

General Terms and Conditions of Business Weiss+Appetito SEM AG, Ried b. Kerzers

1. General

The conditions below shall apply to all goods and services provided by the supplier under purchase or service agreements. Exceptions shall only be valid if they have been agreed in writing between the contracting parties.

2. Proposals

a) Technical basis

The technical basis of the proposal shall be binding on the supplier, the right to make modifications shall explicitly remain reserved. All documents remain the property of the supplier. They may not be copied, reproduced, disclosed to third parties or used for self-manufacture of the assets in question. They must be returned to the supplier on request.

b) Use

Operating and maintenance instructions from the manufacturer and/or supplier and instructions relating to proper use and permissible loads must be strictly complied with.

c) Project design costs

If the customer has commissioned the supplier to design a project but does not assign its implementation to that company after the proposal has been submitted, the supplier shall have the right to demand payment of the project design costs in accordance with SIA (Swiss Society of Engineers and Architects) rates. The costs of clarifying the basic principles for preparing the proposal may not be claimed.

3. Conclusion of agreement

Purchase and service agreements shall not be binding on the parties until they have been signed by both parties.

4. Prices

a) Prices shall be ex warehouse/production site of the supplier, loaded for transport.

b) Price increases after the agreement has been concluded may only be charged on with the purchaser's consent.

c) Ordering procedures in the service agreement shall be dealt with separately (currency, inflation, transport, packing, insurance, customs duties, taxes and levies).

5. Delivery

The delivery period shall commence when the agreement is concluded, but at the earliest after all information and documents to be provided by the orderer as well as any advance payments due have been received. The period shall be set in accordance with the circumstances at the time of conclusion of the agreement and shall be binding. Should unforeseen circumstances occur which are beyond the control of the supplier – such as in cases of force majeure, problems in materials sourcing, disruptions to operations, etc. – the period shall be extended as appropriate. Furthermore, it shall be suspended for so long as the orderer fails to meet its payment obligations on schedule.

6. Terms of payment

Unless agreed otherwise, the following terms of payment shall apply:

- a) For purchase agreements, deliveries of spare parts, repairs, maintenance:
30 days after invoicing with no deductions
- b) For service agreements:
1/3 when the agreement is concluded
1/3 upon notification of readiness to deliver/dispatch
1/3 30 days after system/operating readiness.

Payments shall always be net of charges and shall also be made if the assets delivered require refinishing or parts need to be replaced, or if the goods cannot be delivered on time for reasons for which the orderer is responsible. In the event of wrong deliveries or very serious defects for which the supplier is responsible and which make it impossible to commence operations, the last payment shall only be made after delivery is made in compliance with the agreement or after the defects are remedied.

7. Default by the orderer

Accounts payable that are not paid in compliance with the agreement shall be due immediately, and default interest will be charged from the due date onwards without prior notice of default. This default interest shall normally be 5% above the banks' usual rate of interest on current accounts (in accordance with Article 104 Swiss Code of Obligations (OR)). If agreed part payments are not made within 30 days of their due date at the latest, the entire balance shall be due immediately.

8. Reservation of title

The assets delivered shall remain the property of the supplier until the agreed price including all additional costs and interest is paid. Until this point in time, they may not be pledged, sold or leased without the supplier being informed in advance; liability shall, however, rest with the contractual partner. The supplier shall be entitled to register the reservation of title with the Registry of Reservation of Title at the domicile/registered office of the orderer.

9. Insurance

The orderer shall be obliged to conclude all insurance policies, such as insurance against theft, fire, explosion or natural disasters as well as transport, machinery and/or machine liability and assembly insurance, for unpaid or not fully paid assets with effect from the passage of risk. It shall assign its entitlement to any insurance benefits arising therefrom to the supplier.

10. Warranty and liability

a) Scope

The supplier shall provide a warranty for 12 months or 800 operating hours (on the ventilator, pump, compressor), depending on which is reached first, for correct engineering, appropriate quality of the material used and flawless execution. If the assets delivered should change ownership before the expiry of the ordinary warranty period, the warranty shall end at the time at which title is transferred.

For purchased merchandise or materials from subcontractors, such as pumps, ventilators, clutches, drive shafts, intermediate gears, electrical equipment, etc., the supplier shall only be liable within the limits of the warranty provisions of the manufacturing company in question.

The supplier shall refuse any warranties:

- for used assets or parts thereof,
- for materials it did not supply,
- for assembly and dismantling works not provided by itself and for assets that have been modified or repaired without its consent,
- in the event that the orderer makes modifications, in particular additional installations on the asset, without the supplier's prior written consent,
- for damage of any kind that is attributable to normal wear and tear, wrong or forcible treatment, excessive use, inadequate foundations, inappropriate operation and maintenance, freezing, the use of unsuitable materials and lubricants, accidents, force majeure, etc.
- for any other claims going beyond the warranty obligations described. In particular, all further warranty claims (such as reduction or cancellation) and any other liability of the supplier for direct or indirect damage to the orderer (such as damage due to the contractual asset's being inoperative or legal pursuit of the orderer for third party damages in connection with the delivery and operation of the contractual asset) shall be explicitly excluded. The right shall be reserved to assert claims for damage that can be proved to have been caused by the supplier personally through gross negligence or with unlawful intention. Liability for associates in accordance with Art. 101 OR shall be excluded in as far as this is legally admissible.

b) Warranty performances

The faults borne by the supplier on the basis of this warranty shall be remedied free of charge as quickly as possible at the warehouse/production site and the appropriate parts shall be replaced. Should the customer insist on faults under the warranty being remedied at a site other than the warehouse/production site of the supplier, the relocation costs and any other additional costs compared to performance at the warehouse/production site shall be charged to the customer.

Operating checks by employees of the supplier additionally demanded by the orderer shall not fall under the warranty but shall be invoiced.

11. Applicable law

The agreements concluded shall be subject to Swiss law.

12. Place of performance and place of jurisdiction

The place of performance of all obligations shall be deemed to be the location of the supplier's registered office. Bern shall be the place of jurisdiction for judgements on all disputes.