software available to a third party if ALPHA knows the purpose of this notification and if the third party is aware that ALPHA retains all rights.

### 5. Regulations and Standards

- 5.1. The customer shall, at the latest when placing the order, report ALPHA in writing on the legal, governmental and other regulations, standards and laws at the place of destination that need to be adhered to in the performance of the contract.
- 5.2. Without a written report as defined by Clause 5.1, the Supply is carried out in accordance with the common standards of ALPHA and the customer is liable for claims arising from the violation of regulations, standards and laws according to Clause 5.1.
- 5.3. Unless otherwise agreed the Supply shall comply with those standards and regulations at the place of destination of the Supply of which ALPHA has been informed by the customer according to Clause 5.1.

### 6. Prices

- 6.1. All prices are net, unless otherwise offered or agreed, FCA (Incoterms 2010), including standard packing, in the offered foreign currency, no deduction whatsoever. Any and all additional costs, such as for freight, special packing, insurance, fees for export, transit, import and other permits and for certi-

fications shall be borne by the customer. Amendments and deviations must be in writing.

- 6.2. Taxes, including, without limitation, value added taxes (VAT), levies, fees, social security contributions and the like, which ALPHA or its personnel must pay in connection with the contract or its fulfilment, in particular for supplies and services outside Switzerland as well as the administrative costs connected therewith, shall be borne by the customer and shall be reimbursed by the customer within 30 days after receiving appropriate evidence.

### 7. Terms of Payment

- 7.1. Unless expressly agreed otherwise, payments shall be made by the customer at ALPHA's domicile within 30 days of the invoice date, net with no deduction for cash discount, expenses, taxes, fees, duties and the like. Payment shall be deemed made when Swiss francs or the agreed foreign currency have been made freely available to ALPHA at ALPHA's domicile. If the parties agree upon payment by means of a letter of credit, each party shall bear its own costs.
- 7.2. The customer may neither withhold nor reduce payments due to complaints, credit notes not yet issued, claims or counter-claims not accepted by ALPHA in writing. Otherwise the customer gets into default of payment.
- 7.3. The dates for payment shall be complied with even if dispatch, transportation, any possible installation or putting into operation or acceptance of the Supply is delayed or made impossible due to reasons for which ALPHA is not responsible, or if immaterial parts of the Supply are missing or if post-delivery work, that does not make the use of the Supply possible, is to be carried out.
- 7.4. If the customer exceeds the agreed period of payments, the customer shall be liable, without reminder and with reservation of the right to bring further claims, for interest at a rate depending on the terms prevailing at ALPHA's domicile, but not less than 5 percent per annum. The contractual payment obligations continue to remain in force.
- 7.5. If the advance payment or agreed payment security is not provided by the customer in accordance with the terms of the contract or these General Conditions of Contract, ALPHA shall be entitled to either adhere or terminate the contract and shall, in either case, be entitled to claim damages. If ALPHA adheres to the contract, then ALPHA, without prejudice to any other claims, may suspend the further performance of the contract and retain any of the Supply ready for dispatch until new terms of payment and delivery have been agreed and until ALPHA has received sufficient security. If such agreement cannot be reached within a reasonable time, or if ALPHA does not receive sufficient security, ALPHA may terminate the contract and claim damages.

### 8. Reservation of Title

- 8.1. ALPHA shall retain ownership of the Supply until receipt of full payment in accordance with the contract. The customer shall take all measures necessary for the protection of ALPHA property and ensure that the title of ALPHA is not prejudiced. In particular, the customer shall arrange for any entry in the public registers in the country of its domicile necessary for a valid reservation of ALPHA's title, if requested by ALPHA. The customer shall bear the costs of such entry. If the customer fails to arrange for such entry, the customer shall be fully liable to ALPHA.

### 9. Delivery Period

- 9.1. The delivery period shall commence as soon as the contract comes into effect and any advance payments due on placing the order have been made.
- 9.2. The beginning and the continuance of the delivery period requires the fulfilment of all necessary contractual and non-contractual obligations by the customer or an authorised third party to ALPHA.

**9.3.** The Delivery Period shall be deemed to have been complied with if, before its expiry, the notice of readiness of the delivery for dispatch has been sent to the customer.

**9.4.** The Delivery Period shall be extended by implication for a reasonable term, if:

- a) the information required for performance of the contract is not made available to ALPHA in time or is incomplete, or if the customer subsequently changes such information; or
- b) the customer or a third party is in delay with work it has to execute, or the customer is in delay with the performance of its contractual obligations; or
- c) impediments exist which ALPHA cannot prevent as they are not in ALPHA's area of influence. Such impediments include, in particular, significant operating breakdowns, natural disasters, accidents, labour conflicts, late or deficient delivery of raw materials, semi-finished or finished products, measures taken or omissions by any state authorities; or
- d) any other circumstances arise for which ALPHA is not responsible.

**9.5.** If a specific date is agreed instead of a delivery period, such date shall correspond to the last day of a delivery period.

## **10. Packing**

**10.1.** The packing is included in the price agreed. If, due to the method of delivery or specific instructions by the customer, a special packing is required, such packing shall be compensated to and invoiced additionally by ALPHA. By no means ALPHA takes back the packing, unless the packing is expressly designated as ALPHA's property or as reusable packing. In that case the packing shall be returned at the expense and risk of the customer to the place of dispatch.

## **11. Passing of Risk**

**11.1.** Risk shall pass on to the customer according to the Incoterms agreed or unless otherwise agreed, risk shall pass on to the customer upon shipment ex works. This shall also apply, if part-deliveries are carried out or a delivery is made carriage paid or including installation or if carriage is organised by ALPHA and shall be invoiced additionally or along with the delivery of the Supply by ALPHA.

**11.2.** If dispatch of the Supply is delayed at the request of the customer or due to reasons not attributable to ALPHA, the risk shall pass to the customer at the time originally foreseen for the Supply to be dispatched from ALPHA's premises. From this time on, unless otherwise agreed, the Supply shall be stored and insured on the account of and at the risk of the customer.

## **12. Inspection and Acceptance of the Supply**

**12.1.** Insofar as it is normal practice, ALPHA shall inspect the Supply before dispatch. Further testing, such as an acceptance test, shall be agreed expressly in writing and made at the expense and risk of the customer

**12.2.** The customer shall inspect the Supply within 20 days of receipt of the goods and shall immediately notify ALPHA in writing of any defects. If the customer fails to do so, the Supply shall be deemed to be accepted.

**12.3.** To the extent that ALPHA is responsible for the notified defects, the customer shall give ALPHA sufficient time and opportunity to remedy such defects. After remedy of such defects, provided that the parties agreed upon an acceptance test, an acceptance test shall be carried out at the request of ALPHA or the customer.

**12.4.** If an acceptance test was agreed upon, the following shall apply, unless otherwise agreed:

- ALPHA shall advise the customer in due time of the execution of the acceptance test so that the customer or its representative can attend.
- An acceptance report shall be prepared which shall be signed by both the customer and ALPHA or by their representatives. Such report shall either state that acceptance has taken place, or that it has taken place with reservations, or that the customer has refused the acceptance. In the last two cases, the defects discovered shall be listed individually in the acceptance report.
- In the event of minor defects, in particular those that do not substantially prevent the efficient functioning of the Supply, the customer shall not be entitled to refuse the acceptance of the Supply and the signing of the acceptance report. ALPHA shall remedy such defects without delay.
- In the event of major defects, the customer shall give ALPHA the opportunity to remedy such defects within a reasonable time. Thereafter, a further acceptance test shall take place.

**12.5.** Acceptance shall also be deemed as having taken place:

- if the customer or its representative does not participate in a possible acceptance test; or
- if the possible acceptance test cannot be carried out on the date arranged for reasons for which ALPHA is not responsible; or
- if the customer refuses to sign the acceptance report; or
- as soon as the customer puts the supply to use, places it in its warehouse or impliedly accepts the supply in any other way; or
- if the customer refuses acceptance without being entitled to do so.

**12.6.** All claims by the customer arising from or in connection with defects in the Supply are regulated expressly and exhaustively by this Clause 12. Other and further claims, in particular also fines or indemnifications for delayed deliveries are expressly excluded.

## **13. Warranty**

### **13.1. Warranty Period**

The warranty period is 24 months. The warranty period commences when the Supply leaves the works or, if ALPHA also undertakes the installation of the supply, upon completion thereof. If the parties have agreed upon an acceptance test the warranty period commences when the deliveries or part-deliveries are accepted. In any case the warranty period shall end not later than 26 months after the notice of readiness of the delivery for dispatch was made by ALPHA. The warranty period for repaired parts of the Supply commences anew and lasts for 24 months after remedy of the defect or acceptance but shall end not later than 36 months after the notice of readiness of the primary delivery for dispatch was made by ALPHA. The warranty period shall expire prematurely if the customer or a third party undertakes inappropriate modifications or repairs to the supply or if the customer, in the event of a defect, does not immediately take all appropriate steps to mitigate the damage or give ALPHA the opportunity to remedy such defect within a reasonable period of time.

### **13.2. Liability for Defects in Material, Design and Workmanship**

The customer shall notify ALPHA in writing of the defects during the warranty period and immediately after discovery. Upon written request by the customer, ALPHA shall remedy within a reasonable period of time any parts of the supply which, before the expiry of the warranty period, are proved to be defective or unusable due to defective material, faulty design or poor workmanship. The customer shall give ALPHA sufficient opportunity to carry out such remedial works. Replaced parts shall become ALPHA's property.

### **13.3. Warranted Qualities**

The qualities and specifications of the Supply are specified and warranted expressly and exhaustively in the Order

Acknowledgement. Such warranties are valid until the expiry of the warranty period. If the warranted qualities are not achieved or only partially achieved, the customer may require ALPHA to carry out the necessary remedial works. The customer shall give PFIFFNER the necessary time and opportunity to do so.

#### **13.4. Exclusions from the Liability for Defects**

ALPHA is not liable if the Supply does not comply with the provisions of the contract and that non-compliance is caused by the customer itself or a third party. If the Supply does not comply with the contract, that non-compliance is deemed to be caused by the customer itself or a third party, in particular, if it was the result of detective maintenance, failure to observe the operating instructions, excessive use, use of any unsuitable operating means, chemical or electrolytic influence or work not undertaken by ALPHA. ALPHA is furthermore not liable if the Supply does not conform with the provisions of the contract as a result of, in particular, normal wear and tear, improper use by third parties, use of spare parts or material belonging to the customer or third parties, maintenance by third parties, natural disaster or accidents.

#### **13.5. Subcontractors**

ALPHA's liability for defects in respect of supplies and services provided by subcontractors required and nominated by the customer shall be no greater than such subcontractors' liability for defects.

#### **13.6: Exclusivity of Warranty Claims**

Any warranty claims of the customer are expressly and exhaustively regulated by these Conditions of Contract. Other claims and further claims are expressly excluded.

### **14. Improper Performance of Contract**

**14.1.** In all cases where contractual performance is not duly effected and where not expressly covered by these General Conditions of Contract, the customer shall grant ALPHA a reasonable additional period to remedy its performance. If such additional period lapses and is unused due to fault on the part of ALPHA, the customer may terminate the contract with respect to the part of the Supply not in conformity with the contract or which is anticipated not to be in conformity with the contract. The customer shall immediately inform ALPHA of its withdrawal from the contract in writing. The customer shall immediately return to ALPHA all part-deliveries already received. In such an event, ALPHA shall only be liable for reimbursement of sums paid to it for the parts of the Supply affected by the termination.

**14.2.** In the event of a contract termination by the customer in accordance with § 14.1 above, the provisions of § 16 shall apply with regard to any liability of ALPHA.

### **15. Data Protection**

**15.1.** ALPHA is entitled to process personal data of the customer, whilst performing the contract. The customer agrees in particular that ALPHA may disclose such data to third parties in Switzerland and abroad for the development and cultivation of business relationships.

### **16. Limitation of Liability**

**16.1.** All claims by the customer for damages not affecting the supply itself, such as damages for production interruption, loss of usage, loss of orders, loss of profits, claims by third parties or claims for indirect or consequential damage, irrespective of the legal basis for such claims, are expressly excluded. The total liability of ALPHA arising from or in connection with the contract or with the improper performance of contract is limited to the sums paid by the customer for the Supply provided.

**16.2.** Claims by the customer arising out of or in connection with the contract or with the improper performance of contract are expressly and exhaustively regulated by these Conditions of Contract. Other and further claims are expressly excluded.

**16.3.** This limitation of liability shall not apply in the event of gross negligence or willful misconduct by ALPHA.

### **17. Right of Recourse by ALPHA**

**17.1.** In the event of injury to persons or damage to property of third parties as a result of actions or omissions by the customer or its personnel for which ALPHA is held liable, ALPHA shall have a right of recourse against the customer.

### **18. Final Clauses**

**18.1.** Amendments to the contract must be in writing to become effective.

**18.2.** If a provision of these General Conditions of Contract should prove to be wholly or partially ineffective, the parties shall replace such provisions with a new provision that comes as close as possible to the legal and economic effect of the original provision.

### **19. Jurisdiction and Applicable Law**

**19.1.** Place of jurisdiction shall be Biel/Bienne/BE, Switzerland. ALPHA may, however, also bring an action before the courts at the customer's domicile.

**19.2.** This contract shall be governed by Swiss substantive law. Rules of conflict of laws, provisions of a treaty and the "United Nations Conventions on the International Sale of Goods" of April 11, 1980, shall not apply.