

General Terms of Contract and Delivery

Date 2014

1. General

1.1 These general terms of contract and delivery are a component of the contract for services and shall apply correspondingly in the case of a purchase contract. They have validity, unless contrary terms are listed in writing in the quotation or in the order confirmation. General terms and conditions or individual terms and conditions of the customer are only valid insofar as they have been expressly accepted in writing by the supplier.

1.2 The conclusion of the contract and its amendments require the written form for their validity; for further relevant explanations the facilitated written form is valid (incl. Fax and Email).

1.3 In case of disputes concerning interpretation of translations of these terms in other languages, the most recent German version shall be decisive.

2. Quotes and conclusion of contract

2.1 The contract is deemed to be completed when Wyssen Avalanche Control AG confirms an order in writing, or the customer confirms acceptance of a quotation by the supplier (order confirmation).

2.2 Quotations without a limited period of validity are binding for 10 days after receipt.

3. Scope of delivery

3.1 The contract for services (the order confirmation) is decisive for the scope and performance of supply and service (delivery and performance together, hereinafter the **Work**). Material (at manufacturing costs) or services (at the respectively applicable tariffs of the supplier), which are not included therein, but are necessary due to an order change, are additionally calculated according to expenditure.

3.2 Changes with respect to the contract may be made by the supplier provided that these correspond to the development in technology or in-house development, and do not lead to any deterioration of the Work.

4. Technical documents

4.1 Technical documents such as plans, drawings, descriptions, diagrams and similar, as well as any weight indications, if they have not been expressly designated as binding, are only approximately authoritative; the supplier reserves the right to make necessary or useful changes.

4.2 Technical documents are to be handled confidentially by the customer. They remain the intellectual property of Wyssen Avalanche Control AG and may be neither copied nor reproduced nor in any way brought to the attention of third parties nor used for the fabrication of the equipment, spare parts or components thereof. They may only be used for the maintenance and operation of the Wyssen products.

5. Regulations in the country of destination

5.1 The customer must make the supplier aware, at the latest upon ordering, of the legal, administrative and other regulations and norms, which are related to the production of the Work, its operation and to requirements for sickness and accident prevention. The customer is responsible that the Work, its installation and the operation of the Work complies with all locally applicable statutory, regulatory and insurance law related requirements.

5.2 The customer is responsible for the necessary adaptations of the Work as a result of changes in laws and regulations in the country of destination or country of use.

6. Prices

6.1 The prices of the supplier are, insofar as nothing else is agreed, net, ex works, in Swiss francs, without packaging, transport, insurance, assembly, installation, commissioning and servicing or any sales taxes and value added taxes.

7. Payment terms

7.1 The payments are payable by the purchaser according to the agreed payment terms at the registered office of the supplier. For deliveries in countries other than Switzerland, the payments must be

made either in advance or by an irrevocable and confirmed credit order, accepted by our Bank, UBS AG, Bern, Switzerland.

7.2 The payments are to be made by the purchaser without deduction of discount, expenses, taxes and charges of any kind.

7.3 In case of default of payment, the supplier reserves the right immediately to suspend scheduled deliveries and is entitled to charge a default interest of 5% p.a. after setting a deadline for payment of 10 days.

7.4 The dates of payment must also be observed if transport, delivery, assembly, commissioning or acceptance of the deliveries or services have been delayed or made impossible for reasons for which the supplier is not responsible, or if unimportant parts are missing or refinishing proves necessary, through which however the use of the work is not made impossible.

8. Reservation of proprietary rights

8.1 The supplier reserves the right of ownership of the Work and the entry in the retention of ownership register until its full payment. The purchaser is obliged to take the necessary measures for the protection of the supplier's property.

8.2 The customer will maintain the delivered goods at his own expense for the duration of the retention of title. Furthermore he will take all measures, in order that the supplier's claim of ownership is neither compromised nor nullified. The supplier has the right for the duration of the retention of title at the expense of the purchaser to insure the deliveries against theft, breakage, fire, water and other risks.

9. Delivery time

9.1 The delivery period begins as soon as the contract is concluded, all official formalities such as import, export, transit and payment permits are obtained, the payments arising from the order and any collateral are paid, if necessary the corresponding credit order pursuant to section 7.1 is opened and all technical matters have been settled. The delivery period is deemed met if the readiness for dispatch has been communicated to the customer before its expiry.

9.2 Compliance with the delivery period requires fulfillment of the contractual obligations by the customer.

9.3 The delivery time is reasonably extended:

- if the information or permits that are required for the execution of the Work, are not submitted to the supplier in good time, or if these are subsequently changed by the customer;
- in the case of default by the customer (debtor and/or creditor default), especially if payment deadlines are not respected, credit orders are opened too late or required import licenses do not arrive with the supplier in good time;
- if hindrances arise which the supplier despite application of due care cannot avert, regardless of whether these occur with the supplier, the customer or a third party. Such obstacles are events of force majeure, for example epidemics, mobilization, war, civil commotion, serious operational breakdown, accidents, employment conflicts, late or faulty supply of the necessary raw materials, unfinished goods or finished products, proved rejection of important pieces of the work, official measures or omissions, natural events.
- If the customer or third parties are behind schedule with the work to be done by them or in default with the fulfilment of their contractual obligations in the default, in particular if the customer does not comply with the payment terms.

9.4 The customer is not entitled to damages or withdrawal from the contract due to late deliveries or services.

10. Delivery, transport, and insurance

10.1 The products are packed appropriately by the supplier. The packaging will be charged to the customer at cost. Additional requirements of the customer are respected in accordance with what is operationally possible and charged at cost price.

10.2 Special requests regarding shipping and insurance are to be announced to the supplier in good time. Transport takes place at the expense and risk of the customer. Complaints relating to transport are to be immediately raised by the customer upon

receipt of the delivery or the freight documents with the last forwarding agent, with a copy to the supplier.

10.3 Insurance against damage of any kind falls to the customer.

11 Transfer of benefit and risk

11.1 Benefit and risk are transferred to the customer at the latest upon dispatch of the deliveries ex works. For direct deliveries of a subcontractor to the customer, this applies correspondingly ex works.

11.2 If the shipping is delayed at the request of the customer or for other reasons, for which the supplier is not responsible, the risk is transferred to the customer at the time originally intended for the dispatch ex works. From this point on, the work is stored and insured at the expense and risk of the customer.

12 Inspection and acceptance of the work

12.1 The customer must inspect the Work as soon as it is feasible, in any case within 10 days of receipt, and notify the supplier immediately in writing of any defects. If he fails to do this, the goods and services are considered accepted.

13 Warranty

13.1 The supplier undertakes upon written objection by the customer to repair or replace at his discretion as quickly as possible all parts of the Work, which are verifiably defective or unusable due to poor materials, faulty design or poor workmanship prior to expiry of the warranty period. Parts subject to regular wear and tear such as chains and ropes, and new and used goods, which were used by the supplier on commission of the customer are excluded from the warranty. Replaced parts shall become the property of the supplier and must be returned to Wyssen Avalanche Control AG. The supplier shall bear the costs incurred in the repair of its work. If the rectification of defects is not possible in the work of the supplier, the customer bears the costs of transport, personnel, travel and stay as well as costs for the installation and deinstallation of the defective parts.

13.2 If the guaranteed characteristics are not fulfilled or only partially fulfilled, the customer is entitled to rectification by the supplier. To do this, the customer has to grant the supplier the necessary time and opportunity.

13.3 Warranted characteristics are only those that have been designated as such expressly in the contract or in the order confirmation or in the specifications. Characteristics that depend on uninfluenceable external circumstances, such as e.g. environmental temperature, humidity, wind conditions, etc. are also not warranted. The warranty shall apply at the latest until the end of the warranty period. If an acceptance inspection has been agreed, the warranty is deemed fulfilled if proof of the relevant properties is provided on the occasion of this inspection.

13.4 The warranty period is 12 months. It begins with the transfer of benefit and risk. The warranty period ends if dispatch, acceptance, installation, installation supervision or the commissioning is delayed for reasons, for which the supplier is not responsible, and in any case after 12 months after transfer of benefit and risk or notification of readiness for dispatch.

13.5 For replaced or repaired parts the guarantee period starts anew, and lasts 6 months after replacement, completion of the repair, or upon acceptance, however at the latest not more than 24 months after the start of the warranty period for the principal delivery.

13.6 The guarantee expires prematurely if the customer or third parties without the written consent of the supplier make changes or repairs or use spare parts other than original spare parts or if the customer, in case of a defect, has not immediately taken all appropriate measures to mitigate the damage and give the supplier the opportunity to correct the defect.

13.7 For foreign shipments, the supplier assumes warranty within the framework of the warranty obligations of subcontractors.

14 Liability

14.1 The supplier warrants that the products delivered are free from manufacturing and material defects.

14.2 Excluded from the warranty and liability of the supplier are damage, which is not caused by poor materials, faulty construction, poor workmanship, e.g. due to natural wear and tear, defective maintenance, failure to observe the operating instructions, excessive stress,

unsuitable operating resources, chemical or electrolytic influences, construction or installation work not carried out by the supplier, as well as due to other reasons for which the supplier is not responsible.

14.3 Constructions such as pylons are designed regarding wind loads subject to statutory requirements at the time of the passing of benefit and risk. For the design of systems in wind-exposed areas, the purchaser must make the supplier aware of increased risks, and disclose the corresponding maximum possible wind speeds. The same applies to areas with risk of ice.

14.4 The customer has no additional rights or claims beyond the right to rectification for defects of the material, design or workmanship as well as due to lack of warranted characteristics or inadequate advice or breach of any obligations, or due to operational failures. The supplier does not guarantee continuous availability and continuous operation of the work.

14.5 All claims of the customer against the supplier, except those mentioned in these conditions of sale and delivery, are, regardless of their legal basis, excluded. Particularly claims for damages, correction of defects and additional consequential damages (including production failure, or loss of revenue, usage and data loss, lost profit, etc.), reduction, cancellation or rescission of the contract are waived. The disclaimer refers to the supplier, its directors, associates and agents. In any case, the liability of the supplier is limited to a maximum of the sum insured by its business liability insurance.

14.6 The customer commits, for the entire duration of the operation of the Work to take out adequate liability insurance, in order to guarantee the cover of any third party damages; the supplier is entitled to request a copy of the respective current policy.

14.7 The customer waives, to the extent legally permitted (no intention, no gross negligence), all claims of every kind (except claims for fulfilment of the obligations arising from this contract) against the supplier under article 41 et seq. OR (Swiss Code of Obligations) or other liability bases or principles, even if damages should arise through actions or omissions of the supplier. In particular, liability for indirect damage is waived.

14.8 Should the supplier be prosecuted by a third party (in particular for tortious acts, OR article 41 et seq.) in connection with the contract and the operation of the Work, the customer is committed to support the supplier in the defense of such claims. If the supplier is held liable for the damage, or a part of the damage (final judgment or settlement agreement with prior consent of the customer), then the customer undertakes upon first request and without defenses or objections fully to indemnify the supplier for the entire damage, including court and lawyer's fees of the supplier.

15. Termination by the supplier

15.1 If unforeseen events significantly change the economic meaning or the contents of the deliveries or services or significantly affect the work of the supplier, such as in the case of subsequent impossibility of execution, the contract will be adapted accordingly. Insofar as this is not economically feasible, the supplier is entitled to the dissolution of the contract or annulment of the concerned parts of the contract.

15.2 In the case of such a termination the supplier is entitled to remuneration for the already provided deliveries and services. Claims for damages of the customer due to such a termination are excluded.

16. Applicable law and place of jurisdiction

16.1 This contract is subject to Swiss law (to the exclusion of conflict of international laws IPRG - international private law act - and the Convention of the United Nations on Contracts for the International Sale of Goods of 11th April 1980).

16.2 **Place of jurisdiction is Reichenbach, Canton of Berne, Switzerland.**

The supplier is however entitled to file claims against the customer at its registered office.