



## General Terms and Conditions of STATEC BINDER GmbH, Gleisdorf - Austria April 2021

### 1. Scope

- 1.1 These General Terms and Conditions apply to all deliveries of goods, works or services by STATEC BINDER GmbH (the "Supplier").
- 1.2 Any deviations to the conditions referred to in 1.1 shall only be applicable if they are expressly accepted in writing by Supplier.

### 2. Offer

- 2.1 Any offers of the Supplier are made without obligation.
- 2.2 Any documents relating to offers or a project may neither be reproduced nor made available to third parties without express written consent of the Supplier. The Supplier retains its exclusive property rights to any documents without any limitation. All documents must be returned to Supplier upon Supplier's request immediately if the order is not given to the Supplier.
- 2.3 Any specifications in catalogues, brochures, newsletters, advertisements, illustrations, price lists etc. are only binding if expressly referred to in the offer and/or the order confirmation.

### 3. Conclusion of Contract

- 3.1 The contract becomes effective upon the written order confirmation or the actual delivery.
- 3.2 Any modifications or amendments to the contract require a written agreement.

### 4. Delivery

- 4.1 Agreed delivery periods start to run with the date of the order confirmation but in no event prior to the performance of any of the customer's duties.
- 4.2 Any permits or authorizations that may be required for the delivery outside of Austria must be obtained by the customer and, unless they are received in time, extend agreed delivery dates.
- 4.3 Agreed delivery periods are subject to change upon unforeseeable events or events beyond the reasonable control of the Supplier, such as, without limitation,
  - a.wars, terrorism, natural disasters, pandemics
  - b.acts of state or authorities, impediments because of applicable national, European or international rules in international trade (including embargos)
  - c.shortages of energy or raw material
  - d.strikes, transport damages or delays
  - e.viral or other attacks of third parties to the IT system of the Supplier despite careful adherence to protective measures.Any of the above impediments entitle the Supplier to a commensurate delay of the delivery periods if they affect it or any of its sub suppliers.
- 4.4 If the customer fails to comply with any of its obligations Supplier's obligations are suspended.
- 4.5 The Supplier is entitled to carry out and invoice advance or partial deliveries.
- 4.6 If the customer fails to accept any deliveries made available at the agreed place or time or if the dispatch of goods ready for delivery is not possible or desired by the customer, the goods will be stored at the customer's cost and risk. The delivery shall then be considered as performed and may be invoiced by the Supplier.
- 4.7 In case of delay in delivery a compensation is paid only upon express agreement and shall be limited to the amount of any stipulated penalty.

### 5. Transfer of Risk and Performance of Contract

- 5.1 Unless otherwise agreed costs and risk of loss are transferred to the customer upon delivery ex works. This also applies in case of transport by the Supplier and installation at the customer's premises.
- 5.2 If the delivery is delayed for reasons within the customer's responsibility costs and risk of loss pass to the customer upon the Supplier's notification of readiness for dispatch.
- 5.3 Any periods depending on the Supplier's performance of contract start to run as set forth above regardless of any performance tests or test runs that may be agreed.

### 6. Factory Acceptance Test

- 6.1 To the extent the customer desires a factory acceptance test this is to be agreed with the Supplier in writing at the time of concluding the contract. Unless otherwise agreed the acceptance test is run at the place of manufacture or at a place defined by the Supplier during normal working hours.
- 6.2 The Supplier will give the customer advance notice to enable it to be present at the factory acceptance. In case the factory acceptance test shows conformity with the contract and functionalities as agreed, a factory acceptance test protocol is to be signed, minor shortcomings are noted in a punch list. With regard to serious shortcomings a delay for another factory acceptance test shall be agreed.
- 6.3 If the customer is not present at the factory acceptance test despite being having been given timely notification, the factory acceptance test protocol is signed by the Supplier only and sent to the customer for its information and the acceptance is deemed given unless serious shortcomings had been noted in the course of the performance test.
- 6.4 Unless otherwise agreed the Supplier is responsible for the cost of the factory acceptance test. The customer is responsible for travel and lodging cost of its representative.

### 7. Supervision of commissioning / Performance Test

- 7.1 On completion of commissioning a performance test will take place for a period of 1 hour. During this period the performance valued given by the Supplier will be determined and recorded by duly authorized representatives of both parties. After the test period is concluded an acceptance protocol will be jointly drawn up in which the performance values achieved are recorded.
- 7.2 If the performance values have been proven, the contractor's deliveries and performances will be regarded as accepted.
- 7.3 If individual performance values have not been achieved, the measures to be determined by the Supplier and the agreed deadlines for these will be recorded in the acceptance protocol. On expiry of these deadlines a new performance test will be carried out, but limited however to the determination of performance values not proven during the first test.
- 7.4 The performance values can only be achieved under the prerequisite, that all servicing-, maintenance-, and operation instructions as well as any other regulations of the Supplier are observed precisely.

### 8. Prices

- 8.1 Any prices for machines and spare parts are quoted ex Supplier's works or warehouse excluding packaging, dispatch and VAT. Any expenses, duties and taxes related to the delivery are paid by the customer.
- 8.2 Prices for works are quoted based on normal working hours on work days between 08:00 am and 05:00 pm. If any supervision works are carried out outside of normal working hours due to reasons within the Customer's responsibility or upon the Customer's express wish there will be a 50 % surcharge, if they are carried out on Sundays or holidays a 100 % surcharge will be applied.
- 8.3 Prices are quoted on the costs of material and valid at the time of the first offer. Any changes of these costs prior to the time of delivery entitle the Supplier to adapt the prices accordingly if delivery is delayed due to reasons within the Customer's responsibility.

### 9. Payment

- 9.1 Unless otherwise agreed one third of the price is due upon receipt of the order confirmation, one third once half of the delivery time has passed and one third upon performance pursuant to paragraph 5.
- 9.2 Payments shall be made in the agreed currency. The customer is responsible for any bank charges related to the payment.



- 9.3 The customer is not entitled to any right of set off or to withhold or reduce any payments due because of warranty or compensation claims.
- 9.4 In case of delayed payment or delay of any other customer obligation the Supplier may
- a. suspend the performance of its own obligations until payment of any amount due or performance of other obligations due
  - b. apply a commensurate extension of the delivery date
  - c. immediately declare due the entire purchase price
  - d. charge the customer from such due date interest at the then current discount rate of the European Central Bank plus nine percentage points
  - e. rescind the contract upon setting a proper and reasonable grace period

## 10. Customer's Cooperation

- 10.1 The customer shall support the Supplier's personnel in the carrying out of supervision works at its cost.
- 10.2 The customer has to make available a person that is familiar with the plant for information during any supervision works.
- 10.3 The customer has to facilitate the performance of the supervision works by the Supplier.
- 10.4 Any applicable parts of the plant must be accessible to the Supplier and its personnel without any problem. The Supplier is entitled to invoice any time and material necessary if the applicable parts of the plant are not readily accessible and any demounting works are required.
- 10.5 Upon the Supplier's request the customer shall put the entire plant or the applicable parts of the plant out of operation for certain periods or for the entire duration of the supervision works.
- 10.6 The customer shall inform the Supplier promptly about any material circumstances relating to the plant or the supervision works.
- 10.7 The customer shall keep a plant diary in which all inspections, supervision works, repair works etc. are noted consecutively.
- 10.8 If a specific time for the carrying out of supervision works has been agreed between the customer and the Supplier the customer shall reimburse the Supplier any frustrated expenses (fees, costs of travel to and from etc.) and the time spent if the supervision works cannot be carried out for reasons not within the Supplier's responsibility.
- 10.9 If specific safety measures must be taken or regulations must be adhered to for the performance of any supervision works, the customer shall immediately inform the Supplier in writing. If specific training of the supervision personnel is required, this shall be at the customer's cost. The Supplier is entitled to invoice time, fees and travel expenses incurred in connection therewith to the customer.
- 10.10 In the event the Supplier is impeded by applicable safety regulations in the contractual performance it cannot be held liable for any reason, in particular it is not responsible for a delayed delivery.
- 10.11 The customer is responsible for the protection of persons or objects on location of the supervision works. The customer is liable to provide appropriate working conditions and safety protection on location.

## 11. Technical Support to be rendered by the Customer

The customer shall, if required, provide an adequate number of qualified support personnel for the time required at its cost. The support personnel have to follow the instructions given by the supervisor of the supervision works. The Supplier does not assume any responsibility for any support staff provided by the customer. The customer shall provide the energy and raw material required for the works as well as any required tools and devices including ladders, scaffolding, lifting tools (forklift, crane) etc.

## 12. Retention of Title

Until customer has fulfilled all of its financial obligations any goods supplied shall remain the Supplier's property. The Supplier is entitled to mark its retention of title on the goods supplied. The customer shall be obliged to meet all legal requirements in order to safeguard the customer's property and security interest. Upon attachment or any other kind of seizure the customer must assert the Supplier's title and notify Supplier in writing immediately.

## 13. Warranty

- 13.1 The Supplier warrants that the goods and works are free from defects in material and workmanship and comply with the specifications and properties agreed.
- 13.2 The Supplier is not liable for defects beyond its scope of supply and delivery and for the compliance with any legal or administrative rules and requirements which were not notified to it in writing prior to the conclusion of the contract.
- 13.3 The Supplier is not liable for any defect caused by circumstances which arise after the risk has passed, e.g. incorrect or faulty erection, commissioning, repair – i.e. not carried out by Supplier or a business authorized by Supplier – or any modification carried out without Supplier's prior written consent.
- 13.4 The Supplier shall only be liable for defects which occur under the conditions of operation as provided for in the contract. Also excluded from warranty are any defects caused by external influences which are not expected according to the contract or by software problems which cannot be reproduced. Any warranty is forfeited if the customer carries out modifications or repairs itself or with third parties without prior written consent of the Supplier. Any invoices relating thereto will not be accepted.
- 13.5 Normal wear and tear or deterioration are excluded from the warranty.
- 13.6 The supplier's warranty is limited to defects which occur within twelve months after first commissioning, however not later than 18 months after notification of readiness for delivery. The presumption rule of § 924 ABGB does not apply.
- 13.7 The customer has to promptly notify Supplier of any defect in writing. Such notice shall under no circumstance be given later than two weeks after the appearance or detectability of the defect and shall contain a detailed description of the defect. If the customer fails to notify Supplier in writing of a defect within the time limit set forth above it loses its warranty rights.
- 13.8 Where a defect is such that it may cause further damage, the customer shall notify Supplier in writing immediately. The customer shall be responsible for any damage resulting from its failure to so notify. The customer shall also take any reasonable measures to minimize damage and shall in that respect also comply with the Supplier's instructions.
- 13.9 Upon receipt of a timely notice of defect Supplier shall at its expense in its discretion remedy the defect by repair on location or in its plant or deliver substitute parts, provided the customer and/or the customer's final customer maintains an adequate inventory of replacement parts. The customer shall at its expense provide access to the goods delivered by Supplier and arrange for any intervention in equipment other than that delivered by Supplier. Any defective parts replaced by Supplier become its property.
- 13.10 If Supplier fails to fulfil its warranty obligation despite a written notice of defect the customer may itself undertake or employ a third party to undertake the necessary repair work at the risk and expense of Supplier. If the repair was successfully undertaken by the customer or a third-party Supplier shall reimburse the customer for the reasonable costs incurred by it for such repair. Such reimbursement shall be in full settlement of Supplier's liabilities for the repair of the defect.
- 13.11 If the customer has given a notice of defect to Supplier and no defect is found for which Supplier would be liable Supplier shall be entitled to compensation for the costs incurred as a result of such unfounded notice of defect.

## 14. Liability

- 14.1 Any claims for liability except for claims based on product liability laws may only be raised upon grossly negligent or intentional acts or omission of the Supplier and only for injuries to life and health and items directly damaged by the goods delivered. The evidentiary rule of § 1298 ABGB is excluded. Any other damages in particular, without limitation, for consequential damages or loss of profit are expressly excluded.
- 14.2 The goods delivered comply only with those safety requirements which may be expected based on applicable licensing regulations, operation manuals, Supplier's directions to use the goods – in particular in regard to certain required tests – and any other directions given.
- 14.3 Any claims for damages are forfeited if they are not raised within six weeks upon the occurrence of damage.
- 14.4 The customer shall subject its customers to the above limitations of liability



## 15. Rescission of Contract

**15.1** In addition to the rescission because of the delay of payment mentioned in section 8.4 e) above the Supplier may rescind the contract if

- a. the delivery or performance of works becomes impossible or delayed for reasons within the customer's responsibility beyond a reasonable grace period given in writing or
- b. the customer's financial solvency has deteriorated substantially, and the customer is not willing to make advance payments or provide adequate securities
- c. the Supplier has reasonable cause to believe that its supply would violate an embargo. The rescission may also be declared with regard to any part of the delivery or performance of works yet unfulfilled.

**15.2** Both parties may rescind with regard to any unfulfilled part of the contract if the performance of the contract is delayed for more than six months for reasons of force majeure (see item 15.).

## 16. Force Majeure

The agreed delivery terms do not apply upon unforeseeable, unavoidable events which are beyond the parties' influence such as for example war, pandemics, terrorism, natural disasters, acts and prohibitions of state or authorities, lack of energy or raw material, strikes, damage or delay in transport, etc.. Such events entitle the Supplier to commensurate extensions of the delivery dates even if they occur in the sphere of its sub suppliers.

## 17. Intellectual Property Rights and Copyrights

**17.1** If any good is produced according to customer's construction drawings, designs, models or other specifications the customer agrees to indemnify and hold the Supplier harmless in case of any infringement of third parties' rights.

**17.2** Any technical documents including, without limitation, plans, drawings, technical descriptions, catalogues, brochures, pictures or models etc. remain the exclusive intellectual property of the Supplier. Any use, copying, reproduction, distribution or delivery to third parties, applications or demonstrations are subject to Supplier's prior express written consent.

## 18. Confidentiality

**18.1** The customer shall keep strictly confidential any technical or business information it gains access to in the course of the cooperation with the Supplier (Confidential Information). The Confidential Information must neither be reproduced or made available to third parties nor used for any other purpose than for the operation and maintenance of any items supplied by the Supplier unless expressly agreed in writing by Supplier.

**18.2** The customer shall take any steps necessary to effectively protect any Confidential Information against the access of third parties by applying the very latest technology. In particular, without limitation, the customer must protect Confidential Information against theft, loss, manipulation, damage or any type of reproduction. If the customer becomes aware that unauthorized third parties might have gained knowledge of the Confidential Information the customer must notify the Supplier immediately and in consultation with Supplier initiate any steps necessary to investigate the matter and to prevent any future access.

**18.3** In the event of a breach of the aforementioned provisions the customer shall indemnify and hold harmless the Supplier against any adverse consequences arising of such breach. In addition, the Supplier shall be entitled to cancel the contract with immediate effect.

## 19. Disposal of Old Equipment

The customer shall dispose of any electric and electronic devices procured from the Supplier at the end of their usage in accordance with the then applicable regulations, within the European Union Directive 2012/19/EU on waste electrical and electronic equipment. The customer has the burden of proof for the compliance with the aforementioned obligation. In the event the customer does not comply with this decision it has to indemnify the Supplier or any consequences resulting therefrom.

## 20. Use of Data and Data Protection

**20.1** The customer agrees that the Supplier is entitled to use any data that the Supplier receives in the course of the performance of the contract in accordance with applicable laws to process and to store them and to allow third parties to use, to process and to store such data pursuant to the order of the Supplier. Within the contractual relationship the Supplier is entitled to process and to use personal data of some employees or customers of the customer to the limited extent required to properly perform the contract (e.g. process or carry out orders, carry out payments, arrange for mailings and delivery or to provide service or support work).

**20.2** The customer shall process any personal data provided by the Supplier pursuant to the then applicable data protection regulations exclusively for purposes of the contractual performance and immediately delete them upon the termination of any reason justifying the processing.

**20.3** With regard to its information obligations pursuant to Article 13 and 14 of the Data Protection Regulation the Supplier refers to the data protection declaration on its homepage. Upon the Customer's request a copy of the data protection declaration will be provided without cost.

## 21. Dispute Resolution, Applicable Law

**21.1** Unless otherwise agreed the competent court at the corporate headquarters of the Supplier shall have exclusive jurisdiction for any disputes arising out of the contract.

**21.2** The contract is subject to Austrian law under the exclusion of the conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).