

1 General

1.1 The contract shall be deemed to have been entered into upon receipt of the written acknowledgement of Ferrum Process Systems Ltd. (hereafter called Ferrum) stating its acceptance of the order (confirmation of order).

Offers which do not stipulate an acceptance period shall not be binding.

1.2 These general conditions of supply shall be valid if declared applicable in the offer or in the confirmation of order. Any conditions stipulated by the customer which are in contradiction to these general conditions of sales and delivery shall only be valid if expressly acknowledged by Ferrum in writing.

1.3 Clause 1.2 shall be equally valid for any further terms and conditions attached to the offer or the confirmation of order and which are mentioned therein as being applicable. Such further terms and conditions shall in case of any discrepancies prevail over those of these general conditions of sales and delivery.

1.4 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid.

2 Scope of supplies and services

The scope of supplies and services are exhaustively specified in the confirmation of order and in the appendices thereto, if any.

3 Technical documents

3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

3.2 Each party to the contract retains all rights to any technical documents provided to the other party. The party receiving such documents recognises these rights and shall - without previous written consent of the other party not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

4 Regulations in force in the country of destination, safety devices

The customer shall, in due time prior to placing the order, draw the attention of Ferrum to the regulations and standards ruling in the country of destination and concerning the execution of the supplies and services, the safe operation of the plant and the prevention of illness and accidents.

Safety devices shall be supplied to the extent as having been expressly agreed upon.

5 Prices

5.1 Unless otherwise agreed upon in writing, all prices shall be deemed to be ex works of Ferrum, excluding packing, in freely available Swiss Francs and without any deductions whatsoever.

Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer.

Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to Ferrum against adequate evidence in case Ferrum has become liable for them.

If Ferrum has included in its offer or contract price or indicated separately in its offer or confirmation of order the charges for packing, carriage, insurance and other additional costs, it reserves the right to adjust its prices should the rates on which they are based be modified.

5.2 Ferrum reserves the right to adjust the prices in case a sliding price has been agreed.

In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reason stated in Clause 8.2, or the nature or the scope of the agreed supplies or services has changed, or any documents furnished by the customer were not in conformity with the actual circumstances or were incomplete.

6 Terms of payment

6.1 Payments shall be made at the domicile of Ferrum, according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Payment shall be deemed to be effected as far as the amount due has been made freely available to Ferrum at the domicile of Ferrum. Costs of letters of credit, banking fees and commissions, expenses for collection and, in case payment by bills of exchange is agreed, the costs of discounting of such bills as well as bill of exchange taxes shall be borne by the customer.

6.2 The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services are delayed or prevented due to reasons beyond the control of Ferrum, or if unimportant parts are missing, or if post-delivery work is to be carried out without the supplies being prevented from use.

6.3 If the advance payment or the securities to be issued upon the contract being entered into are not provided in accordance with the terms of the contract, Ferrum shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.

If the customer, for any reason whatsoever, is in delay with a further payment, or if Ferrum has reason to be seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, Ferrum, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery have been agreed and until Ferrum has received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case Ferrum does not receive adequate securities Ferrum shall be entitled to terminate the contract and to claim damages.

6.4 If the customer delays in the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due, at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 percent over the current discount rate of the Swiss National Bank. The right to claim further damages is reserved.

7 Reservation of Ownership

The delivered goods shall remain the sole and absolute property of Ferrum as legal and equitable owner until such time as the customer shall have paid to Ferrum the full amount of the agreed price. The customer shall be entitled to resell the goods in the course of his normal and proper business activities. If the goods are resold by the customer, the customer will ensure to assign his claim against the third party to Ferrum (Art. 164 of the Swiss Federal Code of Obligations).

If according to the applicable law further steps have to be taken to have the title in the goods remained vested in Ferrum until such time as the goods have been fully paid for (e.g. an entry in a public registry), the customer undertakes to take these steps on first demand. If according to the applicable law further steps have to be taken to have the customer's claim against the third party assigned to Ferrum (e.g. an assignment deed), the customer undertakes to take these steps on first demand. If an entry in a public registry is required, Ferrum herewith consents to any steps which have to be taken to execute such a registration and such an entry.

For the delivered goods the customer undertakes to keep them at his own costs in good condition and to effect and maintain for them on his own costs and to the benefit of Ferrum an insurance which provides cover against any physical loss or damage (e.g. theft, breakage, fire, water, etc.) and against any other risk. The customer undertakes to take all steps necessary to have the title in the goods remained vested in Ferrum until such time as the goods have been fully paid for.

All samples and drawings remain the act. and absolute property of Ferrum, even if the customer was obliged to bear the costs for these samples and drawings in full or in part.

8 Delivery time

8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time a notice has been mailed to the customer informing that the supplies are ready for dispatch.

8.2 The delivery time is reasonably extended:

- a) If information required by Ferrum for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services:
- b) If hindrances occur which Ferrum cannot prevent despite using the required care, regardless of whether they occur with Ferrum or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw material, semi-finished or finished products, the need to scrap important work pieces, measures, actions or omissions by any state authorities or public bodies, natural catastrophes, acts of God;
- c) If the customer or a third party is behind schedule with work he has to execute, or the performance of the customer's contractual obligations, in particular the observance of the agreed terms of payment, is delayed.

8.3 The customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of Ferrum and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.

Damages for delayed delivery shall not exceed 1/2 percent for every full week's delay and shall in no case whatsoever altogether exceed 5 percent of the sales price ex works (excluding packing) of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

After reaching the maximum liquidated damages for delayed delivery, the customer shall grant Ferrum a reasonable extension of time in writing. If such extension is not observed for reasons within the control of Ferrum, the customer shall have the right to reject the delayed part of the supplies if fulfilment of the obligation of Ferrum can no longer be reasonably anticipated. If a delay exceeding the above mentioned extension of time and being due to reasons within the control of Ferrum has led to a situation no longer economically bearable on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the one already paid against return of the deliveries supplied.

- 8.4 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of Ferrum unless unlawful intent or gross negligence attaches to persons employed or appointed by Ferrum to perform his obligations.

9 Packing

Packing shall be charged for separately by Ferrum and shall not be returnable, except if its return to Ferrum has been agreed upon. In such case, the packing shall be returned by the customer, carriage paid, to the place of dispatch.

10 Passing of benefit and risk

- 10.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.
- 10.2 If dispatch is delayed at the request of the customer or due to other reasons beyond the control of Ferrum, the risk of Ferrum shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on the supplies shall be stored and insured on the account and at the risk of the customer.

11 Forwarding, transport and insurance

- 11.1 Ferrum shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk.

Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

- 11.2 If it is up to the customer to take out insurance against damage of any kind. Even if insurance cover is to be arranged by Ferrum, it shall be taken out on behalf of the customer and at his expense and risk.

12 Inspection and taking-over of the supplies and services

- 12.1 As far as being normal practice, Ferrum shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be agreed upon in writing and paid for by the customer. As far as circumstances allow, such tests will be carried out in the works of Ferrum.
- 12.2 The customer shall inspect the supplies and services within a reasonable period and shall immediately notify Ferrum in writing of any deficiencies. If the customer fails to do so, the supplies and services shall be deemed to have been taken over. For deficiencies in the supplies or services which cannot be detected at that time, the customer retains his rights regarding guarantees and liabilities as specified in clause 13.
- 12.3 Having been notified of deficiencies according to clause 12.2, Ferrum shall as soon as possible remedy them and the customer shall give Ferrum the possibility of doing so.
- 12.4 The carrying out of a taking-over test as well as laying down the conditions related thereto need corresponding agreement.
- 12.5 Take-over shall also be deemed completed if the agreed take-over test cannot be carried out on the date provided for due to reasons beyond control of Ferrum, or if the customer refuses the acceptance without being entitled to do so, or if the customer refuses to sign a take-over report being true to the facts, or as soon as the customer uses supplies or services of Ferrum.
- 12.6 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in this clause 12 or in clause 13.

13 Guarantee, liability for defects

- 13.1 The guarantee period is 12 months. It starts when the supplies leave the works or at the take-over of the supplies and services should such a takeover have been agreed upon before, or, if Ferrum undertakes the erection or the supervision of erection and/or the commissioning, upon completion thereof. If dispatch, take-over, erection, supervision of erection and/or commissioning are delayed due to reasons beyond control of Ferrum, the guarantee period shall end not later than 18 months after notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period will start anew and will last 6 months after replacement or completion of the repair or taking-over but not longer than the expiry of a period of 12 months reckoned from the end of the guarantee period applying as per the preceding paragraph.

The guarantee will expire prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Ferrum the possibility of remedying such defect.

- 13.2 Upon written request of the customer, Ferrum undertakes at his choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become property of Ferrum.

Ferrum shall bear the costs occurring in its works for the repair or the replacement of the defective parts. If the carrying out of a repair in the works of Ferrum is impossible or expenses or impediments of an unreasonable degree should be connected therewith, Ferrum shall bear the costs of repair and replacement of the defective parts of its supplies occasioned outside its works to such extent as such costs are reasonable under the circumstances prevailing. All additional costs will be at the customer's charge.

- 13.3 Express warranties are only those which have been explicitly specified as such in the confirmation of order or in the agreed specifications. An express warranty is valid until the expiry of the guarantee period at the latest. However, if a take-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity.

If the express warranties are not or only partially achieved, the customer may first of all require Ferrum to carry out the improvements immediately. The customer shall give Ferrum the necessary time and possibility of doing so.

If such improvements fail completely or in part, the customer may claim such compensation as has been agreed before for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part of the supplies and/or services. If a partial acceptance of the supplies and/or services should be economically unbearable on the part of the customer, then the latter shall be entitled to terminate the contract. Ferrum Process Systems Ltd. can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

- 13.4 Excluded from the guarantee and liability of Ferrum for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship of the supplies or services, e.g. deficiencies resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by Ferrum, or deficiencies resulting from other reasons beyond the control of Ferrum.
- 13.5 For supplies and services of those subcontractors prescribed by the customer, Ferrum assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.
- 13.6 With respect to any defective material, design or workmanship as well as to any failure to fulfil any warranties of any kind, the customer shall not be entitled to any rights and claims other than those expressly stipulated in clauses 13.1 to 13.5.
- 13.7 Ferrum is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.

14 Exclusion of further liabilities of Ferrum

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage. This exclusion of liability, however, does not apply to unlawful intent or gross negligence on the part of Ferrum unless unlawful intent or gross negligence attaches to persons employed or appointed by Ferrum to perform his obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.

15 Erection

If Ferrum undertakes the erection or the supervision of the erection and/or the commissioning, the General Conditions of Erection of Ferrum shall apply, unless there are other commitments.

16 Jurisdiction and applicable law

- 16.1 The place of jurisdiction for both the customer and Ferrum shall be Lenzburg. Ferrum shall, however, be entitled to sue the customer at the latter's registered address.
- 16.2 The legal relationship between the customer and Ferrum shall be governed by Swiss substantive law.