

# HCH. KÜNDIG & CIE AG, CH-8630 RÜTI ZH, Switzerland

## General Terms and Conditions of Sale and Delivery

### 1. General

- 1.1 This contract is together with the written confirmation from HCH. KÜNDIG & CIE. AG (from now on referred to as "Provider"), that they accept the order accept (Order Confirmation), enclosed. Quotations that do not contain any terms of acceptance are non-binding.
- 1.2 These General Terms and Conditions of Sale and Delivery are binding, when they are stated as applicable in the Order Confirmation. Other contrary conditions of the Buyer have only validity as far as they are explicit and accepted in writing from the Provider.
- 1.3 All the agreements and explanations of the parties of the contract require confirmation of their validity in a written way. Explanations in text way, which are sent or kept over electronic means, are put on a par with the written way, when this is specially agreed from both parties.
- 1.4 In case there would be any differences between the German and any other version in any other language of this General Terms and Conditions of Sale and Delivery, the original German text prevails.
- 1.5 If any one more of the items are non-binding under prevailing law, then the remaining items remain in full force.

### 2. Scope of supply

- 2.1 The deliveries and activities of the Provider are mentioned in the Order Confirmation including any eventual attachments. The Provider is authorized, to carry out changes to provide improvements as long as they do not cause any increase in the prices. Constructive changes to the Provider delivered goods through the Buyer are only allowed with the written confirmation of the Provider.

- 2.1 The scope of delivery **does not include** the following items in particular:

a) Adjustments to peripheral equipment and succeeding machines

The adjustment of all bubble-guiding components which have to be updated if there is an automatic change of format. In particular, these include film guiding devices in the form of rollers, roller cages, polygon lath guide ways, lateral fold insertion devices and layflat guide ways. Adjustment of associated successor machines due to the change in take-off speed, in order to regulate the average film thickness; particularly winders which are usually controlled in relation to the web tension or are controlled electronically, with the take-off.

b) Energy and operating equipment

All energy supply lines, and the safety devices (fittings, filters, valves etc.) used for the inward and outward supply of electrical energy and compressed air from the Buyer's central supply to the main connections of the instruments or equipment supplied by Provider.

c) Fixtures and changes to machinery and buildings

All fixtures to secure the instruments and/or equipment supplied by Provider, unless they are specially listed in the system specification. Structural changes to the machine, so that the instruments and/or equipment supplied by Provider can be built on, and the consequent adjustments and adaptations to platforms, steps, ladders, railings, covers, lines, etc.

All cable ducts and changes to the machine and the building in order to lay cables.

All installations for air conditioning, ventilation and air extraction on switch cabinets, and lighting, unless they are specially listed in the system specification.

d) Assembly and commissioning

All assembly costs for the instruments and equipment supplied by Provider, unless specified otherwise.

All assembly tools, workshop appliances, welding equipment and auxiliary equipment, such as lifting appliances, ropes and other transportation and storage equipment. Storage, conservation to protect against climatic and mechanical effects, and insurance against theft and destruction of the instruments and equipment supplied by Provider, unless specified otherwise.

All process engineering commissioning costs at the set-up location, and the provision of raw materials for commissioning and for the acceptance test run, unless specified otherwise.

e) Integration into existing PC systems and networks

The installation of the software supplied by Provider on a Buyer-supplied PC System, unless specified otherwise.

The installation of the software supplied by Provider on a file server, the associated configurations on the file server, the network cabling and the driver installation on PC systems connected to the network, unless specified otherwise.

### 3. Schemes and technical documents

- 3.1 Catalogues and literature are non-binding, unless otherwise agreed. Specifications in technical documentation are only binding, as long as they are explicitly warranted.
- 3.2 Every contracting party keeps all rights and schemes and technical documentation that have been received from the other party. The receiving contracting party recognizes these rights and will not give partial or total access to them to a third party without written consent from the other contracting party or use them in other duties different than from the originally approved.

### 4. Regulations in the country of arrival and safety devices

- 4.1 The Buyer has already made aware the Provider, when requesting the quotation, of the specific country norms and regulations, the implementation of the delivery and activities, as well as refer to disease and prevention of accidents. The originated costs will be invoiced to the Buyer.
- 4.2 Additional or other safety devices will be in this respect delivered as expressly agreed.

### 5. Prices

All prices are quoted – except as otherwise agreed – net, Ex-Works of the Provider (EXW Incoterms 2000), without any other commission, payable within 30 days after the invoice date. The packing is, in case it is not specifically advised, in the price included. All additional costs as for example freight, insurance, export, transit, import and any other authorizations are task of the Buyer. In the same way the Buyer has to bear all taxes, contributions, duties and similar expenses that may arise in connection with the performance of the contract, unless according to the contract, said documented, paid out, expenses are to be reimbursed by the Provider to the Buyer.

### 6. Payment conditions

- 6.1 Except as otherwise agreed, the following are the valid payment conditions: 1/3 with the issue of the order, 1/3 before delivery and 1/3 in 30 days from the date of the invoice. The payments are without discount from expenses, taxes, charges, duties, custom duties and suchlike expenses that may arise.
- 6.2 The payment dates are to be kept, even when transport, delivery, mounting, commissioning or acceptance of the delivery or services of reasons, where the Provider does not have any influence, delays or when essential parts are missing or proved to be necessarily reworked, that do not make impossible the use of the delivery. Restraint or reduction of the payment due to any defect, pending guarantee of work, allowance of claims or from any counterclaim of the Buyer not recognized from the Provider are not admissible.
- 6.3 If the Buyer does not keep the agreed payment dates on time, he will receive without warning from the time of the agreed due-date an interest to be due, that are decided according to the terms of the legal residence of the Provider, and which it usually represents at least a 6% of the amount. The compensation for further damages are reserved.

## 7. Reservation of ownership

All objects delivered by us will continue to be our property until they are fully paid.

The Buyer is compelled, to cooperate and to make the necessary arrangements that lead to the protection of the property of the Provider. In particular with the closure of the contract he authorizes the Provider, at cost of Buyer the inscription or reservation of the reservation of proprietary rights in public registers, books or the same character of the relevant laws of the country and to carry out all concerning formalities. The Buyer will maintain the delivered objects at his cost meanwhile of the duration of the reservation of proprietary rights for the benefit of the Provider, assured against theft, violation, fire, water and other risks. He will take all the necessary measures, that they property claim of the Provider neither will be affected nor removed.

## 8. Delivery deadline

8.1 The delivery deadline shall begin as soon as the amount is agreed to, all official formalities such as import and payment approvals have been requested, which bring about any payments to be made on order, as well as any securities, and as soon as important technical points have been solved. It shall be considered to have been kept, if on its expiry the delivery has been completed in the works.

8.2 The compliance of the delivery date sets the compliance of the contractual obligations through the Buyer.

8.3 The delivery deadline shall be proportionately extended:

a) if all the plans, data and necessary materials to be supplied to us by the Buyer are not delivered on time, and if the Buyer changes the design or scope of his order;

b) when obstacles appear, that the Provider despite application of the requested care cannot avoid, regardless if they are caused because of the Provider, the Buyer or a third person. Such obstacles could be for example epidemic, mobilization, war, riots, considerable breakdowns, accidents, work conflicts, delayed or defective supply of the necessary raw materials, pre manufactured or manufactured equipment, proved rejection from important components, official measures or failures, natural phenomenon.

c) if the Buyer falls behind in works to be completed by him in compliance with the contract or is delayed in fulfilling his contractual obligations, in particular if he does not respect payment conditions.

8.4 A late delivery shall neither entitle the Buyer to withdraw from the contract nor to claim compensation for direct or indirect damages due to the delay.

8.5 A penalty for late delivery shall require a special written agreement. It can only be made applicable, in so far as it can be proven that the delay is due to the fault of the Provider and that the Buyer has suffered damages. If the Buyer is supplied with a functionally equivalent substitute delivery, the right to a penalty shall not apply.

## 9. Packing

The Buyer has to inform the Provider already before the quotation about the specific country regulations regarding the packing instructions. The originated additional costs will be invoiced to the Buyer. The packing will not be returned to the Provider.

## 10. Transfer of use and risks

10.1 Use and danger passed over latest with the sending of the consignment Ex-Works from the Provider to the Buyer.

10.2 In case that the consignment is delayed for wish of the Buyer or for any other reason where the Provider is not responsible, the danger is transferred to the Buyer at the original planned point in time of the original Ex-Works delivery time. From this point in time all the consignments will be stored and assured on account and danger of the Buyer.

## 11. Shipment, transport and insurance

11.1 Without any indication of the contrary the shipment is done Ex-Works of the Provider

11.2 Claims in relation with the shipment or transport should be made by the Buyer immediately after receiving the consignment or freight documents from the last forwarding agent.

## 12. Acceptance and commissioning

12.1 Acceptance certificate take only place when it has been expressly agreed to in writing by both parties and will be invoiced to the Buyer.

12.2 If the goods are not sold expressively "including commissioning", so the Provider will provide the Buyer with the industry standard wages for the necessary working hours of his personal as well as the effective charges and fees for travel and maintenance in the invoice. The Buyer takes care in due time, that all preparations (mounting brackets, supports, connections etc.) have been met.

## 13. Guarantee, liability for compensatory damages

13.1 Period of Warranty (Guarantee period)

The period of warranty for new equipment is of 12 months. It begins with the departure of the consignment Ex-Works or with the eventually agreed departure of the consignment and services or, as far as the Provider also the commissioning has assumed, with its completion. In case that the shipment, reception or commissioning are **delayed due to reasons beyond the Provider's control**, the period of warranty is finished the latest 18 months after the communication of the readiness for shipment.

For replaced or repaired parts from new equipment in guaranty, the guarantee period begins to count again and lasts for 6 months after the replacement, completion of the reparation or from reception, at the most until expiration of a limit that constitute the double of the previously guarantee period.

The guarantee expires before, when the Buyer carries out the third improper modification or reparation or when the Buyer, in case a defect appears, does not take immediately all appropriated measures to mitigate the damages and does not give the Provider the opportunity to correct the defect.

Spare parts like for example contact thickness measuring devices, current collectors, track rollers etc. are not subject to guarantee.

For spare parts or reparations for equipment outside the guarantee period, a period of warranty of 3 months is given from the date of the return of the goods, unless otherwise agreed.

A precondition of our guarantee period is the fulfillment from the Buyer of all obligatory contract and payment obligations.

13.2 Liability for defects in material, construction and execution

The Provider is committed, under written request of the Buyer and until the end of the period of warranty, to choose to improve or replace all parts of the consignment of the Provider that verifiably due to bad materials, defective construction or inadequate construction become defective or inoperative. Replaced parts will be property of the Provider. The Provider will bear at his factory the expenses of the rectification. All other costs, especially for freight, customs, packing, assembly and disassembling costs as well as travel and accommodation costs for personnel of the Provider go at the expense of the Buyer.

13.3 Liability for warranted characteristics

Warranted characteristics are only those, that are specifically described in the order confirmation or in the specifications. The confirmation is valid no more than until the end of the warranty period.

13.4 Exclusions of the liability for defects

From the guarantee and liability of the Provider that are excluded are damages, that are not verifiable to be originated due to bad materials, defective construction or inadequate construction, for example, due to natural wear and tear, defective maintenance, disregarding of operating instructions, over demanding operation, inappropriate equipment, chemical or electrolytic influences, commissioning or executed construction works not made by the Provider, as well as due to other reasons **beyond the Provider's control**.

13.5 Supplies and services from sub-suppliers

For deliveries from other manufacturers we assume the same guarantees that the sub-suppliers assume with us.

13.6 Exclusivity of the guarantee claims

Due to defects in the materials, construction or execution as well as due to failure of warranted characteristics the Buyer does not have any rights or claims except what is expressly described under points 13.1 until 13.5.

13.7 Liability for secondary obligations

For claims of the Buyer due to inadequate advice and suchlike or due to violation of any secondary obligation of the Provider only by illegal contract intention or gross negligence.

**14. Exclusion of further liabilities of the Provider**

All cases of violation of the contract and their legal consequences and effects as well as all claims of the Buyer, regardless of which legal grounds they are placed, are in these conditions conclusively arranged. In particular are excluded all not expressly mentioned claims of compensation for damages, deterioration, annulment of the contract or withdrawal from the contract. At any case exist claims of the Buyer for reimbursement for damages, that are not originated from the article of sale itself, in particular like defective production, loss of production, loss of effectivity, loss of orders, loss of profit as well as any other measurable or proximate damages. This exclusion of liabilities is not valid for unlawful act intention or gross negligence of the Provider, however is valid for unlawful act intention or gross negligence from auxiliary persons.

For the rest this exclusion of liabilities is not valid, as long as is not contrary to mandatory rules.

**15. Right of recourse of the Provider**

If through negotiations or omissions of the Buyer or his auxiliary persons get injured or property of third parties damaged and for this reason there will be taken a claim on the Provider, the Buyer is entitled to the right of recourse.

**16. Applicable law, place of jurisdiction**

16.1 Place of jurisdiction for both contracting parties is **CH-8630 Rüti ZH** (Switzerland). The Provider is therefore entitled to prosecute the Buyer at this place.

16.2 The legal position is subordinated to Swiss Law under exclusion of the April 11th UN Convention on Contracts for the International Sale of Goods (Wiener Kaufrecht).