

A. Applicability

1. These General Conditions of Sale shall, in its most current version, apply to all orders placed by the Customer with SMS Concast AG, Zurich (hereinafter "SMS Concast"). The most current version can be obtained from the following web-site: www.sms-concast.ch ([General Conditions of Sale](#)). In case of amendment of this General Conditions of Sale, SMS Concast will notify the Customer.
2. This General Conditions of Sale shall also apply exclusively and notwithstanding any other general terms and conditions of purchase of the Customer, whether or not referred to in its purchase order to SMS Concast even if SMS Concast have not expressly disagreed with such other terms and conditions and even if a purchase order contains addenda or statements that are worded differently or provide for further conditions.
3. Any and all orders placed by the Customer shall be valid only once confirmed by SMS Concast in writing in the form of a signed Contract or a Purchase Order Confirmation signed by SMS Concast. The content of the Purchase Order Confirmation shall always prevail over the purchase order of the Customer. The purchase order in the form and with the content of the Purchase Order Confirmation shall hereinafter be referred to as "Purchase Order".
4. This General Conditions of Sale shall form an integral part of the Contract and/or the Purchase Order.
5. All definitions not expressly defined in this General Conditions of Sale shall be interpreted as described in the Contract, in the Purchase Order or in the Purchase Order Confirmation.

B. Scope of Supply

1. All supplies of SMS Concast shall be as expressly specified in the Contract, in the written Purchase Order Confirmation of SMS Concast or in the underlying offer (hereinafter "Goods"). Any alterations requested by the Customer are only valid if they have been confirmed by SMS Concast in writing.
2. SMS Concast is entitled to vary the design and/or specification at its own discretion, provided that in case of material variations SMS Concast has notified the Customer accordingly and the quality and performance of the Goods is not adversely impaired.
3. Any documents being part or relating to the offer or the Purchase Order Confirmation of SMS Concast (e.g. illustrations, drawings, specifications of weights and dimensions) are only approximate unless they have been specifically stated as being binding.

C. Prices and Payment Terms

1. Prices and Payment Terms shall as set out in the Contract, in the written Purchase Order or in the underlying offer of SMS Concast.
2. All prices of SMS Concast are based on the agreed delivery terms as per INCOTERMS 2010 and are exclusive of any and all taxes, duties and levies of any kind.
3. Payments shall be deemed made to SMS Concast only once they have been unconditionally credited in full to its account without deductions for any bank charges.
4. In the event of payment being overdue by the Customer, 7 % interest p.a. shall become due without express request and without prejudice to any other rights SMS Concast might have under the Contract or at law.
5. In the event of payment being overdue by the Customer, SMS Concast is entitled to suspend any or all part of the Goods and prolong any agreed delivery terms for any delivery until the due payment has been made.
6. Payments shall not be withheld or offset in respect of any claims by the Customer unless they have been finally sustained by an enforceable order of a competent court of justice or accepted by SMS Concast in writing.

D. Delivery

1. Delivery shall be made as per the agreed delivery term as per INCOTERMS 2010. A delivery shall also be deemed made if and when the Goods are stored in a warehouse to which storage at the cost and risk of the Customer SMS Concast shall be entitled if the shipment is delayed due to reasons for which SMS Concast is not responsible.
2. The delivery time shall be reckoned from the date of the signing of the Contract or of the written Purchase Order Confirmation of SMS Concast, unless the Contract or the Purchase Order provides for an advance payment and/or a payment security in which case the delivery time shall be reckoned from the date on which such advance payment has been made and the payment security has been submitted.
3. Partial deliveries of SMS Concast shall be permitted.
4. The Customer shall be obliged to immediately handle and store the Goods according to the instructions of SMS Concast of after the delivery.
5. The Customer shall obtain and secure all necessary permits and licenses necessary for the import of the Goods, the rendering of the Services as well as for the installation and operation of the Goods.
6. The delivery time shall be extended by any possible delay which is a result of events for which SMS Concast is not responsible. In case

the Customer is responsible for such events, SMS Concast is entitled to an increase of the agreed price according to the Contract or Purchase Order by the cost incurred by SMS Concast due to such delay and/or extension.

7. The same applies, if and when more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is an event which entitles SMS Concast to an extension of the delivery time.
8. In case of delay in delivery of the Goods to the agreed shipping point and in case such delay affects the timely installation of the Goods and should such delay be for reasons solely attributable to SMS Concast, the liability of SMS Concast shall be limited to the payment of liquidated damages of 0.5% (zero point one percent) of the price of the delayed Goods for every full week after a grace period of two weeks. The total amount of the liquidated damages shall be limited to 5.0% (five percent) of the price of such delayed Goods, without limitation of the responsibility for intent to injure and gross negligence.
9. The liquidated damages shall represent and shall be considered as a fair and final amount of compensation for possible damages suffered by the Customer as a consequence of delayed delivery and shall constitute the sole and exclusive remedy of the Customer for delayed delivery and the subsequent delay in the start of operation of the Goods to the exclusion of any additional and/or alternative remedy, whether under the Contract or at law.

E. Transfer of risk and title

1. The risk of loss or damage to the Goods shall pass to the Customer as the respective INCOTERM (as per INCOTERMS 2010) agreed in the Contract or in the Purchase Order may determine.
2. In case of warehousing according to paragraph D.1. above, the risk of loss or damage to the Goods shall pass to the Customer upon the warehousing.
3. Title to the Goods shall pass to the Customer once the agreed price has been paid in full to SMS Concast.

F. Acceptance

1. Acceptance of the Goods shall be deemed occurred upon its delivery as per INCOTERMS 2010 in the Contract or in the Purchase Order.
2. Where the Contract or Purchase Order provides for a formal acceptance test and such test has not been successfully conducted or concluded with two months from the completion of the delivery as per the respective INCOTERM (as per INCOTERMS 2010) agreed in the Contract or in the Purchase Order due to reasons for which we are not responsible, then acceptance of the Goods shall be deemed occurred.
3. Acceptance of the Goods shall be also deemed occurred if and when the Goods have been put into operation by the Customer.

G. Warranty

1. SMS Concast warrants that the Goods, upon delivery, shall be new and free from defects due to faulty design, material or workmanship, and shall be manufactured according to what is specified in the Contract, in the written Purchase Order or in the underlying offer.
2. The limitation period in respect of any and all claims by the Customer under the aforesaid warranties (hereinafter "Warranty Period") shall be (i) 12 (twelve) months from the date of putting into operation or (ii) 15 (fifteen) months from delivery - whichever is earlier - or (iii) 6 (six) months from the delivery for any replacement parts.
3. If during the aforesaid Warranty Period (i) the Customer materializes that any part of the Goods fails to meet the warranties as stipulated in paragraph G.1. above (hereinafter "Defect") and (ii) the Customer informs immediately SMS Concast thereof stating in writing the nature of the Defect, SMS Concast shall, at its choice and expense, repair, make good, replace or modify such part of the Goods.
4. SMS Concast shall not be responsible, and these warranties shall not apply to any wearing or tearing parts and/or if the Goods or any parts thereof have been subject to other than normal and/or prescribed storage, handling, operation and maintenance or insufficient maintenance, or to repairs or alternations executed by the Customer after the acceptance.
5. Moreover, the obligations of SMS Concast according to paragraph G.3. above shall not apply to Defect which has been detectable by the Customer but has not been notified or reserved by the Customer at the time of acceptance.
6. No other warranty, condition, guarantee or representation of any kind on the part of SMS Concast in respect of the Goods is given or to be implied by this. Any other warranties, conditions, guarantees, representations and remedies of the Customer which are implied by law - particularly reduction of the purchase price and execution by substitution - are hereby excluded.

H. Force Majeure

1. Should SMS Concast be prevented wholly or in part from fulfilling any of its obligations under the Contract or Purchase Order for reasons of Force Majeure, such obligation shall be suspended to the extent and for as long as such obligation is affected by Force Majeure.
2. Force Majeure hereunder shall include for example but shall not be limited to any of the following events:
flood, typhoon, earthquake, tidal wave, landslide, fire, plague, epidemic, quarantine restriction, perils of the sea; war or serious threat of the same, civil commotion, blockade, arrest or restraint of government, rulers or people, requisition of vessel or aircraft; strike, lockout, sabotage, other labour dispute, explosion, accident or breakdown in whole or in part of machinery, plant, transportation or loading facility; governmental request, guidance, order or regulation; unavailability of transportation or loading facility; curtailment, shortage or failure in the supply of fuel, water, electric current, other public utility, or raw material including crude oil, petroleum or petroleum products; bankruptcy or insolvency of the manufacturer or supplier of the Goods or services; substantial change of the present international monetary system; or any other causes or circumstances whatsoever beyond the reasonable control of SMS Concast.
3. If after 6 months from the date of commencement of such delay, SMS Concast should still be prevented, for reasons of Force Majeure according to paragraph H.2., from performing its obligations under the Contract or the Purchase Order, SMS Concast shall be entitled to terminate the Contract and/or Purchase Order with a notice period of 15 days to the end of each month.

I. Intellectual Property

1. To the best of its knowledge, the Goods do not infringe any patent, design, trade mark, trade name, copyright, or any other intellectual property right of any third party. If, as a result of a claim of a third party prior to the expiration of the Warranty Period, all or any part of the Goods is held to constitute an infringement of the Intellectual Property Rights of any third party and the Customer is prevented from using all or part of this Goods, SMS Concast shall at its cost and to the exclusion of any additional and/or alternative remedy of the Customer either:
 - replace the infringing Goods and/or process by not infringing Goods and/or process; or
 - secure a licence for the Customer,
 at SMS Concast's own choice, provided that the Customer has notified SMS Concast immediately, but not later than 2 business days after any claim being made or action being brought against him and the Customer has not accepted any such claim and that sufficient time is granted to SMS Concast to take appropriate action.
2. Any intellectual property rights in the Goods and/or any documentation or information provided by SMS Concast under and/or in connection with the performance of the Contract or Purchase Order shall at all times remain vested in SMS Concast. SMS Concast shall grant to the Customer a non-exclusive right to use such Goods and/or any documentation or information for the sole purpose of the operation and maintenance of the Goods within the assigned Plant of the Customer.

J. Confidentiality

1. The Customer shall treat all documents, data, material, know-how and information including process software supplied or made available by SMS Concast as proprietary information (hereinafter "Confidential Information"). The Customer shall hold all Confidential Information in confidence and with the same degree of care it uses to keep its own similar information confidential, but in no event shall it use less than a reasonable degree of care; and shall not, without the prior written consent of SMS Concast, disclose such information to any person for any reason at any time. The Customer shall be obliged to procure from each of its employees, business partners and all persons, to whom such Confidential Information is disclosed, a written Confidentiality Declaration at terms and validity not less stringent than the ones set out herein.
2. The foregoing obligation shall not apply to information which the Customer can prove:
 - is obtained from a third person lawfully in possession of such information and who is not subject to a contractual or fiduciary relationship not to disclose such information,
 - is contained at the time of disclosure or thereafter in a patent, copyright or printed publication,
 - is in or enters the public domain after disclosure except as a result of a breach of this confidentiality obligation.
3. The obligation set forth herein shall survive any termination and/or expiration of the Contract for an indefinite time. The obligation shall be binding upon and inure towards the parent, subsidiaries, affiliates, successors and assigns of the Parties hereto.

K. Termination

1. In the event of the termination of the Contract or the Purchase Order due to reasons other than the fault of SMS Concast, it shall be entitled to:
 - a) the Contract Price properly attributable to the parts of the Goods already delivered by SMS Concast as at the date of termination; and
 - b) any amounts to be paid by SMS Concast to its suppliers in connection with the termination of subcontracts, including any cancellation charges; and
 - c) the reasonable amount of profit for the parts of the Contract and/or the Purchase Order partially or fully performed by SMS Concast as of the date of termination; and
 - d) the cost of actual obligations, equipment and Goods manufactured or in the process to be manufactured, commitments and claims which SMS Concast may in good faith have undertaken with third parties in connection with the Contract and/or the Purchase Order, and which are not covered by paragraphs a) through c) above.
2. If the Contract or the Purchase Order is terminated due to continuous Force Majeure according to paragraph H.3., SMS Concast shall not be entitled to the amounts as per paragraph K.1.d).
3. If the Contract or the Purchase Order is terminated due to the default of SMS Concast, it shall only be entitled to the amount as per paragraph K.1.a). Moreover, in case of such termination SMS Concast shall be obliged to pay to the Customer the reasonable and verified cost incurred by the Customer by completing the supply of the Goods at same specifications as per the Contract to the extent such cost exceed the amount that would have been payable to SMS Concast for completing the supply of the Goods. However such entitlement of the Customer is limited to 20% (twenty percent) of the part of the Contract Price attributable to the part of the Goods in respect of which the Contract or the Purchase Order is terminated.

L. Limitation of Liability

1. The liability of SMS Concast for the correctness of Engineering shall be strictly limited to the re-submission of corrected Engineering.
2. SMS Concast shall not be liable for any kind of indirect or consequential loss or damage of any kind nor for any loss of profits, loss of time, loss of raw materials or materials in process, business interruption or loss of income, loss of business, loss of anticipated savings, increased operating or overhead costs or damages to a third party directly or indirectly occasioned.
3. Without prejudice to the limitations contained in paragraphs D.8. and K.3., the overall maximum liability of SMS Concast in relation to or arising out of the Contract or Purchase Order and applicable law including but not limited to all liquidated damages, warranty, rejection, replacement, tort (including negligence), fundamental breach of Contract and including our obligations in case of termination of the Contract etc. shall cumulatively not exceed the value of fifty percent (50 %) of the Contract Price.
4. The above limitations and exclusions set out in this paragraph L shall apply notwithstanding anything else in the Purchase Order to the contrary and regardless of the whether the liability or obligation is based at law and also in respect of any liability caused by any of the agents, officers, employees and/or subcontractors of SMS Concast without limitation of the responsibility for intent to injure and gross negligence.

M. Assignment

The Customer shall, without the consent in writing of SMS Concast, not assign or transfer the Contract or the Purchase Order or the benefits or obligations thereof to any third party.

N. Governing Law and Dispute Resolution

1. The Contract or the Purchase Order shall be interpreted, considered and governed by Swiss law under the exclusion of its conflict of law rules and the UN convention on the international sale of Goods (CISG).
2. Any dispute or difference arising out or in connection with this General Conditions of Sale, the Contract and/or the Purchase Order shall be finally settled under the rules and regulations of the International Chamber of Commerce in Paris by an arbitration committee of three arbitrators to be appointed in accordance with the said rules.
3. The place of arbitration shall be Zurich / Switzerland and the procedural language shall be English.