

General Terms and Conditions of Sale and Delivery

1. General

- 1.1 These General Terms and Conditions of Sale and Delivery ("General Terms") attach to and are incorporated into that certain sales order for the Products by and between PROVIDER and BUYER (the "Contract"). The Contract shall become effective upon written confirmation from PROVIDER that PROVIDER accepts the order for the Products and any corresponding System Specification as specified in the Contract ("Order Confirmation"). Quotations that do not contain any terms of acceptance are non-binding.
- 1.2 These General Terms are binding when the Order Confirmation is issued by PROVIDER. Other contrary conditions are valid insofar as such conditions are explicit and accepted in writing by PROVIDER.
- 1.3 Subsequent to the effective date of the Contract, the parties may document agreements by electronic communications, so long as such electronic communications contain a specific, unequivocal and non-ambiguous confirmation by each party to be bound by such agreement.
- 1.4 In the event that any of the terms of the Contract shall be held by any court of competent jurisdiction or another competent authority to be in conflict with any rule of law or statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from the Contract, but such invalidity or unenforceability shall not invalidate any of the other terms of the Contract and this Contract shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of the Contract.

2. Scope of supply

- 2.1 The deliveries of Products and activities of PROVIDER are referenced in the Order Confirmation including any corresponding attachments. PROVIDER is authorized to make improvements to Products so long as such improvements do not result in an increase in price. BUYER shall only be permitted to make changes to the order confirmed in an Order Confirmation upon written approval of PROVIDER.

- 2.2 The scope of delivery **does not include** the following specific items:

a) Adjustments to peripheral equipment and successor machines (i.e. machines produced by third parties that are installed by third parties and that may be dependent on the function of the Products).

- Adjustment of all bubble-guiding components which require electronic speed coordination in the event of an automatic change of line speed, specifically, but not limited to film guiding devices such as rollers, roller cages, collapsing frames, gusset boards, secondary nip rollers, and web guide devices.
- Adjustment of associated successor machines due to the change in take-off speed, in order to regulate the average film thickness; particularly winders which may be controlled in relation to the web tension or are controlled electronically, with the take-off.

b) Power and energy lines, devices, and equipment

Power and energy supply lines, and the safety devices (fittings, filters, valves etc.) used for the inward and outward supply of electrical power and energy and compressed air from the BUYER's central supply to the main connections of the Products.

c) Fixtures and changes to machinery and buildings

- Unless specifically listed in the System Specification, fixtures necessary to secure the Product.
- Structural changes to the machine, to accommodate the Product, and the resulting adjustments and adaptations to platforms, steps, ladders, railings, covers, lines, etc.
- Cable ducts and changes to the machine and the building made to accommodate cables.
- Installations and accommodations related to air conditioning, ventilation and air extraction, including but not limited to modifications to breaker boxes, switch cabinets, and lighting, unless such changes are specially listed in the System Specification.

d) Assembly and commissioning

- All assembly costs for the Product, unless specified otherwise in the System Specification
- All assembly tools, workshop appliances, welding equipment and auxiliary equipment, such as lifting appliances, ropes and other transportation and storage equipment.
- Storage, protective measures related to climatic and mechanical effects, and insurance against theft and destruction of the Product, unless specifically provided for in the System Specification.
- Process, engineering, and other commissioning costs at the set-up location, and the provision of raw materials for commissioning and for the acceptance test run, unless specifically provided for in the System Specification.

e) Integration into existing computer systems and networks

- The installation of the software supplied by PROVIDER on a BUYER-supplied computer system, unless specifically provided for in the System Specification.
- The installation on a file server of any software supplied by PROVIDER, the associated configurations to the file server, network cabling and driver installation on computer systems connected to the network, unless specifically provided for in the System Specification.

3. Plans and technical documents

- 3.1 Any terms contained in catalogues, technical documentation and literature regarding the Product are not enforceable by BUYER against the PROVIDER unless such terms are expressly set forth herein.
- 3.2 Each party keeps all rights to plans and technical documentation provided to the other party. The receiving contracting party recognizes these rights and will not give partial or total access to such plans and technical documentation to any third party without express written consent from the other contracting party or use them in any manner different than from that which is intended in the Contract.

4. Regulations in the country of arrival and safety devices

The BUYER shall advise PROVIDER, when requesting a quotation, of any specific country customs, laws, regulations, and/or restrictions, including, but not limited to those related to installation and delivery activities, as well as any location specific requirements related to safety, the prevention of adverse health effects, disease, and accidents. Any costs associated with accommodating specific country customs, laws, regulations, and/or restrictions will be invoiced to the BUYER. Additional or other safety devices will be delivered as expressly agreed between the parties.

5. Prices

All prices are quoted, except as otherwise agreed, net, Ex-Works of the PROVIDER (EXW Incoterms 2010), without applicable commissions. **BUYER is advised to see <http://theodmgroupp.com/2010/12/17/incoterms-2011-who-is-now-responsible-for-costs/> for details on EXW payment responsibilities.** Unless otherwise agreed by the parties, the packing is included in the price. Any and all additional costs as, for example, freight, insurance, export, transit, import and any other charges are shall be paid by the BUYER. Additionally, the BUYER shall bear the costs of all taxes, contributions, duties and similar expenses that may arise in connection with the performance of the Contract, unless according to the Order Confirmation, said documented and incurred expenses are to be reimbursed by PROVIDER to BUYER. All costs associated with shipping the Products from Ex-Works delivery point as described in the Contract shall be borne by BUYER. PROVIDER shall have no further responsibility for the Products, and all risk of damage to or loss or delay of the Products shall pass to BUYER upon their delivery at the Ex-Works delivery point. BUYER shall insure each shipment of Products with a reputable insurer for the full invoice of such shipment and such insurance shall name PROVIDER as the loss payee. Such insurance shall provide for full coverage from the time the Products are delivered at the Ex-works point until BUYER shall have paid PROVIDER for the Products in full. BUYER will take all other necessary precautions to ensure that PROVIDER's property interest in the Products will not be affected nor removed.

6. Payment conditions

- 6.1 Except as otherwise agreed, the following are the valid payment conditions: 1/3 with the issue of the order for the Products, 1/3 before delivery of the Products and 1/3 within 30 days from the date of the final invoice for the Products. The payments shall not be discounted for expenses, taxes, charges, duties, custom duties and such other expenses that may arise.
- 6.2 The payment dates are to be strictly adhered to, even when transport, delivery, installation, commissioning, or acceptance of the delivery or services, are disrupted or delayed because of circumstances of Force Majeure (hereafter defined) , or when parts that do not make the use of the delivery impossible, are missing or require reworking. Withholding or reducing payment by reason of any alleged defect, pending guarantee of work, or set off of claims shall not be permitted.
- 6.3 Without waiving or limiting any other legal or equitable remedy available to PROVIDER at law or in equity, interest on the outstanding amount of the invoice shall accrue at the highest rate allowed by law.

7. Reservation of Title

PROVIDER shall retain, and BUYER hereby grants, a security interest in the title to all Products delivered to BUYER until the full amount due from BUYER with respect to all delivered Products has been paid. Further, PROVIDER reserves all rights with respect to delivered Products permitted by law including, without limitation, the rights of rescission, repossession, resale, and stoppage in transit until the full amount due from BUYER in respect of all delivered Products has been paid. BUYER, upon entering this Contract and at BUYER's cost, authorizes PROVIDER to record PROVIDER'S ownership rights in public registers, books or other recording sites under the laws of the relevant location(s).

- 8. Delivery Date**
- 8.1 All orders for Products shall include the required delivery date and shall be reflected in the Order Confirmation.
- 8.2 The delivery date shall be proportionately extended:
- a) if all the plans, data and necessary materials to be supplied to PROVIDER by BUYER are not delivered on time, and if the BUYER changes the design or scope of the order;
- b) when any event or condition, including, but not limited to events or circumstance of Force Majeure (hereafter defined), not existing as of the date of signature of this Contract, not reasonably foreseeable as of such date and not reasonably within the control of PROVIDER, which prevents in whole or in material part the PROVIDER's performance of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute a circumstance of Force Majeure: acts of State or governmental action, severe economic recession, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion. It is expressly agreed by the parties that any refusal or failure of any governmental authority to grant any export license legally required for the fulfillment by PROVIDER of its obligations hereunder shall constitute an event within the meaning of this paragraph.
- c) if the BUYER falls behind in any requirements related to BUYER's compliance with the Contract or if BUYER is delayed in fulfilling his contractual obligations, specifically, but not limited to, if BUYER fails to respect BUYER's payment obligations under the Contract.
- 8.3 A late delivery shall neither entitle the BUYER to withdraw from the Contract nor claim compensation for direct or indirect damages due to the delay.
- 8.4 A penalty for late delivery shall require a special written agreement. Notwithstanding anything to the contrary in such agreement, if any, such penalty will only be due if it is established that the delay is due to the fault of PROVIDER and that BUYER has suffered damages. If BUYER is supplied with a functionally equivalent substitute delivery, the right to a penalty, if any, shall not apply.
- 9. Packing**
- Without limiting any provisions provided above in Paragraph four (4), prior to seeking a quotation, BUYER shall inform PROVIDER of any specific country regulations and requirements regarding packing instructions. Any costs and expenses associated with complying with such regulations and requirements will be invoiced to the BUYER. The packing will not be returned to PROVIDER.
- 10. Transfer of use and risks**
- 10.1 PROVIDER shall have no further responsibility for the Products, and all risk of damage to or loss or delay of the Products shall pass to BUYER, upon their delivery at the Ex-Works delivery point.
- 10.2 In case that the delivery is delayed at the request of BUYER or for any other reason for which PROVIDER is not responsible, the risk is transferred to the BUYER at the time of the original Ex-Works delivery time. From such point in time all the Products will be stored and protected at BUYER's sole risk and expense.
- 11. Shipment, transport and insurance**
- 11.1 All risk of damage to or loss or delay of the Products shall pass to BUYER upon their delivery at the Ex-Works delivery point. PROVIDER shall have no further responsibility for the Products, and BUYER shall insure each shipment of Products with a reputable insurer for the full invoice of such shipment. Such insurance shall provide for full coverage from the time the Products are delivered at the Ex-works point until BUYER shall have paid PROVIDER for such Products in full. BUYER will take all other necessary precautions to ensure that PROVIDER's property interest in the Products will not be affected nor removed.
- 11.2 Claims in relation with the shipment or transport should be made by the BUYER immediately after receipt of Products or freight documents from the last forwarding agent.
- 12. Guarantee, liability for compensatory damages**
- 12.1 **Warranty and Warranty Period**
- The Warranty Period for new Products is twelve (12) months. The Warranty Period begins upon delivery of the Products at the Ex-Works delivery location or upon such other date agreed to by the parties, or, if PROVIDER has assumed responsibility for commissioning, upon completion of commissioning. In the event the shipment, receipt, or commissioning are **delayed due to reasons beyond PROVIDER's control**, the Warranty Period shall be extended for a period equal to the amount of such delay, and will end, at the latest, 18 months after PROVIDER advises BUYER that the Products are ready for delivery.
 - Any item replaced under the system warranty will include an independent warranty, exclusive of the system warranty, for a period of six (6) months from the date of item receipt or until the end of the system warranty, whichever occurs later.
 - The Warranty becomes null and void if work is performed by a non-approved service representative or if BUYER, in case an alleged defect appears, does not immediately take all appropriate measures to mitigate the damages and does not provide PROVIDER with the opportunity to correct any such defect.
 - Spare parts such as contact thickness measuring devices, current collectors, track rollers etc. are not subject to guarantee.
 - For spare parts or reparations for that are not included in the Warranty set forth above, such parts shall be warranted for a period of three (3) months from the delivery date of such spare parts, unless otherwise agreed.
 - Buyer's fulfillment of each and every contractual obligation imposed by the Contract upon Buyer is a condition precedent to entitlement to any Warranty benefits provided by the Contract.
- 12.2 **Liability for defects in material and workmanship**
- The PROVIDER agrees, upon BUYER's written request and until the end of the Warranty Period, to elect to repair or replace all parts of the Products that can be shown to have failed due to defects in materials or workmanship, or become defective or inoperative, because of defects in materials or workmanship. Replaced parts will be the property of PROVIDER. PROVIDER will bear at PROVIDER's factory, any direct costs of repair. All other costs, such as for freight, customs, packing, assembly and disassembly, as well as travel and accommodation for personnel of the PROVIDER are at BUYER's expense.
- 12.3 **Liability for warranted conditions**
- Warranted conditions are only those that are specifically described in the Order Confirmation or in the Systems Specifications and shall be enforceable only for the duration of the Warranty Period.
- 12.4 **Exclusions of the liability**
- Excluded from Warranty are damages, that are not shown to be caused by defects in materials, and workmanship, for example, conditions or damages that result from normal wear and tear, defective maintenance, disregard of operating instructions, over-demanding operation, inappropriate equipment, chemical or electrolytic influences, work not performed by PROVIDER, as well as any other cause resulting from acts, omissions, events, and/or conditions **beyond PROVIDER's control**.
- 12.5 **Parts and Services from Third Party Manufacturers**
- When a Product is used in connection with other parts or services provided from third-party manufacturers, the PROVIDER will use its best efforts to enforce any warranty for such parts or services provided by such third-party manufacturer.
- 12.6 **Exclusivity of the Warranty**
- Sole Remedies.** THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND THE SOLE REMEDIES FOR PROVIDER'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO THE PRODUCTS AND SERVICES COVERED BY THIS CONTRACT AND ALL OTHER PERFORMANCE BY PROVIDER UNDER OR PURSUANT TO THIS CONTRACT SHALL BE LIMITED TO THE REMEDIES PROVIDED IN SECTIONS 12.2- 12.5, LIABILITY FOR WARRANTED CONDITIONS.
- Consequential Damages.** IN NO EVENT SHALL PROVIDER'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF PROVIDER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- 13. ENTIRE AGREEMENT**
- THE CONTRACT (WHICH INCLUDES THE GENERAL TERMS) AND ANY EXHIBITS ATTACHED HERETO AND INCORPORATED AS AN INTEGRAL PART OF THIS CONTRACT, AND THE ORDER CONFIRMATION AND ANY CORRESPONDING ATTACHMENTS, CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDE ALL PREVIOUS AGREEMENTS BY AND BETWEEN PROVIDER AND BUYER AS WELL AS ALL PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS CONTRACT. BUYER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS CONTRACT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN.
- 14. Indemnity**
- BUYER shall at all times indemnify PROVIDER and its officers, employees, agents and contractors with respect to any loss, damage, or cost suffered or incurred by PROVIDER as a direct or indirect result of a breach by BUYER of any of its obligations under this Contract and for injuries and damages claimed by any third party alleged to have been caused, in whole, or in part, by the acts and/or omissions of BUYER.
- 15. Applicable law, place of jurisdiction**
- 15.1 Any and all legal actions or proceedings relating to any dispute, controversy or claim arising out of or relating to this Contract shall be brought in the State District Courts in Fort Worth, Tarrant County, Texas, U.S.A., which shall have exclusive jurisdiction over same. All proceedings shall be conducted in the English language.
- 15.2 **The legal position is subordinated to Texas Law under exclusion of the April 11th UN Convention on Contracts for the International Sale of Goods.**