

# General Terms of Supply for Plants and Machinery

Any relationship and/or contract between **Asyri SA (« ASYRIL »)** and the client (the « **Purchaser** ») related to the design, implementation, manufacture, supply and sale of a ASYRIL machinery or plants (the « **Product** ») shall be governed solely by these General Terms and Conditions.

## 1. General

- 1.1. These terms and conditions are in force and effect with the reception of the official purchase order of the Purchaser.
- 1.2. Any agreements and legally relevant declarations of the contract parties will not be binding until they are concluded in writing. Declarations in text form transmitted or stored by means of electronic media are treated as equal to the written form if this has been agreed upon separately by the contract parties.
- 1.3. The Purchaser is not authorized to transfer his legally binding right related to the contract to third parties without the written consent of ASYRIL.

## 2. Scope of deliveries

- 2.1. The deliveries and services to be executed by ASYRIL are finally stated in the Order Confirmation and in possible annexes.
- 2.2. ASYRIL reserves the right to make changes in the product, not least in the interest of the Purchaser, that will bring about improvements. Any price increases or changes of delivery schedule shall be agreed between ASYRIL and the Purchaser.
- 2.3. Any requests by the Purchaser for changes and/or additions to the design of the Product subsequent to the signature of the contract shall be set forth in writing. ASYRIL reserves the right to either accept or turn down the Purchaser's request upon checking out the feasibility of such changes and/or additions. The costs and changes required in order to implement such changes shall be borne solely by the purchaser. In any event, ASYRIL shall not feel obliged to implement Purchaser's requests until both parties have reached an understanding in writing regarding the consequences and the impact the said changes and/or additions will have on the delivery schedule and on the costs.
- 2.4. In case the destination of the Product is outside Switzerland, the Purchaser shall inform ASYRIL of any kind of regulations and standards applicable in this country. If the Purchaser fails to inform ASYRIL, he shall bear the costs of any work required to adjust to the requested regulations/standards.

## 3. Risk sharing

- 3.1. The Purchaser shall bear all the risk of inefficiency or total or partial lack of qualities of the Product whenever he directly or indirectly specified outside suppliers, materials, accessories, elements or parts of any kind to be used and/or integrated into the Product.

## 4. Drawings, technical documentation, software

- 4.1. All ASYRIL's drawings, technical documentation, illustrations, indications of weights and measurements shall be purely indicative unless specifically defined as being an integral part of the contract.
- 4.2. ASYRIL may hand over plans and documents of the Purchaser to its subcontractors confidentially and as a loan to enable them to execute the work assigned by ASYRIL for the fulfilment of the Purchaser's order.
- 4.3. The Purchaser shall not transfer any data, photos, documents, files, drawings, etc. to third parties which would enable them to copy parts, sub-assemblies, modules, etc. or machines of ASYRIL. If there could be such a risk, the Purchaser will not allow any third parties to see the Product, to take pictures, video, etc.
- 4.4. The Purchaser may use the software, know-how and documentation for the purpose for which they were made available to him, but not disclose or make them available to others, nor copy or reproduce them. Any software extension or alteration by the Purchaser requires ASYRIL's prior approval in writing.

## 5. Price

- 5.1. The price of the Product set forth by ASYRIL in the Order Confirmation is binding and except in the event of special covenants concerning the applicable INCOTERMS 2000 clause, all price shall be deemed ex ASYRIL works. Packing, assembly and ancillary costs of any kind are not included. VAT (Value Added Tax) must be added at the rate provided by law.
- 5.2. The Purchaser must defray the costs for packing, customs duties, fees and taxes of any kind and charges of any kind owed in connection with the contract and owed outside of the country of production.
- 5.3. Packing will be charged and not taken back.
- 5.4. Unless otherwise agreed and specified in the Order Confirmation, all costs relating to letters of credit, bank guarantees, collection, presentation of documents, stamps on letters of exchange and other similar charges shall be borne by the Purchaser.

## 6. Payment terms

- 6.1. Unless otherwise agreed in writing, the price must be paid by the Purchaser without any deduction at the head office of ASYRIL, in the currency that is legal tender thereat and consistent with the following conditions:

- 30% as a down payment to be paid concurrently with the placement of the purchase order by the Purchaser (10 days net, invoice date),
  - 60% in payment of the completion of the assembly of the Product, to be paid concurrently with the commissioning test at ASYRIL (30 days net),
  - 10% to be paid concurrently with the commissioning and final acceptance at the Purchaser's plant, however not later than 60 days after shipment date from ASYRIL (30 days net).
- 6.2. In the event of partial shipments, partial payments will be required consistent with the portion of goods ready/available for shipment.
- 6.3. If the Purchaser does not observe the agreed payment deadlines, he must pay a rate of interest lying 4% over the 3-months CHF LIBOR, as from the agreed due date, without reminder. The right for further indemnification claims will be reserved.
- 6.4. The Purchaser shall be bound to full payment of the amount relating to the changes and/or additions referred to in Art. 2.3.

## **7. Retention of Title of Ownership**

- 7.1. ASYRIL shall keep ownership of the Product until full payment of all collectable claims deriving from the Contract entered into with the Purchaser. The Purchaser undertakes to issue upon request a document evidencing the right to retention of the title of ownership and to hand it to ASYRIL. In the event of failure to pay the agreed price or part thereof, ASYRIL shall be entitled to demand the restitution of the product already in the Purchaser's possession.
- 7.2. During the duration of the retention of title of ownership, the purchaser will maintain the delivered goods in good order at his own expense and will insure them against theft, defects, fire, water and other risks on behalf of ASYRIL. Moreover, he will take all measures to protect ASYRIL's right of ownership from any impairment or cancellation.

## **8. Passage of risks**

- 8.1. The passage of Product risks shall be determined by the Parties in the Order Confirmation. In the absence of a written understanding and unless there is a specific agreement regarding the applicable INCOTERMS 2000 clause, the risks of natural and/or accidental deterioration and of damage caused to or by the product shall devolve unto the Purchaser at the time when ASYRIL advises that the Product is held available for the Purchaser in ASYRIL's works (EXW – INCOTERMS 2000). The same applies for partial deliveries and when deliveries are delayed at the request of the Purchaser or for other reasons not attributable to ASYRIL.
- 8.2. Loss or deterioration of the Product that may have occurred subsequent to the passage of

risks to the Purchaser shall not relieve the later from the payment of the purchase price.

- 8.3. As the risks devolve upon the Purchaser, the later becomes the custodian of the Product. The Purchaser shall then be liable for any damages that may arise from or be caused by the Product to himself or to others.

## **9. Delivery Terms**

- 9.1. The delivery schedule shall be set forth by the parties in the order confirmation. In the absence of a written understanding and unless there is a specific agreement regarding the applicable INCOTERMS 2000 clause, the delivery deadline shall be deemed met at the time when ASYRIL advises that the Product is held available to the Purchaser in ASYRIL's works (EXW – INCOTERMS 2000).
- 9.2. Compliance with the delivery schedule presupposes that all the commercial, administrative and technical aspects have been defined and agreed by and between the parties and that the Purchaser has complied with the obligations he is bound to, among them the production of the required administrative and technical documentation of the required commercial/administrative permits and the payment of whatever is owed or the issuance of a payment guarantee consistent with the contractual provisions.
- 9.3. ASYRIL is bound to respect the delivery term only on the condition that the Purchaser has met all his obligations in all ongoing contracts with ASYRIL. If the Purchaser is late in meeting his obligations, the term of delivery will be prolonged accordingly.
- 9.4. If shipment or production suffers a delay attributable to the Purchaser or if the Purchaser fails to pick up the Product within no later than 15 days from the date of the notice given pursuant Art. 9.1., the Purchaser will be charged for the costs of warehousing.
- 9.5. The term of delivery will extend accordingly if adverse circumstances occur which cannot be avoided by ASYRIL despite reasonable care, irrespective of whether such circumstances occur on the part of himself, of the Purchaser or of a third party, e.g. such circumstances may be epidemics, mobilization, war, riots, substantial equipment failures, accidents, labour conflicts, delayed or defective delivery of the needed raw materials, semi-finished or finished products, official measures or omissions, Acts of Gods, and the prohibition of export, re-export, import, re-import or transit or an embargo imposed by political authority.

## **10. Commissioning & Acceptance**

- 10.1. The Product is carefully monitored by ASYRIL during its production. Specific checks requested by the Purchaser during the course of the pro-

duction at ASYRIL must be agreed in writing and paid for by the Purchaser.

- 10.2. The Purchaser is obliged to inspect the deliveries and services within a reasonable period and inform ASYRIL immediately in writing about any defects. If he fails to do so, the deliveries and services are regarded as accepted.
- 10.3. Unless otherwise agreed, a first test of the Product will be run at ASYRIL regarding consistency with the specifications requested by the Purchaser. The date foreseen for the test will be notified to the Purchaser in order that he may attend. Upon completion of the test both parties will sign a pre-acceptance protocol that will be deemed to constitute acceptance of the Product by the Purchaser.
- 10.4. ASYRIL will run a second test, unless otherwise agreed by the parties, upon completion of the Product assembly in the Purchaser's premises, which will consist of checking the proper execution of the assembly and of the start-up of the Product. The Purchaser shall prearrange all that is necessary for the proper performance of the test on the date set forth. Upon completion of the test both parties will sign an acceptance protocol that will be deemed to constitute the final acceptance and take-over of the product and the process it implements by the Purchaser.
- 10.5. ASYRIL must remove any defects it was notified of as soon as possible and the Purchaser must give ASYRIL the opportunity to do so.

## **11. Warranty**

- 11.1. The warranty covers twelve (12) months or 2500 hours of operation and shall run from the date the Purchaser accepts the Product, however the warranty period cannot extend over 18 months after the date of shipment from ASYRIL's premises (EXW-INCOTERMS 2000).
- 11.2. For the application software ASYRIL grants a three (3) months warranty, starting with the date of the passage of risks.
- 11.3. For supplies and services from third parties, inclusive of any mandated by the Purchaser, ASYRIL shall be liable only within the limits, time-frames and consistent with the warranty terms of the third parties suppliers or sub-contractors.
- 11.4. For parts replaced or repaired, the warranty shall run for six (6) months from the replacement or the completion of the repair, unless the original warranty covers a longer residual period.
- 11.5. Barring any additional claims, until the end of the warranty period and if the claim turns to be justified, ASYRIL undertakes to repair or replace at its own discretion, the supply' components found to be defective or unusable because of demonstrable defects in materials, in construction or in performance. The purchaser must allow ASYRIL the time needed to do all the work it deems appropriate and aimed at eliminating the defects,

failing which ASYRIL shall not be liable for the resulting consequences. In urgent cases that present a safety risk and in order to prevent very serious damages, the Purchaser may himself eliminate the defects upon prior notice to and written consent of ASYRIL.

- 11.6. The costs for checking defects and installing spare parts, as well as travel expenses of any ASYRIL personnel caused by support work in the Purchaser's premises, shall be borne by ASYRIL if it is found that the defect is attributable to ASYRIL. If no defect attributable to ASYRIL is found, the costs for checking and the personnel travel expenses shall be borne solely by the Purchaser.
- 11.7. The warranty will expire ahead of schedule if the Purchaser or a third party makes improper modifications or repairs or if the Purchaser does not immediately take all measures suitable to minimize the damages and/or in case of an incorrect use of the Product.
- 11.8. Supply and/or reparation of parts after the warranty period are covered by ASYRIL *Terms of Supply for Spare Parts*.

## **12. Exclusion of further liabilities**

- 12.1 Any kinds of infringements of the contract and their legal consequences as well as any claims of the Purchaser are finally stipulated in these conditions, irrespective of the legal basis for such claims. Especially any claims for indemnification, price reduction, cancellation of the contract or withdrawal from the contract are excluded. The Purchaser is under no circumstances entitled to claim for compensation for damages which did not occur on the delivery item itself, especially for loss of production, loss of use, loss of orders, loss of profit and other direct or indirect damages.

## **13. Intellectual Property, Trademarks and Patents**

- 13.1. Any results achieved during the course of design, construction, assembly and/or maintenance of the Product, even when done with means, tools, drawings and designs provided by the Purchaser, are and shall remain the sole property of ASYRIL which shall have exclusive ownership of any paternity and property rights.
- 13.2. The Purchaser is not entitled to use and/or cause others to use the trademarks, patents, trade names or other distinctive marks of ASYRIL and undertakes not to deposit nor cause to be deposited in the country where they have their registered offices or elsewhere any trademarks, patents, trade names or other distinctive signs similar to or lending themselves to be mistaken for those of ASYRIL.
- 13.3. The drawing, information and technical documentation relating to the scope of supply and delivered by ASYRIL shall remain ASYRIL's sole

property and cannot be duplicated and/or copied, without the written consent of ASYRIL.

#### **14. Software**

14.1. A simple license is granted to the Purchaser which is limited to the product delivered to him by ASYRIL. The use of this software for other purposes or by third party is prohibited without the previous written consent of ASYRIL.

#### **15. Environmental and operational Safety**

15.1. The Purchaser undertakes to follow the instructions for use and the safety instructions supplied with the Product, and to train his own personnel adequately so that the safe and ecological operation of the Product is constantly guaranteed. Technical modifications on the product may be carried out only upon the written consent of ASYRIL.

15.2. Any kinds of infringements of Art. 15.1. and their legal and financial claims from purchaser or a third party are excluded.

#### **16. Place of Jurisdiction and Applicable Law**

16.1. For all the relations between ASYRIL and the Purchaser regarding the contract as well as the performances, design, amendments and effects thereof, only the Swiss Code of Obligations shall apply.

16.2. The sole place of jurisdiction is Villaz-St-Pierre/Switzerland.

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