

**Status: January 2014**

## **General Conditions of Supplies and Services**

### **1. Exclusive Application; Area of Application**

1.1 All supplies and services shall be furnished by NUKEM Technologies GmbH, NUKEM Technologies GmbH or NUKEM Engineering Services GmbH (both hereinafter referred to as „NUKEM“) to the customer in compliance with the following conditions reprinted below (“General Terms and Conditions”), including the case when these conditions are not explicitly referred to by NUKEM in the course of future business relations with customer. The General Terms and Conditions are only valid if customer is an entrepreneur in the sense of § 14 of the Civil Code (“BGB”).

1.2 Herewith we decline the terms and conditions for orders, confirmations or counter-confirmations of our customers. Such terms and conditions may become a part of the contract only if explicitly approved by NUKEM in written form.

### **2. Order Confirmation**

Orders, which deviate from NUKEM’s offers in any respect, shall only be binding when confirmed by NUKEM in writing. The contract shall only include the supplies and services specified in NUKEM’s written confirmation. Modifications or amendments to these General Conditions or any other contractual agreements shall only be binding if made in writing and duly signed by both parties, and provided that an agreement on an equitable adjustment of the contract price and of the time of delivery is concluded. NUKEM will not begin carrying out a change order or supplying modified services before such an agreement is concluded.

### **3. Documents and Information Rendered by Customer**

All documents pertaining to NUKEM’s offers shall remain its exclusive property and shall not be used, copied or made accessible to any third party without its prior written consent. All documents shall be promptly returned to NUKEM upon request. NUKEM shall partly base its supplies and services on information received by customer. Such information shall advise NUKEM on the effects on its supplies and services of any laws, by-laws, taxes, duties, regulations or official requirements, requests or demands applicable outside Germany as well as on the effects of the site, the soil or sub-soil conditions. Customer warrants that all such information shall be correct and complete and shall reimburse promptly any additional cost incurred by NUKEM in connection with any such missing or incorrect information.

### **4. Time of Delivery**

4.1 Unless otherwise agreed in writing, the time of delivery shall begin from the date of the written order confirmation by NUKEM. Delays in delivery beyond reasonable control of NUKEM or its subcontractor, e. g. force majeure, especially in case of strike, lockout, restraint of government, compliance with orders or requests by governmental or other authorities, inability to obtain fuel, power, raw materials, containers, malfunction of machinery or apparatus etc. shall extend the time of delivery correspondingly. In case of substantial delays due to such reasons the parties shall in good faith agree upon the consequences.

4.2 Delivery dates are only indicative and shall be met as far as circumstances reasonably permit it. However, in case the time of delivery is delayed for more than 4 weeks for reasons attributable to NUKEM, customer is entitled to payment of liquidated

damages of maximum 0.5 per cent of the price of the delayed deliveries for each full further week of delay up to an aggregate maximum amount of 5 % of such price, if he is able to prove that he has suffered any loss due to the delay. All and any further rights and remedies of customer with respect to delay shall be excluded.

4.3 In case circumstances beyond reasonable control of NUKEM as set forth in 4.1 last for more than six months NUKEM shall be entitled to cancel the contract totally or in part at any time by giving written notice to customer, upon whose cancellation NUKEM shall be released from any and all of its contractual obligations. The release from obligations does not affect the payments already due. NUKEM shall in no case be liable towards customer for any cost damage or loss due to such cancellation.

## 5. Prices

Unless stated otherwise in the order confirmation by NUKEM, all of the provided prices shall be net prices which do not include any applicable Value Added Tax, nor any other taxes, customs duties, levies or governmental charges of a similar kind. These prices are quoted "ex works" (INCOTERMS 2010) at the manufacturer's premises and minimal packaging.

## 6. Terms of Payment

6.1 Payment of the contract price shall be effected to the account of NUKEM within 30 days after the date of the invoice without any deduction whatsoever.

If customer fails to pay when due NUKEM is entitled to claim interest on all overdue amounts at a rate of one per cent (1 %) per month without prejudice to claims for further damages. In particular, customer shall reimburse NUKEM for all administrative and legal expenses

in the collection of the amounts payable.

6.2 If payment is not received by the due date, or if customer shall or has become insolvent, shall be declared bankrupt, shall be subject of proceedings under insolvency or bankruptcy law, or shall make an terminate assignment for the benefit of creditors, NUKEM reserves the right to terminate the contract for material breach of customer's obligations. Only in the above cases, NUKEM shall have the right to enter customer's premises where the supplies are stored in order to take possession of and remove them.

## 7. Place of Performance, Passing of Risk and Dispatch

Services shall be supplied by NUKEM "ex works" (INCOTERMS 2010) NUKEM, Alzenau. Supplies shall be shipped "CPT" (INCOTERMS 2010) Euromovers Ferdinand Schlingloff, Lippestr. 7-9, D - 63452 Hanau. NUKEM is prepared to procure the shipment of the supplies as well as to arrange for transport insurance at customer's expense.

## 8. Retention of Title

8.1 All supplies and services delivered to customer shall remain exclusive property of NUKEM until they have been fully paid according to the business relationship with the customer irrespective of the legal basis thereof. In cases of breach of contract on the part of customer, especially delay of payment, NUKEM shall be entitled to take back the deliveries. Taking back or attachment of the delivered articles does not represent a withdrawal from the contract, unless explicitly declared so by NUKEM. After taking back the deliveries, NUKEM is entitled to re-sell them, and the proceeds of such sale shall be credited to the customer's liabilities, with deduction of reasonable sales costs.

8.2 Customer is obligated to treat the deliveries carefully. NUKEM has the right to insure the deliveries at the customer's expense against theft, breakage, fire, water and other damage, unless customer has arranged the insurance himself. He is also obligated to provide proof of such insurance upon NUKEM's request. Customer assigns herewith his compensation claims against the insurer due to loss or damage of the goods subject to retention of title to NUKEM. NUKEM agrees to this subrogation herewith.

8.3 Customer may neither mortgage the deliveries nor transfer them as security. In case of distraint or other actions of third parties, customer shall immediately notify NUKEM in writing.

If the third party is not able to compensate the costs of a legal action in and out of court to NUKEM pursuant to § 771 ZPO (Code of Civil Procedure), customer shall be liable for the loss incurred to NUKEM.

8.4 Customer stores the goods subject to retention of title for NUKEM free of charge with the diligence of a prudent businessman. Customer is obligated to store the goods subject to retention of title separately and to mark them as being property of NUKEM, as well as to identify the receivables assigned to NUKEM in his ledgers as attributable to NUKEM.

8.5 Customer has the right to resell the goods subject to retention of title in the ordinary course of business, but he assigns to NUKEM now all receivables in the amount of the final invoice total (including VAT), which accrue to him from re-sale to his customers or third parties, regardless of whether the goods subject to retention of title were sold before or after further processing. Customer shall not sell the goods subject to retention of title to his customers who limited or ruled out the

assignment of the claims to payment against them. We acknowledge this assignment herewith.

Customer shall remain authorised to collect this amount receivable even after assignment. The right of NUKEM to collect the claim remains unaffected. NUKEM undertakes however not to collect the claim as long as customer is able to meet his payment obligations from the received proceeds of sale, does not enter into default of payment and, in particular, has not been issued a petition for the opening of settlement or solvency proceedings or bankruptcy. In the latter case however NUKEM may demand that customer familiarize NUKEM with the assigned claims and the parties liable, provides all of the data required for the collection, hands over the relevant documents and informs the party liable (the third party) of the assignment.

8.6 Processing or alteration of a delivery item by customer shall always be carried out for NUKEM. In case if the delivery item is processed with other items that do not belong to NUKEM, NUKEM obtains joint ownership of the new object in ratio to the value of the delivery item to the other items processed at the time of processing. For the objects that arise through processing, the same applies, *ceteris paribus*, as for the objects delivered with retention of title.

8.7 Should the delivery items be inseparably mixed or combined with other goods which are not NUKEM's property, NUKEM shall acquire joint ownership to the new object in the ratio of the value of the goods subject to retention of title to that of the other mixed or combined goods at the time of mixture or combination. If mixing is performed in such a manner that the item of customer is to be regarded as the principal item, then it is deemed

agreed that customer transfers to us a prorated co-ownership. This also applies correspondingly to the cases of combining. Customer keeps in safe custody the so created sole ownership or co-ownership for NUKEM.

8.8 NUKEM undertakes to release the securities due upon customer's request, insofar as the realisable value of these securities exceeds the claims to be secured by more than 20%. The choice of the securities to be released is incumbent on NUKEM.

## **9. Acceptance**

9.1 The customer shall declare acceptance of NUKEM's supplies at the place of performance without any delay. The results of the acceptance tests shall be recorded in a protocol which shall be signed by customer. Qualified experts may be named by either party who shall be entitled to witness the acceptance procedure.

9.2 Minor defects which do not impair the functioning or operation of the supplies shall be recorded in the acceptance protocol, but shall not entitle customer to refuse acceptance.

9.3 In case customer does not notify NUKEM in writing within 14 days after having been notified of readiness for acceptance - if such note is not given, within 14 days after receipt of NUKEM's supplies and services - that customer refuses acceptance, the supplies and services shall be deemed accepted.

9.4 The supplies shall be deemed accepted if such supplies, except for tests necessary to examine their functioning, have been put into operation by customer himself or by third parties at customer's direction.

## **10. Liability for defects**

10.1 NUKEM's liability for defects comprises the conformance of the

supplies and services on the date of delivery to technical rules and standards valid in the Federal Republic of Germany on the date of the offer, as well as their lack of defects attributable to non-conformity with agreed specifications, unsuitable material or faulty manufacture.

10.2 Defect claims made by customer presuppose that he has examined the supplies and services according to § 377 HGB (German Commercial Code) and duly claims the defects. In particular, the delivered supplies are to be promptly examined to check their completeness, compliance with the shipping documents and presence of visible defects. Defect claims shall be submitted in writing, specifying the defect in a detailed and comprehensible form and providing the information necessary for identifying and analyzing the defect. Visible defects shall be reported to NUKEM within one week after the delivery; hidden defects shall be reported within one week after their discovery. The above periods are preclusive time limits.

10.3 In case of a properly and timely claimed defect NUKEM may choose whether it eliminates the defect on its own or supplies a defect-free replacement. The supplementary performance is carried out without acknowledgment of any legal obligation. In case of remedy, the remaining period of the initial period of limitation begins again after the return of the remedied goods; the same applies to the replaced goods. The customer's right to reduce the price or cancel the contract in the event of unsuccessful replacement performance shall remain unaffected. The customer's right for claims for damages and reimbursement of expenses remains unaffected as well, unless it is limited or ruled out by the provisions of these Terms and Conditions.

- 10.4 The liability for defects does not cover any defects or damage attributable to normal wear and tear, or caused by incorrect handling, excessive strain, corrosion, improper use or wrong installation.
- 10.5 NUKEM shall perform all engineering, start-up, training and other services ("services") with that degree of care, skill and judgment normally exercised by professional engineering firms of international reputation in performing like services. Customer shall promptly notify NUKEM of any breach of the services liability but in no event later than ten (10) days after customer has knowledge of such breach. The services liability of NUKEM covers solely the damages in form of additionally provided services at NUKEM's expense.
- 10.6 The right to claim for defects is valid for the period of 12 months or – in the case of a multi-shift operation – 6 months, beginning from the date of the delivery. The right to claim for provided services is valid for 6 months. All rights supposedly arising out of this defects liability shall be made pending in court within the above mentioned periods. After that NUKEM is released from all obligations with regard to these liabilities.
- 10.7 Customer shall at no cost and at all times during execution of the contract provide NUKEM with or make available to NUKEM in due time and in sufficient quality or quantity, all personnel, work, feed material, services or supplies not within NUKEM's scope of work but necessary for the proper performance of the contract.
- 10.8 NUKEM shall not be obligated to take back any contaminated goods or materials.

## **11. Limit of Liability**

- 11.1 Except for cases of gross negligence or wilful misconduct NUKEM's liability

for any and all loss damage or additional or increased cost to customer arising out of or in connection with this contract shall in all cases be limited to the greater of either 10.000 € or 5 % of the contract price. The rights and remedies of customer shall be limited to those expressly stated herein.

- 11.2 Customer shall provide and maintain at customer's cost builder's all risk insurance to cover the loss of property in connection with NUKEM's supplies or services naming NUKEM as additional insured. Any deductibles shall be for the account of customer. Customer assumes responsibility for and shall indemnify NUKEM from any liability for personal injury and/or property damage arising out of the handling, possession or use of the supplies by customer.
- 11.3 In no case shall NUKEM be liable for any special, incidental, indirect or consequential damage or loss such as but not limited to loss of profit, loss of contract, increased cost of construction or investment, loss of use, loss of cost due to have soil, material or equipment decontaminated or remediated or disposed of, or the like. The Customer shall bear the sole nuclear liability and shall indemnify and hold NUKEM harmless in respect of any third party nuclear liability claim. NUKEM is not liable for any damage to Customers property caused by a nuclear incident. This limitation of liability shall not be valid in case of intent or wilful misconduct.
- 11.4 The above mentioned limitations of liability are also valid for the customer's rights to claim for damages against our managing directors, executive staff, employees, representatives or persons employed to perform an obligation.

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**12. Offsetting, Right of Retention, Patents and Trademarks**

- 12.1 The customer's right to withhold payments or set them off against alleged counterclaims is excluded unless such claims are subject of a legally binding decision of court.
- 12.2 NUKEM declares that to the best of its knowledge its supplies and services do not infringe any existing valid patents or trademarks. NUKEM shall at no additional cost to customer use its best efforts to assist customer in the preparation and conduct of any infringement suit or action, provided that customer provides prior written notice of such suit or the threat of any suit or action. Customer shall upon NUKEM's request permit NUKEM or its lawyer to fend off such suits or actions. The overall liability of NUKEM out of or in connection with any alleged patent or trademark infringement shall be limited to 10 % of the contract price, except in case of wilful misconduct or gross negligence.
- 12.3 An assignment of the customer's warranty and damage claims is excluded.

the validity of the other provisions shall not be affected thereby. The parties shall use their best efforts to reach a solution having an economic effect as similar as possible to that originally pursued.

**13. Applicable Law, Place of Jurisdiction, General Provisions**

- 13.1 Contracts shall in all respects be governed by and interpreted in accordance with the laws of Germany without regard to the principles on conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply. Exclusive place of jurisdiction shall be Aschaffenburg, Germany, if the customer is a qualified and registered merchant, a legal entity under public law or a special fund under public law.
- 13.2 Modifications or amendments of these General Terms and Conditions must be carried out in writing.
- 13.3 If any provision contained herein is or becomes invalid or unenforceable,