Area of application

1. These general terms of delivery shall apply unless changed by written agreement between the parties. In the absence of written confirmation in conjunction with the contract, no statements or information shall override the provisions of these terms of delivery or in any other respect influence the contents of the contract. These regulations are not applicable to software included in the delivery insofar as the software is subject to separate conditions.

Drawings and descriptions

2. All information concerning weight, dimensions, capacity, price, technical or other data in catalogues, brochures, circulars, advertisements, illustrations and price lists are approximate. Such information is binding only when expressly referenced in the contract.

3. Unless otherwise agreed, any drawings or technical documents provided by the seller and relating to the manufacture of a product or part thereof shall remain the seller’s property. The purchaser shall not use or copy, reproduce, release or otherwise give a third party knowledge of such documentation without the seller’s consent.

4. Any drawings or technical documents relating to the manufacture of a product or part thereof, provided by the purchaser to the seller, shall remain the purchaser’s property. The seller shall not use or copy, reproduce, release or otherwise give a third party knowledge of such documentation without the purchaser’s consent.

Confidentiality

5. Information relating to circumstances, including technical information and relations to clients and other business contacts, to which the parties become privy in the course of their collaboration, and which is not common knowledge, shall not be divulged to a third party through the release of documentation or in any other manner beyond what is necessary for the party’s execution of, or interest in, the contract. Each party shall ensure compliance with this confidentiality requirement by means of confidentiality agreements signed by its personnel or other appropriate means. The confidentiality requirement shall endure beyond the completion or termination of the contract.

Packaging

6. Any pricing quoted in price lists and catalogues is deemed to apply to unpackaged goods.

Acceptance testing

7. Unless otherwise agreed, any contractual acceptance testing shall be carried out in the seller’s facility during normal working hours. If the contract does not include test specifications, the testing shall be performed in accordance with the norms generally applied within the relevant industry in the country where the goods are being manufactured.

8. The seller shall inform the purchaser of acceptance testing in sufficient time to allow the purchaser’s representative to attend. If the purchaser is not represented at the testing, the seller shall provide the purchaser with a test protocol which shall constitute binding proof with respect to the pertinent test parameters.

9. If acceptance testing shows that the goods fail to meet contractual requirements, the seller shall promptly take measures to bring the goods into compliance with the contract. Renewed testing shall then be performed at the purchaser’s request. Insignificant defects shall not justify a demand for renewed testing.

10. All costs relating to acceptance testing performed in the seller’s facility are for the seller’s account. The purchaser is responsible for his own expenses, such as travel costs and per-diems for himself and any assistants attending the testing.

Delivery and delivery period

11. Delivery is made ex seller’s warehouse. Time of delivery shall be reckoned from the latest of the following dates:
   (a) Date the contract was concluded;
   (b) Date the seller was informed of any necessary licences or other permits;
   (c) Date the seller received payments contractually required to be made before commencement of production.
   (d) Date the seller received all technical data and instructions necessary for the delivery.

12. Seller who finds it impossible to maintain a contractual delivery date, or expects a delay, should promptly inform the purchaser in writing, stating the reason for the delay and, if possible, the estimated date of delivery.

13. If no delivery period is stated in the contract, the seller is entitled, when two-thirds of such delivery period has elapsed, to request the other party in writing to agree on a definite date.

14. If no delivery period is stated in the contract, the seller shall be entitled to sell the goods in a manner that could jeopardise the seller’s right to repossession. No acceptance or promissory note shall be considered as payment until fully redeemed.

Retention of title

22. If it appears unlikely that the purchaser will fulfill his legal obligations under the contract, or if the seller cancels the contract, the seller shall have the right to repossess any goods that can still be legally recovered. Until full payment has been made, the buyer shall not without the seller’s written consent dispose of the goods in a manner that could jeopardise the seller’s right to repossess. No acceptance or promissory note shall be considered as payment until fully redeemed.

Liability for defects

23. The seller undertakes to remedy any defects arising from faulty construction, materials or manufacture in accordance with Clauses 24-32.
24. The purchaser is required to examine the goods as soon as possible upon receipt. If there is reason to believe that a product defect may result in damage, a written complaint must be made immediately.

The seller's liability shall be limited to defects reported by the purchaser within 15 days from the date the defect was or should have been detected, and within one year from the contractual delivery date or a subsequent date on which the seller fulfilled his obligations in accordance with an agreed delivery clause.

25. Any replaced or re-manufactured components are covered by warranty on the same terms and conditions as those applicable to the original product for a period of three months. This provision is not applicable to the remainder of the goods for which the warranty will only be extended by the period during which the goods were unusable as a result of a defect in the meaning of Clause 23.

26. On receipt of the purchaser's written notice concerning a defect in the meaning of Clause 23, the seller shall remedy the defect without delay and, except as provided in Clause 27, at his own expense. The seller shall return any defective component in the meaning of Clause 23 to the seller for repair or replacement, unless the seller chooses to execute the repairs at the purchaser's location.

By delivering a duly repaired or replaced component to the purchaser, the seller shall be deemed to have fulfilled his obligations under this clause with respect to the defective component.

Instead of addressing a defect, the seller may refund the purchase price, in which case the purchaser must return the goods essentially unchanged and undiminished or, if this proves impossible, credit the seller with an amount equal to the value of the returned goods when settling the account. The amount which the seller is required to repay to the purchaser shall be reduced by the amount the purchaser reasonably should pay for deriving profit and benefit from the goods, as well as any amount commensurate with the depreciation of the goods.

27. The purchaser shall bear the cost and risk of transporting defective components to the seller, whereas the seller shall bear the cost and risk of transporting any replaced or repaired goods to the destination specified in the contract or, if no such destination is stated, to the place of delivery. If the seller carries out repairs as referenced in Clause 26 at the purchaser's location, the latter shall pay travel costs and per-diems relating to travel and working hours expended by the seller's personnel.

28. Any defective components replaced pursuant to Clause 23 shall be placed at the seller's disposal.

29. If, upon being requested to do so, fails to meet his obligations within a reasonable period pursuant to Clause 26, the purchaser may, at his option, have necessary repairs carried out or new goods manufactured at the seller's expense provided that he exercises due diligence in doing so, or, if the defect is of such importance to the contract as to render this work or services impossible, he may cancel the contract with respect to the portion of the goods which could not be used as intended due to the seller's negligence. In such case, settlement shall be made pursuant to Clause 26, third paragraph.

The seller's obligation to carry out the measures referenced in Clause 26 and compensate the purchaser pursuant to the present paragraph shall be limited to a total amount not exceeding 15 per cent of the price of the goods.

30. The seller's responsibility shall not extend to defects caused by materials supplied or designs stipulated by the purchaser.

31. Notwithstanding the provisions of Clauses 23-30, the seller's obligations shall not extend beyond fifteen months from commencement of the original warranty period.

32. The seller's liability is limited to defects arising during proper use and under operating conditions foreseen in the contract. It shall not extend to defects caused by inadequate maintenance or improper assembly by the purchaser, modifications without the seller's written consent, repairs incorrectly performed by the purchaser, or normal wear and tear. The seller shall have no liability for defects save as stipulated in Clauses 23 – 31. This applies to any loss the defect may cause, such as loss of production, loss of profit and other consequential economic loss.

Product liability

33. The purchaser shall indemnify and hold the seller harmless to the extent that the seller incurs liability towards any third party in respect of loss or damage for which the seller is not liable towards the purchaser according to the second and third paragraphs of this clause. The seller shall have no liability for damage caused by the goods:

a/ to any (movable or immovable) property, or consequent loss due to such damage, occurring while the goods are in the purchaser's possession, or
b/ to products manufactured by the purchaser or to products of which the purchaser's products form a part.

The above limitations of the seller's liability shall not apply if he has been guilty of gross negligence.

If a third party lodges a claim for compensation against seller or purchaser for loss or damage referred to in this Clause, the other party to the contract shall forthwith be notified thereof in writing.

The seller and the purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them based on damage or loss alleged to have been caused by the goods. The liability as between the seller and the purchaser shall, however, always be settled in accordance with Clause 42.