

### 1. General terms and conditions

- 1.1 The contract shall be concluded upon receipt of the written confirmation from herzog systems ag, hereinafter referred to as „Supplier“, as to order acceptance (order confirmation).
- 1.2 These conditions of delivery shall be binding should they be deemed applicable within the offer or order confirmation. Any other provisions of the Buyer shall apply in so far as the Supplier accepts them explicitly in writing.

### 2. Delivery and services

Delivery and services rendered by Supplier shall be mentioned at the end of the order confirmation, including any annexes to it as the case may be. Supplier shall authorize any modification with a view to improvement in so far as this does not cause any price increase.

### 3. Plans and technical documents

- 3.1 Specifications in technical documents shall only be binding if explicitly warranted.
- 3.2 Each Party shall reserve all rights as to plans and technical documents disclosed to the other Party. The Party who receives the documents shall acknowledge these rights and shall not make them available, neither fully, nor partially, to third parties or use them beyond the scope they were provided for, without prior written permission from the other Party.

### 4. Prices

- 4.1 All prices shall be net in the agreed national currency, including the percentage Swiss value added tax, as the case may be, ex works, without packaging, without any deductions.
- 4.2 The Supplier shall reserve the right to a price adjustment should it become necessary between date of offer and contractual fulfilment to have any technical adjustments of the product done upon Buyer's request.

### 5. Conditions of payment

- 5.1 Payments shall be done at Supplier's domicile without any deduction as to discount, expenses, tax, duties, fee and customs or similar. Unless otherwise agreed, the term of payment shall be 30 days starting with the date of invoice.
- 5.2 The terms of payment shall also be met should shipping, delivery, operation or acceptance of delivery or service, for reasons which the Supplier can not be held responsible for, be delayed or made impossible, should any unessential parts be missing or should the necessity for subsequent work arise which nevertheless does not render the use of the delivered goods or services impossible.

### 6. Reservation of ownership

The Supplier shall remain owner of its deliveries until it fully receives the payment according to the contract. The Buyer shall authorize the Supplier upon completion of the contract to have the reservation of ownership put in the official Register and to meet all related formalities at the Buyer's expense.

The Buyer shall maintain the delivered products at its own expense for the whole duration of the ownership reservation and insure them against theft, damage, fire, water and other risks. Furthermore, the Buyer shall take all necessary measures to ensure that the Supplier's claim of ownership is neither impaired nor waived.

### 7. Term of delivery

7.1 The term of delivery shall begin as soon as the contract is concluded, all official formalities done, the payments and securities due upon order made and the essential technical aspects cleared. The term of delivery shall be considered met if until its expiration a notice has been sent to the Buyer which informs that the products are ready for dispatching.

7.2 The term of delivery shall extend accordingly:

- a) if the Supplier does not receive the information necessary for the fulfilment of contract in due time or if the Buyer changes this information at a later time causing a delay of the delivery or services;
- b) if hindrances arise which the Supplier is not able to avert in spite of all necessary diligence, regardless if they arise with the Supplier, the Buyer or a third party. Such hindrances are for example epidemics, mobilization, war, riots, considerable stoppages, accidents, labour conflicts, delayed or deficient delivery of necessary raw materials, semi-finished or finished products, unrectifiable reject components, official measures or prohibitions, natural events;
- c) if the Buyer or third parties lag behind with the work which they are supposed to carry out or if they are in default with the fulfilment of their contractual obligations, especially if the Buyer does not meet the conditions for payment.

The Buyer shall have no rights and claims as to delay of delivery or service.

### 8. Packaging

Should the Buyer request any special packaging, it shall be charged for by the Supplier.

### 9. Passing of risk

9.1 Use and risk shall be transferred to the Buyer at the latest upon dispatch of the goods ex works.

9.2 Should the dispatch be delayed at the Buyer's request or for reasons that the Supplier can not be held responsible for, the risk shall pass to the Buyer in the time, originally stipulated for dispatch ex works.

### 10. Check and receipt of deliveries and services

- 10.1 The Supplier shall check the delivery and services as is customary prior to dispatch. Should the Buyer request further checks, they shall be subject to a special agreement and shall be paid by the Buyer.
- 10.2 The Buyer shall check the delivery and services and shall notify in writing the Supplier without delay about any deficiencies. Should the Buyer fail to notify the Supplier, the delivery and services shall be considered accepted.
- 10.3 The Supplier shall be bound to remove any deficiencies notified by the Buyer according to 10.2 as soon as possible whereas the Buyer shall give Supplier the opportunity to do so.
- 10.4 The carrying out of an acceptance check, as well as the determination of the applicable conditions shall be subject to a special agreement.
- 10.5 The Buyer shall have no other rights and claims related to any kind of deficiencies of the delivery or services other than the ones explicitly specified here under point 10 and point 11.

### 11. Warranties and guarantees

- 11.1 The warranty period shall cover 24 months. It shall commence with the date of dispatch ex works. Should the dispatch be delayed for reasons that Supplier can not be held responsible for, the warranty period shall expire 18 months after notification from the carrier.

For replaced or repaired goods the warranty period shall commence anew and cover 6 months from the time of replacement or completion of the repair work.

The warranty shall lapse prematurely should the Buyer or third parties carry out improper alterations or repair work or should the Buyer in case a deficiency becomes obvious not take all necessary measures to minimize the damage and not give the Supplier the opportunity to correct the deficiency.
- 11.2 The Supplier undertakes, at the written request of the Buyer, to repair or replace as soon as possible, all parts of the deliveries, which are demonstrably unusable due to bad material, faulty construction or faulty execution until the expiration of the warranty period. Parts which have been replaced shall become the Supplier's property.
- 11.3 Warranted characteristics are only those that have been designated as such in the specifications and are valid until the expiry of the warranty period.

Should the warranted characteristics not be fulfilled or only partially fulfilled, the Buyer is initially entitled to have them improved without delay by the Supplier. The Buyer shall give the Supplier the necessary time and opportunity to do so. Should the improvement not be satisfactory or only partially satisfactory, the Buyer shall have the right to an adequate reduction of the price. Should the deficiency be so serious that it can not be improved within an adequate period of time and should the delivery or services not be usable or only usable to a considerably reduced extent for the agreed purpose, the Buyer shall have the right to reject acceptance of the deficient part or, if a partial acceptance is not economically appropriate, to withdraw from the contract.

The Supplier shall only be bound to pay back the amounts received for the rejected parts.

- 11.4 Excluded from warranty and guarantee are damages which cannot be proved to have arisen as a consequence of poor material, defective construction or unsatisfactory execution, for example as a consequence of natural wear and tear, defective maintenance, non-compliance with business regulations, excessive stress, inappropriate resources, chemical or electrolytic action, installation and fitting work which was not done by the Supplier, as well as a consequence of other reasons which the Supplier cannot be held responsible for.
- 11.5 The Buyer shall have no other rights and claims related to any kind of deficiencies affecting material, design or execution, as well as to non-compliance with the warranted characteristics other than the ones explicitly specified under points 10.1 to 10.4.

## 12. Exclusion of Supplier's further liability

- 12.1. All instances of breaches of contract and their legal consequences, as well as all claims of the Buyer, irrespective of the legal basis.
- 12.2. All not explicitly stated claims for damages, compensation, reduction in price, contract cancellation or withdrawal from the contract.
- 12.3. Under no circumstances shall the Buyer be entitled to compensation for damages or consequential costs other than for the delivery item itself, such as loss of production, loss of orders, loss of profit, as well as other direct or indirect damage. This exclusion of liability shall not apply to unlawful intent or gross negligence on the part of the Supplier.

In all other respects, this exclusion of liability shall not apply to the extent that it is contrary to mandatory law (*ius cogens*).

## 13. Jurisdiction and applicable law

- 13.1 Place of jurisdiction for the Buyer and the Supplier shall be the Supplier's place of business.
- However, the Supplier shall be entitled to take legal action against the Buyer at the Buyer's place of business.
- 13.2 Legal relations between Supplier and Buyer shall in all respects be governed by Swiss substantive law.