

W+D TERMS & CONDITIONS OF SUPPLY

Effective: 1st November 2023

The contractual relationship between Seller and Buyer (the Party / the Parties) with regard to the supply of equipment and services, if any, hereinafter “the Supply” is subject to the following rules and regulations.

1. Contract

1.1 The Supply is exclusively governed by the following documents:

- (i) Seller’s quotation/offer.
- (ii) these General Terms and Conditions of Supply,
- (iii) Buyer’s order and
- (iv) Seller’s acceptance, including by means of an order confirmation.

These documents form the Contract and supersede all prior written agreements, letters, and understandings between the Parties. In case of discrepancies the provisions of Seller’s quotation /offer and acceptance, including by means of an order confirmation, shall prevail over these General Terms and Conditions of Supply and over the provisions of Buyer’s order and the provisions of these General Terms and Conditions of Supply shall prevail over the provisions of Buyer’s order. Any amendments to the Contract must be in writing and signed by the Parties.

1.2 These General Terms and Conditions of Supply apply to all subsequent contracts between Buyer and Seller even if not expressly referred to.

1.3 Seller’s quotation/ offer shall be valid for 30 days from the date thereof, unless otherwise stated in writing. Seller reserves the right to correct all errors and omissions in any quotation, offer, order, order confirmation or invoice.

1.4 Buyer’s order shall not be regarded as accepted until it has been confirmed in writing by Seller.

1.5 Any information which appears in catalogues, drawings, brochures, price lists, documents containing specifications, particulars of weight, dimensions, or illustrations etc., shall not form or represent a part of the Contract, unless expressly agreed in writing.

1.6 Prior to formation of the Contract, Buyer shall inform Seller of specific statutory, official and/or other requirements which are mandatory for the implementation of the Contract at the place where the Supply is to be used or installed. Buyer shall provide any relevant information in English.

2. Supply

2.1 The scope of the Supply is specified in the Contract.

2.2 In the interest of continuous product improvement, Seller reserves the right to carry out variations to the Supply, provided they do not affect the main features of the Supply, the Price, delivery date other terms of the Contract.

2.3 Seller shall not be obliged to carry out variations to the Supply required by Buyer until the Parties have agreed in writing on how the variations will affect the Price, the delivery date, and other terms of the Contract.

3. Price

3.1 Buyer shall pay the Price for the Supply specified in the Contract.

3.2 Unless otherwise agreed in the Contract, the Price shall be quoted in EUR, FCA Seller’s facility, in conformity with the latest version of INCOTERMS, hereinafter “INCOTERMS”, net of VAT and shall be payable in EUR.

3.3 Buyer shall pay any and all additional charges which are levied out of or in connection with the Supply or the Contract, or Buyer shall reimburse Seller for the same against adequate evidence. These charges include, but not limited to, bank fees, freight charges, insurance premiums, fees for export, transit, import and other permits, fees for certifications, inspections, storage costs, taxes, customs duties, and other similar charges.

3.4 Seller reserves the right to adjust the Price in case of documented price increase for materials and/or wages.

3.5 Any price deviations due to modifications of the scope of the Supply requested by Buyer and accepted by Seller shall be documented by a change order.

4. Payment

4.1 Buyer shall pay the Price in accordance with the terms and the provisions specified in the Contract.

4.2 Unless otherwise agreed the Price and any additional costs shall be paid by Buyer not later than 10 days from invoice date, and to be effected without deduction of any cash discount for payment made prior to or on the due dates.

4.3 Payment shall not be deemed to have been effected until Seller’s account has been fully and irrevocably credited.

4.4 If a payment is not made by Buyer when due within the terms of the Contract, Buyer shall be deemed to be in default and Seller shall be entitled to charge default interest at a rate of eight (8) percentage points per annum above the Main Refinancing Operation Fixed Rate announced by the European Central Bank as of the date of the payment default, but in no event shall the default interest rate be greater than the maximum rate permitted by the applicable law.

4.5 In case Buyer is in payment default or Seller has information that Buyer will be financially unable to make payments of the Price as they become due, Seller shall be entitled:

- (i) to suspend performance under the Contract in whole or in part and / or
- (ii) to revoke the payment terms and provisions specified in the Contract by demanding prepayment (in part or in total) and / or adequate guarantees or securities for payment of the Price.

The above-mentioned entitlements shall apply without prejudice to any and all other rights or remedies available to Seller at law or in equity.

4.6 Buyer shall not be entitled to withhold or to set-off any payment unless expressly acknowledged in writing by Seller.

5. Ready for Shipment

5.1 If agreed in the Contract, the Supply will be tested prior to delivery at Seller's plant on Buyer's test materials, hereinafter "RFS-Test".

The RFS-Test is passed if the Supply meets:

- (i) the specifically agreed test parameters, if any, or
- (ii) if no specific test parameters have been agreed, the general basic functions of the Supply.

Insignificant deficiencies shall have no effect on the successful passage of the RFS-Test. In any case, Seller is entitled to repeat the RFS-Test until the Supply passes the RFS-Test.

5.2 Buyer shall provide all test materials in the necessary quality and quantity, on schedule, free of charge to the location where the RFS-Test will be carried out. In the event that Buyer fails to supply the test materials:

- (i) Seller shall be entitled to purchase sufficient quantities of test materials at Buyer's expense to complete the test, and
- (ii) Seller shall be entitled to postpone the delivery date.

5.3 Seller shall notify Buyer of the date of the RFS-Test not later than 15 days prior to such date, to allow Buyer to attend. In case a repeat RFS-Test has to take place, Seller shall promptly notify Buyer of the relevant date.

5.4 Buyer may attend the RFS-Test at its expense. The RFS-Test will be performed even if Buyer does not attend.

5.5 If Seller confirms after the third repetition of the RFS-Test that the Supply did not pass the RFS-Test due to Seller's fault, Buyer shall be entitled to terminate the Contract and Seller shall retain title and possession of the Supply and reimburse the Price already paid by Buyer without interest in case the Parties cannot reach any further agreement. Any further rights and remedies of Buyer at law or in equity are excluded.

5.6 After the Supply has passed the RFS-Test, Seller shall notify Buyer of its "readiness for shipment" and Buyer must take delivery of the Supply.

6. Delivery

6.1 Unless otherwise agreed in the Contract, the Supply will be delivered FCA Seller's facility (INCOTERMS latest version).

6.2 All delivery dates mentioned in the Contract are approximate dates and subject to Seller's timely self-delivery by its vendors and secure transport routes.

6.3 The delivery date will be met upon Seller's written notice to Buyer of "readiness for shipment". The delivery date may be extended by Seller due to Force Majeure, if Buyer is in default under the Contract or due to other reasonable cause. Partial deliveries are allowed.

6.4 If the Supply is not delivered FCA Seller's facility, Buyer shall inspect the Supply within a reasonable time after delivery. All claims that the Supply does not conform to the terms of the Contract due to damage in transportation and transit must be made to Seller and to the carrier in writing within twenty-one (21) days after inspection. Such written notice shall state the full particulars in support of Buyer's claim. If Buyer fails to give notice within the twenty-one (21) day period, the Supply shall be deemed to conform to the terms of the Contract, and Buyer shall be bound to accept and pay for the Supply in accordance with the terms of the Contract.

7. Authorization

7.1 Seller's obligations under this Contract are subject to export regulations of Seller's country.

7.2 In case the Contract specifies delivery FCA Seller's facility (INCOTERMS), Seller shall have no obligation to obtain any export licenses or other official authorization, hereinafter "Authorization", necessary for the delivery of the Supply.

7.3 If the Parties agree on delivery other than FCA Seller's facility (INCOTERMS), Seller shall obtain any Authorization necessary for the delivery of the Supply, and Seller shall have the right to:

- (i) postpone the delivery date if the Authorization cannot be obtained in due time or
- (ii) terminate the Contract with immediate effect if the required Authorization cannot be obtained.

In case Seller terminates the Contract, Seller shall reimburse the Price already paid by Buyer without interest and retain title and possession of the Supply. Any further rights and remedies of Buyer at law or in equity are excluded.

8. Transfer of Risk

8.1 Risk of loss shall pass in accordance with the agreed INCOTERM.

8.2 If Buyer does not take delivery of the Supply on the agreed delivery date, Seller shall be entitled to store and insure the Supply at Buyer's risk and costs. Buyer shall pay all costs related to Buyer's failure to take delivery promptly upon receipt of invoice from Seller.

9. Title

9.1 Seller warrants that, at the time title to the Supply passes to Buyer, the Supply or parts thereof shall be of good and marketable title, free and clear of all liens, security interests, pledges, charges, deeds of trust, options, or other encumbrances of any kind.

9.2 Title to the Supply shall not pass to Buyer until Buyer has paid the Price and any additional cost in full in accordance with the Contract, hereinafter "Retention of Title". Buyer shall assist Seller to perfect a Retention of Title.

9.3 While the Supply is subject to Retention of Title Buyer shall not relocate, sell, hire, lease, lend, pledge, or otherwise dispose the Supply to third parties. Buyer shall assist Seller in implementing measures to safeguard and assert Seller's Retention of Title. Buyer will notify Seller immediately if any third party obtains or seeks to enforce any rights with respect to the Supply.

9.4 Seller shall be entitled to insure the Supply subject to Retention of Title, unless Buyer can provide evidence that it has insured the Supply to Seller's satisfaction. The cost of any such insurance shall be in addition to the Price and shall be payable by Buyer promptly upon receipt of Seller's invoice.

10. Intellectual Property and Software

10.1 Seller is the owner, or the authorized user of all intellectual property related to the Supply. Buyer is not entitled to any rights in or to Seller's intellectual property such as patents, copyrights, registered or unregistered designs, technology, know-how, trade secrets, trade names, trademarks or logos, owned or used by Seller, except as set forth in Sections 10.2 and 10.3, below.

10.2 Software products or software documentation, hereinafter "Software", attached to and / or contained in the Supply remain the Seller's property or the property of the software author / licensor. The Software may be used by Buyer only to the extent expressly permitted by Seller under this Contract. Buyer shall not modify, reproduce, reverse engineer, license, disclose or otherwise make available the Software to third parties.

10.3 Seller grants to Buyer a non-exclusive and non-transferable right, without the right to sublicense, to use intellectual property related to the Supply in accordance with the Contract for the only purpose of operating and/or maintaining the Supply. The right granted in this Section 10.3 may be transferred by Buyer in the event that the Buyer assigns, sell or transfers the Supply.

10.4 Buyer shall indemnify, defend, and hold harmless Seller from any liabilities, claims and damages related to any asserted or ascertained violation of intellectual property rights (including, without limitation, violation of the provisions governing unfair competition) with respect to the manufacture and/or sales of products made using the Supply.

10.5 Buyer shall notify Seller promptly after receiving any information or notice of any claim, whether formally or informally, that the Supply infringes the intellectual property rights of third parties. In the event a claim is made, or a legal action is commenced against Buyer in relation to an asserted violation of intellectual property rights (including, but not limited to provisions governing unfair competition), in connection with the manufacture, sale and / or use of the Supply, Buyer shall notify Seller immediately in writing. Seller, in its sole discretion, may:

(i) take back the Supply, reimburse the Price already paid by Buyer without interest; or

(ii) at its own expense modify the Supply to eliminate the asserted violation or

(iii) at its own expense provide for the defense of Buyer in the legal action (such defense has to be carried out in strict conformity with Seller's instructions) to keep Buyer harmless from direct costs caused by such legal actions.

The remedies mentioned under (i), (ii), and (iii) shall be Buyer's sole remedies for the above-mentioned claims and legal actions.

10.6 The choice of patterns, engravings and / or other features for the final products made using the Supply shall be the final and binding decision of Buyer. Irrespectively of any assistance given in this respect by Seller, Buyer is solely responsible and liable for any consequence related to that choice.

11. Machine safety

For health and safety reasons, the Supply must be installed and operated in strict conformity with Seller's documentation.

12. Supply-related-Services

12.1 Services related to the Supply e.g. installation, start-up, commissioning, supervision or training, hereinafter "Supply related Services", will be performed by Seller only if expressly provided in the Contract.

12.2 Should Seller agree in writing to provide Supply-related-Services, the Seller's General Terms and Conditions of Service shall apply in addition to the following provisions, unless otherwise agreed.

12.2.1 Buyer will carry out at its sole expense and responsibility, all necessary preliminary works, and will provide all necessary resources, devices and tools required for rendering Supply-related-Services. These must be in perfect working order and in accordance with Seller's instructions. Buyer shall support Seller in arranging for the entry visa and for the work permits for Seller's employees or subcontractors' personnel in due time prior to the start of Supply-related-Services.

12.2.2 In order to ensure the health and safety of Seller's employees and subcontractors' personnel rendering the Supply-related-Services at Buyer's plant, Buyer guarantees to comply with all health and safety regulations valid at the place of installation. If performance of the Supply-related-Services poses a threat to the health and safety of Seller's employees or subcontractors' personnel, Seller shall be entitled to postpone or suspend performance of such services without liability to Seller until working conditions at Buyer's plant are acceptable to Seller. Buyer shall be liable for any damages to Seller's employees, to subcontractors' personnel or to Seller's property caused by its failure to comply with the before mentioned health and safety regulations. Supply-related-Services will be executed during usual local working hours (day shift) for the duration of 8 hours per day. Seller's employees or subcontractors' personnel shall not be required to work more than the maximum number of hours per day and week permitted by Seller's national labor laws or regulations.

13. Warranty

13.1 Seller warrants to Buyer that the Supply will be new and free from defects in design, material and workmanship, hereinafter "Warranty". Seller's Warranty shall be subject to the provisions below.

13.2 Unless otherwise stated in Seller's quotation / offer, the warranty period for the Supply shall be 15 months from the date of Seller's notification of readiness for shipment or 12 months from the start-up of the Supply at the place of installation, whichever comes first and shall not be subject to any suspension or extension for any reason whatsoever. For auxiliary equipment the warranty period shall be 12 months from the date of shipment, for spare parts, the warranty period shall be 6 months from the date of shipment.

13.3 Buyer must notify Seller in writing of any defects of the Supply providing all reasonable details, including contract details. This notice of defect, hereinafter "Complaint", has to be transmitted to Seller immediately after discovery of a defect or after Buyer ought to have discovered it.

13.4 If Seller determines that a Complaint is justified, Seller shall have the option to:

- (i) supply any replacement part(s) free of charge and / or
- (ii) repair the Supply. In case of repair of the Supply, Seller shall bear the cost of its labor and Buyer shall bear the travel and lodging expenses of Seller.

13.5 The Supply that is subject to a Complaint shall not be returned by Buyer to Seller, unless otherwise agreed. Defective parts of the Supply will become Seller's property once they are replaced and are to be returned to the Seller at its request and cost immediately after replacement.

13.6 A Complaint is not justified, and a defect is not subject to Seller's warranty:

- (i) if Buyer fails to transmit a Complaint immediately after discovery of a defect,
- (ii) if Buyer fails to provide its reasonable assistance to enable Seller to rectify a defect,
- (iii) if a defect has been caused by an improper operation or treatment of the Supply, by failure to comply with Seller's operating instructions, operating conditions and / or service and maintenance intervals,
- (iv) if a defect has been caused by natural wear and tear (e.g. consumables) and / or by the use of non-recommended materials or
- (v) if without Seller's consent modifications or repairs are made to the Supply or if a part of the Supply is substituted with a part that is not provided or recommended by Seller.

13.7 Defects in material and workmanship are not subject to Warranty in case Seller has offered Supply-related-Services (as per section 12) and Buyer has not ordered at least supervision of installation from Seller.

13.8 If repeated attempts to rectify a defect fail or if it is impossible or economically unviable to rectify a defect, Buyer will have the right, in case an agreement on a reasonable price reduction cannot be reached and the defect amounts to a material breach of contract, to withdraw from the Contract and Seller will reimburse the Price already paid without interest in exchange for transfer to, or retention by, Seller of ownership and possession of the Supply.

13.9 If Seller fails to take any action to rectify a defect within a reasonable time, and after a final time limit agreed by the Parties has expired, Buyer shall be entitled to rectify the defect with due care and competence at Seller's expense. Seller shall reimburse Buyer for all reasonable, documented direct costs arising out of such rectification of defects.

13.10 The Warranty set forth herein is exclusive and in lieu of all other warranties express or implied by law, including without limitation, any implied warranties of merchantability or fitness for a particular purpose, and the remedies mentioned in section 13.4, 13.8 and 13.9 will be Buyer's sole and exclusive remedies in case of defects of the Supply.

14. LIMITATION AND EXCLUSION OF LIABILITY

14.1 SELLER'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT OR ANY BREACH THEREOF, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), INDEMNITY OR OTHERWISE, SHALL NOT EXCEED 10% OF THE PRICE IN TOTAL.

14.2 IN NO CASE, SHALL THE BUYER BE ENTITLED TO CLAIM FOR DAMAGES WHICH DO NOT OCCUR IN THE SUPPLY ITSELF, SUCH AS BUT NOT BE LIMITED TO FOR LOSS OF PRODUCTION, LOSS OF USE, LOSS OF ORDERS, RECALL COSTS, LOSS OF PROFIT AND OTHER DIRECT OR INDIRECT OR CONSEQUENTIAL DAMAGE. LIABILITY IS ALSO EXCLUDED FOR COMPENSATION CLAIMS FROM THIRD PARTIES AGAINST THE CUSTOMER FOR INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS.

14.3 IN NO EVENT WILL SELLER BE LIABLE:

(I) FOR DAMAGES DUE TO BUYER'S FAILURE TO INFORM SELLER OF ANY AND ALL STATUTORY OFFICIAL OR OTHER REQUIREMENTS MANDATORY FOR THE OPERATION OF THE SUPPLY AT THE PLACE OF INSTALLATION.

(II) FOR DAMAGES DUE TO BUYER'S FAILURE TO COMPLY WITH SELLER'S WRITTEN INSTRUCTIONS, REGULATIONS AND GUIDELINES FOR THE OPERATION OF THE SUPPLY.

(III) FOR THE SUITABILITY OF THE PREMISES, BUILDINGS OR FACILITIES FOR THE OPERATION OF THE SUPPLY; (IV) FOR ANY ADVICE OR CONSULTANCY PROVIDED BY SELLER TO BUYER WITHOUT A SPECIFIC, SEPARATELY AGREED CONSIDERATION; SUCH ADVICE AND CONSULTANCY WILL BE OF A COURTESY NATURE ONLY; OR

(V) FOR BUYER'S NEGLIGENCE.

14.4 SELLER'S LIMITATION AND EXCLUSION OF LIABILITY SHALL NOT APPLY IN CASE OF SELLER'S WILLFUL MISCONDUCT AND GROSS NEGLIGENCE AND TO THE EXTENT SELLER'S LIABILITY IS MANDATORY UNDER APPLICABLE LAW.

15. Force Majeure

15.1 Seller shall not be liable for damages, nor shall Seller be deemed to be in default, by any reasons due to Force Majeure. Force Majeure is defined as any circumstance beyond the Seller's control that temporarily or permanently prevents fulfilment of the Contract, such as but not limited to war (declared or not declared) or war risk, riots, whole or partial mobilization, terrorist or political acts of force, strike, lockout, confiscation, seizure, embargo, express travel warnings of the competent authorities, import and/or export restrictions, restrictions in the energy supply, natural disasters, fire, earthquake, contagious diseases/epidemics, acts of God, and / or delay of supply of equipment, and / or services by sub-contractors due to such circumstances.

15.2 If Seller wishes to invoke Force Majeure, Seller shall inform Buyer of the start and end of such circumstances. Any delay due to Force Majeure shall extend the time of performance under the Contract for a period of time not to exceed the length of the delay due to Force Majeure. In the event an occurrence of Force Majeure lasts for more than 180 days, Seller shall have the right to terminate the Contract without further liability.

16. Termination

16.1 Without prejudice to any and all other rights or remedies of Seller, Seller shall be entitled to terminate the Contract upon the occurrence of any of the following events:

(i) Buyer's failure to pay any sums when due to Seller under the Contract.

(ii) Buyer's failure to provide any guarantee or security requested by Seller subject to section 4.5;

(iii) Buyer's failure to provide its reasonable assistance to enable Seller to perform its contractual obligations.

(iv) Buyer's failure to perform its contractual obligations; or

(v) in the event Buyer is insolvent or the subject of a bankruptcy, insolvency or other similar proceedings unless prohibited by applicable law.

16.2 In the event of termination, without prejudice to any and all other rights or remedies of Seller, Seller shall be entitled to:

(i) the immediate return of the Supply at Buyer's expense,

(ii) a penalty of 10% of the Price to be paid by Buyer immediately after Seller's notification,

(iii) any damages suffered by Seller as a result of such termination, and

(iv) the right to sell the Supply publicly or privately for Buyer's account and apply the net proceeds of such sale, after deducting expenses therefore, against the Price provided that Buyer shall remain liable for any deficiency following such sale.

Seller shall also have the right to set off the penalty and any damages against any payment already received without reducing the amounts due from Buyer hereunder.

16.3 Buyer shall not be entitled to terminate the Contract for convenience.

17. Confidentiality

17.1 Buyer shall treat all proprietary, non-public information regarding Seller, Seller's business and the Supply, including without limitation, business information, drawings, designs, technology, know-how, pricing and specifications submitted by Seller, hereinafter "Information", as confidential and shall not disclose them to any third party without Seller's prior written consent or use them for any purpose except where authorized to do so by Seller. This confidentiality obligation does not apply to information which Buyer can prove:

- (i) is at the date of disclosure or becomes at any time after that date publicly known other than by Buyer's breach of this confidentiality obligation.
- (ii) has been known by Buyer before disclosure or
- (iii) is or becomes available to Buyer from a source other than from Seller without violation of any non-disclosure obligations.

17.2 Upon Seller's request and in any case upon termination of the Contract, Buyer shall return to Seller all Information submitted by Seller as confidential or otherwise covered by any of Seller's intellectual property rights.

18. Remedies

Buyer's remedies specified in the Contract are exclusive and no other remedies either at law or in equity shall be available to Buyer.

19. Miscellaneous

19.1 Buyer may not assign any of its rights, interests or obligations under the Contract without the prior written consent of Seller and any attempt to assign the Contract without such consent shall be void and of no effect.

19.2 Any notice under the Contract must be in writing and may be delivered personally or by recorded receipt. Notices shall be delivered or sent to the Parties usual place of business.

19.3 Seller's rights under the Contract shall not be prejudiced, waived or affected by any extra time, forbearance or indulgence extended by Seller to Buyer.

19.4 If any provision of the Contract is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions which shall remain in full force and effect. If any provision of the Contract is found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

19.5 The Contract is binding on the Parties, their successor and permitted assigns.

19.6 The Supply may be subject to export control regulations of the European Union, the United States of America, the United Kingdom and other countries ("Export Laws"). The Buyer shall comply with such Export Laws and obtain any licence or permit required to transfer, export, re-export or import the Supply. The Buyer must not, directly or indirectly, sell, permit to be sold, dispose of, export, re-export or otherwise provide the Supply to any country or entity under sanction or embargo administered by the European Union, the United States of America, the United Kingdom or other country.

20. Applicable Law and Arbitration

20.1 The Contract will be subject to Swiss law without regard to its conflict of laws principles. Further, the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Contract.

20.2 All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or three arbitrators appointed in accordance with the said Rules.

20.3 The place of the arbitration shall be Zurich; Switzerland and the arbitration proceedings shall be conducted in English. The decision of the arbitrators shall be binding and conclusive upon the parties.