
GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

1. General

- 1.1 The following general conditions form an integral part of all sales contracts concluded between SWISS TIMING (hereafter ST) and its customers.
- 1.2 The present general conditions shall apply except when specifically excluded by the terms of the offer or of the confirmation of order. Any change or derogation thereof shall be expressed in writing and agreed thereto by the parties.
- 1.3 Should any specific provisions of the present general condition be found invalid, this shall not affect the validity of the remaining provisions.
- 1.4 The customer hereby expressly waives assertion of its own General Conditions if any.

2. Offers

Except as otherwise agreed, offers made by ST to its customers shall remain valid for 90 days.

3. Conclusion of contract

The contract between ST and its customer (herein after the Contract) shall be considered as concluded when, after receipt of an order, ST has formally confirmed acceptance thereof, or, when all contract documents have been signed by both parties.

4. Scope of supply and services

- 4.1 Scope and execution of services shall be agreed between customer and ST and recorded in the confirmation of order. Services, supplies or commitments not recorded in the Contract, shall not be part of ST obligations.
- 4.2 In order to further the continued improvement of its systems, reflecting latest technical developments, ST reserves the right to make any useful changes concerning presentation and specifications provided that such changes do not diminish the expected performance.
- 4.3 ST shall have the right at its own discretion to subcontract third parties of its own choice, for any part of its contractual obligations.

5. Technical documentation

- 5.1 The data embodied in technical documents (such as leaflets, descriptions, calculations, drawings plans, illustrations, etc.) shall only be binding if the Contract expressly makes reference to such documents.
- 5.2 Technical documents handed to customer prior or subsequent to entry into force of the Contract and likely to be used for production of the installation as a whole or parts thereof shall remain the exclusive property of ST. Without the written approval of ST customer shall not be entitled to use, copy, duplicate or bring these technical documents to the knowledge of third parties in any manner.
- 5.3 Technical documents made available by ST in association with bids which do not lead to an order, shall be returned to ST.
- 5.4 Customer shall be responsible for the completeness and accuracy of the technical documents, calculations and other data handed to ST for the purposes of executing an order.

6. Regulation in force at destination

- 6.1 The customer shall draw the attention of ST to the legal, administrative and like requirements relating to the delivery, and where applicable to the assembly and productive utilization of the items to be delivered. Where applicable customer shall act promptly to obtain the required visas and work permits. The customer shall provide full information concerning local health and accident prevention regulations. The customer shall provide assistance and advice in respecting these requirements and regulations.
- 6.2 Should it become necessary to make alterations to the scope of supplies and services due to changes in such regulations subsequent to entry into force of the Contract or by reason of regulations that were not known when the Contract was entered into, any increases or reductions of cost resulting therefrom shall be added to or deducted from the contractual price, as the case may be.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

7. Working conditions

- 7.1. Should customer not notify ST to the contrary, the following conditions shall be deemed to subsist as a basis for calculating the Contractual Price:
- 7.1.1 The work will not be carried out at an unhealthy or dangerous location.
- 7.1.2 ST personnel shall have the opportunity to find suitable accommodation and board in the neighborhood of the place of installation.
- 7.1.3 The requisite appliance and goods of consumption such as water and energy at customer's disposal will be available on site to ST in good time and, unless otherwise stipulated, free of charge.
- 7.1.4 Customer will make lockable or guarded rooms available to ST on site free of charge to enable the contractual supplies and the commissioning personnel's appliances, tools and clothing to be stored where they are safe from theft and damage.
- 7.1.5 Customer will ensure proper working conditions.
- 7.1.6 Customer will make it possible for ST to carry out the contractual services during normal working hours. If the foregoing conditions are not or are only partly fulfilled, ST shall be entitled to charge customer a supplement for the additional costs arising therefrom.

8. Prices

- 8.1 Except if agreed to the contrary, prices are understood to be in Swiss francs, CIF construction site excluding any deductions whatsoever.
- 8.2 All extras arising in the country of destination such as customs duties, clearance expenses, export, import, or other licenses, authentications and all kinds of customary taxes (such as turnover and/or value added tax), dues and other possible fiscal levies are not included in the prices and shall be charged to customer separately.
- 8.3 Except for extras as defined in Clause 8.2 of the present general Conditions, the prices listed in the bid shall remain unchanged for the duration of the contract. The prices cover delivery and services set forth by ST in the offer and confirmed in the contract.
- 8.4 Additional or reduced costs due to alterations of adjustments to customer's operating concept shall be documented openly by ST to customer and may modify the Contractual Price.

- 8.5 Should the term of the Contract be extended for any reason imputable to customer or one of his suppliers and should the work be interrupted or prolonged as a result thereof, ST shall have the right to amend the time schedule accordingly. Any additional costs (such as waiting time, additional working time, travelling and accommodation expenses, etc.) arising therefrom shall be for account of customer.

- 8.6 Should wage rates or the prices of materials change between the contractual delivery date and the actual delivery date ST reserves the right to adjust prices (in accordance with the price escalation formula in appendix 1)

9. Terms of payment

- 9.1 If not expressly agreed otherwise and set forth in the Contract, the terms for payment shall be as follows:

30% on receipt of order confirmation
or on signing of the contract, as the
case may be;
70% against shipping documents.

All payments shall be net with no deductions of any kind of expenses, taxes or other charges whatsoever. Customer's payment obligation shall be fulfilled as soon as the payments have been made freely available to ST, in Switzerland.

- 9.2 Initial payment by customer shall be made to the ST account at its domicile. Subsequent payment shall be effected by the issuance of irrevocable documentary letter of credit, confirmed by a first class Swiss Bank. The letter of credit shall be issued within 30 (thirty) days following entry into force of the contract and shall be assignable and permit part shipments.
- 9.3 If part deliveries are made, payments shall match the extent of individual deliveries.
- 9.4 Payments shall be made in such a manner that ST is able to dispose of the respective moneys within 30 days after due date.
- 9.5 Payments shall be made even if unimportant parts which do not prevent utilization of the delivery or installation are missing or if it should prove necessary to carry out minor additional work on installation.
- 9.6 Customer shall have no right to reduce or withhold payments by reason of complaints, claims or offsets not accepted by ST.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

9.7 Where other payment conditions based on installation have been agreed to, should customer fail to observe the stipulated deadlines for payment installments, ST shall have the right to charge penalty interest at 1% per annum above the issuing rate of Swiss Bank 5 years term notes, prevailing at the date of utilization. The payment of penalty interest shall not void the obligation to make payment in accordance with the contract.

9.8 The costs of any bonds or sureties shall be for account of customer.

9.9 ST claim for damages and its right from withdrawal of the Contract, at the expiry of a reasonable period of time, remains expressly reserved.

10. Industrial Property rights

10.1. All industrial property rights (such as patents, industrial designs and trademarks) of ST shall remain its property. Without written authorization from ST, customer and subsequent users shall in no manner copy or cause to be copied these patents and/or industrial designs and/or trademarks. Markings applied on the products and/or its packaging shall in no manner be altered, supplemented or defaced.

10.2 Customer shall promptly inform ST of any use by third parties that might be considered as infringement of ST industrial property rights.

11. Property reservation and right of disposal

11.1 ST shall retain title to deliveries on the Products, until they have been paid for in full.

11.2 ST is entitled to request, at customer's expense, the entry of the property reservation on the corresponding register and to fulfill all related formalities.

For the duration of the Property reservation, customer shall, at its own expenses, maintain the products and insure them to the benefit of ST against theft, breakage, fire, water and any other risks.

Customer shall further take all precautions whereby ST's property right is not jeopardized.

Should customer persist, after a 30 day respite, in failure to observe its obligations regarding delivery acceptance and payment, ST is entitled to sell the products ordered by customer to third parties without impediment and despite any possible existing industrial property rights (patent, design, trademark and/or copyright) of customer on said products.

11.3 Any conduct of customer which is in contravention with provisions of the Contract entitles ST to repossess the delivered Products. Such repossession of the Products by ST does not replace other remedies arising from the Contract nor cancel the contract unless explicitly so stated by ST in writing.

12. Installation

Except as otherwise agreed between ST and the customer, the scope of ST services shall cover installation of the entire system.

13. Completion period

13.1 Except as otherwise agreed, the period for completion of the installation shall commence at the latest of the dates shown below:

13.1.1 Date of entry into force of the contract as provided by Clause 3.

13.1.2 Date on which ST is notified of the grant of any official licenses required (such as import, export, or payment permits).

13.1.3 Date on which ST receives the payment installment to be made as provided in the contract or confirmation of order.

13.1.4 Date on which ST receives the technical information necessary to the proper execution of the order.

13.2 The completion period shall be prolonged appropriately in the following cases:

13.2.1 If customer fails to supply promptly to ST the technical information required during implementation of the contract or alters the same retrospectively.

13.2.2 In case of force major beyond ST's control, irrespective of whether the same arises at ST, customer or a third party's premises. Examples of such cases are epidemics, mobilization, war, riot, accidents, transport damages, labor disputes, measures taken by authorities (i.g. visas, work permits customs), natural catastrophes.

13.2.3 If customer falls into arrears with the tasks to be executed by it or with the fulfillment of its contractual obligations, and specifically if customer fails to comply with the terms of payment. In the foregoing cases, ST shall give written notice to customer.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

- 13.3 Should the Contract specifically provide a binding period for completion with stipulated monetary penalty in the event that ST for reasons of its own responsibility is unable to complete the contractual performance within the prescribed period (if applicable, after prolongation under the terms of Clause 13.2), customer shall be entitled to such monetary penalty in lieu of any other penalty.
- 13.3.1 The penalty shall relate to that part of the Contractual Installation which cannot by reason of the delay in completion be utilized in the manner envisaged.
- 13.3.2 The penalty shall amount to max. 0,5% for each full week of delay after the date contractually stipulated (where applicable, as extended under the terms of Clause 13.2) for completion, subject to a maximum total of 5%. The penalty shall be applied to the final payment due on acceptance of the Contractual Works, provided customer claims it in writing.
- 13.3.3 The aforementioned penalty precludes any further claim for damages against ST on grounds of delay in completion.

14. Commissioning the installation

- 14.1 Commissioning the installation by commencing trial operation shall be performed by customer's operating personnel under the direction of ST.
- 14.2 Customer shall make available a sufficient number of qualified operating personnel for commissioning.
- 14.3 ST shall familiarize the operating personnel with the installation and train the maintenance personnel, the scope of instruction and the selection and numbers of the personnel to be trained being governed by the Contract. ST reserves the right to evaluate the suitability of maintenance personnel.
- 14.4 During commissioning in particular, customer shall take measures to ensure proper working conditions enabling ST to test thoroughly the functional efficiency of the entire system under undisturbed conditions.
- 14.5 During commissioning, ST, in close collaboration with customer's maintenance personnel, shall carry out the maintenance tasks on the installation that arise, provided that customer makes the spare parts and maintenance aids (such as tools, instruments, suitable places to work, etc.) recommended by ST available throughout commissioning and places them at ST's disposal on request. Spare parts used during commissioning shall be replaced there-after by ST free of charge. Replaced parts shall become the property of ST.

15. Testing the installation

- 15.1 As soon as ST's work is ready for acceptance, customer shall be notified thereof by ST. The said notification shall be made sufficiently early to enable customer to take all requisite measures.
- 15.2 Acceptance testing shall take place in the presence of both Parties, in accordance with the acceptance procedure provided by the contract and under the technical conditions prescribed by the contract. Logs of acceptance tests (Acceptance Minutes) shall be drawn up and signed by both Parties.
- 15.3 Should the installation prove on acceptance testing not to be in conformity with the contract, customer shall give ST an opportunity to remedy the defects at its own cost and within reasonable period of time and so to restore contractual conditions.
- 15.4 Customer shall make fuel, energy, raw materials and working materials available in reasonable quantities to ST, free of charge, to the extent the same be necessary for carrying out acceptance testing and for adjusting the installation ready for service. Similarly, customer shall at its own expense take all other measures necessary for these purposes.

16. Acceptance of the installation

- 16.1 As soon as the installation has been completed in accordance with the Contract and acceptance testing has been carried out successfully, the installation shall be deemed to have been accepted by customer.
- 16.2 Customer shall be under obligation to accept the installation in the following cases:
- 16.2.1 If the only defects detected during acceptance testing and recorded in the Acceptance Minutes are insignificant and do not impair the functional efficiency of the installation. In such case, the installation shall be deemed to have been accepted (subject to reservations as per Acceptance Minutes). ST, for its own part, hereby undertakes to remedy any defects forthwith and to observe contractual conditions.
- 16.2.2 If customer himself places the installation wholly or partly into service for its own purposes.
- 16.3 On acceptance of the installation by customer, the stipulated final payment shall fall due.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

17. Warranty

- 17.1 The warranty shall commence on acceptance of the installation by customer and shall last for 12 months. In case of initial non acceptance, the warranty shall have a maximum duration of 15 months from the normal acceptance date as stipulated in the contract.
- 17.2 ST hereby undertakes that during the warranty period it will on written request by customer at its own option either repair free of charge or make good free of charge or replace all parts becoming faulty or unusable as a demonstrable consequence of unsatisfactory material, design error or faulty execution. On the other hand, cost and risk of shipping such parts shall be for the account of customer. Furthermore, ST shall remedy free of charge to any system faults occurring in the installation during the warranty period. Warranty shall, however, be subject to the following provisions:
- 17.2.1 That customer makes the spare parts and maintenance aids (such as tools, instruments, suitable places to work, etc.) recommended by ST available throughout the warranty period and places them at ST's disposal on request.
- 17.2.2 That the installation is properly operated by duly qualified operating personnel.
- 17.2.3 That the installation is impeccably maintained by qualified maintenance personnel. It is left open to customer to carry out maintenance work itself, entrust it to third parties or enter into a maintenance contract with ST.
- 17.2.4 That the customer is not in default with its payments. Should the foregoing conditions not be or only partly be fulfilled, ST shall be entitled to charge customer with the costs accruing as a result thereof.
- 17.3 Customer's spare parts used by ST during the warranty period shall be replaced by ST forthwith and free of charge. The replaced parts shall revert to ST's ownership.
- 17.4 The warranty of software services shall be subject to the provisions set forth in Clause 21.
- 17.5 Customer shall enter into a maintenance contract for computer hardware with the computer supplier at the time of acceptance of the installation. The costs thereof shall be for account of customer.

17.6 The warranty shall exclude consumable material, damage due to normal wear and tear, improper maintenance of the installation by customer/third parties, failure to observe operating instructions, effects of chemicals or electrolysis, defective construction or erection work not carried out by ST as well as due to any cause beyond ST responsibility.

17.7 The warranty shall lapse if customer or third parties undertake modifications or repairs to the installation without the prior written approval of ST.

18. Transfer of risk

The charges and risk of delivery pass to the customer as set forth in INCOTERMS (current edition in force at the time of the conclusion of the Contract) in accordance with the chosen mode of delivery (ex-factory, FOB, CIF, etc.). If shipment is delayed or made impossible for reasons of which customer is responsible, the delivery will be stored at the expenses, risk and perils of the customer.

19. Transportation

On receipt of order confirmation, customer shall provide ST with precise shipping instructions. Complaints associated with shipment shall be made by customer to final carrier forthwith on receipt of the good or freight documents and shall be notified to ST.

20. Liability

ST shall perform its services in accordance with the Contract provisions and honor its warrantee obligations according to said provisions. Over and above this, all further liability towards customer for any damage, direct or consequential, whatsoever is expressly excluded.

In particular, ST assumes no liability for costs which may arise for disassembly or assembly, or for damages arising directly or indirectly from the delivered products themselves, from their application or any defect therein. ST specially declines all liability for any consequential or subsequent damages, as for example lost profits.

ST liability shall in any case be limited to the value of the order or the part of the order which would not have been fulfilled. Such limitation shall also apply in case of non-fulfillment of the order by ST.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

21. Software license

21.1 The standard software and/or the application software (herein after the Software) are supplied by ST with the delivery and installation of the system provided by ST (herein after the System). They shall form an integral part thereof and may only be used by customer for the System.

21.2 The Softwares are the property of ST and are protected by copyright law and international treaty provisions.

21.3 The Software are licensed to customer by ST on a non exclusive basis. This license entitles customer to use the Software for the System only and for the period of time as defined in the Contract. This license does not authorize customer to:

- copy (except for one safeguard copy), modify or transfer the Software or the documentation in whole or in part, except as expressly provided for in the Contract,
- modify or adapt the Software or documentation in whole or in part, except as expressly agreed in the Contract.

If customer fails to comply with the foregoing provisions, ST may terminate the Software license. Upon termination, customer shall destroy all copies of the Software.

21.4 For a period of 90 days from the date of receipt of the Software by customer, ST warrants that the Software will substantially conform to the specifications defined in the Contract and to the documentation provided with it when used as specified in such documentation.

Provided that customer return the Software within the 90 day period, ST warrants, at its sole option (a) to remedy free of charge to the non conformance of the Software, (b) to help customer to work around the error.

21.5 In no event shall ST be liable for any other damages whatsoever, including but not limited to, direct, indirect, special, incidental, or consequential damages or other pecuniary loss arising out of the use of or inability to use the Software. In particular, ST shall not be responsible for any costs including, without limitation, loss of business profits, business interruption, business information, the cost of recovering such information or claims by third parties.

21.6 ST warranty according to the terms of point 21.4 is void:

- if failure of the Software has resulted from accident, abuse or misapplication caused by customer,
- if customer has altered the Software, the configuration of the hardware or the ambient conditions, without the prior written agreement of ST

In such cases, ST shall not be responsible for the improper functioning of the global technical concept of the System.

22. Applicable law and place of enforcement

The Contract is subject to Swiss Law.

Any and all disputes arising in connection with this Contract shall be submitted solely to the competent court of the Canton of Berne.

GENERAL CONDITIONS FOR SALES, DELIVERY AND INSTALLATIONS

Appendix I**Price escalation formula**

(on the basis of the price escalation formula dated March 1966 and drawn up by the Association of Swiss Mechanical Engineering Industries VSM)

$$P = P_0 \left(a + b \frac{Lm}{Lo} + c \frac{Mm}{Mo} \right)$$

P	=	Selling price on date of delivery
P ₀	=	Selling price by tender
a	=	0,15 Coefficient of fixed part of costs
b	=	0,50 Coefficient of part varying with wage index
c	=	0,35 Coefficient of part varying with material index
Lo	=	Wage index ² of Employers' Association of the Swiss Engineering and Metal Industries, Zürich on date of tender
Lm	=	Average of all wage indices ² - from date of order acknowledgment to completion in accordance with contract* or - during period of manufacture, i.e., from _____ to _____
Mo	=	Mean of price indices ³ of principal materials in category "metals and metal goods" required for manufacture, related to their proportion of value of goods on date of tender
Mm	=	Average of mean values of all price indices ³ of principal materials in category "metals and metal goods" required for manufacture, related to their proportion of value of goods at time of delivery - from date of order acknowledgment to completion in accordance with contract* or - from date of order acknowledgment to date by which vendor had obtained most of these materials, i.e. from _____ to _____

1 a + b + c must always total 1.

2 Since the wage index is only worked out by the Employers' Association quarterly, the index for the past quarter shall be inserted in each case.

3 Fractions of the wholesale price index worked out and officially published monthly. (If the year serving as a basis for determination of the index is changed by the authority concerned, the vendor is entitled to recalculate the changes in wages and prices in accordance with the new index values.)

* Delete where non-applicable.