

## Terms of Delivery (01/2011)

CONTAINEX hereinafter called "the Seller"

### 1. Plans and Documents

Plans, drafts, quotations and other technical documents that may also be part of the offer, as well as samples, catalogues, prospects, photos and similar items shall remain at all times the intellectual property of the Seller. Each use, reproduction, dissemination and hand-over to third parties, publication and exhibition may only be made with the express approval of the owner.

### 2. Delivery Period

2.1 The Seller shall be entitled to make partial deliveries and deliveries in advance.

2.2. Should the Purchaser not accept the contractual goods supplied at the contractually agreed place or time and the delay has not been caused by an action or omission of the Seller, the Seller shall either demand fulfilment of the contract or rescind the contract by fixing a subsequent time limit.

If the goods have been separated, the Seller may store the goods at the Purchaser's expense and risk. Furthermore, the Seller shall also be entitled to claim reimbursement of any justified expenses that the Seller had to incur in connection with performing the contract insofar as the same are not covered by the payments received.

### 3. Price

Unless otherwise agreed, all prices shall be ex works of the Seller's premises, without loading.

### 4. Payment

4.1 The Purchaser shall not be entitled to withhold payments by reason of warranty claims or of any other counter-claims that the Seller has not accepted.

4.2 Should the Purchaser have defaulted on an agreed payment or any other act of performance, the Seller may either demand the fulfilment of the contract and

- a) postpone the fulfilment of its own obligations until the Purchaser has paid the arrears or performed the contract in some other way,
  - b) use an appropriate extension of the period of delivery,
  - c) demand the outstanding payment of the entire purchase price,
  - d) unless the Purchaser can establish a reason to be relieved, charge interest on arrears, as of the due date, at the rate of 7.5% above the rate of the Euribor for 12 months,
- or serve notice of rescission of the contract, by granting an appropriate extension of the deadline.

4.3 In any event, the Purchaser shall reimburse to the Seller the reminder charges and debt enforcement costs that constitute a further loss caused by the delayed performance.

4.4 If, pursuant to sub-clause 4.2, the Purchaser fails to make the payment due or to provide any other act of performance before the extended deadline, the Seller may withdraw from the contract by giving written notice thereof. At the Seller's request, the Purchaser shall return to the Seller any delivered goods and compensate the Seller for any reduction in the value of the goods that has occurred, as well as refund to the Seller all justified expenses that the Seller had to incur in connection with the performance of the contract. Regarding undelivered goods, the Seller shall be entitled to make the completed or unfinished parts available to the Purchaser, and ask for a pro-rata proportion of the sales price.

## 5. Retention of Title:

The Seller shall retain the title to the goods sold until the Purchaser has met all financial obligations. The Seller shall be entitled to record its ownership on the outside of the delivery item. The Purchaser shall comply with the required formal regulations to safeguard the retention of title. In the event of sequestration or any other enforcement action, the Purchaser shall assert the right of ownership of the Seller and inform the latter without delay.

## 6. Warranty:

6.1 Subject to the following provisions, the Seller shall remove any defect affecting the use of the item that originated in a failure of construction, material or layout, in accordance with the following provisions. The Seller shall also be liable for any defects in respect of expressly requested features.

6.2 The said obligation shall apply only to such defects as appear within a period of one year, when working a one-shift operation, from the time of transfer of risk, or in the case of delivery with installation from the time of completion of the installation.

6.3 The Purchaser may rely on this clause, only if he/she informs the Seller in writing without delay of any defects that have appeared. It is incumbent upon the Purchaser to provide evidence that the defect already existed within the period indicated in clause 6.2. Once the Seller has been so informed, the Seller shall, if the defects must be remedied according to the provisions of this clause, at the Seller's option:

- a) rework the defective goods on site;
- b) have the defective goods or the defective parts shipped back for reworking;
- c) replace the defective parts;
- d) replace the defective goods.

6.4 If the Seller arranges for the defective goods or parts thereof to be returned to Seller for the purpose of reworking or replacement, the Purchaser shall bear the costs and the risk of the transport, unless otherwise agreed. The re-shipment of the reworked or replaced goods or parts to the Purchaser shall be at the Seller's costs and risk, unless otherwise agreed.

6.5 The defective goods or parts, replaced in accordance with this clause, shall be retained by the Seller.

6.6 The Seller shall refund any costs for removal of a defect, undertaken by the Purchaser, only if the Seller has given its consent thereto in writing.

6.7 The Seller's obligation under warranty shall apply only to defects that appear when observing the designated operating conditions and putting the item to normal use. This obligation shall, in particular, not apply to defects that are due to poor installation on the part of the Purchaser or his/her representatives, poor maintenance, or poor repairs or modifications undertaken by persons other than Seller or its representative, without the written agreement of the Seller, or to normal wear and tear.

6.8 The Seller shall be liable for those parts of the goods that the Seller obtained from sub-contractors prescribed by the Purchaser only to the extent of the Seller's own warranty claims vis-à-vis the sub-contractor.

If the Seller produces an item on the basis of the Purchaser's construction data, drawings or models, the Seller's liability shall not be extended to the accuracy of the construction but as to the extent that the construction was carried out in accordance with the instructions of the Purchaser. In such cases, the Purchaser shall indemnify the Seller against a breach of proprietary rights.

When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods, the Seller shall not give any warranty.

6.9 As of the beginning of the warranty period, the Seller shall not assume any other liability apart from that defined in this clause.

#### 7. Liability:

7.1 It is expressly agreed that the Seller shall not be liable to the Purchaser for damages in the event of personal injuries, or for damage to goods that are not the object of the contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that the Seller acted with gross negligence. The Purchaser shall provide evidence of any alleged loss or damage. A shift of the burden of proof shall be excluded.

7.2 The purchased item provides only that level of safety that may be expected on the basis of authorisation regulations, operating instructions, regulations of the Seller on the handling of the purchased item, especially with regard to any possible inspections, and other instructions given.

7.3 In the event of minor negligence of the Seller, provided that clause 7.1 is not applied, the compensation for damage shall be limited to 5% of the total of the order, but subject to a maximum of €100,000.

7.4 Court proceedings for all claims for damage by way of defects in deliveries and/or service delivery shall be filed in court within one year of the expiry of the contractually agreed warranty period if the Seller does not expressly accept the defect; otherwise all claims shall become time-barred.

#### 8. Applicable Law/Place of Jurisdiction:

Vienna shall be the place of jurisdiction for claims arising from or in connection with this Contract. The Seller may also file an action at the local court at the place of the registered office of the Purchaser. The law of the place of jurisdiction, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG), shall apply.

#### 9. General Provisions:

Invalid or unworkable provisions shall not affect the validity of the remaining provisions. On the contrary, a substitute provision intended by the parties to achieve the same economic purpose as the invalid or unworkable clause shall replace the invalid provision.