

## **GENERAL TERMS AND CONDITIONS OF SALE (January 2012)**

These General Terms and Conditions of Sale apply to quotations and sales by GEA TDS GmbH ("Seller") of goods and/or services. Such quotations and sales are expressly conditioned upon acceptance of these General Terms and Conditions of Sale. Quotations shall expire after 30 days unless a different period is stated therein. Any provision of a purchase order or other document of Buyer that is inconsistent with or additional to these General Terms and Conditions of Sale is not accepted by Seller, unless done so expressly and specifically in a written document signed by an authorized representative of Seller. Any contract must be confirmed in writing by an authorized representative of Seller. "Contract" shall refer to the parties' contract as set forth in a contract, purchase order or other document signed by an authorized representative of Seller and shall include these General Terms and Conditions of Sale and the Seller's quotation. "Plant" shall mean the plant, equipment and other items to be supplied by Seller under the Contract. All references to days are to calendar days.

1. **Scope of Supply:** Seller's scope of supply shall be limited to the Plant and services expressly stated in Seller's quotation. All other goods and services are expressly excluded from Seller's scope of supply. Where the works performed by the Seller are required to interface with other plant of Buyer (including that of its other contractors), the part of the interface supplied by Seller shall meet in all respects the specifications in the Contract. Buyer shall be responsible for all other aspects of the interface, including coordination and interconnection.

2. **Execution of the Contract:** Seller may execute the Contract in accordance with its own project execution plans, procedures, and working methods to the extent that they do not conflict with any express provision of the Contract. Where Seller issues drawings or documents to Buyer or his representatives for approval, these must be approved (with comments, if any) and returned to Seller within five days of submittal, otherwise such drawings or documents will be deemed to have been approved. Any re-submitted documents shall be deemed approved upon submittal. Should any comments be subsequently submitted by Buyer, compliance by Seller with such comments shall be subject to the change order provisions below.

3. **Site Services:** If any site services, including services relating to the erection, testing or commissioning of the Plant or the supervision thereof, are included in Seller's scope under the Contract, Seller shall have full and unrestricted access to and use of the site at all times required by Seller. Further, all works not within Seller's scope shall be completed by Buyer or its contractors so that Seller's site services can commence forthwith on Seller's arrival at the site and can be performed and completed without any delay, disruption or obstruction. In case of any such delay, disruption or obstruction, Seller shall be entitled to reimbursement of its resulting additional reasonable costs and an extension of time for any resulting delay. Buyer will be responsible for providing all civil works and raw materials, products, consumables and utilities required during erection, testing and commissioning of the Plant and all trained and qualified labour (skilled and unskilled) required by Seller for its site services in strict conformity with the Contract's requirements as well as any other goods and services stated in Seller's quotation as being Buyer's responsibility. Buyer will place at Seller's disposal safe and reliable equipment required by Seller, including cranes and other lifting and transport equipment. A lock-up dry room for keeping tools and small machine parts shall be made available free of charge to Seller's staff. Buyer shall provide sufficient lighting and, if necessary, heating of the premises. Seller's direction and review of Buyer's personnel and other contractors at the site shall be limited to providing instructions and technical advice relating to the erection, testing and commissioning of the Plant and other site services. Buyer shall be solely responsible for any failure of its personnel or other contractors to strictly comply with the instructions and requirements of Seller's personnel at site and any damages, losses or injuries otherwise attributable to such personnel or contractors. Buyer shall indemnify, defend and hold Seller harmless from any losses, injuries or damages relating to or resulting from the acts or omissions of persons employed by Buyer or its contractors as well as unsafe site conditions. In the event Seller's performance of site services is delayed for reasons not attributable solely to the Seller so that Seller cannot reasonably complete such services within the time contemplated by the Contract, the Seller shall be entitled to a written equitable adjustment to the Contract, including contract price and project schedule, mutually agreed by the Parties prior to having to complete said services.

4. **Payment:** Payment is to be made in the currency and on the dates stated in the Contract. Payment shall not be deemed effected until immediately available funds have been received by Seller in its account. If no due date is stated in the Contract, the down payment shall be received within 7 days of the date of Seller's invoice and all other instalments shall be received within 14 days of the date of Seller's invoice. All bank and other transaction costs are for Buyer's account.

Buyer may not refrain from making any payments when the conditions for payment cannot be fulfilled due to reasons beyond Seller's control, including without limitation failure of Buyer to take delivery of the Plant when tendered, to perform any tests when required or to sign or approve any documentation. Invoices may be submitted on partial shipments. Buyer shall notify Seller of its objections to any invoice within five days of receipt, absent which the invoice shall be approved. Buyer may object to only such portions that are disputed in good faith. No offset by Buyer is allowed. If payment is delayed or only made in part without Seller's prior written consent, the unpaid balance shall bear interest at 1.5% per month or the maximum legal rate of interest, whichever is less, until payment is received in full and Seller may, in its discretion, immediately suspend its performance under the Contract.

5. **Taxes:** The price and any other amounts to be paid to Seller are exclusive of any duties, taxes (including without limitation value added, sales, use, business, excise or withholding taxes), assessments or charges of any kind; Buyer shall be responsible for all such duties, taxes, assessments and charges. If any duties, taxes, assessments or charges are imposed on Seller by authorities in the country where the Plant will be installed in connection with any work performed by Seller under the Contract, Buyer shall reimburse Seller all such amounts.

6. **Incoterms / Delivery / Delay:** The most recent version of Incoterms applicable at the date of Seller's quotation shall apply. Risk of loss and damage to the Plant, including without limitation due to improper storage and/or damage in connection with erection and commissioning of the Plant, shall be in accordance with the stipulated Incoterm. If no Incoterm is stipulated, delivery shall be Ex Works manufacturer plant (as specified by Seller). All transport and insurance after the point of delivery is for Buyer's own account and risk. Statements of packing measurements and gross weight are an approximate guide and shall not be binding on Seller. Seller may deliver the Plant from multiple locations, including different countries.

If Seller is more than two weeks late in shipping the Plant when compared to the time specified by the delivery schedule (as such should be extended according to the Contract) for reasons solely attributable to the negligence of the Seller, Buyer shall be entitled to, as liquidated damages and not as a penalty and upon prior written notification of the delay, an amount equal to 0.1% of the portion of the Contract price

attributable to the value of the delayed shipment for each full week of delay after said notification up to a maximum of 2.5% of the Contract price, provided that such liquidated damages shall not be due where Seller has failed to deliver only minor portions of the Plant that do not delay Seller's implementation of its works or where Buyer has not incurred any resulting loss or damage. No adjustment for partial weeks shall be allowed.

Payment of the liquidated damages shall constitute full and complete satisfaction of any claim of Buyer against the Seller arising from or in connection with late delivery of the Plant and shall be Buyer's exclusive remedy in respect thereof. All milestone dates other than that for delivery are indicative only. Except for the above stated liquidated damages, no other claims for late performance or delivery under this Contract shall be allowed.

To the extent Seller's completion of the works is or will be delayed due to any instructions or other acts or omissions of Buyer or its representatives, suppliers or contractors, a physical condition or circumstance at site that could not be foreseen and avoided by an experienced contractor or adverse weather conditions, the Seller shall be entitled to an extension of time and to be reimbursed for any additional costs incurred by Seller as a result of such delay, including its reasonable profits.

**7. Retention of Ownership:** The Plant shall remain the property of Seller until Seller has received payment in full, including payment for all site services. The retention of title shall not affect the passing of risk of loss or damage. Until payment in full is received, the Plant shall not be sold, pledged or otherwise encumbered without Seller's prior written consent.

**8. Loss or Damage in Transit:** Where the delivery terms require that Seller arrange shipment and insurance of shipment and there occurs any loss or damage in transit, this must be notified to Seller within 7 days of the Plant being received at the point of delivery. If loss or damage is not reported within said period, the Plant will be deemed to be in accordance with the Contract and Buyer shall be bound to accept delivery and make payment accordingly. Seller's liability in respect of any claim accepted under this clause is limited to replacing or repairing (at Seller's sole discretion) the portion of the Plant proven to have been damaged or lost in transit to the point of delivery. Seller expressly excludes any liability for any expenditure by Buyer unless agreed in advance and in writing.

**9. Force Majeure:** Seller shall be excused from any obligation to the extent of delays in completion caused by acts of war or terrorism, embargoes, strikes, fires, delays in transport or customs clearance, failure to obtain export permits, shortages or inability to obtain any materials, any other acts of God or government or any circumstances beyond the control of Seller and shall be entitled to a corresponding extension of time. In case of delays exceeding three months, either Party shall be entitled to terminate the Contract by giving prompt written notice thereof, in which case Seller shall be entitled to all payments then due and all other costs and expenses incurred in performing the Contract and/or resulting from termination, including the cost of any ordered goods or services that Seller is required to pay.

**10. Warranties:** The parts comprising the Plant shall be free of defects in workmanship and materials for a period of 12 months from the date of initial start-up on first feed or 18 months from delivery, whichever occurs first. Seller's warranty is conditioned on Buyer notifying Seller in writing of any defects discovered during the warranty period within not later than 10 days after discovery. Further, Seller's warranty is limited to Seller repairing or replacing, in its sole discretion, the parts determined by its authorized representative of Seller to be defective in materials or workmanship at the time of delivery. Process or performance warranties, if any, must be expressly stated and identified as such in the Contract (e.g., technical data in the contractual documents shall not constitute a warranty unless the term warranty is also expressly used in connection with such data); such warranties, if any, and any related acceptance tests are subject to the terms and conditions of **Annex A** enclosed hereto.

Buyer is responsible for all labour, equipment and charges used or incurred in the removal, transport, installation and commissioning of repaired or replaced parts. Seller's warranties do not cover and Buyer assumes full responsibility for all losses and damages arising from or relating to: wear and tear parts; use of non-original spare parts; use of unsuitable or out-of-spec lubricants, consumables or utilities; use of unsuitable, insufficient or out-of-spec feed; faulty or non-performance of upstream and downstream equipment required for the operation of the Plant; modifications without Seller's express written consent; corrosive or abrasive substances; faulty maintenance or operation, including failure to comply with Seller's manuals or instructions (written or oral); information, design, buildings, equipment, services, personnel or other items supplied by Buyer or any third party other than a subcontractor of the Seller, including nominated subcontractors; failure of Buyer to provide sufficient protection for the Plant against external conditions; or other conditions or circumstances not due to the fault of Seller. In case of any defective computer hardware or software that is acquired, directly or indirectly, by Seller from original manufacturers, Seller's obligation shall be limited to transferring to Buyer any warranties obtained by Seller.

The Seller hereby excludes and disclaims to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those expressly set out in this Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of Buyer, including without limitation any warranties as to fitness for purpose or merchantability. Without limiting the foregoing, the Seller shall not be liable for any loss or damage any defect may cause, including without limitation any loss or damage excluded or limited by § 12.3.

**11. Confidentiality and IP.** All drawings, specifications and other documentation and information of any kind (whether orally disclosed, written, computer generated or otherwise) furnished or made available, directly or indirectly, to Buyer or any person engaged by or acting on behalf of Buyer, by either Seller or any of its subcontractors or vendors shall remain the proprietary and confidential property of Seller (or its subcontractors or vendors), and shall be used by Buyer only with respect to the operation, maintenance and repair of the Plant and shall not be used by Buyer in connection with any other project. Such proprietary and confidential information and data shall not be disclosed to any third party at any time without Seller's prior written consent. Buyer shall not allow any reverse engineering of Seller's equipment without Seller's prior written consent. Any such proprietary and confidential information that Buyer determines must be disclosed to its employees shall only be disclosed to its employees on a need-to-know basis for the operation, maintenance, and repair of the equipment. The intellectual property in any equipment, document or other information given or made available to Buyer under the Contract shall remain the exclusive property of Seller (or its subcontractors and/or vendors), provided that the Buyer shall have a non-exclusive, royalty free right to use such intellectual property for the sole purpose of operating the Plant so long as Buyer pays all amounts as they become due under the Contract.

**12. Remedies and Limitations:**

**12.1 Termination.** Either Party may terminate the Contract by giving written notice thereof to the other Party if: (a) the other Party fails to pay any monetary obligation when due under this Contract within 30 days of written notice of such failure, (b) the other Party fails to perform

any material obligation under the Contract (other than any payment obligation) and has not taken action to commence to cure the failure within 30 days of written notice of such failure or does not diligently pursue such cure thereafter, (c) the other Party becomes bankrupt, insolvent or otherwise unable to pay its bills when due.

**12.2 Exclusive Remedies.** Buyer's rights, remedies and liabilities as stated in this Contract (whether by way of reimbursement of costs, liquidated damages, repair, replacement, price reduction or otherwise) shall be its exclusive rights, remedies and liabilities regardless of the theory or circumstances (including breach of contract or statutory duty, negligence or other tort, indemnify, breach of warranty or otherwise).

**12.3 No Indirect & Consequential Damages.** Except only (i) to the extent of any liquidated damages provided for in this Contract, and (ii) to the extent the exclusion of Seller's liability is prohibited by applicable law (in which circumstances Seller's liability shall only be limited to the extent permitted by applicable law), Seller shall in no case be liable for any loss of revenues or profits; loss of opportunity, production or contracts; loss of use; loss of or damage to raw materials or product; plant downtime or delays; penalties; recall costs; any damages payable by Buyer; or otherwise for any financial or economic, consequential, special, punitive, exemplary, indirect or incidental losses or damages howsoever caused.

**12.4 Aggregate Liability.** Except only to the extent the exclusion or limitation of Seller's liability is prohibited by law (in which circumstances Seller's liability shall only be limited to the extent permitted by applicable law), Seller's aggregate liability to Buyer under or in connection with the Contract shall in no case exceed 25% of the Contract price received by the Seller, irrespective whether such liability arises in contract, by statute, in tort (including negligence), indemnity, breach of warranty, by price reduction, make good or otherwise. This limitation shall not apply to the extent the Seller receives proceeds from the insurance(s) required to be maintained by it according to § 13 in respect of any bodily injuries. Any make good or other remedial costs incurred by the Seller shall be applied against the foregoing aggregate liability limitation.

**12.5 Claim Period / Mitigation.** All claims of Buyer must be made promptly and shall not be made more than 10 days after expiration of the warranty period stated in § 10, after which all claims shall be deemed waived. Buyer and Seller shall have a duty to mitigate any damages, whether based on breach, indemnity or other theory.

**13. Insurance:** Seller will maintain any workmen's compensation insurance required by the laws of the country where the site is located and, comprehensive general liability insurance, including product liability, with a combined single limit of Euro three million per occurrence and Euro five million in the aggregate in respect of Seller's legal liability toward third parties for bodily injury and physical property damage (other than to the Plant). Buyer shall take out and maintain at all relevant times all-risk insurance covering the Plant and Buyer's project at its full value from delivery of the Plant until expiration of Seller's warranty period. Buyer's all-risk policy shall list Seller as an additional insured, include a waiver of subrogation against Seller and its subcontractors and shall provide for 20 days' prior written notification to Seller in event of termination or cancellation. Buyer shall bear the risk of any deductibles, which shall be reasonable in amount.

**14. Directives / Permits:** The Plant as delivered by Seller shall comply with the directives, laws, rules, regulations, codes and standards, if any, that are expressly stated in Seller's quotation and in effect on the date of Seller's quotation. If after said date any stated directives, laws, rules, regulations, codes or standards are changed or enacted, or there are new or different interpretations thereof, which require a change in the Plant or otherwise adversely affect Seller's obligations or compensation under this Contract, an equitable adjustment shall be made to the contract price, delivery schedule, payment terms and other provisions of the Contract (which must be agreed in writing prior to Seller having any obligation to implement the change). Seller shall have no responsibility for compliance with any emission, discharge or other environmental requirements, except to the extent Seller gives an express and specific warranty under § 10 above in respect thereof. Buyer shall be responsible for all permits, approvals and licenses in connection with owning, erecting, testing, commissioning, operating and maintaining the Plant and for any certification of the facilities incorporating the Plant. Seller's obligations under the Contract are subject to all required export and import permits being obtained.

**15. Safety Requirements.** Buyer shall use and shall train and require its employees to use all safety devices, guards, and proper safe operating and maintenance procedures as prescribed by all applicable directives, laws, rules, regulations, codes and standards and as set forth in the operating and maintenance manuals and instruction sheets furnished by Seller. Buyer shall not remove or modify any safety device, guard or warning sign. If the Buyer fails to strictly observe any of the obligations set forth in the preceding two sentences with regard to any of Seller's Plant, Buyer shall indemnify, defend and hold Seller harmless from any losses, injuries or damages incurred by Seller as a result of any injury, damage or losses directly or indirectly in connection with the operation of the Plant as a result of such failure.

**16. Change Orders / Instructions:** Buyer or Seller may propose changes in Seller's works. In case of any proposed change order, Seller will notify Buyer of how the proposed change order can be carried out and which modifications to the Contract (including contract price, schedules, etc.) are required. If Buyer wishes to proceed with the proposed change order, the Parties shall agree in a document duly signed by both Parties the necessary revisions to this Contract. Seller shall have no obligation to carry out any proposed change order until a written change order has been signed by the Parties; however, if Buyer requests that Seller proceed with the proposed change and Seller does so, Seller shall be entitled to reimbursement of its additional costs and to additional time for any resulting delay. Unless otherwise agreed, any costs of Seller's personnel in preparing and performing a change order shall be subject to reimbursement according to Seller's prevailing rates. All instructions of Buyer shall be in writing.

**17. Governing Law and Disputes:** The Contract shall be governed by and construed according to the laws of Switzerland without reference to its conflicts of law provisions. The UN Convention on the International Sale of Goods is excluded. All disputes arising out of or in connection with the provisions of this Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The venue of such arbitration shall be in Zurich. All documentation and oral proceedings shall be in the English language.

**18. Miscellaneous:** If any provision of the Contract is determined to be invalid or unenforceable, this shall not affect the validity or enforceability or the remaining provisions and the parties shall agree on substitute provisions that achieve as closely as possible the same economic effect. Captions are for convenience only. The Contract sets forth the entire and sole understandings between Seller and Buyer with respect to the subject matter thereof; Seller's data or other information in product information, price lists or other documents not expressly made a part of the Contract are binding only if expressly stated in the Contract. The Contract may not be assigned by either Party without the other Party's prior written consent.

## ANNEX A

Where process or performance warranties are given by Seller as per clause 10, the following shall apply:

1. **Acceptance Tests.** In order to determine whether the warranties have been fulfilled, Buyer shall conduct with its trained, qualified personnel the relevant acceptance test(s). The test shall be conducted soonest possible after mechanical completion, but no later than thirty (30) days after the first introduction of feed into the Plant unless otherwise mutually agreed. If stated in the Contract, Seller shall provide technical supervision or other related services in connection with such tests.

2. **Test Methods/Test Period.** Unless detailed test methods are stated in the Contract, such methods shall be proposed by Seller and then agreed in writing by the Parties at least 60 days prior to the commencement of the acceptance tests. These methods shall be in accordance with generally accepted engineering practice and will include, to the extent applicable, methods for measuring the process streams by calibrated measuring devices, methods for calibrating such measuring devices, methods for sampling and analysing process streams and for evaluating the results of the measurements and analyses. The tests shall be conducted for the period of time specified in the Contract. If no period is agreed, the applicable period shall be 12 hours. Unless otherwise stated, the warranted values shall be subject to a  $\pm 5\%$  tolerance.

3. **Plant Acceptance.** The warranties and any acceptance conditions stipulated in the Contract shall be discharged in full, and the Plant shall be deemed to have passed the relevant tests and therefore finally accepted if any one or more of the following applies:

- (i) the Plant has on average performed in accordance with the acceptance conditions;
- (ii) the Plant is taken into use by Buyer prior to completion of any acceptance conditions;
- (iii) the Plant has not passed the tests within four (4) months from completion of the installation of the Plant, 6 months from delivery of the Plant to the site or 18 months from the signing of the Contract, whichever is earliest; or
- (iv) the Seller has paid any liquidated damages that may be due.

Where stipulated or allowed in the Contract or reasonably requested by the Seller, the Plant may be accepted in sections, in which case the provisions of this clause shall apply to each such section.

4. **Acceptance Certificate.** Buyer shall immediately issue an acceptance certificate when the Plant (or section thereof, if applicable) is deemed accepted according to § 3 of this Annex A and shall state in such certificate the date when acceptance was achieved.

Buyer may not refuse to issue an acceptance certificate due to the existence of defects that do not adversely and materially affect the operation of the Plant for its intended purpose; such defects to be added to the acceptance certificate to be completed by Seller as soon as practical.

Seller may apply by written notice to Buyer's project manager for an acceptance certificate when the Plant has passed the acceptance tests or Seller's obligations in respect thereof have been discharged. If Buyer fails to sign the certificate within 14 days, Buyer shall be nonetheless deemed to have issued the certificate effective the date of acceptance as per § 3 of this Annex A and without any conditions or qualifications.

5. **Effect of Acceptance.** When Seller receives or is entitled to an acceptance certificate for the Plant or a section thereof, the effect shall be as follows:

- (a) the works (or section) are deemed complete and correctly executed in all respects except for such qualifications as have been added to the certificate and except for any further express duties to be performed by Seller under the Contract after such date.
- (b) Performance of any duties under the Contract contingent on the issue of a certificate, including payment, shall become due.
- (c) Buyer may take the Plant into beneficial use.

6. **Failure to pass acceptance tests.** If during an acceptance test the Plant fails to perform as warranted, the Seller shall soonest possible investigate the reasons for such failure and inform the Buyer of the results of its investigation. The Buyer shall, at its cost, fully cooperate with the Seller in such investigation and shall supply the Seller with all documentation required by the Seller to determine the cause of the failure.

If it is determined that the Plant fails to pass any test due to reasons attributable solely to the fault of the Seller, the Seller shall without delay and at its own cost undertake all reasonable actions to remedy the cause of the failure and, unless the deficiency was insignificant, the relevant acceptance test shall be repeated.

If, notwithstanding such efforts, the Plant still fails to pass one or more repeat of the relevant acceptance test for reasons solely attributable to the Seller, the Seller may, after consultation with Buyer and after at least three attempts to remedy the failure, elect either to carry out further remedial actions or to pay, as liquidated damages (and not as a penalty), the relevant amount(s) specified in the Contract in full and final satisfaction of all losses and damages suffered by Buyer in consequence of or in connection with such failure, provided that any costs or expenses reasonably incurred by Seller in seeking to remedy the defects shall be deducted from the amount of such liquidated damages. If no liquidated damages are specified, the parties shall agree on a in the contract price. The liquidated damages (or as the case may be, the agreed price reduction) shall be the Buyer's exclusive remedy for any failure of the Plant to perform as warranted and shall not in any event exceed in the aggregate 5% of the Contract price.

If it is determined that the Plant failed to pass any acceptance test due to reasons not due solely to the Seller's fault, the Plant shall be deemed to have performed as warranted in respect of such test and the Buyer shall reimburse the Seller for its costs relating to investigation and remediation.

7. **Delay in Acceptance.** If the acceptance tests are delayed or prolonged due to reasons not attributable to Seller, the Seller shall be entitled to payment of its resulting costs including without limitation waiting time, overhead, insurance and financial costs.