

## **GENERAL CONDITIONS FOR THE SUPPLY AND ERECTION OF MECHANICAL AND ELECTRICAL EQUIPMENT**

### **PREAMBLE**

1. These General Conditions shall apply unless the Parties agree otherwise in Writing. When the General Conditions apply to a specific contract, modifications to or deviations from them must be agreed in Writing.

### **DEFINITIONS**

2. In these General Conditions the following terms shall have the meanings herein assigned to them:  
**"Contract"** shall mean the written contract between the Parties concerning the supply and erection of the Plant, and all appendices, including agreed amendments and additions to the said documents. The date of the Contract shall be the date of signature by the Purchaser of the latest document comprised within the Contract.  
**"Contractor"** shall mean Reimelt FoodTechnologie GmbH, including its sub-contractors and sub-suppliers.  
**"Contract Price"** shall mean the payment to be made for the Works. If erection is to be carried out on a time basis and has not been completed, the Contract Price for the purposes of Clauses 13, 36, 37 and 41 shall be the price for the Plant with the addition of 10 per cent or of any other percentage that may have been agreed by the Parties.  
**"Gross Negligence"** shall mean an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.  
**"Party"** shall mean either the Contractor or the Purchaser and **"Parties"** shall mean the Contractor and the Purchaser jointly.  
**"Plant"** shall mean all machinery, apparatus, materials and articles to be supplied by the Contractor under the Contract.  
**"Proposal"** shall mean the proposal submitted to the Purchaser by the Contractor in respect of the Works.  
**"Purchaser"** shall mean the person or company entering into the Contract with the Contractor in respect of the Works.  
**"Site"** shall mean the place where the Plant is to be erected, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Plant and erection equipment.  
**"Works"** shall mean the Plant including all work to be carried out by the Contractor under the Contract. If the Works according to the Contract shall be taken over by separate sections intended to be used independently from each other, these conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.  
**"in Writing"** shall mean either by document signed by the Parties or by letter or telefax, identifying the sender or by electronic mail.

### **PRODUCT INFORMATION**

3. All information and data contained in product brochures and price lists are binding only to the extent that they are by reference expressly included in the Contract.

### **DRAWINGS AND DESCRIPTIONS**

4. All drawings and technical documents relating to the Works submitted by one Party to the other Party prior or subsequent to the date of the Contract shall remain the property of the submitting Party. Drawings, technical documents or other technical information received by one Party shall not, without the consent of the other Party, be used for any purpose other than erection of the Plant and commissioning, operation or maintenance of the Works. They may not, without the consent of the submitting Party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

### **INSPECTION BEFORE SHIPMENT**

5. If required in writing in the Contract an inspection shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours upon reasonable prior notice having been given in writing and each Party shall bear its own expenses.

### **PREPARATORY WORK AND WORKING CONDITIONS**

6. The Contractor shall in good time provide drawings showing the manner in which the Plant is to be

erected, together with all information required for preparing suitable foundations, for providing access to the Plant and any necessary equipment to the point where the Plant is to be erected, and for making all necessary connections to the Works.

7. The Purchaser shall in good time provide all installations, and make available the conditions necessary for the erection of the Plant and for the correct operation of the Works. This shall not apply to preparatory work which according to the Contract shall be performed by the Contractor.
8. The preparatory work shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 6. The work shall be completed in time to enable the Contractor to meet his obligations under the Contract with regard to completion of the Works. In any case the Purchaser shall ensure that the foundations are structurally sound. If the Purchaser is responsible for transporting the Plant to the Site, he shall ensure that the Plant is on the Site in good time.
9. If an error or omission in the drawings or information referred to in Clause 6 is discovered and notified to the Contractor before expiry of the period referred to in Clause 46, the cost of any necessary remedial works shall be borne by the Contractor.
10. The Purchaser shall ensure that the following conditions are satisfied:
  - a) The Contractor's personnel shall be able to start work in accordance with the agreed time schedule and to work during normal working hours. Provided that the Purchaser has been given notice in reasonable time, work may be performed outside normal working hours to the extent deemed necessary by the Contractor.
  - b) Before erection is started the Purchaser shall inform the Contractor of all relevant safety regulations in force at Site. The erection shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before erection is started and shall be maintained as appropriate during the erection period.
  - c) The Contractor's personnel shall be able to obtain suitable and convenient board and lodging and shall have access to internationally accepted hygiene facilities and medical services.
  - d) The access routes to the Site shall be suitable for the required transport of the Plant and equipment.

#### **PURCHASER'S DEFAULT**

11. If the Purchaser anticipates that he will be unable to comply with the conditions of Clauses 7, 8 and 10 or to receive the Plant on the Site and/or to allow the Works to be completed in time, he shall forthwith notify the Contractor in Writing, stating the reason and, if possible, the time when he will be able to comply with his obligations. The provisions of Clause 12 shall apply.
12. If the Purchaser fails to comply with Clauses 7, 8 and 10 he shall compensate the Contractor for any resulting costs. The Purchaser shall pay any part of the Contract Price which but for such failure would have become due. In such cases the Contractor may, where practicable, choose to ensure compliance himself at the Purchaser's expense, provided he does so in a reasonable manner. The Contractor shall, after notification in Writing to the Purchaser, be entitled to suspend completion of the Works for the duration of the Purchaser's failure. If the Plant is not yet on the Site, the Contractor shall arrange for storage of the Plant at the risk and expense of the Purchaser. The Contractor shall also, if the Purchaser so requires, insure the Plant at the Purchaser's expense.
13. Unless completion of the Works is prevented by any such circumstances as mentioned in Clause 61, the Contractor may by notice in Writing require the Purchaser to remedy his default within a final reasonable period. If for any reason for which the Contractor is not responsible, the Purchaser fails to remedy his default within such period, the Contractor may by notice in Writing terminate the Contract. The Contractor shall then be entitled to compensation for the loss he suffers because of the Purchaser's default. The compensation shall not exceed the Contract Price.

#### **LOCAL LAWS AND REGULATIONS**

14. The Contractor shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works. The Purchaser shall provide the relevant information in respect of these laws, regulations and rules.
15. The Contractor shall carry out any variation work caused by changes in laws, regulations and rules referred to in Clause 14, or in their generally accepted interpretation, occurring between the dates of submission of the Proposal and take-over of the Works. The Purchaser shall bear the extra costs and other financial consequences resulting from such changes, including variation work.
16. If the Parties are unable to agree on the extra costs and other consequences of changes in laws, regulations and rules, referred to in Clause 14, the Contractor shall be compensated on a time basis for any variation work until the dispute has been settled in accordance with Clause 66.

## **VARIATIONS**

17. Subject to the provisions of Clause 21, the Purchaser is entitled to require variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may also suggest variations in Writing.
18. Requests for variations shall be submitted to the Contractor in Writing and shall contain an exact description of the variation required.
19. As soon as possible after receipt of a request for a variation or after having suggested a variation, the Contractor shall notify the Purchaser in Writing whether and how the variation can be carried out, stating the resulting alteration to the Contract Price, the time for completion and other terms of the Contract. The Contractor shall also give such notice to the Purchaser when variations are required as a result of changes in laws, regulations and rules referred to in Clause 14.
20. If completion of the Works is delayed as a result of disagreement between the Parties on the consequences of variation, the Purchaser shall pay any part of the Contract Price which would have become due if the Works had not been delayed.
21. Save as provided in Clause 15, the Contractor shall not be obliged to carry out variations required by the Purchaser until either the Parties have agreed on how the variations will affect the Contract Price, the time for completion and other terms of the Contract, or the dispute has been settled in accordance with Clause 66.

## **PASSING OF RISK**

22. Any agreed trade term shall be construed in accordance with the latest INCOTERMS in force at the date of the Contract. If no trade term is specifically agreed upon the delivery shall be Ex Works (EXW), INCOTERMS 2000. If, in case of the delivery Ex Works, the Contractor, at the risk of the Purchaser, undertakes to send the Plant to its destination, the risk will pass no later than when the Plant is handed over to the first carrier. Partial shipments shall be permitted unless otherwise specified. If the Purchaser fails to take delivery of the Plant, the risk will pass to the Purchaser not later than at the date when delivery was effected.

## **TAKE-OVER TESTS**

23. When erection has been completed take-over tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for take-over in accordance with the Contract. The Contractor shall notify the Purchaser in Writing that the Works are ready for take-over. He shall in this notice give a date for take-over tests, giving the Purchaser sufficient time to prepare for and be represented at these tests. The Purchaser shall bear all costs relating to the carrying out of take-over tests, except that the Contractor shall bear the costs relating to his personnel and any other persons representing the Contractor in connection with such take-over tests.
24. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the take-over tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the take-over tests.
25. If, after having been notified in accordance with Clause 23, the Purchaser fails to fulfil his obligations under Clause 24 or otherwise prevents the take-over tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for take-over tests stated in the Contractor's notice.
26. The take-over tests shall be carried out during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the Purchaser's country.
27. The Contractor shall prepare a test report of the take-over tests. This report shall be signed by both Parties. If the Purchaser has not been represented at the take-over tests after having been notified in accordance with Clause 23, the test report shall be accepted as accurate.
28. If the take-over tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires in Writing without undue delay, new tests shall be carried out in accordance with Clauses 23 - 27. This shall not apply when the deficiency was insignificant and/or does not affect the efficiency of the Works.

## **TAKE-OVER**

29. Take-over of the Works takes place:
  - a) when the take-over tests have been satisfactorily completed or are regarded under Clause 25 as having been satisfactorily completed, or
  - b) where the Parties have agreed not to carry out take-over tests, when the Purchaser has received a

Contractor's notice in Writing that the Works have been completed, provided that the Works are as required for take-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Works shall not prevent take-over.

30. The Purchaser is not entitled to use the Works or any part thereof before take-over. If the Purchaser does so without the Contractor's consent in Writing, he shall be deemed to have taken over the Works. The Contractor shall then be relieved of his duty to carry out take-over tests.
31. As soon as the Works have been taken over in accordance with Clause 29 or are deemed to have been taken over in accordance with Clause 30, the period referred to in Clause 46 shall start to run. The Purchaser shall at the Contractor's request in Writing issue a certificate stipulating when the Works have been taken over. The Purchaser's failure to issue a certificate shall not affect take-over according to Clause 29 or deemed take-over according to Clause 30.

## **COMPLETION**

32. The Works shall be considered as completed when they are taken over in accordance with Clause 29 or are deemed to have been taken over in accordance with Clause 30.
33. If instead of specifying the date for completion, the Parties have specified a period of time on the expiry of which completion shall take place, such period shall start to run on the date of the Contract. The time of completion shall be renegotiated in case the Purchaser is behind schedule with the work he has to carry out in accordance with an agreed programme.
34. If the Contractor anticipates that he will not be able to complete the Works by the date or within the period specified, he shall forthwith notify the Purchaser in Writing, stating the reason, and, if possible, the revised date or period by which completion can be expected.
35. The Contractor shall be entitled to an extension of the time for completion if delay occurs:
  - a) because of any of the circumstances referred to in Clause 61, or
  - b) as a result of variation work under Clause 15, or
  - c) as a result of variations under Clauses 17 - 21, or
  - d) as a result of any act or omission on the part of the Purchaser, or
  - e) as a result of suspension under Clauses 12, 41 or 64.The extension shall be reasonable taking into consideration all the circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for completion.
36. The Contractor is in delay if the Works are not completed by the due time for completion as specified in the Contract, subject to any extension to which the Contractor is entitled in accordance with Clause 35. The Contractor's delay entitles the Purchaser to liquidated damages from the date on which the Works should have been completed. The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each complete week of delay. The liquidated damages shall not exceed in total 5 per cent of the Contract Price. If only part of the Works is delayed, the liquidated damages shall be calculated on that part of the Contract Price which is attributable to such part of the Works as cannot in consequence of the delay be used as intended by the Parties. The liquidated damages become due at the Purchaser's request in Writing but not before take-over or termination of the Contract under Clause 37. The Purchaser's right to liquidated damages shall be forfeited if such request has not been submitted within six months after take-over of the Works.
37. If the Contractor's delay is such that the Purchaser has become entitled to the maximum liquidated damages under Clause 36 and the Works are still not completed, the Purchaser may demand in Writing completion within a final reasonable period which shall not be less than four weeks. If the Contractor does not complete the Works within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in Writing to the Contractor terminate the Contract in respect of such part of the Works which, due to the Contractor's failure, cannot be used as intended by the Parties. If the Purchaser terminates the Contract or any part thereof, he shall be entitled to compensation for the loss he has suffered as a result of the Contractor's delay. The total compensation, including the liquidated damages which are payable under Clause 36 shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.
38. Liquidated damages under Clause 36 and termination of the Contract or part thereof with limited compensation under Clause 37 are the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of Gross Negligence.

## **PAYMENT**

39. Payment shall be made in the manner and at the time or times agreed in the Contract. Unless otherwise stated in the Contract, the terms are net, ex works, excluding Federal State or local taxes.

Withholding of payments or set-off by the Purchaser due to any claims disputed shall not be permitted. Should the Contractor be entitled to partial payments as stipulated in the Contract, and should any partial payment be delayed for more than 4 weeks, the total sum of all partial payments shall become due immediately.

40. Whatever the means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been fully and irrevocably credited.
41. If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due. The rate of interest shall be agreed between the Parties. If the Parties have not agreed on the rate of interest, it shall be 12 per cent per annum. In addition the Contractor may after having notified the Purchaser in Writing, suspend his performance of the Contract until he receives payment. If the Purchaser has not paid the amount due within three months after the due date, the Contractor shall be entitled to terminate the Contract by notice in Writing to the Purchaser and to claim compensation for the loss he has incurred. The compensation shall not exceed the Contract Price.

#### **RESERVATION OF TITLE**

42. The Plant shall remain the property of the Contractor until paid for in full, including if applicable payment for the erection of the Plant to the extent that such retention of property is valid under the applicable law. The Purchaser shall at the request of the Contractor assist the Contractor in taking any measures necessary to protect the Contractor's title to the Plant in the country concerned. The retention of property shall not affect the passing of risk under Clause 22.

#### **LIABILITY FOR DAMAGE TO PROPERTY BEFORE TAKE-OVER**

43. The Contractor shall be liable for any damage to the Works which occurs before the risk has passed to the Purchaser. This applies irrespective of the cause of the damage, unless the damage has been caused by the Purchaser or anyone for whom the Purchaser is responsible. Even if the Contractor is not liable for the damage to the Works in accordance with this Clause, the Purchaser may require the Contractor to remedy the damage at the Purchaser's cost.
44. The Contractor shall be liable for damage to the Purchaser's property occurring before take-over of the Works only if it is proved that such damage was caused by negligence on the part of the Contractor or anyone for whom the Contractor is responsible in connection with the performance of the Contract. The Contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

#### **LIABILITY FOR DEFECTS**

45. Pursuant to the provisions of Clauses 46-59, the Contractor shall remedy any defect in the Works resulting from faulty design, materials or workmanship.
46. The Contractor's liability is limited to defects in the Works which appear within a period of one year from take-over. If the daily use of the Works exceeds the maximum daily use specified in the Contract or otherwise agreed in Writing between the Parties, this period shall be reduced proportionately. If take-over has been delayed for reasons for which the Purchaser is responsible, the Contractor's liability for defects shall in any event, except as stated in Clause 47, not extend beyond 18 months after delivery of the Plant.
47. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 46 shall be extended only by a period equal to the period during which the Works have been out of operation as a result of the defect.
48. The Purchaser shall forthwith notify the Contractor in Writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 46. The notice shall contain a description of the defect. If the Purchaser does not notify the Contractor of a defect within the time-limits set forth in this Clause, he shall lose his right to have the defect remedied.
49. On receipt of the notice under Clause 48 the Contractor shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 45-59. Repair shall be carried out at the Site, unless the Contractor deems it appropriate that the defective part of the Plant is returned to the Contractor for repair or replacement. Where remedial work is carried out at the Site, Clauses 10 and 44 shall apply correspondingly. The Contractor is obliged to dismantle the Works to the extent necessary and to reassemble the Works if this requires special knowledge. If such special knowledge is not required, the Contractor has fulfilled his obligations in respect of the defect when he delivers to the Purchaser a duly

- repaired part or a new part in replacement of the defective part.
50. If the Purchaser has notified the Contractor in accordance with Clause 48, and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he has incurred as a result of the notice having been given.
51. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Works, to the extent that this is necessary to remedy the defect.
52. Unless otherwise agreed, necessary transport of the Plant and/or parts thereof to and from the Contractor in connection with the remedying of defects for which the Contractor is liable shall be at the risk and expense of the Contractor. The Purchaser shall follow the Contractor's instructions regarding such transport. If the Works are not at the Site, the Purchaser shall bear any resulting additional costs incurred by the Contractor when remedying defects.
53. Defective parts which have been replaced shall be made available to the Contractor and shall become the property of the Contractor.
54. If, within a reasonable time, the Contractor does not fulfil his obligations under Clause 49, the Purchaser may, by notice in Writing, set a final time for completion of the Contractor's obligations. If the Contractor fails to fulfil his obligations within such final time, the Purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of the Contractor. Where successful remedial works have been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the Purchaser shall be in full settlement of the Contractor's liabilities for the said defect.
55. Where the defect has not been successfully remedied:
- a) the Purchaser is entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstances shall such reduction exceed 10 per cent of the Contract Price, or
  - b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may terminate the Contract by notice to the Contractor in Writing. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 15 per cent of the Contract Price.
56. The Contractor is not liable for defects arising out of materials provided by, or a design stipulated or specified by the Purchaser.
57. The Contractor is liable only for defects which appear under the conditions of operation provided for in the Contract, including under proper use of the Works. The Contractor's liability does not cover defects which are caused by faulty operation, faulty maintenance or faulty repair by the Purchaser, or by modifications to the Works carried out without the Contractor's consent in Writing. The Contractor's liability does not cover normal wear and tear.
58. Notwithstanding the provisions of Clauses 45 - 59 the Contractor shall not be liable for defects in any part of the Works for more than two years from take-over. If take-over has been delayed for reasons for which the Purchaser is responsible, the Contractor's liability for defects shall not be extended beyond 30 months after delivery of the Plant.
59. Save as stipulated in Clauses 45 - 58, the Contractor shall not be liable for defects. This applies to any loss which the defect may cause including loss of production, loss of profit and any other indirect loss. This limitation of the Contractor's liability shall not apply if the Contractor has been guilty of Gross Negligence.

#### **DIVISION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS**

60. The Contractor shall not be liable for any damage to property caused by the Works after completion and whilst in the possession of the Purchaser; nor shall the Contractor be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part. If the Contractor incurs liability towards any third party for such damage to property as described in the preceding sentence, the Purchaser shall indemnify, defend and hold the Contractor harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the Parties, such Party shall forthwith inform the other Party thereof in Writing. The Contractor and the Purchaser shall be mutually obliged to permit themselves to be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Works. The limitation of the Contractor's liability in the first sentence of this Clause shall not apply where the Contractor has been guilty of Gross Negligence.

#### **FORCE MAJEURE**

61. Either Party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the Parties such

as fire, war (whether declared or not), extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this Clause. A circumstance referred to in this Clause which occurred prior to the date of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the Contract.

62. The Party claiming to be affected by Force Majeure shall notify the other Party in Writing without delay upon the occurrence and upon the cessation of such circumstance. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Contractor for expenses incurred in securing and protecting the Works.
63. Regardless of what might otherwise follow from these General Conditions, either Party shall be entitled to terminate the Contract by notice in Writing to the other Party if performance of the Contract is suspended under Clause 61 for more than six months.

#### **ANTICIPATED NON-PERFORMANCE**

64. Notwithstanding other provisions in these General Conditions regarding suspension, each Party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other Party will not perform his obligations. A Party suspending his performance of the Contract shall forthwith notify the other Party thereof in Writing.

#### **LIMITATION OF LIABILITY**

65. The total liability of the Contractor under the Contract for any reason whatsoever shall be limited to a maximum of 15 per cent of the Contract Price. Save as elsewhere stated in these General Conditions, there shall be no liability for either Party towards the other Party for loss of production, loss of use, loss of contracts or for any consequential, economic or indirect loss whatsoever. This limitation of liability shall not apply if either Party has been guilty of Gross Negligence.

#### **DISPUTES AND APPLICABLE LAW**

66. All disputes arising in connection with the Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules, supplemented as necessary by the procedural rules of the law of the Contractor's country.
67. The Contract shall be governed by the substantive law of Switzerland including **CISG** (Vienna Conventions of April 11, 1980).
68. The Contract and its conditions shall remain valid even if particular terms or provisions are invalid or unenforceable.