



## General Business Conditions for the Delivery of Equipment and Services applicable to business transactions with commercial enterprises 06.2005

### 1. Scope

The below stipulated Conditions for the Delivery of Equipment and Services, including the Annex attached to them, are understood to apply to all contracts, agreements, deliveries and other services. They shall take priority over the Purchaser's business conditions and will not allow of any restriction or modification by Purchaser. Nor shall the Purchaser's business conditions become part of the contract as a result of Vendor's acceptance of the purchase order.

### 2. Quotations and Finalisation of Contract

- 2.1 Our quotations are without engagement. Information given in advertising literature or other publicly available product descriptions, catalogues, advertisements, documents, illustrations, drawings and the like, is understood to be only approximate and shall not become binding on us with respect to the condition and properties of the equipment and services delivered by us.
- 2.2 Unless otherwise agreed, contracts shall take effect only if confirmed by us in writing.
- 2.3 We reserve title and copyright to cost estimates, quotations, drawings, technical documents, records and similar information, whether of material or immaterial nature, including electronic media. Such information must not be made available or disclosed to any third party.

### 3. Delivery Scope

- 3.1 Unless otherwise agreed, our written order confirmation shall be the sole legal basis defining the scope and properties of the equipment and/or services delivered by us. Information relative to the properties of the equipment or services delivered by us shall not be considered guaranteed. Additional agreements and/or alterations shall become legally binding only if confirmed by us in writing.
- 3.2 The design of new equipment with respect to guarding provisions and safety features, complies with the requirements stipulated in Annex I to the EU Machinery Directive 98/37/EC stipulating the safety and health requirements for the design and manufacture of machinery and equipment. Purchaser's requirements beyond these standards will be subject to extra charge.

Machines that are put into free circulation in the EU for the first time, are required to conform to pertaining EU safety directives and regulations at that time. Any retrofits becoming necessary as a result of these directives and/or regulations as well as adapted documentation will be charged separately and are at the Purchaser's expense.

In the event that machines that were delivered within the EU prior to 1 January 1995 should be notably modified or altered as a result of such retrofits, they are required to conform to the directives and regulations in force at the time the relevant equipment is retrofitted. The resulting costs will be charged separately and are at the Purchaser's expense.

- 3.3 The equipment delivered by us will be commissioned by our personnel. Purchaser shall make available the auxiliary personnel needed for commissioning as well as the personnel to be trained by us. Garant will provide the Purchaser's personnel with a brief instruction in the safety requirements and operation of the equipment. Extended training courses, if requested by

Purchaser, will be arranged by us only if specifically agreed with Purchaser. Extended training within the meaning of this article will not include on-the-job training during production after commissioning.

- 3.4 The attached Annex to the present General Business Conditions shall be considered an integral part hereof (if applicable). It is the Purchaser's responsibility to fulfil his obligations as stipulated in the aforesaid Annex in due time.

### 4. Electrical Equipment

- 4.1 The electrical and electro-mechanical equipment delivered by us with new machines will conform to the general directives for products and services approved and applied by the electrical engineering industry in the Federal Republic of Germany. Electrical equipment is designed to conform to the requirements stipulated in Annex I to the EU Low Voltage Directive 73/23/EEC as well as to European Standard ES 60204-1 relating to electrical apparatuses in mechanical equipment. Apart from this, the electrical equipment delivered by us will comply with the EU directive 89/336/EEC relating to electromagnetic compatibility.

Machines that are put into free circulation in the EU for the first time, are required to conform to pertaining EU safety directives and regulations at that time. Any retrofits becoming necessary as a result of these directives and/or regulations as well as adapted documentation will be charged separately and are at the Purchaser's expense.

In the event that machines that were delivered within the EU prior to 1 January 1995 should be notably modified or altered as a result of such retrofits, they are required to conform to the directives and regulations in force at the time the relevant equipment is retrofitted. The resulting costs will be charged separately and are at the Purchaser's expense.

- 4.2 The equipment is standardly laid out for AC 400V ( + 6%, - 10%) 50 Hz power supply, with earthed neutral. Different voltage and frequency conditions as well as the use of an un-earthed neutral will be subject to surcharge.
- 4.3 The attached Annex to the present General Business Conditions shall be considered an integral part hereof (if applicable). It is the Purchaser's responsibility to fulfil his obligations as stipulated in the aforesaid Annex in due time.

### 5. Prices and Terms of Payment

- 5.1 Unless otherwise agreed, prices are understood ex stock or ex works, including loading and excluding packing, plus value added tax at the applicable legal rate.
- 5.2 Unless otherwise explicitly agreed, payment of invoices shall become due immediately and without deduction.
- 5.3 In case of default in payment, Purchaser shall be liable to interest at minimum 8% per annum in excess of the applicable official interest rate of Deutsche Bundesbank.
- 5.4 Failure of Purchaser to meet his payment obligations as well as circumstances that come to our knowledge after making the contract and imply a potential impairment of Purchaser's credit standing, will entitle us to claim immediate payment of all amounts due to us. Moreover, we reserve the right to effect shipment of deliveries still outstanding at that time only against

prepayment or subject to Purchaser producing adequate bank securities, or, alternatively, to terminate the contract, after granting Purchaser a reasonable period of grace, and to claim damages.

- 5.5 Offsetting of our claim for damages against other uncontested or legally established claims shall be excluded.

## **6. Delivery time**

- 6.1 The quoted delivery time or period is understood to be only approximate, unless explicitly agreed as binding in writing. The delivery period shall begin at the date of dispatch of Garant's order confirmation, however not before Purchaser's submittal of all required documents, permits as well as release and receipt by Garant of the agreed down-payment. The delivery time shall be considered met if the subject matter of contract leaves the factory or Garant notifies Purchaser of the readiness for shipment by the end of the agreed delivery period.
- 6.2 Our obligation to meet the agreed delivery date shall be subject to the Purchaser meeting his obligations under the contract.
- 6.3 The delivery period shall be reasonably extended if we are affected by adverse circumstances such as industrial disputes, in particular strike and/or lockout, or if unforeseen impediments that are beyond our control should occur, providing such events can be proved to have an impact on the completion and/or shipment of the subject matter of contract. This shall also apply to our subcontractors should they be affected by such circumstances or impediments.
- 6.4 Nor shall we be held responsible for circumstances or events of the aforementioned nature, if they occur during an already existing default situation. We undertake to notify Purchaser at the earliest possible date of the beginning and end of such adverse circumstances or events.
- 6.5 Purchaser shall have the right to terminate the contract, if we are unable to fully meet our obligations under the contract prior to the passing or risk. Moreover, Purchaser shall be entitled to terminate the contract if part of the subject matter of contract cannot be delivered and Purchaser can prove a reasonable interest in denying partial shipment of the subject matter of contract. Unless this is the case, Purchaser shall pay us the amount relevant to the partial shipment effected by us. The same shall apply in case of inability on our part. See also paragraph 12.
- 6.6 If the aforesaid impossibility or inability occurs during Purchaser's default in accepting the goods under the contract or if Purchaser, alone or primarily, has to answer for the aforesaid circumstances, Purchaser shall be liable to compensation.

## **7. Passing of risk, receipt and acceptance of goods**

- 7.1 Passing of risk to Purchaser shall take place by the time of shipment at the latest, and this shall also apply in case of partial shipment or if our obligations under the contract include other duties such as, e.g., forwarding or shipping costs, transportation to Purchaser's site and installation of equipment. If acceptance of goods is agreed under the contract, this shall be decisive for the passing of risk. Acceptance shall take place immediately upon our notification of readiness for shipment. Minor defects in the goods shall not relieve Purchaser of his obligation to accept the goods.
- 7.2 In case transportation should be delayed because of circumstances not to be answered for by us, the risk shall pass to Purchaser as from the date of readiness of the goods for shipment. In such a case, we will be entitled to charge the resulting storage costs to Purchaser at the below mentioned rate, unless otherwise agreed: at least ½ per cent per month of the value of that part of the total delivery scope which we put in store from the date we have notified Purchaser of the readiness for shipment. Either party shall have the right to furnish evidence of higher or lower costs.
- 7.3 Partial shipment will be allowed.

## **8. Field Installation, Repair**

- 8.1 Unless otherwise agreed, the assignment of field service personnel will be billed at the service rates in force at the time such services are performed and on the basis of the time sheets and/or service reports certified by Purchaser. In case of failure of Purchaser to certify time sheets and/or service reports or to certify them in time, field service shall be billed based on the aforesaid activity reports. Partial billing shall be allowed.
- 8.2 In the event of repair, the costs of parts and materials used, extra services performed and labour and travel costs plus incidentals will be shown separately in the related invoices.
- 8.3 In addition to travelling costs (railway, more than 200 km: first class; air: if possible economy class, if flight time exceeds 7 hours; business class; motor-car: see rates for field service personnel), we will bill the Purchaser incidental costs such as for visa formalities, work permits, transportation of baggage and tools, etc. We reserve the right to select the means of transport. If going from the place of lodging to the job site takes more than 30 minutes, the actual time will be charged to Purchaser at the same rate as normal working hours.
- 8.4 In this respect and if applicable, the conditions stipulated in paragraph 5 and in the Annex to the present General Business Conditions shall apply. Purchaser shall meet his obligations as specified in the aforesaid Annex to the General Business Conditions completely and in good time.
- 8.5 Should the progress and completion of any installation or repair be delayed because of circumstances not to be answered for by us, the agreed completion time shall be reasonably extended. Any costs resulting from such delay shall be borne by Purchaser. This shall also apply in the event of interruptions of work entailing the need for us to withdraw our personnel from the job site. All resulting costs, including waiting times, travel and incidental costs, will be charged to Purchaser at our applicable field service rates.
- 8.6 Purchaser shall accept the installation and/or repair upon receipt of our notification of completion of work and, if agreed under the contract, upon successful completion of a test run. In case of minor defects in the goods, Purchaser shall not refuse his acceptance. In the event that acceptance should be delayed for reasons not to be answered for by us, the work shall be deemed accepted by Purchaser after one week from our notification of completion of work, providing such notification points out the consequences of non-acceptance by Purchaser. Once the work is accepted by Purchaser, our liability for any apparent defects shall cease, unless Purchaser has reserved the right to claim damages for any specific defect.

## **9. Retention of Title**

- 9.1 If the subject matter of contract is delivered prior to full payment of the amounts payable by Purchaser under the contract, it shall remain our property until the time payment is received by us in full, providing this is in compliance with the pertinent law of the country where the subject matter of contract is located. If the applicable law does not allow of retention of title as aforesaid, we shall have the right to the benefit of such other rights in respect of the delivered goods as such law permits us to exercise. Purchaser shall afford us any assistance in taking appropriate measures to protect our right of property or such other rights as aforesaid.
- 9.2 Until full payment is made for the subject matter of contract, Purchaser is required to arrange for and produce evidence of adequate insurance cover against all risks and losses at his own expense.
- 9.3 If, in connection with payments by Purchaser, any liability on bills of exchange should result for us, we shall retain title to the goods until bills are met by Purchaser as the drawee.
- 9.4 Purchaser shall not have the right to pledge the subject matter of contract or to assign it by way of security. Purchaser shall notify us immediately in the event of seizure or distraint of property or dispositions by any third party.

9.5 Purchaser shall not be entitled to resell the delivered goods unless approved by us in writing. Customer agrees already at this stage to assign to us any claims in the billed amount of the reserved property that accrue to him from such resale against the buyer or any third party, also if based on contracts for work and services or contracts for work and materials. We hereby accept Purchaser's assignment as aforesaid. Customer shall notify the party to whom he resells the reserved property of such assignment of claims and make available to us at our request any information and/or documents we may need to assert our claims as aforesaid.

9.6 In case of failure of Purchaser to fulfil his obligations towards us under the contract in due time, we shall be entitled to insist on return of the reserved property by Purchaser without terminating the contract. The contract shall be deemed terminated only if explicitly declared so by us in writing.

## 10. Warranty against defects

10.1 We will remedy, at our discretion, all those defects in the goods and/or services under the contract that can be demonstrably proved to have existed prior to the passing of risk. Replaced parts shall become our property. Purchaser shall advise us immediately in writing of any defect in the supplied goods or services.

10.2 Purchaser shall give us the opportunity to remedy defects within a reasonable period of time. In the event of an unsuccessful second attempt by us to repair defects and providing the nature of the matter or of the defect does not allow of other action, Purchaser shall have the right - notwithstanding his right to claim damages, as stipulated in paragraph 12 - to terminate the contract or to claim a reduction of the purchase price. In the event of minor defects, Purchaser shall not be entitled to claim a reduction of the purchase price.

10.3 Purchaser's right to claim damages because of defects in the delivered goods shall become statute-barred after twelve months from delivery or acceptance of the goods.

10.4 Purchaser shall not be entitled to claim damages based on defects that result from faulty installation, commissioning and operation of the delivered goods by Purchaser or from natural wear and tear, the use of wrong or inappropriate utilities and production materials, improper changes, repair, maintenance and inspection of the delivery goods by Purchaser or any third party.

10.5 Paragraphs 10.1 – 10.4 shall apply to claims relating to defects in brand new equipment and parts.  
It is understood that used equipment and parts will be delivered 'as viewed', exempt from any warranty claims.  
Garant will assume liability for defects only if explicitly agreed in writing with the Purchaser.

## 11. Defects in title

11.1 In the event that any third party should take action against Purchaser because of infringement of industrial property rights or of copyright, we shall be entitled, at our discretion and at our expense, to enforce a relevant licence or to modify or replace the subject matter of contract in such a way that infringement of the aforesaid rights is avoided. Unless this can be realised at a reasonable cost, we shall be entitled to terminate the contract, as shall Purchaser.

11.2 Paragraph 11.1 is understood to apply only on condition as follows: Purchaser shall advise us immediately in writing of any third party claim of the aforesaid nature that is asserted against him. Purchaser shall not admit any such claims and shall entitle us to settle the case with the third party direct, either in or out of court. Third party claims shall be considered unsubstantiated if related to any modifications made by Purchaser to the delivered goods or to the improper use or operation of the delivered goods with parts not delivered by us.

11.3 We will not assume any liability whatsoever in the event that the products manufactured on the equipment under the contract should infringe any industrial property rights.

11.4 We will assume liability as stipulated in paragraph 12.

## 12. Damages

12.1 Purchaser shall not have the right to claim damages or reimbursement of expenses on any legal ground whatsoever.

12.2 Paragraph 12.1 shall not apply in the event that liability is stipulated under the product liability act as well as in the event of intent, gross negligence, injury to life, limb and health, fraudulent concealment of defects or defects that were excluded under guarantee; furthermore, in the event of culpable non-fulfilment of essential obligations under the contract. Any claim for damages or for reimbursement of expenses shall, however, be limited to damage as can be reasonably foreseen because of the nature of the subject matter of contract, unless such damage is attributable to intent, gross negligence or in the event of liability based on injury to life, limb and health.

12.3 In the event that Purchaser will be entitled to claim damages or reimbursement of expenses within the meaning of paragraph 12, such claims shall become statute-barred upon expiry of the prescription period stipulated in paragraph 10.3. In the event of intentional or fraudulent conduct as well as in the event of claims under the product liability act, the statutory periods shall apply.

## 13. Venue and Choice of Law

13.1 Any disputes arising from or in connection with the contract shall be submitted to the court having jurisdiction over the supplier's principal place of business. We will, nevertheless, have the right to apply to the court having jurisdiction over the Purchaser's principal place of business.

13.2 The contract shall be governed by the law of the Federal Republic of Germany. The uniform law on sale of goods as stipulated in the Vienna UNCITRAL Rules of 11 April 1980 (CISG) shall not be applicable.



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## Annex to General Business Conditions for the Delivery of Equipment and Services Purchaser's Obligations and Duties

06.2005

Unless otherwise agreed in writing between Purchaser and ourselves, Purchaser shall perform and complete the below specified work and supply the below specified equipment in good time and at his own expense.

### 1. Purchaser's obligations and duties under the contract for delivery of equipment, if complete installation is agreed, as well as with regard to any installation and repair work

#### 1.1 Return of the completed GARANT utilities chart to GARANT by the time of order placement at the latest.

1.2 Preparation of foundations and bases and, if necessary, pits, trenches, etc., including equipotential bonding and ground straps to the junction points on the equipment, in accordance with our foundation and floor load drawings and with out utilities drawings.

1.3 Completion of electrical and construction work such as wall and ceiling openings, including covers and weather protection provisions, prior to the agreed start of installation and/or repair.

1.4 Safeguarding of the installation and intermediate storage sites against theft and damage.

1.5 Provision of sufficient space in a closed building for the receipt and storage of the delivered equipment and for trouble-free and safe offloading, intermediate storage and handling of the delivered machine components and of the packing material at the site of installation or repair. For the offloading of delivered components from truck, an appropriate site at ground level or a loading bay of international standard height shall be made available. The entry gates to the building and the on site transport routes shall be so dimensioned that trouble-free and safe handling of the delivered components is guaranteed. Dimensions of containers and crates can be noted from the handling drawings supplied by us. Adequate floor load capacity and characteristics within the entire handling/transport and installation site shall be ensured in accordance with the weights of the delivered equipment and of the installation equipment used (lift trucks, crane, transport casters, etc.).

1.6 Suitable recreation rooms for our personnel with appropriate sanitary facilities as well as dry and lockable rooms for keeping materials and tools. Moreover, Purchaser shall make available, free of charge, telephone/fax machine, power (230V/400V) and, if required, an interpreter.

1.7 In the event that the site of installation or repair is outside the Federal Republic of Germany, Purchaser shall advise us of the pertaining local laws, statutory requirements and government regulations and shall make sure that our personnel will be familiarised with them completely and in good time. Moreover, Purchaser shall take appropriate action to ensure that visa or other entry or exit permits or work permits, etc. will be available in good time. Apart from this, Purchaser shall advise our personnel prior to starting work of all applicable safety regulations and requirements and shall take appropriate safety precautions at the site of installation and shall maintain them throughout the time of installation. Any costs we or our personnel may incur as a result of lacking, incorrect or late instruction of our personnel in safety requirements at the installation site, shall be borne by Purchaser.

1.8 Cleaning of the delivered equipment of anticorrosive or other preservative coating.

1.9 Return to GARANT of temporary transport and handling means and lifting/suspension devices.

1.10 Proper disposal of packing material in compliance with local statutory and government regulations.

1.11 Supply of fresh air and removal of heated air as specified in the installation drawings supplied by us.

1.12 Supply of utilities of adequate quality (power, water, gas, compressed air) at the site of installation up to the infeed points on the delivered equipment, including shut-off valves, as specified in the installation drawings, cable routing diagrams and utilities drawings supplied by us.

1.13 Supply and connection of an isolation transformer or autotransformer, if necessary, in order to comply with the specified requirements for utilities.

1.14 Assembly of cable ducts, trenches and conduits, including mounting and fastening material, as specified in the cable routing diagrams supplied by us.

1.15 Supply of connecting and attachment parts, including installation, wiring and commissioning of components or items supplied by Purchaser and that are not part of our delivery scope under the contract. Purchaser shall make sure that any components or items that are not supplied by us will conform to all applicable local safety requirements, regulations and standards. In the event that Purchaser should fail to supply such components or items or to supply them in good time, this shall not give him the right to refuse acceptance of the goods or services delivered by us. We will not assume any liability whatsoever for components or items not supplied by us.

1.16 Connection of primary voltage to the equipment and to auxiliary attachments such as temperature control units or chillers by an authorised qualified electrician, including supply of any material required for this.

1.17 Assembly of supply and discharge lines, including connection of all process pipework (e.g., ink, solvent, lacquer, adhesive, vacuum, cooling water, etc.) as specified by us.

1.18 Pressurisation of electrical cabinets and operator consoles in the event of dust being present in the ambient air.

1.19 Steam traps, in the event that the delivered equipment is fitted with climate control devices for the electrical components.

1.20 Supply and conditioning of process utilities required for operating the delivered equipment (e.g., cooling water, thermal oil, gas) including initial charging.

1.21 Supply and installation of a dedicated voice line (no cordless telephone) as well as of a dedicated analog data communication line (not ISDN) to the central computer in the operator or electrical cabinet of the equipment for remote diagnostic purposes.

1.22 Grouting of equipment as specified in the foundation drawing supplied by us or as may be agreed with the installation supervisor nominated by us.

1.23 Supply of an adequately equipped PC for spare parts identification on CD-ROM (if available for the delivered equipment). Minimum requirements for the PC: Pentium® III / 333 Mhz or equivalent, 128 MB working memory, 8 MB graphics card, 17" Monitor / 1024 x 768 Pixel, CD-ROM drive with 30-times read speed, 3-button mouse, Microsoft Windows® 95/98 or NT®, Internet Explorer or Netscape 4.0 or more recent version (for off-line operation).

1.24 Supply of all raw and auxiliary materials specified for commissioning and acceptance of the delivered equipment, in the specified quantities; furthermore, the supply of product size dependent tooling as specified as well as disposal of any waste material during commissioning and acceptance trial running (inks, solvent, adhesives, etc.) in accordance with the pertaining statutory and government regulations and requirements.

1.25 Supply of suitable apparatuses for the loading and unloading of film or paper reels into and out of the delivered equipment respectively, unless such apparatuses are part of our delivery scope.

**2. Additional obligations and duties to be fulfilled by Purchaser when the subject matter of contract relates to print-ing and/or finishing equipment**

2.1 In the event that solvent-based substances will be used or processed on the delivered equipment, Purchaser shall ensure conductive floor conditions in the area where the delivered equipment will be installed, in compliance with the supplied explosion protection drawings (XM drawing) and in conformity with the pertaining local statutory and government regulations. It is essential that adequate explosion protection be provided in the hazardous areas of the equipment.

2.2 Supply of platforms, if required, including cable ducts, as specified in our installation drawings and in conformity with the agreed installation schedules.

2.3 Supply of calibrating or test gas for checking LEL monitoring systems as to their correct functioning. If solvent based substances or materials are used on the delivered equipment, the use of solvent level analysers is an indispensable requirement. The user of the delivered equipment shall be responsible for inspecting and re-calibrating the solvent level monitoring system at regular intervals according to the instructions given in the operator manual.

2.4 Purchaser shall be responsible for proper compressed-air supply and for proper supply and disposal of solvent and cleaning solutions, if the delivered equipment comprises a wash-up system.

2.5 Initial charging of machine with thermal oil, including the installation of required thermal oil heaters or steam generators and including connecting pipes and complete insulation between heaters/generators and the delivered equipment, if thermal oil, steam or hot water is used as the heating source for drying.

2.6 Supply, installation and connection of outgoing air and fresh air pipes, including complete noise and heat insulation. Moreover, Purchaser shall be responsible for monitoring emission values and for taking appropriate action to minimise emission according to local regulations.

2.7 Supply of fire extinguishers according to local regulations and, if integrated with the delivered equipment, the connection of appropriate signal lines to the delivered equipment according to our specifications.

**3. Additional obligations and duties to be fulfilled by Purchaser when the subject matter of contract relates to converting machines**

3.1 Supply of adhesive or paste and their disposal, including necessary pipework.

3.2 Supply and disposal of water used for cleaning purposes, including necessary pipework.

**4. Additional obligations and duties to be fulfilled by Purchaser when the subject matter of contract relates to blown and cast film equipment**

4.1 Installation of towers and platforms according to the supplied installation drawings and in conformity with the agreed installation schedules.

4.2 Installation of service platforms in the area of the die and for the handling of the downstream equipment, in accordance with the installation drawing supplied by us.

4.3 Installation of connecting pipes between blowers and/or heat exchangers for film cooling and the die.

4.4 Installation of resin supply arrangements and of suitable vacuum feeders and storage containers up to the agreed delivery boundary.

4.5 Supply of a crane for installing and removing extruder screws and chill rolls into/from cast film lines (the specified load capacity must be observed).

**5. Obligations and duties to be fulfilled by Purchaser in addition to paragraphs 1. to 4. above, if GARANT supervised installation is agreed under the contract**

5.1 Offloading of equipment using the attachment and sling points specified by us.

5.2 Transport and handling of the delivered equipment at the Purchaser's plant.

5.3 Removal of temporary handling/transport means.

5.4 Supply of installation and auxiliary personnel as well as of necessary transport and lifting equipment in accordance with the installation schedule specified by us.

5.5 Installation and wiring of the delivered equipment as directed by the installation supervisor nominated by us.

**6. Non-fulfilment**

In the event of Purchaser's failure to fulfil his obligations and duties as specified above or if he fails to do so in good time, we will, after allowing him a reasonable extension to take appropriate remedial action, be entitled, though not obliged, to fulfil the aforesaid obligations and duties in his place and at his expense, without prejudice to our statutory rights and claims.

01.06.2005



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