

## Terms & Conditions of Apex Tool Group GmbH for ETO (Engineer To Order) Projects

### I. GENERAL TERMS AND CONDITIONS

1. The scope of deliveries and/or services (hereinafter referred to as "Supplies") shall be determined by the written declarations of both Parties. General terms and conditions of the Purchaser shall apply only if and when expressly accepted by the supplier or the provider of services (hereinafter referred to as "Supplier") in writing.
2. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the Agreement is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
3. The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
4. Partial Supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.
5. In the event of retrofitting or extensions on existing systems, the Supplier may work on the assumption that the documentation made available to him complies with the state of construction at which time the offer was made. The Purchaser shall be duly informed of any changes that may arise, which shall be performed only after they have been approved.
6. Subject to a positive credit check the quote will be valid to the date stated in the quote.

### II. PRICES AND TERMS OF PAYMENT

1. Our prices are subject to change, unless agreed otherwise in writing. Prices shall be ex works and exclude packaging; value added tax shall be added at the then applicable rate.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
3. Payments shall be made free Supplier's paying office.
4. The Purchaser may set off only those claims that are undisputed or against which no legal recourse is possible.
5. If a project discount rate has been agreed, this shall not apply to replacement, purchased or special parts.
6. **The following payment terms shall apply:**

30 % of the total sum after the order has been received (upon presentation of a limited bank guarantee), 50 % after delivery, 10 % after takeover in operational condition (but no later than 90 days after delivery), 10 % after final acceptance (but no later than 120 days after delivery).

7. For new customers order intake will be against prepayment.
8. Prices and terms of payment are subject to a positive credit check.

### III. RETENTION OF TITLE

1. Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until each and every claim the Supplier has against the Purchaser on account of the business connection has been fulfilled. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. The Purchaser shall inform the Supplier forthwith of any pledged items, seizure or other act of intervention by third parties.
4. Where the Purchaser fails make payments due, the Supplier shall be entitled to cancel the Agreement and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. In the event of other essential breaches of duty, particularly those that may compromise the inventory of Retained Goods, the Supplier shall be entitled to take back the Retained Goods, which does not require cancellation of the Agreement. The Purchaser shall be obliged to surrender the Retained Goods.

### IV. TIME FOR SUPPLIES; DELAY

1. Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
2. If non-observance of the times set is due to force majeure (e.g. mobilization, war, rebellion or natural hazard events such as earthquakes, floods, lightning, storm) or similar events (e.g. strike or lockout), such times shall be extended accordingly.
3. The purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance shall be excluded in all cases of delayed Supplies even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the Agreement by the Purchaser based

on statute shall be limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

4. At the Supplier's request the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the Agreement due to the delayed Supplies or insists on the Supplies to be carried out.
5. If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0.2% of the price of the items of the Supplies, but in no case more than a total of 2 %. The parties to the Agreement may prove that higher or, as the case may be, lower storage costs have been incurred.

## V. DELIVERY AND TRANSFER OF RISK

1. Delivery shall be made in accordance with INCOTERMS2010 EXW, Westhausen, Germany.
2. If the Purchaser is in default of acceptance, the risk shall be transferred onto the Purchaser as soon as the goods have been made available for shipping. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - a) if the Supplies do not include erection or assembly, at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport at the expense of the Purchaser;
  - b) if the Supplies include erection or assembly, on the day of taking over in the own works or, if so agreed, after a faultfree trial run.
3. Date of delivery: as agreed following consultation.
4. The obligation to deliver only exists if the payment terms are observed by Purchaser.
5. The statutory obligations of the Supplier are subject to the timely and orderly supply from its own supplier.

## VI. INSTALLATION AND COMMISSIONING

1. Unless otherwise agreed in writing, installation and commissioning shall be subject to the following provisions.
2. Installation and commissioning at the site of the Purchaser or end user, if included in the scope of order, is made in relation to the scope of supply and the parts, data and functions underlying the offer.
3. Unless otherwise specified, commissioning is completed in the same term (i.e. a single journey). Delays in commissioning caused by the Purchaser shall be charged to its expenses.
4. Installation and set-up work is subject to the condition that at least 25 original parts are available when work is set to commence. At least 50 original parts are required for the proof of performance/machine capability study (MCS).

5. The weekly working time during assembly is 35 (according agreed standard weekly working hours) hours (Monday through Friday from 6 a.m. to no later than 7 p.m.).  
**The following surcharges apply to other installation times:**  
For the 1st and 2nd extra hour: 25%  
For the 3rd extra hour: 50%  
For work performed on Saturdays: 50 %  
For work performed on Sundays: 50 %  
For work performed on paid public holidays: 150 %  
For night work (from 7 p.m. to 6 a.m.) 30 %  
The surcharges are based on an hourly rate of 124,00€. Hotel and expenses are included at a rate of 100, 00€. If the proofed expenses are higher they will be charged extra.
6. Delays for which the Supplier cannot be held responsible or any additional installation services shall be borne by the Purchasers (e.g. due to a lack of main connections, parts, on-site conditions, network connections and addresses, etc.). These shall be documented, confirmed by the Purchaser and subsequently invoiced on the basis of the agreed hourly rates.
7. Where only components are provided, commissioning shall be understood as start-up support, i.e. excluding mechanical or electrical installation. The following items/services are included in the scope of supply:
- Programming of the nutrunner control
  - Test communication nutrunner control / PLC
  - Structure communication nutrunner control / superordinate control system
  - MCS support at end customer (metering brake provided and operated by customer)
8. Only those items explicitly specified in the offer are included in the scope of supply and services. Any items that are not mentioned are not included in the scope of supply/services: **The following items/services shall not be essentially supplied or performed:**
- Production support, system supervision, provision of personnel during run-up phase etc. after final inspection and handover of the system. Where ordered, these services will be separately invoiced to the Purchaser against proof.
  - The presence of the Supplier's personnel is not obligatory in the period between beginning of production and final inspection. In the event that trouble-shooting or optimizations becomes necessary during this period, the Supplier shall immediately take the necessary steps.
  - Pro rata cleaning costs, e.g. for final cleaning. The Supplier shall hand over the site in clean-swept condition.
  - Special provisions as regards ex protection, lightning protection, fire protection, and others.
  - Link to other systems.
  - Standard air-conditioning in the control cabinets unless such is not necessary due to the waste heat generated inside the control cabinets.
  - Supply of programming equipment, software licenses, and such like.
  - Supply of maintenance cabinets
  - System compensation
  - Steel construction

- k) Media supply
  - l) Central supply
  - m) Foundation work
  - n) Examining accessibility or parameter ID
9. Unless otherwise defined in the offer, the Purchaser shall provide at its own expense and in good time:
- a) Final inspection fees and other regulatory costs
  - b) All earth and construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labor, construction materials and tools.
  - c) The equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants.
  - d) Performing bores or work on floors, walls, etc. containing asbestos (or other substances harmful to health or the environment).
  - e) Energy and water at the point of use including connections, heating and lighting. In order to ensure smooth functioning of the system, failure-free power supply must be guaranteed on site.
  - f) Sanitary facilities shall be made available to the Supplier's assembly staff free of charge
  - g) Laying of the network (Ethernet, Profibus, Profinet.) as far as the Supplier's control cabinets or a data socket located at a distance of at most 5 m from the control cabinets.
  - h) Laying of power supply as far as the Supplier's control cabinets or a pick-up point located at a distance of at most 10 m from the control cabinets.
  - i) Supplying sufficient quantities of goods in transit and media for testing purposes
  - j) Cycle time specifications and process descriptions or charts
  - k) At least 2 weeks prior to commissioning, the Purchaser shall make available all IP addresses and system designations.
  - l) The site must be freely accessible at all times.
  - m) In order to ensure smooth functioning of the system, failure-free power supply must be guaranteed on site.
  - n) Where component supplies are concerned, the Purchaser is required to check and confirm cable lengths, socket specifications, torque ranges and nutrunner types employed.
  - o) Unless otherwise stipulated, only start-up support shall be provided in the event of component supply, i.e. no installation work is included. In this case, the relevant systems will have been installed fully operational by the Purchaser at the time where start-up support shall be provided.
  - p) Static testing of steel construction.
  - q) Suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,

- r) Protective clothing and protective equipment needed due to particular conditions prevailing on the specific site
- 10. Before the erection work starts, the Purchaser shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- 11. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
- 12. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling of the Supplier or the erection personnel.
- 13. If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.

## VII. RECEIVING OF SUPPLIES

The Purchaser shall not refuse to receive Supplies due to minor defects.

## VIII. DEFECTS AS TO QUALITY

**The Supplier shall be liable for defects as to quality (hereinafter referred to as "Defects" ) as follows:**

- 1. All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
- 2. Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("BGB"), as well as in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfill its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration, suspension and recommencement of limitation periods remain unaffected.
- 3. The Purchaser shall notify Defects to the Supplier in writing and without undue delay.
- 4. In the case of notification of a Defect, the Purchaser may withhold payments to a reasonable extent taking into account the Defect occurred. The Purchaser,

however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle the Supplier to have its expenses reimbursed by the Purchaser.

5. The Supplier shall first be given the opportunity to supplement its performance within a reasonable period of time. At the choice of the Supplier, performance may be supplemented by repairing the fault or delivering a fault-free item. The parts replaced as a result of supplementary performance shall become the property of the Supplier.
6. If supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the Agreement or reduce the remuneration, irrespective of any claims for damages it may have according to Art. XI. As a rule, supplementary performance is deemed unsuccessful after two failed attempts to supplement performance or if supplementary performance was declined in writing or if supplementary performance is impossible.
7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the Agreement, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labor, and material, to the extent that expenses are increased because the subjectmatter of the Supplies was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Supplies.
9. The Purchaser's right of recourse against the Supplier pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier pursuant to Sec. 478 para. 2 BGB.
10. Furthermore, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. VIII, based on a Defect, shall be excluded.

## **IX. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT; DEFECTS IN TITLE**

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties. industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the

Agreement, the Supplier shall be liable to the Purchaser within the time period stipulated in Art. VIII No. 2 as follows:

- a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Purchaser may cancel the Agreement or reduce the remuneration pursuant to the applicable statutory provisions.
  - b) The Supplier's liability to pay damages shall be governed by Art. XI.
  - c) The above obligations of the Supplier shall only apply if the Purchaser immediately notifies the Supplier of any such claim asserted by the third party in writing, does not concede the existence of an infringement, and leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgment of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
  3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
  4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a, Art. VIII Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
  5. Where other defects in title occur, Art. VIII shall apply mutatis mutandis.
  6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a defect in title, shall be excluded.

## **X. IMPOSSIBILITY OF PERFORMANCE; ADAPTATION OF AGREEMENT**

1. To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability pursuant to Art. XI No. 2. This does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to cancel the Agreement shall remain unaffected.
2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the Agreement shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically

unreasonable, the Supplier shall have the right to cancel the Agreement. . If the Supplier intends to exercise its right to cancel the Agreement, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

## XI. OTHER CLAIMS FOR DAMAGES

1. Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
2. The above shall not apply in the following cases, i.e the Supplier shall be liable - on whatever legal grounds - for damages in the event of:
  - a) intent,
  - b) gross negligence on the part of the proprietor/bodies or managing staff,
  - c) culpable harm to of life, body or health,
  - d) defects that were or fraudulently concealed by the seller,
  - e) within the scope of a guarantee undertaking
  - f) defects on the supplied equipment or parts wherever mandatory liability exists under product liability laws for personal injury or material damage to privately used items.
3. In the event of culpable fundamental breach of contract (i.e. of obligations that enable the realization of the Agreement according to the rules in the first place and on whose observance the buyer regularly trusts), the Supplier shall also be liable for gross negligence by non-managerial staff and for slight negligence; in the latter case liability shall be limited to the contractually relevant, foreseeable damage or loss.
4. To the extent that the Purchaser has a valid Claim for Damages according to this Art. XI, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. VIII No. 2.

## XII. VENUE AND APPLICABLE LAW

1. If the Purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the Agreement shall be the Supplier.s place of business. However, the Supplier may also bring an action at the Purchaser.s place of business.
2. Legal relations existing in connection with this Agreement shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## XIII. BINDING NATURE OF THE AGREEMENT

1. The legal invalidity of one or more provisions of this Agreement shall in no way affect the validity of the remaining provisions. This shall not apply if adhering to the Agreement would be an unreasonable hardship for one party.
2. Should individual provisions of the Agreement with the customer or of these Terms of Supply be or become ineffective, the legal effectiveness of the other provisions shall remain unaffected by this fact. The provision that is invalid either in full or in part shall be replaced by a provision that economically comes closest to the invalid provision.

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