

# General Conditions of Purchase for Machine Tools, Manufacturing Means and Systems of Emitec France S.A.S.

Applicable to transactions with enterprises, private entities (personnes physiques ou personnes morales de droit privé)

## 1 General

- 1.1 The following Conditions of Purchase shall apply to the purchase of machine tools, special machines, manufacturing means and technical systems by EMITEC companies in France (hereinafter: "Principal").
- 1.2 Our General Conditions of Purchase shall apply exclusively; we do not recognise any of the contractor's general terms and conditions of business that conflict with or deviate from or merely supplement our Conditions of Purchase, as a whole, unless we expressly consent to their validity in writing. Our Conditions of Purchase shall also apply even if we accept or pay for deliveries and services in full knowledge of the fact that the contractor's conditions differ or deviate from our Conditions of Purchase, without explicitly objecting to them.
- 1.3 The requirements from Principal's perspective shall be documented in the "Principal's Specifications" which shall be conveyed to the contractor together with the enquiry, however at the latest together with the order. The Principal's Specifications shall be all the requirements determined by Principal placed on the contractor's deliveries and services within the relevant order ("Requirements Specification"). The contractor shall render the requirements defined in the Principal's Specifications more precisely by preparing "Contractor's Obligations" and describe in detail how the requirements placed on the deliveries and services are to be implemented. To such extent, the Contractor's Obligations describe the scope of delivery and the procedure during project management if approved by Principal.
- 1.4 Our General Conditions of purchase shall apply for (i) a special Machine designed and manufactured in accordance with EMITEC requirements specifications ("*contrat d'entreprise*") or (ii) for the purchase of standard Machine.
- 1.5 The subject matter of a contract between us and the relevant contractor shall be designated as "Machine". This is to be understood as the entirety of all the individual components encompassed by the scope of the order and the enquiry, including equipment, devices and facilities. Any deviations from these guidelines and conditions shall require our explicit written approval.
- 1.6 To the extent a Machine as defined above is produced and delivered in independent part components, these Conditions of Purchase shall apply in full to all part components.

## 2 Enquiry, Contractual Basis and Conclusion of Contract

- 2.1 The Machine data necessary for the technological process shall be shown in the enquiry, in particular, in the Principal's Specifications. Our enquiries shall be non-binding and shall not constitute an offer to conclude a contract.
- 2.2 By submitting the offer, the contractor confirms that it has gained clarity in respect of all necessary details regarding the scope of deliveries and services and is thus in possession of all the prerequisites facilitating submission of an offer. Subsequent invoking of lack of knowledge or error shall thus not be accepted. Every Machine must be offered in a ready-for-operation state (exceptions are set forth in the enquiry) including any and all accessories and all equipment to warrant the required function/performance. Compliance with

French law, all relevant statutory and official regulations and orders, in particular, compliance with the requirements under French law mandatory provision like liability for defective products (*responsabilité des produits défectueux*), with Directive 2006/42/EC on Machinery, and our Conditions of Purchase shall be verified and confirmed. The offer shall be binding and free of charge for us.

- 2.3 The basis of the contract shall be as in the following order:
  - 2.3.1 The written order (purchase order) including annexes.
  - 2.3.2 The General Conditions of Purchase of the Principal and, specifically, in their commercial (these General Conditions of Purchase) and technical parts (Principal's Specifications and Contractor's Obligations).
  - 2.3.3 The statutory provisions.
- 2.4 Purchase orders and conclusions as well as any amendments and supplements to them must be in writing on paper and signed. Purchase orders can be submitted also by fax.
- 2.5 Oral agreements made prior to or at the time of conclusion of the contract shall be valid only if confirmed in writing by the Purchasing Department. This shall not affect Clause 2.4, Sentence 2.
- 2.6 Oral agreements made after conclusion of a contract, particularly subsequent amendments and supplements to our Conditions of Purchase – including this stipulation requiring written form – and side agreements of any kind shall likewise be valid only if confirmed in writing by the Purchasing Department.

## 3 Order/Amendment to the Delivery Item

- 3.1 Principal shall be bound by binding offers for three weeks. If the contractor does not accept the order within such period, Principal shall have the right to revoke its order without contractor being entitled to any claims against Principal due to this.
- 3.2 The contractor shall be obliged to inform us without delay of any intended change to the Machine. Any deviations from the order shall require the prior written consent of our Purchasing Department.

## 4 Prices and Remuneration

- 4.1 The prices agreed in the relevant order shall be fixed prices plus value-added tax for the term of the contract.
- 4.2 Additional deliveries and services not mentioned in the order shall only be remunerated if a written cost estimate is submitted to our Purchasing Department and afterwards a written order is issued.
- 4.3 Irrespective of whether a purchase order is placed or not, we shall not pay any remuneration or compensation for visits or the preparation of offers, projects, etc.

## 5 Issuance of Invoices/Payment

- 5.1 Invoices shall be sent to us separate from the delivery to the billing address set forth on the individual contract in each case, stating the invoice number and other identifying information. The contractor shall be obliged to state the order number and the order date of Principal on the invoices.

## 5.2 Payment

30 % after receipt of the order confirmation and down-payment invoice

30 % after delivery

40 % four weeks after successful commissioning

Invoices shall be paid within 14 days after receipt of invoice with 2 % discount or within 30 days after issue date of invoice net. Default shall occur 30 days after the invoice becomes due and is issued and the Machine is received and successfully commissioned. Payment shall be made subject to verification of the invoice. We have our own transport insurance. Therefore, if the contractor charges amounts for such insurance, we shall deduct such amounts from the invoice amount accordingly. Machine transfer of ownership will occur at the first payment made by EMITEC.

5.3 Payments shall be rendered on the basis of corresponding invoices without exception.

6 To the extent advance payments are agreed, the contractor shall provide us with an absolute surety unlimited in time and free of charge for us of a credit institution admitted to business operation in France for each advance payment. Acceptance/Passage of Risk

6.1 Acceptance of the Machines shall be subdivided into preliminary and final acceptance. If, in the individual case, part acceptances were agreed, these shall be affected only subject to successful complete acceptance.

6.2 The acceptance procedures for the preliminary and final acceptance will be in accordance with the provisions of the Contractor's Obligations.

### 6.2.1 Preliminary acceptance

The preliminary acceptance of the ready-for-production Machines shall take place in the contractor's factory in the presence of one of its responsible employees and an individual instructed by us.

In the event of unsuccessful acceptance caused by the contractor, the contractor must reimburse a fixed sum of €500 per employee travelling to the site and per day.

The costs for non-reusable parts in the event of unsuccessful preliminary acceptance shall be solely chargeable to the contractor.

Delivery of the Machine to us may only be effected after successful preliminary acceptance on the basis of a preliminary acceptance protocol signed by one of the two contracting parties and subsequent to elimination of any possibly determined defects.

### 6.2.2 Final acceptance

Final acceptance shall be conditional on ready-for-operation handover at our site, requiring that all the necessary work including manufacture of the test pieces classified as correct and briefing of the principal's operators as well as satisfying the stipulations relating to final acceptance pursuant to the contractor's obligations.

Final acceptance must be performed as formal acceptance. Tacit acceptance e.g. through start-up, shall be ruled out, this not being applicable if formal acceptance failed to take place at the latest six (6) weeks after ready-for-operation handover on grounds coming under our sphere of

responsibility. A written final acceptance protocol on successful final acceptance must be drawn up, signing of such protocol by the employees of the parties present at such final acceptance being required.

With successful final acceptance and signing of the final acceptance protocol, the passage of risk shall pass to us. In the event of unsuccessful final acceptance, the contractor shall bear any and all costs for operating supplies and non-reusable work pieces.

6.3 Waiver of the preliminary or final acceptance shall require written form on paper and signed.

## 7 Delivery Dates/Default in Delivery

7.1 The dates stipulated in the order shall be binding. The date of successful final acceptance at our site shall be determining for compliance with the completion and delivery date.

7.2 If the contractor realises that an agreed date probably cannot be complied with for any reason whatsoever, the contractor must inform us thereof without delay in writing, stating the grounds and the duration of the delay. This shall also be applicable if the events leading to the delay occur during a delay in delivery.

7.3 Natural disasters, war, riot, sabotage and strike and/or lock-out of more than four weeks shall release the contracting parties from their performance obligations for the duration of the interruption and in the scope of their impact.

As far as can be reasonably expected, the contracting parties shall provide whatever information is necessary without delay and adjust their obligations to the changed circumstances in good faith.

7.4 If originally agreed dates or deadlines are reset, the provisions of this Clause 7 shall apply analogously.

7.5 If dates or deadlines are not complied with for a reason coming under the responsibility of the contractor or of its subcontractors or suppliers, we shall be entitled to demand a contractual penalty in the maximum amount of 5 per cent of the entire value of the purchase order without having to furnish evidence of a corresponding loss. If no other agreement was concluded by the parties in an individual case, 0.3 per cent of the value of the order shall become due as contractual penalty for each working day of delay. As defined in this provision, a working day shall be deemed Monday - Friday. We reserve the right to assert a claim for compensation for any losses beyond this.

We may assert our claim for the contractual penalty until payment of the final invoice.

7.6 If contractual dates and deadlines are not complied with by the contractor despite setting of a reasonable deadline for performance or subsequent remedy on grounds coming under the contractor's responsibility, in addition to the right under Clause 7.5, we shall have the legal power at our discretion to rescind the contract without prejudice to further-reaching statutory claims, to procure a substitute from a third party (covering purchases) or to perform services ourselves and/or to demand compensation instead of performance. A contractual penalty pursuant to Clause 7.5 must be set off against a possible compensation claim.

7.7 The contractor shall grant us the right of access to its factory at reasonable times to review the progress of work in respect of compliance with dates and deadlines and of due execution of the order.

- 7.8 At our request, the contractor will provide us with a progress report at regular intervals showing which work has been completed and whether the stipulated dates and deadlines will be able to be adhered to.
- 7.9 Acceptance of delayed delivery or performance shall not include waiver of any contractual penalties or compensation claims.

## **8 Claims for Defects**

- 8.1 The deadline for statute-barring of claims for defects shall commence with signing of a successful final acceptance protocol pursuant to Clause 6.2.2 If, in the individual case, no derogating deadline was agreed, our claims for defects shall become statute-barred after 36 months. If, as a result of operational interruptions, defects are caused, the deadline will be extended by the duration of the operational interruption, at the maximum, however, to 48 months.
- 8.2 The contractor shall be liable for its deliveries and services being at least in accordance with state-of the-art in terms of technology, engineering and the relevant French law provisions as well as in terms of the rules and guidelines of authorities, employer's liability fabrication, material and assemble defects, for their being in accordance with the contractually stipulated or warranted properties and for their being carried out in accordance with the technical requirements (Contractor's Obligations) and Requirements Specifications.

For the duration of the statute of limitation in terms of defects - unless otherwise stipulated in the individual case - the technical values that were underlying at final acceptance must be complied with by the Machine. If this is not the case, the Machine shall be deemed defective.

- 8.3 Defects falling within the statute of limitations for defects must be eliminated by the contractor at its costs without delay and in accordance with our choice by way of subsequent remedy or substitute delivery. In terms of subsequently remedied or re-delivered parts, statute-barring shall re-commence from the date of elimination of the defect confirmed by us as being duly performed.
- The liability for defects shall refer to the shipped parts and sub-assemblies, where defectiveness was not determined at final acceptance. The warranty period for these parts shall begin with their regular deployment. It shall end at the latest three months after shipment.
- 8.4 After unsuccessful expiration of a brief deadline period set by Principal in urgent cases for subsequent remedy for the elimination of defects, Principal shall be authorised to eliminate the defects itself at the contractor's costs or to have them eliminated by third parties. We reserve the right to assert other claims against the contractor.
- 8.5 If the elimination of the defect is not possible, cannot be reasonably expected of the contractor or has not been effected within a reasonable period, we shall be authorised to rescind the contract or to reduce the agreed price (reduction) The same shall apply if the contractor refuses to eliminate the defect or if the manner of subsequent remedy to which we are entitled is unacceptable.
- 8.6 Further-reaching compensation claims shall remain unaffected by the above provisions.
- 8.7 In the event of rescission, Principal at its request shall be provided with the Machine until an adequate substitute has been procured. The cost of disassembly and transport from Principal's site shall be borne by the contractor. The payments rendered by us shall be refunded

to us without deduction within 30 days from the date of our declaration to the effect that the Machine is available for disassembly and evacuation.

- 8.8 The contractor shall be liable within the framework of the statutory provisions for all losses which have been culpably caused by its work and its employees. In a dispute, it will be up to the contractor to prove that neither it nor its employees were responsible. Moreover, contractor will be liable for legal warranty with respect to hidden defects in accordance with article 1641 and follows of the French civil code for all Machines delivered to EMITEC under these conditions.

## **9 Spare Parts/Special Tools**

The contractor must ensure supply or spare parts which are not standard parts and with special tools for a period of 10 years subsequent to final acceptance. If this is not realised, the contractor at its costs shall arrange for retrofitting based on the equipment list.

## **10 Intellectual or Industrial Property Rights**

- 10.1 The contractor shall indemnify us and keep us indemnified from any third-party claims arising under property rights or similar rights which such parties assert against us or our customers. The contractor shall compensate us for any losses incurred by us under the assertion of such claims against us or our customers.
- 10.2 Clause 10.1 shall not be applicable if the contractor has manufactured the Machine in accordance with our submitted drawings, models or other equivalent specifications or data.
- 10.3 The contracting partners undertake to inform one another without delay of risks of infringement of which they have become aware and alleged cases of infringement and to take the opportunity to consensually counteract any such claims.
- 10.4 To the extent that the contractor supplies within the framework of the contract Machines and equipment, the use of which is for a particular purpose or in connection with procedures which the contractor has registered or for which it has been granted protection or will be granted protection, a licence for us and/or our customers shall be deemed agreed.

The contractor shall inform Principal at our request of the use of published and unpublished own property rights and licenced property rights and property rights applications in connection with the Machine.

## **11 Protection of know-how**

- 11.1 The drawings, tools, special equipment, prototypes, plans, documents and the like, submitted by us in connection with performance of the contract will be handed over and entrusted to the contractor only for the purpose of performance of the contract. The contractor shall not be authorised to use the documents for other purposes nor to make them accessible to third parties. Subsequent to successful final acceptance, the contractor must return the entirety of the surrendered material without delay.
- 11.2 In the case that special tools are developed, produced and used to perform the order irrespective of whether they are produced by the contractor itself or by a third party on its behalf, the contractor shall be obliged not to use these tools for production of Machines or other items for its own purposes or for delivery to third parties. Tools provided by us shall be made available to us without requirement of request and without delay as soon as the order has

been fulfilled or the tools are used up or must be replaced by new ones. We may also demand that tools provided by us that can no longer be used or only in a restricted way are scrapped under our supervision.

- 11.3 The information and knowledge, notably of a technical kind, that the contractor became aware of on the occasion of this contract shall also only be used for performance of the contract and may not be realised for other purposes or made accessible to third parties without our prior written consent unless the contractor is obliged to disclose by statute or official order. The contractor shall oblige its sub-contractors accordingly. The confidentiality obligation shall survive performance of this contract during ten (10) years.
- 11.4 Exhibiting tools at fairs or presenting to third parties work pieces which are being or are going to be produced or processed on or using the Machines, equipment or other manufacturing means ordered by Principal, shall be prohibited without Principal's prior written consent.
- 11.5 Publications of the contractor's of any kind concerning the Machine shall also require Principal's prior written consent to the extent the Machine was especially produced or used for Principal's purposes.

## **12 Miscellaneous**

- 12.1 Place of performance for deliveries, services and payments shall be, unless explicitly otherwise agreed, the delivery address or place of use requested by us.
- 12.2 In addition to these Conditions, the INCOTERMS 2010 definitions including all possible addenda shall apply.
- 12.3 The contractual relationships shall be subject to the laws of the France only, excluding conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.4 If the contractor is a merchant, the place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationships which are based on these Conditions of Purchase shall be the registered office of Emitec in France. We shall be further entitled at our discretion to sue the contractor before the court at its registered office or its branch or before the court of the place of performance.
- 12.5 We shall be entitled to transfer our rights and obligations under this contract to another affiliated group company in Germany or abroad. In such case, we will agree the contractual amendments necessitated by this with the contractor.
- 12.6 Contractor is not allowed to transfer, assign, and subcontract its rights and obligations under this contract to third party without our prior written approval.
- 12.7 We shall process personal data within the framework of the contractual relationship in compliance with the regulations of French law dated January 6 1978 "Informatique et libertés".
- 12.8 The contractor shall respect French labor law and provide us with the documents listed in Appendix 1.

## APPENDIX 1

### ➤ Documents to be furnished by the Service Provider ESTABLISHED IN FRANCE

1) List of mandatory supporting documents which must be furnished upon completion of the Agreement and every six (6) months until the end of its performance and appended to the Agreement to evidence compliance with the social and fiscal obligations of the Service Provider mentioned in Article 3.3 of the Agreement:

- a) A certificate of supply of social statements issued by the social protection authority in charge of the recovery of social contributions incumbent upon the Service Provider. The certificate must be less than six (6) months old.

### AND

- b) A declaration on honor regarding the due filing with the tax administration, upon the date of such declaration, of all mandatory tax declarations and the receipt of filing with a company formalities centre when the Service Provider is not bound to register with the Trade and Companies Registry or the Trades Register and is not in a position to produce the documents mentioned in a) or b) of section 2 below.

2) Moreover, the Service Provider must furnish one of the following documents upon completion of the Agreement:

- a) An extract of the certificate of incorporation with the Trade and Companies Registry (K or K bis) which is less than 3 months old
- b) An identification card proving registration with the Trades Register
- c) A quotation, an advertising document or professional correspondence, on condition that such shows the name or corporate name, the full address and registration number with the Trade and Companies Registry or Trades Register or a list or a table from a professional association, or the reference of the approval delivered by the competent authority

3) If the Service Provider has employees, it should provide a declaration on honor based on the template attached.

Je soussigné ..... en qualité de  
..... certifie sur l'honneur

- que le travail confié par la société \_\_\_\_\_, pour la réalisation des prestations définies dans le présent Contrat conclu le ..... sera exécuté par des salariés employés régulièrement au regard des articles L.1221-10, L.3243-2 et R.3243-1 du Code du Travail
- Avoir déposé auprès de l'administration fiscale, à la date du ..... (**date de l'attestation**), l'ensemble des déclarations fiscales obligatoires

Fait à [        *lieu* ], le [        *date* ] en trois exemplaires originaux.

4) Finally, if the Service Provider has employees, every month it must furnish the periodical contributions bulletin (BRC) which proves that it has paid the social charges due on the salaries paid to its employees.