

SUAR Eng. & Trade Co., General Terms & Conditions, January 2010

1. DEFINITIONS:

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions;
- 1.2 "Customer" means the organisation or person who purchases goods and services from The Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "The Supplier" means SUAR Eng. & Trade Co., Anadolu Cad. No: 175/5 35020 Bayrakli – Izmir / TURKEY.
- 1.5 All references to the goods and services are to those goods and services supplied under an order or contract by The Supplier to the Customer and as specified in the letter of quotation or the tender documents forwarded by The Supplier to the Customer.

2. GENERAL:

- 2.1 These terms and conditions shall over-ride all other terms and conditions inconsistent herewith wherever contained. The Supplier shall not be bound by any variation, waiver or addition unless agreed in writing.
- 2.2 For the agreed installation of contractual products shall apply together with these General Terms and Conditions and the Supplier 's Installation Conditions / Installation Price Conditions.
- 2.3 Initial Quotations are made free of obligation. The Supplier reserves the right to make technical improvements and modifications of products without prior notification.
- 2.4 Unless the Customer has undisputed counterclaims, he shall neither be entitled to offset nor to withhold payments for deliveries received.
- 2.5 Place of performance for delivery is Suppliers works in Izmir / TURKEY, for agreed installation the place of installation.
- 2.6 All orders for the purchase of goods and services from The Supplier are accepted upon and subject to this Agreement, together with the letter of quotation, the tender documents or any other such documents described by The Supplier as forming part of the quotation, forwarded by The Supplier to the Customer. No qualification of this Agreement whether contained in the Customer's form of purchase, letters or other forms of communication, shall annul or vary any of the terms of this Agreement except insofar as expressly consented to by The Supplier in writing.
- 2.7 All orders received by The Supplier from the Customer must be made in writing (which includes by facsimile or email correspondence). Verbal or telephone orders cannot be accepted.
- 2.8 In the event of a conflict between any Order Acknowledgement Form provided by The Supplier and this Agreement, the terms of the Order Acknowledgement Form shall prevail.
- 2.9 The Supplier shall use its reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services nor shall it be made of the essence by notice.

3. QUOTATION VALIDITY:

- 3.1 Unless previously withdrawn, any quotation shall be valid for a period of thirty days from the date of issue, or for such extended time as may be required and agreed between the Customer and The Supplier in writing. Any order for the purchase of the goods and services must be placed by the Customer within the agreed period for the prices to remain valid in accordance with the quotation.

4. PRICES:

- 4.1 If orders are accepted by the Supplier but it later transpires that the Supplier has insufficient information to enable it to complete the orders without further reference to the Customer, the Supplier shall be at liberty to amend the contract price to cover any increase in cost which takes place after acceptance due to further information being given to himself.
- 4.2 Any sample submitted must be returned to the Supplier 's Works, carriage paid within one month from date of despatch, or paid for.
- 4.3 Prices quoted shall be EXW (ex-works). If applicable, VAT has to be added.
- 4.4 The Supplier's quotation covers only the products and services specified therein. Any subsequent alteration by the Customer in the design, application, quantities or the specification and any suspension of work due to modified instructions, lack of instructions or incomplete drawings or specifications, will involve adjustment of the price if any costs are increased as a result.
- 4.5 All instruction plates and manuals will be supplied in English unless previously agreed in writing by The Supplier and that, where a variation has been agreed, this may entail additional charges.

5. PAYMENT:

- 5.1 Unless otherwise agreed in writing, payment for goods and services supplied against an order shall be made in full, without any set-off, in the currency of the order. Payment shall be due and be made by means of telegraphic transfer, quoting The Supplier's invoice number and the Customer's name, to The Supplier's account in Turkey within the period agreed on the order. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 3% per annum above the base rate of the Supplier 's bank.
- 5.2 The Customer shall instruct its bank to notify The Supplier by facsimile as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment and the number of the invoice to which the payment relates.
- 5.3 The Supplier reserves the right to proceed with orders only on receipt of an Irrevocable Letter of Credit in favour of The Supplier. The Customer shall cause this to be confirmed by a Turkish bank as agreed by The Supplier. Exercise by The Supplier of such right shall not be construed as excluding the Customer's basic responsibility for paying, within the applicable credit period, for the goods and services delivered. Each such letter of credit shall be advised in writing by the said bank to The Supplier in a form acceptable to The Supplier. All charges in respect of each letter of credit shall be for the account of the Customer. If The Supplier exercises its rights under this clause then, failing the Customer's compliance with its requirements, The Supplier shall be under no obligation to deliver the goods or services in question.
- 5.4 Title to the goods shall not pass to the Customer until The Supplier has received payment in full and in the case of non-payment the Supplier shall be entitled to repossess the goods.

5.5 In case of any delays in payment, the Supplier shall be released from any obligations to effect any further deliveries resulting from any contract. Furthermore the Supplier reserves the right to require payment in advance in any such case or if he has reason to believe that there could be a delay or failure of the Customer to fulfill his paying obligation.

6. DELIVERY PERIOD & DELAY:

6.1 Delivery times or periods are ex works and shall commence only after settlement of all technical questions and after the Supplier have received all documents, permits or releases required from the Customer or from authorities as well as any advance payments requested. Subject to correct and punctual internal delivery. The Supplier shall inform the Customer without delay of the non-availability of the delivery products.

6.2 In any case the Customer has to send to the Supplier a reminder setting a reasonable period of grace before claiming default of delivery.

6.3 In the event of compensation for damages caused by late deliveries, the Supplier 's liability for compensation besides performance shall be limited to 5% and for compensation instead of performance to 10% of the value of the delivery. This limit shall not apply in cases of intent, gross negligence and/or injury to life, body or health.

6.4 These terms apply by analogy on installation times. Installation times shall commence only after the Customer has fulfilled his preparational duties according to the Supplier 's Installation Conditions.

7. SPARE PARTS:

7.1 The Supplier 's obligation to storing / delivery of spare parts lapses latest five years after delivery of the original product. Spare parts are charged according to the currently valid Price List.

8. INSTALLATION & COMMISSIONING:

8.1 Where prices stated in quotations and/or orders accepted include installation and/or commissioning, and where by reason of any extension in the installation and/or commissioning period beyond that allowed in the quotation or contract caused by conditions on site outside the Supplier 's control, the Supplier shall be entitled to charge the Customer therefore at the same rate as the other work carried out under the contract. The Customer shall at his own expense not later than 2 weeks before the date fixed by the Supplier for the delivery of the goods ensure that the site is ready to receive the goods and that all the installation facilities recommended by the Supplier have been provided. The Customer will reimburse the Supplier for any expenses and costs (including the cost of the storage of any goods) to the Supplier arising from any non-compliance by the Customer with the recommendations of the Supplier as to installation facilities.

9. TECHNICAL DOCUMENTATION:

9.1 All specifications, drawings, descriptions and illustrations contained in the Supplier 's catalogues, price lists, and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of any contract. Any drawings issued to the Customer before or after acceptance of the order must be treated as confidential and shall not be copied or disclosed by the Customer to any person (other than the Customer's employees) firm or corporation. The said drawings and specifications shall remain the property of the Supplier and shall be returned on demand. The said descriptions and illustrations shall not constitute a sale by description. The Supplier reserves the right to amend or alter drawings without prior notification.

10. CLAIMS FOR DAMAGE, SHORTAGE OR LOSS:

10.1 No claim for damage or shortage of delivery will be entertained by the Supplier unless the he is notified thereof in writing within three days of receipt. The goods in respect of which any such claim is made shall be preserved intact as received for a period of fourteen days within which time the Supplier 's servants or agents shall have the right to amend and investigate the claim. Any breach of this condition shall disentitle the Customer to any allowance in respect of the claim to which he may otherwise be entitled.

10.2 When the delivery is agreed as ex works, no claim for damage or loss in transit will be accepted by The Supplier.

11. LIABILITY FOR DEFECTS:

11.1 The Supplier is liable that his products are free of defects at the transfer of risk. Qualities, performance or other features shall only be binding if the Supplier has expressly agreed on them as specification of the product in writing. Immaterial deviations from the agreed quality or non-essential restrictions in usability are, however, of no significance. Details in advertisements and instructions for use or reference to industrial standards shall not constitute agreed qualities or the taking-on of particular obligations.

11.2 In case of a defect the Customer has to set a reasonable period of time to enable the Supplier to eliminate the defect either - subject to the Supplier 's discretion - by repairing the product or supplying a product free from defects. In the event of rejection, impossibility or failure of subsequent performance, the Customer has the right to demand a reduction of the purchase price or - provided the performance in question is not construction work - to withdraw from the contract. In case that additional expenses to repair or replace the products arise because the Customer has transferred the products after delivery to another place than the agreed place of performance the Customer has to bear the additional costs.

11.3 The Customer has to inspect the products as to quantity and defects immediately on receipt and has to notify any apparent defects immediately. Hidden defects are to be notified immediately after being discovered. Failure to meet these obligations excludes any and all potential claims for these defects.

11.4 The Supplier is further not liable for any damages following improper use, handling, maintenance, operation or processing or on normal wear. This especially excludes liability for results of thermic, chemical or electric impact on the products or in case that the defects are caused by measures of the Customer not confirmed by the Supplier.

11.5 If, in the course of the examination of a defect of which the Customer has given notice, or in the course of the Supplier 's subsequent improvement work, it should turn out that the notice of defects was not justified, the Supplier shall be entitled to charge reasonable compensation for the examination and/or repair work.

11.6 The Customer will assist The Supplier in providing copies of reports on the use and performance of the goods and services, in particular where such use and performance has revealed any fault in the goods and services.

12. CUSTOMER'S OBLIGATIONS:

12.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

12.1.1 Co-operate with the Supplier;

12.1.2 Provide the Supplier with any information reasonably required by the Supplier;

12.1.3 Obtain all necessary permissions and consents which may be required before the commencement of manufacturing/provision of services;

12.1.4 Comply with such other requirements as may be set out in the order or otherwise agreed between the parties; and

12.1.5 Where appropriate, arrange all necessary import procedures and licences to

12.1.6 Allow for the importation of the goods into the Customer's country.

12.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 12.1.

12.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the order, the Customer shall be required to pay to the Supplier as agreed damages.

12.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

12.4.1 The Supplier shall have no liability in respect of any delay to the completion of any project;

12.4.2 If applicable, the timetable for the project will be modified accordingly;

12.4.3 The Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

13. TESTS:

13.1 The Supplier's products are carefully inspected and submitted to his standard tests. If special test or tests in the presence of the customer's representatives are required, unless otherwise agreed, must be made at the Supplier's works and will be charged extra. In the event of any delay on the part of the customer in attending such test after seven days' notice that the Supplier is ready, the tests will proceed in the Customer's absence, and shall be deemed to have been made in the presence of the Customer.

14. STORAGE:

14.1 If forwarding instructions sufficient to enable the Supplier to despatch the goods are not received within fourteen days after the date of notification that they are ready for despatch, the Customer shall take delivery or arrange for storage, the Supplier shall be entitled to arrange for the goods to be stored subject to the following conditions:

14.1.1 That the storage is at the Customer's risk and the Supplier shall not be held liable for any loss howsoever arising.

14.1.2 If the goods are stored on the Supplier's premises, it shall be entitled to charge a fee per week equivalent to 5 per cent of the purchase price, such fee to be paid monthly in arrears.

15. RESERVATION of PROPRIETARY RIGHTS:

15.1 The delivered products shall remain the Supplier's property and title shall not pass to the Customer until all open liabilities of the Customer have been fully paid for.

15.2 The Customer may resell the products in the normal course of business provided the claims arising from the resale have not been assigned, pledged, attached or otherwise encumbered.

15.3 In the event of delay in payment, the Supplier is entitled to withdraw from the contract and/or, even without withdrawal, to demand that reserved goods still available at the Customer be handed over to the Supplier and to collect the assigned claims himself. The Supplier has the right to reclaim any products which are still in the Customer's possession.

16. INTELLECTUAL PROPERTY RIGHT:

16.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

17. INDUSTRIAL PROPRIETARY RIGHTS, SECRECY:

17.1 The Supplier reserves ownership in any moulds, samples, diagrams, commercial or technical documents provided by the Supplier as well as all copyrights, proprietary and intellectual property rights in any such item. This applies also if the Customer has partly or wholly borne their costs. The Customer may use all such items only in formats approved by the Supplier in writing, he is neither entitled to manufacture these items nor to have them manufactured on his behalf.

18. INDEMNIFICATION:

18.1 The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement.

18.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

19. ALTERATION / CANCELLATION OF ORDER:

19.1 Any order placed by the Customer shall not be binding upon The Supplier until accepted and confirmed in writing.

19.2 No alteration can be made to the contract without the Supplier's written consent and then only subject to the following:

19.2.1 If prices have not been agreed when the Supplier so consents, it reserves the right to halt production until agreement is reached.

19.2.2 If agreement is not reached within 7 days of production halting as provided in sub-clause 19.2.1 above, the Customer may elect either that the work continue in accordance with the contract as though such alteration had not been agreed or that all further work cease in which event the Customer shall pay the Supplier for the work done and also make good any loss suffered by the Supplier.

19.3 Either party may terminate this Agreement forthwith by notice in writing to the other if:

19.3.1 The other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so

19.3.2 The other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

19.3.3 The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

19.3.4 The other party ceases to carry on its business or substantially the whole of its business; or

19.3.5 The other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

20. IMMEDIATE ACTION:

20.1 Where specific and immediate action is required by the Customer the Supplier may elect to carry out such work without furnishing its written consent in which event the customer shall indemnify the Supplier against all additional costs thereby incurred and for such additional price as shall be agreed between the Supplier and the Customer or in default of agreement within 14 days after the completion of the work as shall be stated in writing to be a fair price by an independent arbitrator whose decision shall be final and binding on both parties.

21. WORK SUSPENDED:

21.1 If work is suspended on the customers' instructions or for lack of instructions for a period of 30 days any loss occasioned thereby shall be recoverable from the Customer by the Supplier. If work is suspended for 30 days the contract may at the sole discretion of the Supplier be deemed to have been repudiated by the Customer by the service of notice in writing to this effect on the Customer who shall make good to any loss suffered by the Supplier.

22. FORCE MAJEURE:

22.1 If, as a consequence of hostilities (whether war be declared or not), Act of God, fire, riots, civil commotions, strikes, lockouts, Government regulations or directions, breakdown of plant or shortage of materials or labour, stoppages or restraint of labour from whatever cause, partial or general, or for any other cause whatsoever arising otherwise than by the voluntary act of the Supplier, the Supplier shall be unable to fulfil its obligations under the contract or if the Supplier be so engaged under Government or priority directions as to prevent or delay work on other orders the Supplier shall be entitled as its option at any time on notice to the Customer to make partial deliveries only to determine the contract, without prejudice in any case to rights accrued in respect of deliveries already made.

23. THIRD PARTIES:

23.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

24. ENTIRE AGREEMENT:

24.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

25. NOTICES:

25.1 Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the quotation or order or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

26. WAIVER:

26.1 The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

27. SEVERABILITY:

27.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

28. ASSIGNMENT:

28.1 The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

29. INDEPENDANT CONTRACTORS:

29.1 The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

30. LEGAL CONSTRUCTION:

30.1 All contracts shall be construed and interpreted in accordance with the laws of the Republic of Turkey with exception of the 'UN Convention on the International Sale of Goods' (CISG).