

## GENERAL TERMS & CONDITIONS OF TERMS

### 1. Scope of General Terms & Conditions of Terms

- 1.1. These General Terms & Conditions of Sale (these “**Terms**”) shall apply to all sales made by **TP Food Group – North America Inc.**, a Pennsylvania corporation (hereinafter the “**Seller**”), to buyer (hereinafter the “**Buyer**”) for the supply of any items of equipment (machinery, materials, components, spare parts etc..) (hereinafter the “**Equipment**”) and/or for the supply of services (inspections, repairs, maintenance, overhaul, upgrades, installation, start-up, take-over, training etc.) (hereinafter the “**Services**”), as more specified in the relevant Confirmation Order (as defined below).
- 1.2. This Agreement (as defined below) shall be effective upon receipt and acceptance by Seller of (i) each Confirmation Order duly signed for by a Buyer’s Legal Representative within the term therein indicated (hereinafter the “**Confirmation Order**”) and (ii) receipt by Seller of each down payment agreed upon in the subject Confirmation Order. Should the down payment be made after the signing of the Confirmation Order, the Agreement shall enter into full force and effect at the time the down payment is received by Seller, being understood that Seller will not start the engineering and/or production of the Equipment or preparation to deliver Services until the down payment has been paid and the Confirmation Order accepted in writing by Seller.
- 1.3. The Confirmation Order and these Terms (collectively, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.
- 1.4. Any waiver, exception and/or amendments to these Terms shall be valid only if specifically agreed in writing by Seller and Buyer in the relevant Confirmation Order. Any oral or written confirmation and/or engagement undertaken by Seller’s agents and/or partners and/or employees shall not be binding on Seller if not expressly confirmed in writing by a legal representative of Seller, such written confirmation to form an amendment to these Terms.
- 1.5. In the event of conflict or inconsistency between the provision of these Terms and the Confirmation Order, the provisions of the Confirmation Order shall prevail. Any commercial practice, custom or convention established between the Parties shall not be binding on Seller.
- 1.6. Any additional or different terms or conditions found in the Buyer’s order, or in response to these Terms, will be considered objections by the Seller and will hold no validity.
- 1.7. Any terms and conditions present in any of the Buyer’s documents, such as the Buyer’s purchase order or shipping request, which conflict with or supplement the Terms specified here, are explicitly rejected. They do not bind the Seller and are not considered a part of the agreement between the Buyer and the Seller.
- 1.8. The annexes to these Terms and to the Confirmation Order constitute an integral part of the Agreement.

### 2. Definitions

- 2.1. Terms defined in this Art. 2 shall have the meanings indicated hereunder:

“**Confidential Information**” means all information, products and materials, whether or not designated as confidential or covered by intellectual or industrial property right, disclosed by or on behalf of Seller, or otherwise received, observed and accessed by the Buyer, in connection with this Agreement, in whatever form (written, oral or electronic) and whether prior or after the date of execution of this Agreement, including without limitation: (a) all business, financial accounting, marketing, sales, business strategies, methods, contracts and pricing information concerning Seller or its affiliated companies; (b) all trade secrets, know how, inventions and other creative, technical, product or service information concerning Seller or its affiliated companies, including formulas, product standards, production’s processes, techniques and settings; (c) all customers, customer contracts, employee and human resources information, records and lists of Seller and its affiliated companies; (d) all work products, work papers, analyses, notes, graphics, images, drawings, designs, software and programs, samples and specifications.

“**Confirmation Order**” means (i) the formal acceptance, signed by a Buyer’s Legal Representative, of a Seller Commercial Offer; (ii) a valid and official Purchase Order with specific reference to the relevant Seller Commercial Offer

“**Country**” means the country in which the Equipment shall be delivered and installed.

“**Defect**” means any non-conformity of the Equipment as defined in Art. 21.

“**Excusable Delay**” means an event that, supported by factual and adequate evidence, meets the following four criteria: (i) is beyond the reasonable control of the Seller; (ii) could not reasonably have been foreseen; (iii) could not reasonably have been prevented by means reasonably available to the Seller; and (iv) occurred without the fault or neglect of Seller.

“**Installation**” means all mechanical Installation, electrical and instrumentation installation, insulation etc. which is necessary for putting the Equipment in a condition to perform Installation Testing.

“**Installation Testing**” means the running of the Equipment without product in order to check its correct installation and operation from a mechanical and electrical point of view (i.e., “dry run test”).

“**Installation Certificate**” means the certificate referred to in Art. 12.

“**Layout**” means the layout of the Equipment as designed by Seller.

“**Party**” means either Seller or the Buyer, and together the Parties.

“**Price**” means the price set out in Art. 17 for the supply of the Equipment and or of the Services, subject to any additions or deductions as may be under the provisions of the Terms.

“**In Writing**”: communication by document signed by both Parties or by letter and electronic mail.

“**Performance Testing**” means the operation of the Equipment intended to demonstrate that the Equipment, when used in production, reaches the characteristics provided for in the relevant Confirmation Order.

“**Equipment**” means any materials and/or machines which are the subject-matter of this Agreement and which are better specified in the relevant Confirmation Order.

“**Project Representative**” means the representative of either Party nominated in accordance with Art. 5.

“**Site**” means the premises where the Equipment is to be installed in accordance with the relevant Confirmation Order.

“**Site Representative**” means the person who represents either Party on Site.

“**Start Up**” means the stage during which the Equipment is gradually put into production for the purpose of testing its correct operation, which stage ends with the completion of the Performance Testing.

“**Take Over**” means the moment when the Equipment is deemed to be fully accepted by the Buyer according to Art. 15.

“**Take Over Certificate**” means the certificate referred to in Art. 15.

“**Technical Documentation**” means the documentation regarding the Equipment and maintenance of the Equipment, to be provided by Seller, which is listed in Art. 7.

“**Time Schedule**” means the time schedule defined in the Confirmation Order.

“**Training Certificate**” means the certificate, signed by both Parties, which records the satisfactory completion of the Buyer’s personnel training.

“**User’s Manual**” means the technical user manual of operation and maintenance of the Equipment which shall include all instructions regarding the Equipment and its mode of operation, as well as the safety measures to be complied with.

### **3. Subject matter and scope of the Agreement**

- 3.1. The scope and subject matter of this Agreement is the supply by Seller of Equipment and Services, as better described in the relevant Confirmation Order.
- 3.2. The supply of the Equipment and Services can include the following:
  - (a) the design and engineering of the Equipment.
  - (b) the preparation of the Layout.
  - (c) the supply of machineries, materials and components necessary for the Equipment.
  - (d) the supply of the Technical Documentation.
  - (e) the Installation services.
  - (f) the Start Up and Take Over services.

- (g) the training of Buyer's personnel.
  - (h) the inspection services
  - (i) the repair services after inspection
  - (j) the maintenance services
- 3.3. Buyer shall inform Seller about any legislative requirement in force in the Country at the date of signature of this Agreement, and that can be relevant for the design and manufacture, import and installation of the Equipment or for the execution of Services. If any such information is not provided on time to Seller, the Buyer shall pay any additional cost related to the adjustment of the Equipment or rescheduling of Services and shall accept any consequent Time Schedule amendment.
- 3.4. Buyer shall take all reasonable steps to assist Seller in performing obligation in section 3.3 hereabove under these Terms. The Buyer shall obtain import permits and/or licenses required for any part of the Equipment as per Art 6 and, to the extent applicable, building permits and operating permits. The Buyer shall obtain (temporary) import permits and/or licenses for Seller's equipment necessary for Installation, visa and/or work permits required in the Country for Seller's personnel and any further authorizations, consents and/or approvals necessary for the performance of the Contract in the Country. The Buyer shall obtain such permits and licenses within reasonable time having regard to the time for delivery of the Equipment and time for the delivery of Services.
- 3.5. Unless otherwise provided for in the relevant Confirmation Order, Services shall be performed by Seller, who shall make available the necessary qualified technical personnel.
- 3.6. Seller shall not in any case be held liable for any act or omission of any Buyer's employee/contractor or, in general, of any person made available to Seller in connection with the execution of this Agreement and/or for any work or equipment supplied by them. The Buyer shall indemnify, defend and hold Seller harmless from any claim or action for loss or damage to any property or for personal injury or death related to the acts or omissions of any such person. Seller accepts no liability (including vicarious liability) for any failure of the Buyer to comply with any mandatory law applicable to the relationship between the Buyer and its employees/contactors, including, but not limited to, tax, insurance, social security, contractual, insurance, health care and labor law.

#### **4. Alterations and additional work**

- 4.1. Buyer shall be entitled to request in writing form alterations and additions to the Layout/Equipment which it considers appropriate and which had not been considered when negotiating this Agreement. In such case Seller shall submit an estimate of the price variations and the possible implications with respect to: (i) the Time Schedule and (ii) the characteristics of the Equipment agreed in this Agreement. Should the Buyer agree to the price and time variations, then an amendment to the Confirmation Order will be executed prior to proceeding.
- 4.2. Seller shall be entitled to modify the Equipment at its own discretion to enhance safety, performance or quality features of the Equipment and shall provide a reasonable description of any change which has a material effect on fit, form and function of the Equipment.

#### **5. Assignment- Subcontractors - Parties representatives**

- 5.1. Neither Party is entitled to assign this Agreement without the previous written consent of the other Party.
- 5.2. Seller has the right to sub-contract any part of this Agreement and to purchase any part of the Equipment from third parties.
- 5.3. Each Party shall nominate within seven (7) days from the date of signature of this Agreement, a Project Representative and a Site Representative, who shall be fluent in English.

#### **6. Time Schedule and Supply of the Equipment and/or Services**

- 6.1. The Time Schedule, included in the relevant Confirmation Order, specifies the dates for the performance by the Parties of the main obligations under this Agreement. The delivery dates provided in the Proposal are approximations, made in good faith to the best of the Seller's ability.
- 6.2. In the event that Seller does not comply with the delivery dates agreed in the Time Schedule, with the exception of any delays attributable to the Buyer or to a Seller's Excusable Delay, Seller shall be liable to pay to the Buyer a sum equal to 0.5% of the Price as liquidated damages, as hereinafter defined, per each week

of delay following a 15 (fifteen) days grace period. The total sum of the liquidated damages shall not exceed 3% of the Price. PAYMENT OF LIQUIDATED DAMAGES FOR DELAY SHALL BE FINAL AND IN FULL SATISFACTION OF SELLER'S LIABILITY FOR SUCH DELAY AND ALL FURTHER CLAIMS OF BUYER DUE TO SUCH DELAY. ANY CLAIMS FOR INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST EARNINGS OR PUNITIVE DAMAGES ARE EXCLUDED, REGARDLESS OF THE REASON

- 6.3. Any delay of the Buyer in corresponding the agreed down payment or any alteration/ addition to Layout, Equipment or Services requested by the Buyer under art 4 above, could cause a delay in the engineering and production of the Equipment or into the planning of Services that shall be assessed by Seller at its own discretion. In such case, Seller is entitled to notify in writing a new Time Schedule to the Buyer and shall not be considered liable for any delay in the performance of its obligations under this Agreement. All shipments, deliveries and/or rendering of Services are subject to approval by the Seller's credit department.
- 6.4. With reference to Equipment, Seller shall provide the following documents upon each shipment:
  - Commercial invoice (not authenticated. Authentication from the competent Embassy available upon request and at Buyer's cost).
  - Certificate of origin (provided upon Buyer's request. Not authenticated and available after Equipment's dispatch. Authentication from the competent Embassy available upon request and at Buyer's cost).
  - Packing list.
  - CMR or B/L, as applicable.
- 6.5. In the event of a delay in shipment's dates agreed in the Time Schedule due to reasons attributable to Buyer or Country of Destination, Seller shall be entitled to store the Equipment at the Buyer's risk and at the cost of USD 300,00 per each container/truck per week (with a minimum applicable fee of USD 1.000,00), following a 15 (fifteen) days grace period starting on the mutually agreed scheduled shipping date. Such extra warehouse's cost shall be paid by the Buyer before shipment of the Equipment; Seller shall be entitled to refuse to ship the Equipment if the extra warehouse's costs are not paid by the Buyer.
- 6.6. In case of postponement of the shipping term, as a result of a Buyer's request accepted in writing by the Seller, the Buyer shall pay any Price's installment according to the originally agreed payment milestones.
- 6.7. The number of containers/trucks necessary for the Equipment transportation to the Site shall be confirmed by Seller upon written request of the Buyer in advance to confirmed shipping date.
- 6.8. Unless otherwise agreed in the Confirmation Order, Seller shall deliver the Equipment FCA (ICC Incoterms<sup>®</sup> 2010) Seller's facility in the USA, Italy, Spain or Slovenia.
- 6.9. The risk of loss or damage to the Equipment will be transferred to the Buyer in accordance with the applicable Incoterm.
- 6.10. Until the Price has been paid in full, Buyer shall carry "all risk" insurance, insuring against damage or destruction for its full replacement value, and "public liability and property damage" insurance in an amount equal to the replacement value of the Equipment subject of the Confirmation Order, for each accident or occurrence covering the Equipment and its operation. The insurance shall be at Buyer's expense, shall be issued by insurers of recognized responsibility, qualified to issue such policies in the state of each plant, and shall name Seller as the loss payee. Buyer, upon request, shall furnish Seller with certificates of insurance evidencing the coverage required hereunder;
- 6.11. Seller shall retain title to the Equipment until the Price has been paid in full by Buyer. Buyer hereby grants to Seller a first priority security interest in the Equipment until the Price has been paid in full. Seller shall have the right to file a UCC-1 Financing Statement to perfect a security interest on all or any portion of the Equipment, at any time.
- 6.12. Until the Price has been paid in full, if Seller supplies Buyer with labels, plates, or other markings reflecting the titled owner of the Equipment, Buyer shall affix and keep the same on prominent places on the Equipment.

## **7. Technical Documentation**

- 7.1. Upon signing of the Installation certificate, in case the Confirmation Order covers the provision of overhaul or upgrade services, Seller shall provide the Buyer with the following Technical Documentation:
  - the User's Manual, supplied in English language and in any other language required by the law, in electronic and hard copy.
  - if required by the law of the Country, the EC Declaration of Conformity or the Declaration of Incorporation (both as defined in the EU Directive 2006/42/EC) (as the case may be).

- only in case the electrical control panel of the Equipment is supplied by Seller, the electrical diagram, in English language.
  - the electronic copy of the final Layout.
  - the list of recommended spare parts, in English language.
- 7.2. Technical Documentation can be used only for purpose of operating and maintaining the Equipment.
- 7.3. Buyer's approval of any drawings delivered as per the Confirmation Order is required and is to be indicated by their signature on said drawings. If, within fourteen (14) days of the Buyer being requested to approve the drawings, the Buyer either fails to sign the drawings or neglects to communicate any objections to the drawings in writing, it shall be presumed conclusively that the drawings have been approved and accepted. Any additional costs incurred by the Seller due to changes in specifications or drawings that have been approved by the Buyer, and for any additional work, equipment, or materials provided beyond what is originally specified in this agreement, shall be appended to the purchase price, and borne by the Buyer. All drawings, illustrations, or samples created by the Seller in connection with this Proposal are the property of the Seller and must be returned upon request. These materials are considered confidential and may not be used in a manner detrimental to the Seller's best interests, nor may they be released or disclosed to any other individual or entity without the Seller's prior written consent.

## **8. Taking Delivery of the Equipment**

- 8.1. The Equipment will be delivered packed and Seller will ensure the adequate packaging of the Equipment. Any special packaging of the Equipment required by the Buyer shall be agreed in the relevant Confirmation Order and any additional costs, assessed by Seller, shall be borne by Buyer.
- 8.2. Buyer shall examine the Equipment upon delivery at the place of destination within 3 days after delivery. Buyer shall check that packing has not been damaged during transportation. Buyer shall notify the results of the above examination of the Equipment, by e-mail within one (1) day from the examination.
- 8.3. If it appears that certain Equipment is missing or damaged:
- Buyer shall attempt to limit the damage by taking suitable measures.
  - Buyer shall not return or attempt to repair the Equipment without Seller's prior written consent or shall lose its right to claim for warranty or product shortcoming whether the defect was existing prior to said repair or caused by said repair.
  - the Parties shall consult each other in order to agree upon the repair or replacement of missing or damaged Equipment and to evaluate the impact of such occurrence in the Time Schedule. If it is not clear from the circumstances that the loss or damage is Seller's responsibility (or that it occurred before the risk passes to the Buyer), Buyer shall bear the cost and risk relating to the above repair or replacement, provided that if it should subsequently be determined that Seller was responsible, Seller shall reimburse the above costs.
  - Buyer shall immediately notify the event of in-transit loss or damage both to the insurance company as indicated in the transportation insurance policy, if any, and to the carrier; and give notice thereof without any delay to Seller.

## **9. Management of the Site and safety**

- 9.1. The Buyer is exclusively responsible for ensuring that all safety devices and controls are correctly positioned and in operational condition at all times. They must also ensure compliance with federal, state, and local government laws, rules, and regulations related to safety standards, as well as industry safety standards, unless otherwise mutually agreed upon in writing by both the Seller and Buyer. The Buyer is additionally tasked with instructing the operating personnel on the safe operation of the Equipment delivered and maintaining it post-delivery.
- 9.2. Buyer shall be responsible for the working conditions and for the care, custody and safekeeping of the Equipment, of the Seller's Tools and for all other goods which are at the Site to fulfil this Agreement need.
- 9.3. Unless otherwise agreed in the relevant Confirmation Order, Buyer shall be responsible for the supervision of the Site at all times. Buyer shall ensure: (i) the availability of qualified personnel as specified in the Confirmation Order to assist Seller's personnel in carrying out their activities, during all working hours and days (including over time, Saturday, Sunday and local Bank holidays as agreed) in which Seller's personnel carries out its activities at the Site and (ii) that its personnel and other contractors act in safe conditions and in accordance with the reasonable instructions of Seller's Site Representative.

- 9.4. Buyer shall ensure that Seller's personnel have safe and appropriate access to the Site at any time required by Seller (including overtime, Saturday, Sunday and local Bank holidays as agreed).
- 9.5. Buyer undertakes to:
  - 9.5.1. inform Seller about any health, safety protection and accident prevention measures in force at the Site and any relevant applicable law, within 15 days from the execution of this Agreement.
  - 9.5.2. conduct a training aimed to explain to Seller's personnel any health, safety protection and accident prevention measures in force at the Site, upon arrival of Seller's personnel at the Site.
  - 9.5.3. provide Seller with a risk assessment document if applicable.
  - 9.5.4. comply with the safety measures included in the occupational health and safety plan provided by Seller.

## 10. Seller's Personnel

- 10.1. Seller shall provide the agreed technical representatives for the performance of Services in accordance with the scope of the Confirmation Order. The number of representatives is indicated in the relevant Confirmation Order. Seller warrants that the manpower indicated in the Confirmation Order is sufficient, under normal conditions, for executing the the Services reported in the Confirmation Order.
- 10.2. Should it appear necessary to provide additional Seller's manpower, with respect to what foreseen in the Confirmation Order, for reasons not attributable to Seller, Buyer shall pay for each additional man/day of such personnel the daily fees of USD 650,00 and cover the costs for: (i) travel hours and travel expenses in relation to 1 (one) transfer of Seller's personnel from Seller's business place to the Site and (ii) board/lodging and local travel expenses. Such daily fees will be invoiced monthly to the Buyer and will be paid by the latter before the end of the following month, considering the invoice date.
- 10.3. Unless otherwise agreed in the relevant Confirmation Order:
  - Seller shall cover the costs of travel hours and travel expenses in relation to one (1) transfer of Seller's representative from Seller's business place to the Site.
  - Buyer shall cover the costs for: (i) local travel expenses for the commuting from the place where Seller's personnel are lodged and the Site; (ii) all living expenses (board and lodging etc...) of Seller's personnel. Any accommodation booked for Seller's personnel shall attain the minimum standards of a European 3 stars accommodation and shall be close to the Site.
- 10.4. In case Installation/Start Up/Take Over operations are suspended for reasons for which Seller is not responsible, a daily fee of USD 650,00 for each person and any cost related to the stay of Seller's personnel in the Country shall be paid by Buyer.
- 10.5. In case Installation/Start Up/Take Over operations shall be suspended for a period of more than seven (7) days with respect to the agreed Time Schedule, Seller/Seller's subcontractor's personnel shall have the right to return at their home country. Any cost related to the return of Seller/Seller's subcontractor's personnel to the Site to complete Installation/Start Up/Take Over operations (e.g., air ticket, car journey, travel hours, visas) shall be borne exclusively by Buyer.
- 10.6. In case Buyer expressly requires that Installation/Start Up/Take Over operations shall be carried out in a time frame, including the period covering Christmas and New Year holidays (between 20 December and 6 January), Seller/Seller's subcontractor's personnel shall have the right to return to their home country between 23 December and 2 January and all travel expenses (Site/home country and return) shall be borne by Buyer.

## 11. Installation – in conjunction with overhaul and/or upgrade services

- 11.1. No later than seven (7) days before the deadline indicated in the Time Schedule for the commencement of Installation, Buyer shall notify Seller of the date on which the Installation shall start.
- 11.2. Unless otherwise agreed in the relevant Confirmation Order, the Installation will be carried out by the Seller's technical personnel or Seller's subcontractors, assisted by the Buyer's personnel as provided for in art. 10 above.
- 11.3. Buyer shall complete, within the deadline agreed in the Time Schedule for starting the Installation:
  - all civil works, foundations, utility connections necessary to the Installation and operation of the Equipment and will provide any supplies that are not at Seller's charge as well as whatever may be necessary of the Installation as requested by Seller in advance to the Installation start date (including, but not limited to, cranes, transport equipment, roof high power lift, secure lock-up dry room for storage of Seller's equipment, changing



and washing facilities for Seller's personnel, communication connections, heating and air conditioning on the Site).

- temporary protective screening, where appropriate to prevent contamination of the closest production areas.
  - ensure that openings and passageways are of adequate size for moving the Equipment into its location without disassembly;
  - arrange for necessary lighting and elevator service. Implement fire protection measures in connection with similar equipment, in compliance with all relevant rules and regulations.
- 11.4. Buyer acknowledges and accepts that unforeseen technical problems may arise during the Installation. Accordingly, Seller shall not be held liable for any delays and its consequences caused by unforeseen technical difficulties.
- 11.5. In case that, during the Installation, the Buyer requests that the Equipment is installed with a different configuration compared to the final agreed Layout, Seller shall be entitled to suspend the Installation activities and evaluate, at its own discretion, all action needed to fulfill the new Buyer's request. Any costs resulting from the necessary amendments shall be borne by the Buyer. Seller is entitled to notify in writing a new Time Schedule to the Buyer which will consider the applicable engineering and completion timing and shall not be considered liable for any delays in the performance of its obligations under this Agreement.
- 11.6. In case the Installation shall be postponed upon request of the Buyer or, in any case, for reasons not attributable to Seller for over thirty (30) days from the date of arrival of the Equipment at the Buyer's plant, the payment's installment connected with the issuance of the Installation Certificate or Take Over Certificate shall be due by the Buyer within sixty (60) days from the date of arrival of the Equipment at the Buyer's plant. Any such delay may also cause charges by Seller to Buyer for representatives' time and expenses pursuant to section 11 hereabove.

## **12. Installation Testing and Certificate – in conjunction with overhaul and/or upgrade services**

- 12.1. Seller shall promptly notify the Buyer in writing about the completion of Installation.
- 12.2. Immediately after the notification under art 12.1 above, the Parties will inspect the Equipment and will jointly draw up an Installation Certificate verifying the completion of the Installation. The Installation Certificate shall indicate:
- a. that Seller has delivered all Equipment in accordance with this Agreement.
  - b. that all security systems/protection have been installed and functioning; and
  - c. that the Equipment has been correctly installed and that all the Equipment operates correctly from the mechanical and electrical point of view.
- 12.3. Should the above inspection reveal any defaults, defects or deficiencies which do not allow the Equipment Start Up, the Party responsible for such deficiencies shall provide the remedy within the shortest possible timeframe, and a new inspection shall be carried out before drawing up the Installation Certificate. Minor default, defects or deficiencies that do not hinder the Start Up shall not delay the drawing up of the Installation Certificate, but they shall be mentioned in the Installation Certificate, together with the indication of the deadlines and actions that the defaulting Party will take remedy to them.
- 12.4. If the Installation inspection is not carried out and/or the Installation Certificate is not issued within one (1) day after the notification of Installation's completion, due to the absence of Buyer's representatives or for any other reason for which Buyer is responsible, Seller's personnel shall be entitled to leave the Site and a blocking system shall be activated on the Equipment in order not to allow any use before signing of the Installation Certificate.

## **13. Start Up of the Equipment – in conjunction with overhaul and/or upgrade services**

- 13.1. Buyer agrees to provide all utilities necessary to commence the Start Up of the Equipment within three (3) days from the signing of the Installation Certificate. As soon as the relevant utilities connection has been made, Seller shall commence the Start Up.
- 13.2. During the Start Up, Seller shall be responsible for the technical operation of the Equipment and will operate the technical process together with the Buyer's operators. Buyer shall instruct its personnel diligently to observe all the instructions provided by Seller's supervisory personnel.
- 13.3. In case the Buyer fails to comply with the 3-days term provided for in art. 13.1 above, the costs and periods of stay of Seller's personnel in the Country shall be regulated by art. 10.4 and 10.5 above.

**14. Performance Testing and Report – in conjunction with overhaul and/or upgrade services**

- 14.1. Within five (5) days from the commencement of the Start Up, Seller shall notify in writing the Buyer of its intention to start the Performance Testing and will indicate the date on which such testing can be commenced.
- 14.2. Performance Test will be carried out in accordance with the standards and principles normally applied in test runs for equipment of similar kind and shall have a duration of 24 hours. Seller shall draw up a protocol that will report all the results of the tests and which will be signed by both Parties.
- 14.3. Buyer shall ensure that, during Performance Testing:
  - a) all feed and utilities conform strictly to this Agreement.
  - b) all analyses of the feed, utilities and product are timely provided as required by Seller.
  - c) all upstream and downstream equipment operates properly.
- 14.4. In any case, the Performance Testing will be completed within seven (7) days from the Start Up date.

**15. Take Over and Take Over Certificate – in conjunction with overhaul and/or upgrade services**

- 15.1. The Equipment shall be deemed to have been taken over by the Buyer and Take Over is deemed therefore to have occurred at the time when the Performance Testing shows that the Equipment can attain the characteristics specified in this Agreement. Upon occurrence of the Take Over, the Buyer shall issue the Take Over Certificate.
- 15.2. Deviations from the agreed operating characteristics, along with any other deficiencies or shortcomings in the Equipment, that can be rectified by means of minor adjustments or additions and do not hinder the Equipment from being operated in accordance with this Agreement, shall not constitute any reasons for not Taking Over the Equipment.
- 15.3. In case the Take Over shall be postponed, upon request of the Buyer or, in any case, for reasons not attributable to Seller over twenty-one (21) days from the date of completion of the Installation, the payment's installment connected with the issuance of the Taking Over Certificate shall be due by the Buyer within twenty-one (21) days from the date of completion of the Installation.
- 15.4. Until the Equipment has been taken over in accordance with Art. 15.1 above, Buyer shall not have the right to dispose of the Equipment without written agreement between the Parties, nor shall the Buyer be entitled to put the Equipment or portions thereof into operation other than for Performance Testing purposes.
- 15.5. If the Equipment, or a portion thereof, is taken into operation without Seller's permission, and before Taking Over in accordance with Art. 15.1, the Equipment, or that portion of it which has been taken into operation, shall be deemed to have been taken over.
- 15.6. Transmission of the Equipment's ownership is carried out only when the Buyer issues the Take Over Certificate and all payment milestones are paid for in full, to the extent that such retention of title is valid under the relevant law. The retention of title by the Seller, shall not affect the passing of the risk that shall be transferred as per applicable Incoterm. As a result, the Buyer may not alienate, pledge or encumber the Equipment without the Seller's written consent. If upon written Seller's consent, the Buyer sells the Equipment before settling the complete payment, it must bind the final Buyer with reservation of title.

**16. Training of Buyer Personnel**

- 16.1. Buyer shall appoint skilled personnel to be trained in the operation, maintenance and cleaning of the Equipment. Such personnel shall have previous experience in the operation and maintenance of technical and computerized systems like the ones comprised in the Equipment.
- 16.2. Training operations shall be carried out by Seller's personnel in accordance with the Confirmation Order.
- 16.3. Upon completion of the training, the Parties shall jointly sign the Training Certificate.

**17. Price and payment**

- 17.1. The Price for the supply of the Equipment shall be set out in the relevant Confirmation Order.
- 17.2. The Price is fixed and it is not subject to revision.
- 17.3. In case of unforeseen events after execution of this Agreement outside the control of the Seller, which influence the price calculation, including, but not limited to increases of freight charges or, introduction of new or respectively increase of existing local governmental charges, the Seller reserves the right to adjust the Price accordingly. The same applies to additional charges arising from the fact that the route of transportation



must be altered for whatever reason. In any of these events the Buyer shall not be entitled to a right of withdrawal nor to a right to claim frustration of contract.

- 17.4. Payment of the Price shall be made by Buyer to Seller in US Dollars in accordance with the payment conditions set out in the relevant Confirmation Order and at a bank designated by Seller, being understood that payment shall be deemed made to Seller only at the time when the sum has been unconditionally credited to Seller's bank account. Banking charges and costs related to the Buyer's bank or to any intermediary bank shall be borne by the Buyer, banking charges and costs related to the Seller's bank shall be borne by the Seller.
- 17.5. All sums duly invoiced by Seller shall be paid in full by the Buyer without any set off, counterclaim or deduction whatsoever and are not subject to any settlement, discount or other special terms of payment.
- 17.6. In the event that the Buyer fails to make timely payment of the Equipment and/or Services' purchase price or any portion thereof, the Seller, at its sole discretion, can either cancel the contract or, without imposing penalties, extend the deadline for the Seller's performance obligations under the contract by a duration equivalent to the Buyer's payment delay. Furthermore, any additional costs incurred by the Seller as a result of the Buyer's delay, such as storage and shipping or rescheduling service delivery, will be added to the Price.
- 17.7. If the Parties have agreed on payment by documentary credit (L/C), then, unless otherwise agreed, the Buyer must arrange for a documentary credit (L/C) to the amount specified in the relevant Confirmation Order in favor and to the satisfaction of Seller, to be issued by a reputable bank, unless otherwise agreed, confirmed by a bank acceptable to Seller, subject to the Uniform Custom and Practice for Documentary Credits published by the International Chamber of Commerce as in force at the date of signing this Agreement. Unless otherwise agreed, the documentary credit (L/C) shall be payable at sight and allow partial shipments and transshipment.
- 17.8. If a payment, which the Buyer is due to pay under the Terms agreement, is not received by Seller before the due date, or if notification of the opening (and confirmation) of the L/C under the relevant Confirmation Order is not received by the due date, the Buyer shall pay overdue interest, or respectively, late opening fees on the overdue amount, until the payment is made in full to Seller or the notification of opening (and confirmation) of the L/C or of the bank guarantee has been received by Seller.
- 17.9. Unless otherwise agreed, the rate of interest shall be one point five percentage points (1,5%) above the average bank short-terms lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the state of the currency of payment.
- 17.10. Additionally, the Buyer commits to covering all expenses, including but not limited to collection costs, reasonable attorney fees, and court fees incurred by the Seller in the process of collecting the owed sums.
- 17.11.

## **18. Taxes, duties, etc.**

- 18.1. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 18.2. All payments to be made by Buyer under this Agreement shall be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority. If the Buyer is compelled to make any such deduction, it will pay to Seller such additional amounts as are necessary to ensure receipt by Seller of the full amount which it would have received but for the deduction.

## **19. Invoicing**

Seller shall issue the invoices upon each shipment of part of the Equipment. Any specific content/description to be included in the invoice shall be communicated to Seller at least seven (7) days before the proposed shipment date. No changes in the invoice's content are allowed after shipment.

## **20. Termination of this Agreement**

- 20.1. Each Party is entitled to suspend performance of its obligations under this Agreement in the event the other Party fails to perform in a timely manner any material obligation under this Agreement until the default is remedied, without prejudice to other remedies that may be available, and subject to the following: a Party shall notify the other Party in writing of its intent to suspend and grant a final time period to the other Party to remedy the default, failing which the right of suspension may be exercised without further delay.
- 20.2. Each Party shall be entitled to terminate this Agreement in case of:
  - the other Party has failed to perform a substantial obligation under this Agreement after having been served a notice of failure without the default being satisfactorily remedied in accordance with Art. 20.1 above; or
  - the other Party becomes bankrupt or insolvent, goes into liquidation or any act is done or event occurs that under applicable law has a similar effect to any of these events or acts, and the Party fails to provide, upon request, an adequate security (e.g. bank guarantee, insurance company guarantee) for the fulfillment of its obligations under this Agreement.
- 20.3. The termination of this Agreement shall not affect the right to receive payment for obligations already performed.
- 20.4. In case of termination for default of the other Party under art. 20.1 above, the terminating party will be entitled to compensation for the loss it has suffered as a direct consequence of the default justifying termination. Except where the default justifying the termination amounts to fraud or misconduct, the total liability damages shall be limited to a maximum amount equivalent to 10% of the Price.
- 20.5. In the event Buyer cancels the purchase of the Equipment prior to shipment of the Equipment, Buyer shall pay Seller as liquidated damages and as Buyer's sole liability for such cancellation an amount equal to the Price of the Equipment already manufactured under this Agreement. THE PARTIES ACKNOWLEDGE THAT THE AMOUNT OF DIRECT DAMAGES DUE TO CANCELLATION OF THE PURCHASE IS IMPOSSIBLE TO QUANTIFY AT THE TIME OF THE EXECUTION OF THIS AGREEMENT AND THAT THE ABOVE LIQUIDATED DAMAGES REPRESENT A REASONABLE FORECAST, AND NOT A PENALTY, OF THE DIRECT DAMAGES THAT SELLER WOULD SUFFER IN CASE OF A CANCELLATION OF THE PURCHASE BY BUYER.

## 21. Warranty Terms

- 21.1. All guarantees provided by Seller with respect to performance and operation of the Equipment are conditional upon the observance by the Buyer of the instructions and procedures provided by Seller and the information shared during the training about the management, operation and maintenance of the Equipment.
- 21.2. Seller guarantees that the Equipment has been designed with due care and that it includes everything which is patently necessary for the Equipment to provide the operating characteristics and to be used as defined in the Confirmation Order.
- 21.3. Buyer represents and warrants that it purchases the Equipment only for the lawful and legitimate civil use set out in the relevant Confirmation Order. No other use of the Equipment is authorized. Seller shall never be held liable for the improper use or storage of the Equipment by the Buyer.
- 21.4. Seller shall address and solve any defect or non-conformity in the Equipment (hereinafter referred to as a "Defect"), arising from faulty design, materials or workmanship provided by Seller.
- 21.5. Buyer acknowledges and accepts that:
  - Seller, in its sole discretion, shall decide whether to repair or replace the components causing the Defect.
  - Seller must be granted a reasonable opportunity to inspect the equipment.
  - Full access to the Equipment control panel through an Ethernet line shall be granted to Seller.
- 21.6. Repair or replacement costs do not include board, lodging and travel expenses of Seller's technical staff to the place of intervention, which shall be covered by Buyer.
- 21.7. The liability of Seller applies only to Defects that arise within a period of twelve (12) months from the Taking Delivery date of spare parts; in case of Confirmation Orders for upgrades or overhauls, twelve (12) months from the Take Over Certificate Date of the Equipment, or fifteen (15) months from the date of the last Equipment delivery, whichever occurs first.
- 21.8. Any Warranty Claim shall not be considered applicable if the Take Over certificate has not been issued by Buyer.
- 21.9. The liability of Seller does not extend to Defects caused by circumstances for which Seller is not responsible, such as, but not limited to, improper or insufficient maintenance or incorrect operation, improper use conditions not in accordance with this Agreement, failure to store the Equipment components or other

materials appropriately, alterations or repair made without Seller's written permission, repairs carried out improperly by the Buyer, or normal wear and tear.

- 21.10. Defects shall be notified to Seller in writing within eight (8) days from the date of their first appearance. Such notification shall include a description of the type and extend of the Defect. If Buyer has not notified Seller of a Defect as required by the provisions of this Art., it forfeits its right to have the Defect made good in accordance with Art. 21.1.
- 21.11. Parts replaced or repaired under the provisions of Art. 21.1 are subject to the same warranty from Seller, and under the same conditions as apply for the rest of the Equipment, for a period of one (1) year after such replacement or repair has been done.
- 21.12. If the Buyer has notified a Defect as described in Art. 21.1, and if it is found that there is no Defect for which Seller is liable, Seller is entitled to compensation for the costs which it has thereby incurred.
- 21.13. Neither Party shall be liable to the other Party for any indirect and consequential damages arising in connection with the Defects, such as but not limited to loss of profit, production or contracts.
- 21.14. In case of unsettled contractually determined payments by the Buyer, the Seller shall not be obliged to consider the Buyer's warranty claims.

## **22. Force Majeure**

- 22.1. Where a Party fails to perform one or more of its obligations, excluding Buyer's obligation to pay the Price, under this Agreement, the consequences set out in Art. 22.2 will follow if and to the extent that either Party proves the occurrence of one or more of the following impediments:
  - a. War (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of foreign enemy, extensive military mobilization.
  - b. Civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience.
  - c. Act of terrorism, sabotage or piracy.
  - d. Act of authority whether lawful or unlawful, compliance with any law or governmental order, rule regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization.
  - e. Act of God, plague, pandemic, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought.
  - f. Explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged breakdown of transport, telecommunication or electric current.
  - g. General labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 22.2. A Party successfully invoking art. 22.1 is, subject to art. 22.4, 22.4 and 22.5 below, relieved of:
  - its duty to perform its obligations under this Agreement (excluding Buyer's obligation to pay the Price); and
  - any liability in damages or any other contractual remedy for breach of contract,

from the time at which notice of the impediment that causes the failure to perform reaches the other Party.

- 22.3. Where the effect of the impediment or event invoked is temporary, the consequences set out under Art. 22.2 above shall apply insofar, to the extent that and so long as the impediment or listed event invoked impedes performance by the Party invoking this clause of its contractual duties. Where this paragraph applies, the Party invoking this clause is under an obligation to notify the other Party as soon as the impediment or listed event ceases to impede performance of its contractual duties.
- 22.4. A Party invoking this clause is under an obligation to take all reasonable means to limit the effect of the impediment or event invoked upon performance of its contractual duties.
- 22.5. Where the duration of the impediment invoked under Art. 22.1 exceeds six (6) months and has the effect of substantially depriving either or both Parties of what they were reasonably entitled to expect under this Agreement, either Party has the right to terminate this Agreement by notification within a reasonable period to the other Party.

### **23. Confidentiality**

- 23.1. Buyer hereby undertakes to (i) keep all Confidential Information and all knowledge derived therefrom in strict confidence, (ii) protect them from unauthorized access, use or disclosure and agrees not to disclose, directly or indirectly to any third party, nor to use, copy, evaluate or incorporate, within or outside of its businesses, any such Confidential Information for any purpose other than this Agreement.
- 23.2. Buyer may only allow access to and disclose such Confidential Information to those of its employees, directors, officers, advisors and representatives (hereinafter, "Buyer Personnel") who need to have access to such Confidential Information in order to assist, implement or work on this Agreement, but only after the Buyer Personnel has been informed that the information is confidential and has been legally bound by written confidentiality obligations. If any Buyer Personnel discloses or uses the Confidential Information other than as authorized in these Terms or otherwise engages in conduct in violation of these Terms, such disclosure, use or violation will be deemed to have been performed by the Buyer that will be held responsible for such actions of its Personnel.
- 23.3. If the Buyer is requested to disclose any Confidential Information in any judicial or administrative proceedings, then, except as otherwise required to comply with applicable law, the Buyer shall first notify Seller of such request as soon as possible, providing all information and assistance reasonably requested, so that Seller may resist such disclosure or seek and appropriate protective measure.
- 23.4. Buyer agrees that it will not reverse engineer, analyze, modify, disassemble, or otherwise attempt to derive any data from any Confidential Information disclosed by Seller.
- 23.5. The Buyer acknowledge and accept that that any Confidential information transmitted or learnt by Seller shall remain of exclusive property of Seller. No express or implied license, right, title or interest is granted or conveyed to the Buyer, except the limited right to review such Confidential Information in connection with this Agreement.
- 23.6. Upon expiration or termination for any reason of this Agreement, the Buyer shall promptly return or destroy any Confidential Information in its possession or control in whatever form.
- 23.7. The confidentiality obligations set out in this Art. 23 shall come into force on the date of execution of this Agreement and shall remain in force for 5 (five) years. Notwithstanding the foregoing, to the extent that any Confidential Information is considered as a trade secret/intellectual or industrial property under applicable law, such information shall be held in confidence by the Buyer for as long as such information qualifies as a trade secret/intellectual or industrial property under applicable law.

### **24. Notices**

- 24.1. All notices required under this Agreement shall be made in writing by means of certified e-mail (if possible) or email to the contact persons designated in the relevant Confirmation Order.

### **25. Severability**

- 25.1. If any provision to this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provision of this Agreement shall remain in full force and effect.

## **26. Governing Law and Jurisdiction**

- 26.1. This Agreement shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its conflict of law provisions. The application of the UN Convention on the International Sale of Goods is excluded.
- 26.2. Any controversy or claim arising out of or relating to this Agreement, or the making or performance, or to its validity, terms or provisions which cannot be settled by amicable negotiation shall be settled by binding arbitration in the City of New York, New York, in accordance with the Commercial Rules of the American Arbitration Association then existing, and judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing Party shall be entitled to recover its reasonable attorney's fees and costs from the other Party.

## **27. Indemnification**

- 27.1. Buyer shall indemnify, defend and hold harmless Seller, and its officers, directors, employees and agents from and against any losses, liabilities, damages, demands, obligations, fines or civil penalties, expenses, costs, and fees (including, but not limited to, court costs and reasonable attorney's fees) of whatsoever kind and nature (collectively, "Losses"), imposed on, incurred by or asserted against Seller, its officers, directors, employees and agents, in any way relating to or arising out of (a) the use, operation, possession or disposition of the Equipment by Buyer, (c) the willful misconduct or gross negligence of Buyer or any of its officers, directors, employees or agents, or (d) the negligence of Buyer or any of its officers, directors, employees or agents, to the extent that Losses are caused by such negligence.

## **28. Limitation of Liability**

- 28.1. WITH THE EXCEPTION OF ANY LIMITED WARRANTY PROVIDED IN A VALID WARRANTY CERTIFICATE ISSUED BY THE SELLER TO THE BUYER, THE SELLER DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING THE EQUIPMENT OR ANY SERVICES, ADVICE, OR CONSULTATIONS, IF ANY, OFFERED BY THE SELLER OR ITS REPRESENTATIVES TO THE BUYER OR ANY OTHER PARTY. THE SELLER EXPRESSLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, OR FOR ANY CLAIM BY ANY THIRD PARTY. SELLER SHALL NOT BE LIABLE FOR DAMAGES OF BUYER ARISING OUT OF INADEQUATE DESIGN, MANUFACTURE, MAINTENANCE, SANITATION, OR OPERATION OF EQUIPMENT IN WHICH THE EQUIPMENT IS INTEGRATED OR WITH WHICH IT IS USED, DEFECTS CAUSED BY IMPROPER USE OF THE BUYER'S EQUIPMENT OR IN CONDITIONS OUTSIDE THE SPECIFIED ENVIRONMENTAL PARAMETERS BY BUYER OR ANY THIRD PARTY, FAILURE BY THE BUYER OR ANY OTHER PARTY TO PROPERLY MAINTAIN, CLEAN, AND SANITIZE THE EQUIPMENT, OR REPAIRS INCORRECTLY CARRIED OUT BY BUYER OR OTHER THIRD PARTY, FOR DAMAGES NOT CAUSED BY GOODS SUPPLIED BY SELLER, OR DERIVING FROM THIRD PARTIES' EQUIPMENT OR PARTS, AND SHALL NOT BE RESPONSIBLE FOR PROVIDING ANY TYPE OF SERVICES ON SUCH EQUIPMENT OR PARTS. EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF SELLER TO THE BUYER, IF ANY, SHALL IN NO CASE EXCEED THE TOTAL AMOUNT OF TEN PERCENT (10%) OF THE EQUIPMENT'S PRICE OR- TEN THOUSAND US DOLLARS (USD 10,000) WHICHEVER IS THE LOWEST. IN ANY EVENT, THIS IS CONDITIONAL UPON THE EQUIPMENT BEING OPERATED BY BUYER IN COMPLIANCE WITH THE OPERATING INSTRUCTIONS.

## **29. Patents**

- 29.1. The Buyer agrees to indemnify and absolve the Seller from any claims, suits, losses, or liabilities brought against or incurred by the Buyer or any other party arising from allegations of patent, copyright, trademark, or other proprietary rights infringement, whether under common law or other legal grounds, or from claims of unfair trade or unfair competition. This indemnification pertains to matters arising from the Buyer's utilization, ownership, or sale of the equipment covered under this agreement.