

GENERAL CONDITIONS

for the supply of Plant and Machinery for export

Prepared under the auspices of the UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, March 1953

188

1. PREAMBLE

- 1.1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties.

2. FORMATION OF CONTRACT

- 2.1. The Contract shall be deemed to have been entered into when, upon receipt of an order, the Vendor has sent an acceptance in writing within the time-limit (if any) fixed by the Purchaser.
- 2.2. If the Vendor, in drawing up his tender, has fixed a time-limit for acceptance, the Contract shall be deemed to have been entered into when the Purchaser has sent an acceptance in writing before the expiration of such time-limit, provided that there shall be no binding Contract unless the acceptance reaches the Vendor not later than one week after the expiration of such time-limit.

3. DRAWINGS AND DESCRIPTIVE DOCUMENTS

- 3.1. The weights, dimensions, capacities, prices, performance ratings and other data included in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute an approximate guide. These data shall not be binding save to the extent that they are by reference expressly included in the Contract.
- 3.2. Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Vendor. They may not, without the Vendor's consent, be utilised by the Purchaser or copied, reproduced, transmitted or communicated to a third party. Provided, however, that the said plans and documents shall be the property of the Purchaser;
- (a) if it is expressly so agreed, or
- (b) if they are referable to a separate preliminary Development Contract on which no actual construction was to be performed and in which the property of the Vendor in the said plans and documents was not reserved.
- 3.3. Any drawings or technical documents intended for use in the construction of the Plant or of part thereof and submitted to the Vendor by the Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of the Purchaser. They may not, without his consent, be utilised by the Vendor or copied, reproduced, transmitted or communicated to a third party.
- 3.4. The Vendor shall, if required by the Purchaser, furnish free of charge to the Purchaser at the commencement of the Guarantee Period, as denned in Clause 9, information and drawings other than manufacturing drawings of the Plant in sufficient detail to enable the Purchaser to carry out the erection, commissioning, operation and maintenance (including running repairs) of all parts of the Plant. Such information and drawings shall be the property of the Purchaser and the restrictions on their use set out in paragraph 2 hereof shall not apply thereto. Provided that if the Vendor so stipulates, they shall remain confidential.

4. PACKING

- 4.1. Unless otherwise specified:
- (a) prices shown in price lists and catalogues shall be deemed to apply to unpacked Plant;
- (b) prices quoted in tenders and in the Contract shall include the cost of packing or protection required under normal transport conditions to prevent damage to or deterioration of the Plant before it reaches its destination as stated in the Contract.

5. INSPECTION AND TESTS

INSPECTION

- 5.1. If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Plant, both during manufacture and when completed, inspected and checked by his authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with the Vendor as to date and time.
- 5.2. If as a result of such inspection and checking the Purchaser shall be of the opinion that any materials or parts are defective or not in accordance with the Contract, he shall state in writing his objections and the reasons therefor.

TESTS

- 5.3. Acceptance tests will be carried out and, unless otherwise agreed, will be made at the Vendor's works and during normal working hours. If the technical requirements of the tests are not specified in the Contract, the tests will be carried out in accordance with the general practice obtaining in the appropriate branch of the industry in the country where the Plant is manufactured.
- 5.4. The Vendor shall give to the Purchaser sufficient notice of the tests to permit the Purchaser's representatives to attend. If the Purchaser is not represented at the tests, the test report shall be communicated by the Vendor to the Purchaser and shall be accepted as accurate by the Purchaser.
- 5.5. If on any test (other than a test on site, where tests on site are provided for in the Contract) the Plant shall be found to be defective or not in accordance with the Contract, the Vendor shall with all speed make good the defect or ensure that the Plant complies with the Contract. Thereafter, if the Purchaser so requires, the test shall be repeated.
- 5.6. Unless otherwise agreed, the Vendor shall bear all the expenses of tests carried out in his works, except the personal expenses of the Purchaser's representatives.
- 5.7. If the Contract provides for tests on site, the terms and conditions governing such tests shall be such as may be specially agreed between the parties.

6. PASSING OF RISK

- 6.1. Save as provided in paragraph 7.6., the time at which the risk shall pass shall be fixed in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of the formation of the Contract. Where no indication is given in the Contract of the form of sale, the Plant shall be deemed to be sold "ex works".
- 6.2. In the case of a sale "ex works", the Vendor must give notice in writing to the Purchaser of the date on which the Purchaser must take delivery of the Plant. The notice of the Vendor must be given in sufficient time to allow the Purchaser to take such measures as are normally necessary for the purpose of taking delivery.

7. DELIVERY

- 7.1. Unless otherwise agreed, the delivery period shall run from the latest of the following dates:
 - (a) the date of the formation of the Contract as defined in Clause 2;
 - (b) the date on which the Vendor receives notice of the issue of a valid import licence where such is necessary for the execution of the Contract;
 - (c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the Contract.
- 7.2. Should delay in delivery be caused by any of the circumstances mentioned in Clause 10 or by an act or omission of the Purchaser and whether such cause occur before or after the time or extended time for delivery, there shall be granted subject to the provisions of paragraph 5 hereof such extension of the delivery period as is reasonable having regard to all the circumstances of the case.
- 7.3. If a fixed time for delivery is provided for in the Contract, and the Vendor fails to deliver within such time or any extension thereof granted under paragraph 2 hereof, the Purchaser shall be entitled, on giving to the Vendor within a reasonable time notice in writing, to claim a reduction of the price payable under the Contract, unless it can be reasonably concluded from the circumstances of the particular case that the Purchaser has suffered no loss. Such reduction shall equal the percentage named in paragraph A of the Appendix of that part of the price payable under the Contract which is properly attributable to such portion of the Plant as cannot in consequence of the said failure be put to the use intended for each complete week of delay commencing on the due date of delivery, but shall not exceed the maximum percentage named in paragraph B of the Appendix. Such reduction shall be allowed when a payment becomes due on or after delivery. Save as provided in paragraph 5 hereof, such reduction of price shall be to the exclusion of any other remedy of the Purchaser in respect of the Vendor's failure to deliver as aforesaid.
- 7.4. If the time for delivery mentioned in the Contract is an estimate only, either party may after the expiration of two thirds of such estimated time require the other party in writing to agree a fixed time.
Where no time for delivery is mentioned in the Contract, this course shall be open to either party after the expiration of six months from the formation of the Contract.
If in either case the parties fail to agree, either party may have recourse to arbitration, in accordance with the provisions of Clause 13, to determine a reasonable time for delivery and the time so determined shall be deemed to be the fixed time for delivery provided for in the Contract and paragraph 3 hereof shall apply accordingly.
- 7.5. If any portion of the Plant in respect of which the Purchaser has become entitled to the maximum reduction provided for by paragraph 3 hereof, or in respect of which he would have been so entitled had he given the notice referred to therein, remains undelivered, the Purchaser may by notice in writing to the Vendor require him to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever the Vendor fails within such time to do everything that he must do to effect delivery, the Purchaser shall be entitled by notice in writing to the Vendor, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant and thereupon to recover from the Vendor any loss suffered by the Purchaser by reason of the failure of the Vendor as aforesaid up to an amount not exceeding the sum named in paragraph C of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant as could not in consequence of the Vendor's failure be put to the use intended.
- 7.6. If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Plant had been delivered. The Vendor shall arrange for the storage of the Plant at the risk and cost of the Purchaser. If required by the Purchaser, the Vendor shall insure the Plant at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 10 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Plant shall not be borne by the Purchaser.
- 7.7. Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 10, the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time.
If the Purchaser fails for any reason whatever to do so within such time the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Plant as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding the sum named in paragraph D of the Appendix or, if no sum be named, that part of the price payable under the Contract which is properly attributable to such portion of the Plant.

8. PAYMENT

- 8.1. Payment shall be made in the manner and at the time or times agreed by the parties.
- 8.2. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the Contract.
- 8.3. If delivery has been made before payment of the whole sum payable under the Contract, Plant delivered shall, to the extent permitted by the law of the country where the Plant is situated after delivery, remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to retain the property in the Plant, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to retain. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as aforesaid.
- 8.4. A payment conditional on the fulfilment of an obligation by the Vendor shall not be due until such obligation has been fulfilled, unless the failure of the Vendor is due to an act or omission of the Purchaser.
- 8.5. If the Purchaser delays in making any payment, the Vendor may postpone the fulfilment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor.
- 8.6. If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 10, the Vendor shall not be entitled to any interest on the sum due.
- 8.7. Save as aforesaid, if the Purchaser delays in making any payment, the Vendor shall on giving to the Purchaser within a reasonable time notice in writing be entitled to the payment of interest on the sum due at the rate fixed in paragraph E of the Appendix from the date on which such sum became due. If at the end of the period fixed in paragraph F of the Appendix, the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract and thereupon to recover from the Purchaser the amount of his loss up to the sum mentioned in paragraph D of the Appendix.

9. GUARANTEE

- 9.1. Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship.
- 9.2. This liability is limited to defects which appear during the period (hereinafter called "the Guarantee Period") specified in paragraph G of the Appendix.
- 9.3. In fixing this period due account has been taken of the time normally required for transport as contemplated in the Contract.
- 9.4. In respect of such parts (whether of the Vendor's own manufacture or not) of the Plant as are expressly mentioned in the Contract, the Guarantee Period shall be such other period (if any) as is specified in respect of each of such parts.
- 9.5. The Guarantee Period shall start from the date on which the Purchaser receives notification in writing from the Vendor that the Plant is ready for despatch from the works. If despatch is delayed, the Guarantee Period shall be extended by a period equivalent to the amount of the delay so as to permit the Purchaser the full benefit of the time given for trying out the Plant. Provided however that if such delay is due to a cause beyond the control of the Vendor such extension shall not exceed the number of months stated in paragraph H of the Appendix.
- 9.6. The daily use of the Plant and the amount by which the Guarantee Period shall be reduced if the Plant is used more intensively are stated in paragraph I of the Appendix.
- 9.7. A fresh Guarantee Period equal to that stated in paragraph G of the Appendix shall apply, under the same terms and conditions as those applicable to the original Plant, to parts supplied in replacement of defective parts or to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining parts of the Plant, the Guarantee Period of which shall be extended only by a period equal to the period during which the Plant is out of action as a result of a defect covered by this Clause.
- 9.8. In order to be able to avail himself of his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.
- 9.9. On receipt of such notification the Vendor shall remedy the defect forthwith and, save as mentioned in paragraph 10 hereof, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfilment by the Vendor of his obligations under this paragraph in respect of such defective part.
- 9.10. Unless otherwise agreed, the Purchaser shall bear the cost and risk of transport of defective parts and of repaired parts or parts supplied in replacement of such defective parts between the place where the Plant is situated and one of the following points:
 - (i) the Vendor's works if the Contract is "ex works" or F.O.R.;
 - (ii) the port from which the Vendor dispatched the Plant if the Contract is F.O.B., F.A.S., C.I.F. or C. & F.;
 - (iii) in all other cases the frontier of the country from which the Vendor dispatched the Plant.
- 9.11. Where, in pursuance of paragraph 9 hereof, repairs are required to be effected on site, the conditions covering the attendance of the Vendor's representatives on site shall be such as may be specially agreed between the parties.
- 9.12. Defective parts replaced in accordance with this Clause shall be placed at the disposal of the Vendor.
- 9.13. If the Vendor refuses to fulfil his obligations under this Clause or fails to proceed with due diligence after being required so to do, the Purchaser may proceed to do the necessary work at the Vendor's risk and expense, provided that he does so in a reasonable manner.
- 9.14. The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated, by the Purchaser.
- 9.15. The Vendor's liability shall apply only to defects that appear under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Plant has passed in accordance with Clause 6. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection, or from alterations carried out without the Vendor's consent in writing, or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.
- 9.16. Save as in this Clause expressed, the Vendor shall be under no liability in respect of defects after the risk in the Plant has passed in accordance with Clause 6, even if such defects are due to causes existing before the risk so passed. It is expressly agreed that the Purchaser shall have no claim in respect of personal injury or of damage to property not the subject matter of the Contract or of loss of profit unless it is shown from the circumstances of the case that the Vendor has been guilty of gross misconduct.
- 9.17. "Gross misconduct" does not comprise any and every lack of proper care or skill, but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue, or a deliberate disregard of any consequences of such act or omission.

10. RELIEFS

- 10.1. The following shall be considered as cases of relief if they intervene after the formation of the Contract and impede its performance: industrial disputes and any other circumstances (e.g. fire, mobilisation, requisition, embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in the use of power) when such other circumstances are beyond the control of the parties.
- 10.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.
- 10.3. The effects of the said circumstances, so far as they affect the timely performance of their obligations by the parties, are defined in Clauses 7 and 8. Save as provided in paragraphs 7.5., 7.7. and 8.7. if, by reason of any of the said circumstances, the performance of the Contract within a reasonable time becomes impossible, either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.
- 10.4. If the Contract is terminated in accordance with paragraph 3 hereof, the division of the expenses incurred in respect of the Contract shall be determined by agreement between the parties.
- 10.5. In default of agreement it shall be determined by the arbitrator which party has been prevented from performing his obligations and that party shall bear the whole of the said expenses. Where the Purchaser is required to bear the whole of the expenses and has before termination of the Contract paid to the Vendor more than the amount of the Vendor's expenses, the Purchaser shall be entitled to recover the excess.

If the arbitrator determines that both parties have been prevented from performing their obligations, he shall apportion the said expenses between the parties in such manner as to him seems fair and reasonable, having regard to all the circumstances of the case
- 10.6. For the purposes of this Clause "expenses" means actual out-of-pocket expenses reasonably incurred, after both parties shall have mitigated their losses as far as possible. Provided that as respects Plant delivered to the Purchaser the Vendor's expenses shall be deemed to be that part of the price payable under the Contract which is properly attributable thereto.

11. LIMITATION OF DAMAGES

- 11.1. Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of the Contract.
- 11.2. The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

12. RIGHTS AT TERMINATION

- 12.1. Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

13. ARBITRATION AND LAW APPLICABLE

- 13.1. Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.
- 13.2. Unless otherwise agreed, the Contract shall be governed by the law of the Vendor's country.
- 13.3. If the parties expressly so agree, but not otherwise, the arbitrators shall, in giving their ruling, act as *amiables compositeurs*.

APPENDIX

(To be completed by parties to the Contract)

	Clause	
A. Percentage to be deducted for each week's delay	7.3	_____ per cent
B. Maximum percentage which the deductions above may not exceed	7.3	_____ per cent
C. Maximum amount recoverable for non-delivery	7.5	_____ (in the agreed currency)
D. Maximum amount recoverable on termination by Vendor for	7.7	
failure to take delivery or make payment.....	and 8.7	_____ (in the agreed currency)
E. Rate of interest on overdue payments	8.7	_____ percent per annum
F. Period of delay in payment authorizing termination by Vendor	8.7	_____ months
G. Guarantee Period for original Plant and parts replaced or renewed	9.2	
	and 9.7	_____ months
H. Maximum extension of Guarantee Period	9.5	_____ months
I. (1) Daily use of Plant.....	9.6	_____ hours/day
(2) Reduction of Guarantee Period for more intensive use	9.6	_____

* The English and French texts are equally authentic. The observations of the experts who drew up these General Conditions, together with a description of the procedure followed, are embodied in the "COMMENTARY ON THE GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND MACHINERY FOR EXPORT", published by the Economic Commission for Europe. It can be obtained direct from the Sales Section of the European Office of the United Nations, Geneva, Switzerland, or through United Nations Sales Agents.

SUPPLEMENTARY CLAUSE PRICE REVISION

General Conditions for the supply of Plant and Machinery for export **LW**

Should any change occur in the cost of the relevant materials and/or wages during the period of execution of the contract, the agreed prices shall be subject to revision on the basis of the following formula:

$$P_1 = \frac{P_o}{100} \left(a + b \frac{M_1}{M_0} + c \frac{S_1}{S_0} \right)$$

where:

P_1 = final price for invoicing.

P_0 = initial price of goods, as stipulated in the contract and as prevailing at the date of _____ (1)

M_1 = mean (2) of the prices (or price indices) for (type of materials concerned) _____
_____ over the period _____ (3)

M_0 = prices (or price indices) for the same materials at the date stipulated above for P_0 .

S_1 = mean (2) of the wages (including social charges) or relevant indices (4) in respect of _____
(specify categories of labour and social charges) over the period _____ (3)

S_0 = wages (including social charges) or relevant indices (4) in respect of the same categories at the date stipulated above for P_0 .

a, b, c, represent the contractually agreed percentage of the individual elements of the initial price, which add up to 100. ($a + b + c = 100$)

a = fixed proportion = _____

b = percentage proportion of materials = _____

c = percentage proportion of wages (including social charges) = _____

Where necessary, b (and if need be, c) can be broken down into as many partial percentages (b_1, b_2, b_3, \dots) as there are variables taken into account ($b_1 + b_2, \dots + b_n = b$).

Documentation. For the purpose of determining the values of materials and wages, the parties agree to use the following documents as sources of reference:

1. Materials: prices _____ (type of materials)
(or price indices)
published by _____
under the headings _____

2. Wages: wages (including related social charges)
(or relevant indices)
published by _____
under the headings _____ (5)

Rules for applying the Clause. In the case of partial deliveries which are invoiced separately, the final price shall be calculated separately for each such delivery.

Period of application of the Clause. The revision clause shall cover the delivery period fixed in the Contract, together with any extension thereof granted under Clause 7.2., but shall in no case apply after the date on which manufacture is completed.

Tolerances. Prices shall not be revised unless the application of the formula produces a plus or minus variation of _____ (6)

Saving Clause. If the parties wish the revision formula to be adjusted or replaced by a more accurate method of calculation when the plus or minus variation exceeds a certain percentage, they shall expressly so agree.

-
- (1) It is recommended that the parties should, as far as possible, adopt as the initial price the price prevailing at the date of the contract and. not at an earlier date. This* is normally the contract price less cost of packing, transport and insurance.
 - (2) Arithmetical or weighted.
 - (3) Specify the datum period, which may be defined as part or the whole of the delivery period.
 - (4) If legal social charges are covered by the index, they need not be taken into account again.
 - (5) Indices relating specifically to the engineering and electrical industries should be used as far as possible.
 - (6) State the percentage plus or minus variation which must be exceeded before the formula is applied.

attached to the General Conditions for the Supply of Plant and Machinery for Export by the German Metall-Working Industry

The conditions hereinafter enumerated contain the figures provided for in the "Appendix" of the General Conditions as well as other supplementary stipulations between the Parties to the Contract.

In the case of diverging interpretations of the German and the English texts, the German text shall prevail.

1. Ad Art. 1

All stipulations of the Parties to the Contract must be made in writing in order to be valid.

2. Ad Art. 2

If the acceptance of the Vendor contains amplifications, limitations or other modifications of the order, the Purchaser shall be deemed to consent, provided that he does not object in writing and without delay.

3. Ad Art. 3

The indications as provided in art. 3 para 1 shall not be binding except where it is so stipulated expressly in the Contract.

4. Ad Art. 5

Acceptance tests (art. 5 para 3) shall not be carried out except where it is so stipulated expressly.

5. Ad Art. 6

If in the case of a sale "ex works" the Vendor, on demand of the Purchaser, undertakes to send the Plant to its destination, the risk will pass on delivery to the first carrier, provided that this date is prior to the date indicated in art. 6 para 2.

If the Purchaser, on the ground of one of the circumstances referred to in art. 10, fails to take delivery of the Plant, the risk will pass to the Purchaser not later than at the date this circumstance has appeared.

6. Ad Art. 7

It is a further prerequisite of the beginning of the delivery period (art. 7 para 1) that agreement must be reached with respect to all technical questions, clarification of which had been postponed by the Parties, at the time the Contract was entered into, until further negotiations, and that any official authorization that may be required for fulfilment of the obligations of the Vendor has been issued.

The price reduction (art. 7 para 3, Appendix paras A and B) shall amount to 0.5 % for each complete week but shall not exceed a total of 5 %.

In the case of art. 7 para 5, Appendix para C, the Parties should come to an amicable agreement. The amount of damages shall correspond with the circumstances of the particular case; it shall keep within the limits of 5 and 25 % of the price payable under the Contract, which is properly attributable to the non-delivered portion of the Plant, and shall in no case exceed the amount of the damage that can be proved.

The maximum amount of damages provided for under art. 7 para 7, Appendix para D, shall be 25 % of the price payable under the Contract, which is properly attributable to the particular portion of the Plant.

7. Ad Art. 8

The Vendor shall be entitled to refuse performance if, due to a circumstance that originated after the formation of the Contract, he has reason to fear that he may not receive the performance of the Purchaser completely and in time (art. 8 para 5).

The rate of interest (art. 8 para 7, Appendix para E) shall be 2 % above the rate of discount of the German Central Bank; the additional period is fixed at one month (art. 8 para 7, Appendix para F); the maximum amount of damages (art. 8 para 7, Appendix para D) shall be 25 % of the price payable under the Contract, which is properly attributable to the particular portion of the Plant.

8. Ad Art. 9

The Purchaser shall inform the Vendor what protective devices he requires against dangers originating from the use of the Plant. They shall be delivered at the Purchaser's own expense if both Parties have agreed on the kind and the scope of the protective devices to be delivered; the failure to deliver other protective devices shall not be deemed to be a defect (art. 9 para 1)7

The Guarantee Period (art. 9 para 2, Appendix para G) shall be 6 months, provided that no other Guarantee Period has expressly been agreed upon in the Contract.

The extension of the Guarantee Period (art. 9 para 5, Appendix para H) is limited to 6 months.

The daily use of the Plant (art. 9 para 6, Appendix para I) is fixed at 8 hours; if the Plant is used more intensively the Guarantee Period shall be reduced accordingly.

The fresh Guarantee Period (art. 9 para 7, Appendix G) is fixed at 3 months. Likewise, the Vendor shall not be liable with respect to manufactured goods provided by the Purchaser (art. 9 para 14).

All claims of the Purchaser based on defects shall expire 6 months after assertion of the defectiveness, except where they have been recognised by the Vendor or where the Purchaser has brought an action or instituted arbitration proceedings prior to the expiration of the time-limit.

9. Ad Art. 13

The Contract shall be governed by German law (art. 13 para 2).

10. Application to contracts for work and materials

The Conditions shall apply to Contracts for work and materials in the same manner as to Contracts of sale.

11. Erection

If the Vendor undertakes to erect the Plant the agreements shall apply that have been made expressly with respect to erection.

12. Exclusion of other claims lodged by the Purchaser

All further claims lodged by the Purchaser, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the Plant itself, shall be excluded, whatever legal ground may be underlying such claims.

The said exclusion of liability shall not apply in case of intent or gross negligence on the part of owner or his executives, nor in cases of negligent breach of a condition which goes to the root of the Contract ("wesentliche Vertragspflichten").

In cases of negligent breach of a condition which goes to the root of the Contract ("wesentliche Vertragspflichten") the Vendor shall be liable only - except in cases of intent or gross negligence on the part of the owner or his executives - for reasonably foreseeable damage which is intrinsic to the Contract.

Nor does the said exclusion apply in cases of strict liability, under the Product Liability Act (Produkthaftungsgesetz), for defects of the Product causing death or personal injury, or damage to items of property that are used privately. Furthermore, the said exclusion of liability shall not apply in the absence of expressly warranted qualities if this very warranty served the purpose of protecting the Purchaser against damage occurring to items other than the Plant itself.

ADDITIONAL CLAUSES

ZMÜ

for supervision of erection of plant and machinery abroad No. 188B*

Prepared under the auspices of the

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Geneva, April 1964

1. PREAMBLE

- 1.1 These Additional Clauses shall be read in conjunction with General Conditions for supply of plant and machinery for export No. 188, of which clauses 1, 2, 8, 10, 11, 12 and 13 cover relations between the parties as regards the supervision of erection.

2. SCOPE OF THE CONTRACT

- 2.1. Erection will be carried out by the Purchaser, who shall, at his own expense, provide the skilled and unskilled labour, all equipment and everything necessary for the erection of the Plant.
- 2.2. The Vendor shall provide the services of one or more competent engineers
- (a) to give to the Purchaser or his representative mentioned in paragraph 6. / of these Additional Clauses the necessary instructions for the erection of the Plant by the Purchaser and, if provided in the contract, for its commissioning by him; and
- (b) to supervise the manner in which the Vendor's instructions have been carried out.
- 2.3. The number and qualifications of the Vendor's staff, and the estimated duration of erection, shall be as specified in the Contract.
- 2.4. The date on which the Vendor's staff should arrive on site shall be as provided in the Contract; if not so provided, the Purchaser shall give the Vendor not less than one month's notice requiring such arrival.

3. LOCAL LAWS AND REGULATIONS

- 3.1. The Purchaser shall give to the Vendor in due time any information concerning local laws and regulations which is necessary for the proper execution of the Contract.

4. CHARGES PAYABLE BY THE PURCHASER

- 4.1. Supervision of erection is carried out on a time basis. The following items shall be separately charged:
- (a) The travelling expenses incurred by the Vendor in respect of his employees and the transport of their instruments and personal effects (within reasonable limits) in accordance with the specified method and class of travel where these are specified in the Contract;
- (b) the living expenses, including any appropriate allowance, of the Vendor's employees for each day's absence from their homes including non-working days and holidays;
- (c) time worked at the agreed rate, it being understood that overtime and work on holidays and at night will be charged at the special rates mentioned in the Contract;
- (d) time necessarily spent on:
- (i) preparation and formalities incidental to the outward and homeward journeys;
- (ii) the outward and homeward journeys ;
- (iii) daily travel morning and evening between lodgings and the site if it exceeds half an hour and there are no suitable lodgings closer to the site ;
- (iv) waiting when work is prevented by circumstances for which the Vendor is not responsible under the Contract,
- (e) any taxes or dues levied on the invoice and paid by the Vendor in the country where erection takes place.

5. WORKING CONDITIONS

- 5.1. The price agreed for the supervision of erection shall be on the understanding that the following conditions are fulfilled, except so far as the Purchaser has informed the Vendor to the contrary:
- (a) the erection shall not be carried out in unhealthy or dangerous surroundings
- (b) the Vendor's employees shall be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and shall have access to adequate medical services.
- Any departure from the conditions mentioned in this paragraph shall attract an extra charge.

6. LIAISON AGENT

- 6.1. The Purchaser shall designate in writing a competent representative to be his channel of communication with the Vendor's staff.

7. SAFETY REGULATIONS

- 7.1. The Purchaser shall notify the Vendor in full of the safety regulations which the Purchaser imposes on his own employees and the Vendor shall secure the observance of such safety regulations by his own employees.
- 7.2. If breaches of these regulations by the Vendor's staff come to the notice of the Purchaser, he must inform the Vendor in writing forthwith.
- 7.3. The Vendor shall inform the Purchaser in full of any special dangers which the execution of the erection may entail.

8. OVERTIME

- 8.1. Any overtime and the conditions thereof shall, within the limits of the laws and regulations of the Vendor's country and of the country where erection is carried out, be as agreed between the parties.

9. WORK OUTSIDE THE CONTRACT

- 9.1. The Purchaser shall not be entitled to use the Vendor's employees on any work unconnected with the subject matter of the Contract without the previous consent of the Vendor. Where the Vendor so consents, he shall not be under any liability in respect of such work, and the Purchaser shall be responsible for the safety of the Vendor's employees while employed on such work.

10. INSTRUCTION OF THE PURCHASER'S EMPLOYEES

10.1. In appropriate cases the Contract may provide on the terms and conditions therein set out for instruction to be given by the Vendor to the Purchaser's employees who will run the Plant.

11. INTERRUPTION OF WORK

- 11.1. If the work is interrupted for a cause for which the Vendor is not responsible:
 - (a) the Purchaser is entitled to send home the Vendor's staff, but in this case the Purchaser shall pay the expenses resulting therefrom;
 - (b) the Vendor is entitled to recall his staff at the expense of the Purchaser if the interruption of erection exceeds the period fixed in paragraph J of the Appendix.
 - (c) If the Vendor's staff is sent home or recalled, the contract is not terminated and its performance is merely suspended until the Purchaser has required the return of the Vendor's staff to the site by giving at least one month's notice or as may be agreed.

12. VENDOR'S LIABILITY

- 12.1. If it is shown that the Vendor or his staff have failed, otherwise than by reason of the circumstances mentioned in paragraph 10.7. of the General Conditions No. 188, to observe their obligations in accordance with clause 2 of these Additional Clauses, or that they have failed to use proper skill, care and diligence in carrying out the said obligations, and that the cost of erection to the Purchaser has thereby been increased, the Purchaser shall be entitled to claim repayment of the extra cost provided that he shall without delay have given written notice to the Vendor of his intention to make such a claim.
- 12.2. In the event of personal injury or damage to property occurring during erection and before supervision thereof and of commissioning of the Plant (where the contract provides for supervision of commissioning) has been completed, the liabilities shall be apportioned as follows:
 - (a) The Vendor shall at his own expense make good any damage to the Plant or to any other property of the Purchaser to the extent that such damage was caused by a failure on the part of the Vendor or on that of his staff to use proper skill and care in fulfilling their functions as defined in paragraph 2.2. of these Additional Clauses.
 - (b) (i) In respect of personal injury, or of damage to the property of a third party, the respective liabilities of the Purchaser and of the Vendor towards the person injured or to the third party whose property has been damaged shall be governed by the law of the country where the injury or damage took place,
 - (ii) if the injured person or the said third party brings a claim against the Purchaser, the Vendor shall indemnify the Purchaser against such claim to the extent that the injury or damage was due to a failure of the Vendor or his staff as mentioned in sub-paragraph (a) hereof;
 - (iii) if the injured person or said third party brings a claim against the Vendor, the Purchaser shall, to the extent permitted by the law of the country where the injury or damage occurred, indemnify the Vendor against such a claim save to the extent that, by the operation of sub-paragraph (b) (ii) hereof, the Vendor would have been liable to indemnify the Purchaser had the claim been brought against the Purchaser.
- 12.3. In order to avail himself of his rights under sub-paragraph (b) of paragraph 12.2. of these Additional Clauses the party against whom a claim is made must notify the other of such claim and must permit the other, if the other so wishes, to conduct all negotiations for the settlement of such claim and to act in his stead or, to the extent permitted by the law of the country where the action is brought, to join in such litigation.
- 12.4. Any limitation of the indemnities payable by either party by virtue of this clause shall be as stated in paragraph K of the Appendix.
- 12.5. Save as provided in this clause the Purchaser shall have no claim against the Vendor in respect of personal injury or damage to property or any losses, damages or expenses suffered by the Purchaser resulting from the erection operations or any delay therein unless it is shown from the circumstances of the case that the Vendor has been guilty of " gross misconduct " as defined in paragraph 9.17. of General Conditions No. 188.

APPENDIX

{To be completed by parties to the Contract}

	Paragraph of Additional Clauses		
J. Duration of interruption in erection at the expiry of which the Vendor is authorised to recall his supervising engineers	11.1	_____	per cent
K. Maximum indemnities payable by the parties	12.4	_____	(in the agreed currency)

* These Additional Clauses may be used, at the option of the parties, as an alternative to the Additional Clauses for Supervision of Erection of Plant and Machinery Abroad No. 574 B. The French, English and Russian texts are equally authentic.

attached to the Additional Clauses for Supervision of Erection of Plant and Machinery Abroad by the German Metall-Working Industry

The provisions hereinafter enumerated contain the data provided for in the "Appendix" of the Additional Clauses for Supervision of Erection of Plant and Machinery Abroad as well as other supplementary stipulations between the Parties to the Contract.

In the case of diverging interpretations of the German and the English texts, the German text shall prevail.

- 1. Ad Art. 1
in conjunction with article 1 of General ECE-Conditions for the Supply of Plant and Machinery for Export No. 188**
All stipulations of the Parties to the Contract must be made in writing in order to be valid.
- 2. Ad Art. 1
in conjunction with article 2 of General ECE-Conditions No. 188**
If the acceptance by the Vendor contains amplifications, limitations or other modifications of the order, the Purchaser shall be deemed to consent unless he objects in writing and without delay.
- 3. Ad Art. 1
in conjunction with article 8 of General ECE-Conditions No. 188**
The Vendor shall be entitled to refuse performance if, due to a circumstance that originated after the formation of the Contract, he has reason to fear that he may not receive the performance of the Purchaser completely and in time (art. 8 para 5 of General ECE-Conditions No.188).
The rate of interest (art. 8 para 7, Appendix para E of General ECE-Conditions No. 188) shall be 2 % above the rate of discount of the German Central Bank; the additional period is fixed at one month (art. 8 para 7, Appendix para F of the General ECE-Conditions No. 188);
the maximum amount of damages (art. 8 para 7, Appendix para D of the General ECE-Conditions No. 188) shall be 25 % of the remuneration provided for.
- 4. Ad Art. 1
in conjunction with article 13 of General ECE-Conditions No. 188**
The Vendor is entitled to bring an action, instead of before an arbitrator, before the law court of his habitual residence or the seat of his principal place of business or before the law court having jurisdiction over the Purchaser, unless and until the dispute has been referred to arbitration by one of the Parties.
- 5. Ad Art. 2 No. 3**
If nothing has been provided for in the Contract, the Vendor shall decide in such a manner as to him seems fair and reasonable.
- 6. Ad Art. 3**
This obligation to give information shall also apply to particular circumstances on the erection site.
- 7. Ad Art. 4 No. 1d**
For any time mentioned in art. 4 No. 1d, a charge will be made on the basis of the remuneration stipulated in the Contract for the time worked.
- 8. Ad Art. 4 No. 1e**
The Vendor is entitled to charge any taxes or dues paid by his personnel in the country where erection takes place.
- 9. Ad Art. 5 No. 1, last paragraph**
If the circumstances resulting from any departure from the conditions mentioned in this paragraph are such that it would be unreasonable to require the Vendor to proceed with the supervision of erection, he may, without prejudice to his rights, refuse to do so.
- 10. Ad Art. 11 No. 1b**
The duration of interruption in erection at the expiry of which the Vendor is authorised to recall his personnel shall be fixed at 2 weeks (Appendix J).
- 11. Ad Art. 11 No. 1c**
The continuation of the Contract shall be subject to conditions which are adapted to the new circumstances.
- 12. Ad Art. 12 No. 4**
The maximum damages payable by the Parties shall not exceed 25 % of the remuneration actually accrued or of the remuneration that in all likelihood would have accrued if the Contract had been performed; the total damages shall in no case exceed 100,000.- DM (Appendix K).
- 13. Exclusion of other claims lodged by the Purchaser**
All further claims lodged by the Purchaser, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the Plant or Works themselves, shall be excluded, whatever legal ground may be underlying such claims.
The said exclusion of liability shall not apply in case of intent or gross negligence on the part of owner or his executives, nor in cases of negligent breach of a condition which goes to the root of the Contract ("wesentliche Vertragspflichten").
In cases of negligent breach of a condition which goes to the root of the Contract ("wesentliche Vertragspflichten") the Vendor shall be liable only - except in cases of intent or gross negligence on the part of the owner or his executives - for reasonably foreseeable damage which is intrinsic to the Contract.
Nor does the said exclusion apply in cases of strict liability, under the Product Liability Act (Produkthaftungsgesetz), for defects of the Product causing death or personal injury, or damage to items of property that are used privately. Furthermore, the said exclusion of liability shall not apply in the absence of expressly warranted qualities if this very warranty served the purpose of protecting the Purchaser against damage occurring to items other than the Plant itself.