

## **APPENDIX A.**

### **GENERAL TERMS AND CONDITIONS OF DELIVERY AND ASSEMBLY**

#### **A. Definitions**

1. CONINCO International Limited is hereinafter referred to as the "Supplier" which expression shall include its successors in title.
2. The person or entity whose order for products or services is accepted by the Supplier is hereinafter referred to as the "Customer" whether or not expressly referred to in other documents issued by Supplier or Customer
3. "Contract" means the agreement made between the Customer and the Supplier for the purchasing of the products comprising the terms set out in the Supplier's offer and these Terms and Conditions.
4. "Product" shall include any equipment, machine, system or any other thing sell under this Contract.
5. "Terms & Conditions" means these General Terms & Conditions of Delivery and Assembly.

#### **B. Scope of application**

1. These General Terms and Conditions apply to all our proposals, declarations relating to legal transactions, sale contracts and contracts for works and services, including the provision of consultancy and other contractual services to the exclusion of all other terms and conditions. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract with the Customer whether simply as a result of such document being referred to or sent to Supplier or otherwise.
2. These General Terms and Conditions likewise apply to all future transactions with the Customer regarding the products listed in Supplier offer, unless differing terms and conditions are expressly agreed by Supplier in writing as applying to any contract. Furthermore, these General Terms and Conditions also apply to all other agreements arising as a consequence of the agreed performance of Works such as servicing or repair contracts

#### **C. Execution and subject of contract, scope of Works**

1. The quantity and description of the Works as set out in Supplier Written Offer and signed by Customer shall be conclusive of the scope and nature of the Works to be performed.
2. Delivery of products shall be to the Site of the Customer and includes a one time assembly/installation. Any other delivery arrangements are not included in the Price and must be agreed in writing.
3. Assembly shall mean erecting, joining, fixing and inserting of parts of products according to our technical specifications. Any such assembly shall be dependent upon the Customer having first ensured that the location for assembly is prepared and in such state and condition as Supplier shall instruct or direct.
4. All information regarding the properties, specifications or descriptions of Works and/or the products or materials comprising them in brochures, catalogues, advertisements, photos, drawings and other illustrations or in our correspondence prior to the offer and on any layout plans is approximate only, unless expressly stated as binding in the Written Offer.
5. Supplier reserve the right to modify the design and the content of the Works prior to performance of the Works provided this does not fundamentally change the Works, their function and appearance, and provided the modifications should be acceptable to the Customer acting reasonably. Clauses E2, and I3 of these General Terms and Conditions apply in the event of any adjustments to the Price.
6. The proprietary rights and copyright in any cost estimates, drawings, plans, specifications or other documents (hereinafter referred to as 'the Documents') is and shall remain Supplier property. The Documents, including parts thereof, must not be reproduced or disclosed to any third party except with Supplier prior written consent and must be returned immediately and without the need for a request from Supplier if a Contract should not materialize. Supplier shall not be liable for any use of the Documents for any purpose other than that for which they were prepared.

#### **D. Obligations of the Customer**

1. The Customer shall immediately after conclusion of the Contract nominate a qualified person as Project Leader, who shall have the authorization of the Customer to issue binding statements and agree to any amendments to the contractual terms in the Customer's name. Furthermore it is the responsibility of the Customer to provide at his own expense:
  - the items, personnel and materials necessary for the performance of the Works including, without limitation, trestles, lifting tools, cranes and other apparatus.
  - utilities with the necessary and sufficient connections to the places of use and sufficient illumination.
  - at the location of assembly, dry and lockable rooms for the storage of our products; and for the assembly personnel, working rooms and rest areas including sanitary facilities.
  - all protective clothing and protective devices which are necessary or desirable due to special circumstances or the properties of the assembly area (including but not limited to those identified in the

- Written Supplier's Offer or Order Confirmation), so as in each case to comply with Statutory Requirements,
- pallets, racks, equipment related ancillary items and anything else which will be necessary or desirable for the beginning of the assembly operation and any trial operation or acceptance process and criteria in relation to the carrying out of the Works.
  - a fork lift truck or lifting equipment suitable for assembly
  - a container or other appropriate receptacle(s) for the absorption or collection of the packaging material
  - free and convenient access to (including by means of lorry) the assembly area
  - a secure storage area for products, materials, plant tools and belongings.
2. Furthermore, the Customer shall be responsible for ensuring the protection of all persons and materials at the assembly area (including our employees, contractors or agents) as well as informing our Project Manager or Site Supervisor accurately about existing safety regulations. Together with the order Customer shall provide Supplier with any information regarding the location of electricity, gas or water conduits or similar systems or utilities which are not visible, as well all necessary static information, without the need for any request. In addition the Customer shall ensure that the access roads and the installation or assembly area are levelled and accessible on floor level, the installation or assembly area matches the floor specifications required by Supplier, and in case of indoor installation the wall and ceiling plaster is completely finished, and the installation of all doors and windows completed.
  3. The Customer warrants and undertakes that it shall comply with all of its duties and obligations under and in respect of any Statutory Requirements that relate or apply to this Contract.
  4. The Customer shall indemnify Supplier in respect of any expense, liability, loss, claim or proceedings whatsoever arising as a result of a breach of its duties, warranties, undertakings or obligations under or in connection with clauses D1 to D4.
  5. The Customer acknowledges that Supplier have relied upon and will rely upon the accuracy, adequacy and completeness of the surveys, reports and other documentation listed in the written Order. The Customer shall indemnify Supplier in respect of any expense, liability, loss, claim or proceedings whatsoever in respect of any inaccuracy, inadequacy or omission therein.

#### **E. Delivery and Assembly periods**

1. If a delivery/assembly period has been agreed, it shall commence when the order confirmation or acceptance of Supplier's Offer has been sent, but not before information, documents licenses and clearances to be supplied by the Customer and the agreed down payment have been received. Nor shall the delivery period commence before all technical questions of crucial importance to the contract performance have been clarified. In case of approximate data or the like in particular, the order confirmation is binding. If this should also contain only approximate data, the Customer must have binding delivery periods confirmed by Supplier separately. If a delivery date has been agreed, the aforementioned stipulations apply accordingly; if the prerequisites stated above for the delivery period have not been satisfied by the time the order confirmation or acceptance of Supplier's Offer is sent, the date for delivery and/or assembly is postponed by the corresponding period of time.
2. If the Customer raises additional requests or wishes modifications relating to the delivery products or the assembly after the order has been confirmed, this requires an adjustment to the Contract agreed by both Parties (delivery products, delivery/assembly date, purchase price, etc.).
3. The delivery / assembly period is extended commensurately in the event of measures taken during industrial disputes, in particular strike and lockout, the occurrence of *force majeure*, governmental orders or in the occurrence of unforeseen circumstances beyond Supplier control, provided they have an effect on the completion or delivery of the delivery products or on the assembly. The same applies if these circumstances occur at CONINCO's sub- Suppliers or subcontractors. Supplier is not responsible for the aforementioned circumstances if they occur during an already existing delay. In important cases Supplier shall notify the Customer as soon as possible of the beginning and end of such circumstances. If, as a result of such unforeseen circumstances, the delivery of the products/assembly becomes impossible or if delivery / assembly is possible only at considerable additional expenses, Supplier is entitled to cancel the Contract in addition to its statutory rights.

#### **F. Stage Performances, performance of Services**

1. Partial performances are permitted. Each partial performance is consider an individual transaction and can be billed separately by Supplier.
2. Supplier is entitled to use subcontractors for assembly services.

#### **G. Delays in delivery and performance of Services**

1. If due to Supplier default there is a delay in the delivery of accepted orders, Supplier shall pay the Customer after a period of grace of at least 25 working days a lum sum compensation in the amount of 0.5% of the value of such part of the delivery respectively of the assembly that cannot be used on time or according to the Contract, for each completed week of the delay up to a maximum of 5% of the net value of the delayed order. Such compensation shall be Customer's sole and exclusive remedy for delay.
2. If there is a delay in delivery or performance as described in Clause G1 which continues and Supplier fails to

deliver within 60 days from the agreed delivery period, Customer can decline acceptance, and further, if the compensation payable under clause G1 has reached the maximum amount referred to in that clause, the Customer shall be entitled to terminate that part of the Contract that has not been performed. However, the Customer shall remain liable to pay for any Works performed (including but not limited to the value of any products and materials delivered or manufactured and ready for delivery) in the period prior to the date of termination.

3. Subject to the provisions of Clause L, clauses G1 and G2 constitute CONINCO sole liability to the Customer for delay in delivery or performance and the Customer is not entitled to any further rights, amounts or remedies for delay in particular claims for damages.
4. If the Customer requires a later delivery or assembly date or date for performance than the one contractually agreed upon and Supplier consent in writing to such postponement, the Customer shall be charged the cost for storage. In the event of storage at our factory this shall be a minimum amount per month no less than 0.5% of the net value of the order. In the event the notice is given after the material have left Supplier factory, Supplier reserve the right to charge any external storage cost to the Customer. Supplier is also entitled, if the Customer does not inform that it is ready to accept the delivery within 30 calendar days, to sell or otherwise dispose of any products or materials for incorporation into the Works or to deliver such products or materials to the Customer.

#### **H. Acceptance of the delivery, delay in acceptance of the delivery, recession of contract**

1. The Customer shall accept the delivery of products when they are delivered in accordance with clause C. If the Customer fail to comply with this obligation, it shall bear all additional costs (e.g. storage and maintenance costs). Once the time limit set by Supplier has passed without acceptance of delivery or confirmation that it is ready to accept delivery, Supplier may rescind the Contract and sell or otherwise dispose of the products and claim the full Price and any damages notwithstanding any other claims Supplier might have. In the event of a refusal on the part of the Customer to accept the products, Supplier shall be entitled to the remedies set out in this clause without the requirement to set a time limit. The risk in products shall pass to the Customer at the moment the Customer was due to accept their delivery even if such delivery is not accepted or is delayed.
2. If the Customer does not fulfil all requisite and assembly conditions to enable Supplier to perform the works, it shall be in default of acceptance of the Works after expiration of a 30 calendar days additional period set by Supplier as shall deem to be adequate. Supplier is entitled to deploy the employees, contractors or agents elsewhere and shall be entitled to damages and compensation for the additional costs caused by the delay.
3. The Customer shall accept the Works as soon as the completion of the Works has been notified to it. The date on which the Customer receives such notification being the **Completion Date**. Where a trial performance has been agreed upon, the Completion Date shall take place immediately after a successful trial operation. Supplier will submit an acceptance protocol to be signed by the Customer. If there is a delay in acceptance which is not the result of any relevant breach by Supplier, the Completion Date will be deemed to have taken place 14 days after receipt of the request to take over the Works and render acceptance. With regard self-contained partial performances, Supplier can ask for separate partial acceptance.
4. If at the Customer's express request the Contract is terminated, the Customer is obliged to pay within four weeks of receipt of a statement of account that portion of the Price which relates to the value of the Works performed or to be performed as at the date of issue of such statement less any payments already made by the Customer in respect thereof and the same shall be recoverable as a debt and/or may be withheld or deducted from any sum due from Supplier to the Customer.

#### **I. Prices and payment terms, sales tax**

1. The element of the Price which relates to the supply of products, materials and assembly is inclusive of delivery to the site, packaging costs and installation and the Price is exclusive of any applicable sales tax. Invoices must be paid within thirty days of receipt of the relevant invoice.
2. Prices quoted or contracted by Supplier with the Customer may be revised by Supplier to cover unforeseen adjustment in Supplier's cost which are due to any factor beyond its control, such as without limitation:
3. \*any foreign exchange fluctuation, currency regulation, \*alteration of custom or other duties, \*steel index fluctuations beyond +/-3%, \*significant increase in the costs of labour, materials, shipments, or other costs of manufacture, \*any change in delivery dates, quantities or specifications for the products requested by the Customer or \*any delay caused by any instructions of the Customer or the failure of the Customer to give Supplier adequate information or instructions.
4. If Supplier desires to revise prices accordingly but is restricted to any extent against so doing by reason of any government law, regulation, order or action, or if the cost basis of prices quoted or contracted as fixed prices is altered by reason of any governmental law, regulation, order or action, Supplier shall have the right to rescind the Contract by written notice to Customer if the parties cannot agree forthwith on a mutually acceptable solution concerning the additional cost thus incurred by Supplier.
5. In the event of delay in payment, interest shall be charged from the due date at the rate of 1,5% per month

of the net value of the invoice due, notwithstanding and without prejudice to any other loss or damage caused by the default and any other claims Supplier may have.

6. Payment shall be by bank transfer, cheques or any other payment form agreed in writing with Supplier.
7. Payment shall be made without set-off, counterclaim or any other deduction or withholding except for any claims which have been determined by a binding court order, uncontested or acknowledge by Supplier.
8. Payments may be made only directly to our company according to details set out in our invoice and not to our branches or our salesmen or representatives. In any event payment is only deemed made, once it is received in cleared funds into Supplier's bank account.

#### **J. Retention of title**

1. Supplier retain full title of all delivery items (reserved products) until payment in full of all claims arising from the business relationship with the Customer, including claims arising out of additionally performed incidental services (e.g. erection). In the case of current account, all of the reserved products are deemed to secure the balance claim.
2. Where the Customer uses the reserved products at his own factories, he is not permitted to resell, pledge or transfer ownership by way of security in whole or in parts, without Supplier express prior consent in writing, as long as the retention of title exists.
3. Where the Customer has acquired reserved products for the purpose of resale, the Customer shall be permitted to resell them in the ordinary course of business. In each case of resale reserved products, the Customer hereby assigns its future claims from the resale against its buyer. Supplier hereby accept this assignment. The Customer shall be authorized to collect any claim. Supplier is also entitled that right; although Supplier shall not do so until the Customer fails to comply with his payment obligations or if there is deterioration in his financial position, which jeopardizes his payment obligations. In this event, the Customer shall be obliged on first demand to provide with all information and documents necessary for collection.
4. Any processing or transformation of the reserved products by the Customer shall always be done on Supplier behalf.
5. The Customer is obliged, to notify Supplier immediately in writing without delay of all measures of execution with respect to reserved products and to forward to Supplier copies of garnishee orders and records. In addition, the Customer shall do everything in its power to ward off execution. In the event of a third-party action against, the Customer is obliged to reimburse Supplier the court and out-of-court cost if the third party is not in a position to do so.
6. In case of Customer being in breach of contract, especially in the case of default in payment, Supplier is entitled to take back the delivered items after a period of grace set by Supplier.
7. If Supplier should assert our right of title to the reserved products, take possession of them or pledge them, this shall not be deemed as a rescission of the Contract unless Supplier have explicitly declared such rescission.
8. If the Customer considerably violates the obligations mentioned in this article (J Retention of title) Supplier shall be entitled to rescind the contract.

#### **K. Claims based on defects in Quality and defects of Title**

1. In the case of defects of the delivery item, Supplier warrant as follows:
2. Notices of defects are to be addressed to Supplier in writing.
3. All those parts of the delivery products respectively assembly services which on acceptance are proven to have been defective upon transfer of the risk to the Customer, will according to our choice be either repaired or redelivered respectively re - performed if they are assembly services free of charge. Supplier gain ownership of all such parts exchanged during this rectification upon their removal. The Customer is required to grant Supplier sufficient time and opportunity for such rectification. Minor deviations from the agreed or usual quality or usefulness, shall not be deemed a defect.
4. Supplier shall bear the expenses necessary for the subsequent performance, unless it causes a disproportionately high charge. This does apply for expenses, in particular for travel and transport costs, which increase because the delivery item has subsequently been taken to a place other than the place of performance.
5. In case the rectification fail, the Customer is entitled to opt for having the agreed purchase price reduced or for the rescission of the Contract. If the Customer choose to rescind the Contract, the Customer shall waive the entitlement to compensation claims and to reimbursement of expenses unless Supplier have intentionally failed to disclose the defect.
6. Further claims by the Customer due to or in connection with defects or consequential damage caused by a defect, for whatever legal reason, shall be limited pursuant to the provisions in paragraph L2 (Liability).
7. In principal Supplier does not give any guarantee as to the durability of nor any other guarantee for our delivery items or services. As a consequence, none of our descriptions, representations or other statements - whether before or at the conclusion of the contract- has the nature of a guarantee.

8. Subject to the provisions in Clause L2. there are no further claims, in particular not for reimbursement of expenditures fruitlessly spent or compensation claims.
9. Supplier does not assume any responsibility for any consequences of the following circumstances:
10. Unsuitable or improper use, in particular overstress, faulty installation or putting into operation by the Customer or third parties, wear and tear or typical wear from use, defective or negligent treatment, failure to carry out maintenance or maintenance not carried out in conformity with the regulations and our operating instructions, unsuitable equipment and facilities and spare parts, faulty building construction work, unsuitable building ground, chemical, electrochemical or physical influences.
11. If the Customer or third parties should effect modifications or repairs to the delivery products in an improper way without our prior express consent, any warranty claims for such works and for any consequences resulting therefrom shall be excluded.
12. In case of defects in title of the delivery item Supplier warrant as follows:
13. CONINCO is obliged to deliver the delivery products free of any industrial property rights and copyrights of third parties. If third parties should lodge legitimate claims arising from an industrial property right or a copyright against the delivery products or parts thereof Supplier shall at our discretion and expense in relation to the delivery products concerned either obtain a right of use, modify them to the effect that the property right or copyright is not infringed or exchange the delivery products or parts thereof. If Supplier should be unable to do so at fair and reasonable conditions, the Customer is entitled to the statutory rights of rescission of the Contract. Subject to the provisions in Clause L, the Customer is not entitled to raise any claims for reimbursement of expenditures fruitlessly spent or compensation claims.
14. Subject to the provisions in article K8 (Unsuitable or improper use), Supplier will hold the Customer harmless from any claims of the respective owners of property rights that are undisputed or determined by final judicial decision. Except in the cases mentioned in paragraph L2 below (Liability), the Customer may not claim indemnities or compensation.

#### **L. Limitation of Liability**

1. The following provisions apply to claims for damages due to, in addition to and instead of performance, namely irrespective of the legal reason (in particular for consulting errors, breach of contractual obligations, defects and tort) as well as to claims for reimbursement of expenses and rights of indemnity (hereinafter compensation claims). The provisions in case of default (article G) take precedence. The Supplier's entire liability in respect of Delivery and Assembly under the Contract shall in any case be limited to the total value of the Contract in respect of which damages are claimed.
2. Supplier shall not be liable for compensation claims against Supplier, in particular for consequential damage such as lost profits, loss on account of plant interruption, loss of production and loss of use, and not for indirect damage either. This limitation does not apply in the following cases:
  - In case of wilful misconduct
  - In case of gross negligence of legal representatives and senior executives with liability being limited to making up for the foreseeable damage typical of the contract;
  - Defects intentionally undisclosed or such defects whose absence Supplier have guaranteed (in this case however only to the extent to which the precise intention of the guarantee was to secure the Customer against the loss or damage sustained.
  - In case of injury to life, body or health;
3. Further claims, in particular rights of indemnity on first demand, are excluded.

#### **M. Exclusion of assignment**

The Customer shall not be entitled to assign the Contract or any part of it or any claim under it without our prior written consent.

#### **N. Cancellation**

Customer may not cancel the order or the Contract described herein except with the express prior written consent of the Supplier. In the event of a cancellation the Customer, shall be liable to and shall pay the Supplier a cancellation charge equal to:

- Cancellation within 5 working days upon reception of order from Customer: 30% of the total Contract Price or down payment whichever is higher
- After 5 working days upon reception of order from Customer: 75% of the total Contract Price

Except that nothing herein shall limit any other remedies available to the Supplier hereunder or at law.

#### **O. Place of performance, transfer of risk, place of jurisdiction, applicable law**

- The place of performance is the domicile indicated by Customer and that has been clarified before design of the plans and despatch

- The Customer from the time the products are delivered to its site accepts responsibility for loss or damage to the products. This responsibility will also apply whilst the products are on site during any period prior to the commencement of the installation.
- The Law of the Hong Kong Special Administrative Region shall govern the formation, existence, construction, performance, validity, disputes and all aspects of the Contract.

**P. Arbitration**

Any dispute arising out of or in connection with this contract or these terms and conditions, including any dispute regarding its existence, validity, interpretation, or termination, whether during the term of this contract or after its termination, shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (“HKIAC”) in accordance with the HKIAC Administered Arbitration Rules in force at the time of commencement of the arbitration, which rules are deemed to be incorporated by reference into this clause. The arbitral tribunal shall consist of one arbitrator, and the language of the arbitration shall be English.

**Q. Notices**

All notices must be in writing and sent by hand, post or by the recorded delivery service to the addresses and individuals identified in the Written Order Confirmation or Supplier’s Offer.