General conditions of contract for the supply of plant and machinery

1. General

1.1 The contract shall be deemed to have been entered into upon receipt of supplier's written acknowledgement stating its acceptance of the order.

Tenders who do not stipulate an acceptance period shall not be binding.

1.2 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by the supplier in writing.

1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.

1.4 Should a provision of these general conditions of supply prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

2. Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. The supplier shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

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 technical documents provided to the other. 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 and safety devices

4.1 The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.

4.2 Unless otherwise agreed upon, the supplies and services shall comply with those standards and regulations at the place of business of the customer about which the supplier has been informed under Clause 4.1. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

5. Prices

5.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deduction 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 the supplier against adequate evidence in case the supplier is liable for them.

5.2 The supplier reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made according to the attached price adjustment clause.

In addition, an appropriate price adjustment shall apply in case:

- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or

- the nature or the scope of the agreed supplies or services has changed, or

- the material or the execution has undergone changes because 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 by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed upon, the price shall be paid in the following instalments:

- One third as advance payment within one month after receipt of the order acknowledgement by the customer,

- one third on expiry of two thirds of the agreed delivery time,

- the reminder within one month after supplier's advice that the supplies are ready for dispatch.

Payment shall be deemed to be effected as far as Swiss francs have been made freely available to the supplier at supplier's domicile. In case payment by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges.

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

6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, the supplier 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 the supplier is 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, the supplier, 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 will have been agreed and until the supplier will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case the supplier does not receive adequate securities, the supplier shall be entitled to terminate the contract and to claim damages.

6.4 If the customer delays in the agreed terms of payment, it 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 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

7. Reservation of title

JAEGGI Hybridtechnology Ltd. reserves full title in and property to all goods until such time as the client has fully paid all and any amount owed to JAEGGI Hybridtechnology Ltd. as a result of or in relation to the respective order.

The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular upon entering into the contract it authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

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, and any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.

8.2 Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligations.

8.3 The delivery time is reasonably extended: a) if the information required by the supplier 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 the supplier cannot prevent despite using the required care, regardless of whether they affect the supplier 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 materials, semi finished or finished products, the need to scrap important work pieces, official 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 it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

8.4 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 the supplier and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate-date the customer, the latter is not entitled to any damages for delay.

Damages for delayed delivery shall not exceed ½ per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price 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 the supplier a reasonable extension of time in writing. If such extension is not observed for reasons within supplier's control, the customer shall have the right to reject the delayed part of the supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

8.5 In case a specific date instead of a delivery period is fixed, such date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.

8.6 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 the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

9. Packing

Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as supplier's property, it 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 reasons beyond supplier's control, the risk of the supplies 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 The supplier 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 The customer shall be responsible for taking insurance against risks of any kind.

12. Inspection and taking-over of the supplies and services

12.1 As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

12.2 The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.

12.3 Having been notified of deficiencies according to Clause 12.2, the supplier shall as soon as possible remedy them, and the customer shall give the supplier the possibility of doing so. After remedy of such deficiencies, a taking-over test according to Clause 12.4 will be carried out at the request of the customer or of the supplier.

12.4 Subject to Clause 12.3 the carrying out of a taking-over test as well as laying down the conditions related thereto needs a special agreement. In the absence of such agreement the following shall apply:

- The supplier shall advise the customer in time of the execution of the taking-over test so that the customer or its representative can attend.

- A taking-over report shall be prepared which shall be signed by both the customer and the supplier or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused the acceptance. In the last two cases, the deficiencies shall be listed individually in the report.

- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse the acceptance of the supplies or services and the signature of the taking-over report. The supplier shall remedy such deficiencies without delay.

- In case of important deviations from the contract or of serious deficiencies the customer shall give the supplier the possibility of remedying these within a reasonable time. Thereafter a further taking-over test shall take place.

If during this test important deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensations from the supplier, provided this has been agreed before. If, however, the deviations and deficiencies appearing during such test 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 such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable to reimburse the sums which have been paid to it for the parts affected by the termination.

12.5 Taking-over shall also be deemed completed:

- if the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;

- if the customer refuses the acceptance without being entitled to do so;

- if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;

- as soon as the customer uses the supplies or services.

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 Clauses 12.4 and 13 (guarantee, liability for defects).

13. Guarantee, liability for defects

13.1 *Guarantee period*

The guarantee period is 12 months, or 6 months in case of a multi-shift system. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking-over have been agreed upon be-

fore, or, if the supplier undertakes the erection, upon completion thereof. If dispatch or taking-over or erection is delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 6 months after replacement or completion of the repair or taking-over, but not longer than the expiry of a period being double to the guarantee period stipulated in the preceding paragraph.

The guarantee expires 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 the supplier the possibility of remedying such defect.

13.2 *Liability for defects in material, design and workmanship*

Upon written request of the customer, the supplier undertakes at its 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 the supplier's property if he does not renounce explicitly. The supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in supplier's works, the customer shall bear the related costs to the extent exceeding the customary costs of transport, personnel, travelling, living, dismantling and reassembly of the defective parts.

13.3 *Liability for express warranties*

Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking-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 the supplier to carry out the improvements immediately. The customer shall give the supplier 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 or, if partial acceptance is economically not justified for it, to terminate the contract. In such case the supplier can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.

13.4 *Exclusions from the liability for defects*

Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those 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 the supplier, or resulting from other reasons beyond supplier's control.

13.5 *Supplies and services of subcontractors*

For supplies and services of subcontractors requested by the customer, the supplier assumes guarantee and liability for defects only to the extent of such subcontractors' guarantee and liability obligations.

13.6 *Exclusivity of guarantee claims*

With respect to any defective material, design or workmanship as well as to any failure to fulfill express warranties, 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 *Liability for additional obligations*

The supplier 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. Non-performance, bad performance and their consequence

14.1 In all cases of bad performance or non-performance not expressly covered by these general conditions of supply - in particular if the supplier, without valid reasons, starts execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if an execution contrary to the terms of the contract can be clearly foreseen due to supplier's fault, or if the supplies and services have been executed contrary to the terms of the contract due to supplier's fault -, then the customer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby by simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to supplier's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

14.2 In such case Clause 16 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.

15. Termination of the contract by the supplier

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the supplier, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, the supplier shall be entitled to terminate the contract or the parts affected thereby.

If the supplier wishes to terminate the contract it shall – after having recognised the consequences of the event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract the supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

16. Exclusion of further liability on the supplier's part

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, reductions of price, termination of 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 the supplier, but does apply to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

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

17. Right of recourse of the supplier

If, through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the supplier, then the latter shall be entitled to take recourse against the customer.

18. Erection

If the supplier undertakes the erection or the supervision of the erection, the General Conditions of Erection of the Swiss Association of Machinery Manufacturers (VSM) shall apply.

19. Jurisdiction and applicable law

19.1 **The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier.** The supplier shall, however, be entitled to sue the customer at the latter's registered address.

19.2 The contract shall be governed by Swiss substantive law.

Price Adjustment Formula

Issued by the Swiss Association of Machinery Manufacturers (VSM)

$$P = P_0 \left(a + b \frac{Lm}{Lo} + c \frac{Mm}{Mo} \right)$$

P	= _____	Selling price on date of delivery
P_0	= _____	Selling price by tender
a	= _____	Coefficient of fixed part of costs (e.g. = 0,1)[1]
b	= _____	Coefficient of part varying with wage index (e.g. = 0,6)[1]
c	= _____	Coefficient of part varying with material index (e.g. = 0,3)[1]
Lo	= _____	Wage index[2] of the Association of Swiss Engineering Employers, Zurich, on date of tender
Lm	= _____	Average of all wage indices[2] - from date of order acknowledgement to completion in accordance with contract * or - during period of manufacture, i.e. from _____ to _____*
Mo	= _____	Mean of price indices[3] of principal material in category «metals and metal products» required for manufacture, related to their proportion of value of goods on date of tender
Mm	= _____	Average of mean values of all price indices[3] of principal materials in category «metals and metal products» required for manufacture, related to their proportion of value of goods at time of delivery - from date of order acknowledgement to completion in accordance with contract * or - from date of order acknowledgement to date by which supplier had obtained most of these materials, i.e. from _____ to _____*

[1] a + b + c must always total 1.

[2] Since the wage index is only worked out by the Employers' Association quarterly, the index for the past quarter shall be inserted in each case.

[3] Fractions of the official producer price index calculated and published monthly. (If the year serving as a basis for determination of the index is changed by the authority concerned, the supplier is entitled to re-calculate the changes in prices in accordance with the new index values.)

* Delete where inapplicable