

## General Conditions of Contract for the Supply of Plant and Machinery

### 1. Scope of Application

These General Conditions apply to the supply of plant and machinery (hereinafter "the Supply") by **Gasbanor (Switzerland) GmbH, Micafluid**, hereinafter named - Gasbanor -

### 2. General

- 2.1 The contract shall come into effect upon receipt of GASBANOR 's written acknowledgement stating its acceptance of the order ("Order Acknowledgement") provided that, in particular, the necessary permits have been obtained from the authorities and the agreed payment security has been provided. Tenders that do not contain a set period for acceptance are binding for a period of 30 days after dispatch by GASBANOR .
- 2.2 General conditions of contract of the customer shall only be valid if expressly accepted in writing by GASBANOR .
- 2.3 All agreements and legally relevant declarations must be in writing.

### 3. Scope of Supply

The scope of the Supply by GASBANOR is exhaustively set out in the order acknowledgement and any appendices thereto.

### 4. Designs, Technical Documents and Software

- 4.1 Unless otherwise agreed, brochures and catalogues are not binding. Designs, drawings and technical documents and data contained in software are only binding insofar as they form an integral part of this contract.
- 4.2 GASBANOR retains all rights to designs, drawings, technical documents and software. The customer acknowledges these rights and shall not make such designs, drawings, documents and software available to any third party, either in whole or in part, nor use them for any purposes other than the agreed purposes without prior written authorisation by GASBANOR .
- 4.3 If the Supply includes software, the customer is hereby granted the non-exclusive and non-transferable right to use the software for the agreed purpose. The customer is not entitled to make copies (except for the purposes of archiving, error searches or for the replacement of defective data carriers) or to update, upgrade or make any other extensions to the software. The customer may not disassemble, decompile, decipher or reverse engineer the software without the prior written consent of GASBANOR . If the customer breaches one of these conditions, GASBANOR is entitled to immediately revoke the right to use the software.

### 5. Regulations and Standards

- 5.1 The customer shall, at the latest when placing the order, refer GASBANOR in writing to the standards and regulations applicable to the provision of the Supply, the mode of the Supply and to health and safety.
- 5.2 Unless otherwise agreed, the Supply shall comply with those standards and regulations at the place of destination of the Supply of which GASBANOR has been informed by the customer according to Clause 5.1 above.

### 6. Reservation Notice

Express reservations by GASBANOR personnel regarding instructions, directives or measures by the customer or regarding actual circumstances may be made in writing or orally and are deemed to be reservation notices by GASBANOR relieving GASBANOR of any liability.

### 7. Prices

- 7.1 All prices are net, ex works, excluding packing, in freely available Swiss francs without any deduction whatsoever. Any and all additional costs, such as for freight, insurance, fees for export, transit, import and other permits, and for certifications, shall be borne by the customer.
- 7.2 Taxes, including, without limitation, value added taxes (VAT), levies, fees, social security contributions and the like, which GASBANOR or its personnel must pay in connection with this contract or its fulfilment, in particular for supplies and services outside Switzerland as well as the administrative costs connected therewith, shall be borne by the customer.  
If taxes, including, without limitation, VAT, levies, fees, social insurance contributions or the like are levied against GASBANOR or administrative costs are incurred, they shall be reimbursed by the customer within 30 days of receipt of a copy of the respective documents.
- 7.3 GASBANOR reserves the right to adjust the prices in the event that
  - the delivery period is extended for any of the reasons set out in Clause 10.4; or
  - the nature or the scope of the Supply is changed; or
  - the documents provided by the customer are not in conformity with the actual circumstances or are incomplete; or
  - the price was agreed upon in a currency other than Swiss francs (CHF) and the exchange rate CHF/foreign currency at the time of placing the order deviates by more than +/- 1% from the exchange rate that was published at 12 noon Swiss time by Reuters on the day of the submittal of the tender; or
  - laws, regulations or generally accepted rules of interpretation are changed after the submittal of the tender.

### 8. Terms of Payment

- 8.1 Payments shall be made by the customer at GASBANOR 's domicile, net with no deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed, the price shall be paid in the following instalments:

- 20% as advance payment within 30 days of receipt of the Order Acknowledgement by the customer,
- 80% within 30 days of notice of readiness of the Supply for dispatch by GASBANOR.

All amounts owed to GASBANOR are payable within 30 days of the invoice date.

Payment shall be deemed made when Swiss francs or the agreed foreign currency have been made freely available to GASBANOR at GASBANOR 's domicile. In the event that payment by letter of credit is agreed upon, the customer shall bear the costs of opening, notifying and confirming such letter.

- 8.2 The customer may neither withhold nor reduce payments due to complaints, claims or counterclaims not accepted by GASBANOR in writing.
- 8.3 The dates for payment shall be complied with even if dispatch, transportation, any installation, commissioning or acceptance of the Supply is delayed or made impossible due to reasons for which GASBANOR is not responsible, or if immaterial parts of the Supply are missing or if post-delivery work, that does not make the use of the Supply impossible, is to be carried out.
- 8.4 If the advance payment or agreed payment security is not provided in accordance with the terms of the contract, GASBANOR shall be entitled to either adhere to or terminate the contract and shall, in either case, be entitled to claim damages including compensation for loss of profit.  
If the customer, for any reason, is in arrears with any other payment, or if GASBANOR is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since the entering into of the contract, then GASBANOR , without prejudice to any other claims, may suspend the further performance of the contract and retain any of the Supply ready for dispatch until new terms of payment and delivery have been agreed and until GASBANOR has received sufficient security. If such agreement cannot be reached within a reasonable time, or if GASBANOR does not receive sufficient security, GASBANOR may terminate the contract and claim damages, including compensation for loss of profit.
- 8.5 If the customer exceeds the agreed periods of payments, it shall be liable, without reminder and with reservation of the right to bring further claims, for interest at a rate depending on the terms prevailing at GASBANOR 's domicile, but not less than 5 percent per annum. The contractual payment obligations continue to remain in force.

#### **9. Reservation of Title**

GASBANOR shall retain ownership of the Supply until receipt of full payment in accordance with the contract.

The customer shall take all measures necessary for the protection of GASBANOR property and ensure that the title of GASBANOR is not prejudiced. In particular, the customer shall arrange for any entry in the public registers in the country of its domicile necessary for a valid reservation of GASBANOR 's title. The customer shall bear the costs of such entry. If the customer fails to arrange for such entry, it shall be fully liable to GASBANOR .

#### **10. Delivery Period**

- 10.1 The delivery period shall commence as soon as the contract comes into effect and the advance payments due on placing the order have been made.
- 10.2 The delivery period shall be deemed to have been complied with if, before its expiry, the notice of readiness of the Supply for dispatch has been sent.
- 10.3 Compliance with the delivery period is conditional upon the customer fulfilling all its contractual and non-contractual obligations to GASBANOR .
- 10.4 The delivery period shall be extended for a reasonable term if:
- a) the information required for performance of the contract is not made available to GASBANOR in time or is incomplete, or if the customer subsequently changes such information; or
  - b) the customer or a third party is in delay with work it has to execute, or the customer is in delay with the performance of its contractual obligations; or
  - c) impediments exist which GASBANOR , despite the use of the required level of care cannot prevent, regardless of whether such impediments arise at GASBANOR 's, the customer's or a third party's premises. Such impediments include, in particular, significant operating breakdowns, accidents, labour conflicts, late or deficient delivery of raw materials, semi-finished or finished products, important work parts being rejected, measures taken or omissions by any state authorities; or
  - d) any other circumstances arise for which GASBANOR is not responsible.
- 10.5 If delivery is not made on time, the customer may claim damages for delayed delivery if it can be proved that the delay was caused through the fault of GASBANOR.  
Damages for delayed delivery shall not exceed 1/2 percent for each full week of delay and shall in no event exceed 5 percent of the contract price of the part of the Supply in delay.  
After reaching the maximum damages for delayed delivery, the customer shall grant GASBANOR a reasonable extension of time in writing. If such extension is not complied with for reasons for which GASBANOR is at fault, the customer may reject the delayed part of the Supply. If a partial acceptance is economically not justifiable on the part of the customer, the customer may terminate the contract. In such an event, GASBANOR shall refund the payments made for the parts of the Supply affected by the termination.
- 10.6 If a specific date is agreed instead of a delivery period, such date shall correspond to the last day of a delivery period. Clauses 10.1 to 10.5 shall apply thereto.
- 10.7 All claims of the customer arising from or in connection with delays in the performance of the contract are regulated expressly and exhaustively by this Clause 10. Other and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by GASBANOR .
11. **Packing**  
Packing shall be invoiced separately by GASBANOR and may not be returned. However, if the packing is expressly designated as GASBANOR 's property, it shall be returned by the customer, carriage paid, to the place of dispatch.
12. **Passing of Risk**
- 12.1 Unless otherwise agreed, risk shall pass on delivery EXW (INCOTERMS 2010).

12.2 If dispatch of the Supply is delayed at the request of the customer or due to reasons for which GASBANOR is not responsible, the risk shall pass to the customer at the time originally foreseen for the Supply to be dispatched from GASBANOR 's premises. From this time on, the Supply shall be stored and insured on the account of and at the risk of the customer.

### 13. Inspection and Acceptance of the Supply

13.1 Insofar as it is normal practice, GASBANOR shall inspect the Supply before dispatch. If the customer requests further testing, such as an acceptance test, this shall be agreed in writing and paid for by the customer.

13.2 The customer shall inspect the Supply within 30 days and shall immediately notify GASBANOR in writing of any defects. If the customer fails to do so, the Supply shall be deemed to be accepted.

13.3 To the extent that GASBANOR is responsible for the notified defects, GASBANOR shall remedy such defects as soon as possible, and the customer shall give GASBANOR sufficient opportunity to do so. After remedy of such defects, an acceptance test shall be carried out at the request of the customer or of GASBANOR, provided that such acceptance test has been agreed upon in accordance with Clause 13.1.

13.4 If an acceptance test was agreed upon, the following shall apply unless otherwise agreed:

- GASBANOR shall advise the customer in due time of the execution of the acceptance test so that the customer or its representative can attend.
- An acceptance report shall be prepared which shall be signed by both the customer and GASBANOR or by their representatives. Such report shall either state that acceptance has taken place, or that it has taken place with reservations, or that the customer has refused the acceptance. In the last two cases, the defects discovered shall be listed individually in the acceptance report.
- In the event of minor defects, in particular those that do not substantially prevent the efficient functioning of the Supply, the customer shall not be entitled to refuse the acceptance of the Supply and the signing of the acceptance report. GASBANOR shall remedy such defects without delay.
- In the event of major defects, the customer shall give GASBANOR the opportunity to remedy such defects within a reasonable time. Thereafter, a further acceptance test shall take place.
- If, during this further acceptance test, major defects are again discovered, the customer may claim either the compensation agreed for such event or, if no such agreement was made, a reasonable price reduction. If, however, the defects discovered during such test are so major that they cannot be remedied within a reasonable time and if the Supply cannot be used for its specified purpose, or if such use is considerably impaired, the customer may refuse acceptance of the defective part or, if partial acceptance is not economically justifiable, terminate the contract. In such event, GASBANOR is only liable for reimbursement of the sums paid to it for the parts of the Supply affected by the termination.

13.5 Acceptance shall also be deemed as having taken place:

- if the customer or its representative does not participate in a possible acceptance test;
- if the acceptance test cannot be carried out on the date arranged for reasons for which GASBANOR is not responsible;
- if the customer refuses to sign the acceptance report;
- as soon as the customer puts the Supply to use or impliedly accepts the Supply in any other way;
- if the customer refuses acceptance without being entitled to do so.

13.6 All claims by the customer arising from or in connection with defects in the Supply are regulated expressly and exhaustively by this Clause 13. Other and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by GASBANOR .

### 14. Warranty

#### 14.1 *Warranty Period*

The warranty period is 12 months, or 6 months in the event of 24-hour operation of the Supply. The warranty period commences when the Supply leaves the works or upon the acceptance of the Supply or, if GASBANOR also undertakes the installation of the Supply, upon completion thereof. If dispatch, transportation, any possible installation, commissioning or acceptance is delayed due to reasons for which GASBANOR is not responsible, the warranty period shall end not later than 18 months after GASBANOR 's notification that the Supply is ready for dispatch.

The warranty period for repaired parts of the Supply commences anew and lasts for 6 months after remedy of the defect or acceptance, but shall end not later than the expiry of a period which is double the warranty period stipulated in the preceding paragraph of this Clause.

The warranty period shall expire prematurely if the customer or a third party undertakes inappropriate modifications or repairs to the Supply or if the customer, in the event of a defect, does not immediately take all appropriate steps to mitigate the damage and give GASBANOR the opportunity to remedy such defect.

#### 14.2 *Liability for Defects in Material, Design and Workmanship*

Upon written request by the customer, GASBANOR shall remedy within a reasonable period any parts of the Supply which, before the expiry of the warranty period, are proved to be defective or unusable due to defective material, faulty design or poor workmanship, provided that the customer has notified GASBANOR in writing of the defects during the warranty period and immediately after discovery. The customer shall give GASBANOR sufficient opportunity to carry out such remedial works. Replaced parts shall become GASBANOR 's property.

GASBANOR shall bear the costs of remedying the defective parts at its premises. If, at the customer's request, the repair is carried out outside GASBANOR 's premises, the customer shall bear all related costs such as transportation, travel and accommodation expenses as well as taxes, levies and fees incurred outside of Switzerland.

#### 14.3 *Liability for Warranted Qualities*

The warranted qualities of the Supply are only those qualities which have been expressly specified as such in the Order Acknowledgement. Such warranties are valid until the expiry of the warranty period. Evidence of the warranted qualities shall be provided by any possible acceptance test.

If the warranted qualities are not achieved or only partially achieved, the customer may initially only require GASBANOR to carry out the necessary remedial works. The customer shall give GASBANOR the necessary time and opportunity to do so.

If such remedial works fail completely or in part, the customer may claim such compensation as was agreed upon for such event, or, if such an agreement was not made, a reasonable reduction in price. If, however, the defects are so major that they cannot be remedied within a reasonable time and provided the Supply cannot be used for its specified purpose, or if such use is considerably impaired, the customer may refuse acceptance of the defective part of the Supply or, if partial acceptance is economically not justifiable, terminate the contract. In such event, GASBANOR is only liable for reimbursement of the sums paid to it for the parts of the Supply affected by the termination.

**14.4 Exclusions from the Liability for Defects**

GASBANOR is not liable if the Supply does not comply with the provisions of the contract and that non-compliance is caused by the customer itself. If the Supply does not comply with the contract, that non-compliance is deemed to be caused by the customer itself, in particular, if it was the result of defective maintenance, failure to observe the operating instructions, excessive use, use of any unsuitable operating means, chemical or electrolytic influence or work not undertaken by GASBANOR .

GASBANOR is furthermore not liable if the Supply does not conform with the provisions of the contract as a result of, in particular, normal wear and tear, improper use by third parties, use of spare parts or material belonging to the customer or third parties, maintenance by third parties, natural disasters or accidents.

**14.5 Subcontractors**

GASBANOR 's liability for defects in respect of supplies and services provided by subcontractors nominated by the customer shall be no greater than such subcontractors' liability for defects.

**14.6 Exclusivity of Warranty Claims**

Any warranty claims of the customer are expressly and exhaustively regulated by this Clause 14. Other claims and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by GASBANOR .

**14.7 Liability for Additional Obligations**

GASBANOR shall only be liable to the customer for faulty advice and the like or for breach of any additional obligations in the event of gross negligence or wilful misconduct.

**15. Contract Performance**

**15.1** In all cases where contractual performance is not duly effected and where not expressly covered by these General Conditions, the customer shall grant GASBANOR a reasonable additional period to remedy its performance.

If such additional period lapses and is unused due to fault on the part of GASBANOR , the customer may terminate the contract with respect to the part of the Supply not in conformity with the contract or which is anticipated not to be in conformity with the contract. In such an event, GASBANOR is only liable for reimbursement of sums paid to it for the parts of the Supply affected by the termination.

**15.2** In the event of a contract termination by the customer in accordance with Clause 15.1 above, the provisions of Clause 19 shall apply with regard to any liability of GASBANOR .

**16. Termination of the Contract by GASBANOR**

The contract shall be amended as appropriate if unforeseen events substantially change the economic effect or the content of the Supply or substantially affect the fulfilment of the contract by GASBANOR , or if provision of the Supply subsequently becomes entirely or partially impossible. Insofar as such amendment is not economically justifiable, GASBANOR may terminate the contract or the individual provisions affected thereby.

If GASBANOR intends to terminate the contract, it shall, after having recognised the consequences thereof, immediately inform the customer even if an extension of the delivery time has previously been agreed. In the event of a termination of the contract, GASBANOR shall be entitled to payment for those parts of the Supply which have already been made. Claims for damages by the customer are excluded.

**17. Export Control**

The customer acknowledges that the Supply may be subject to Swiss and/or foreign statutory provisions and regulations regarding export control and, without export or re-export permits from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The customer agrees to comply with such provisions and regulations. The customer acknowledges that such provisions and regulations may change and are applicable to the contract according to the wording valid at the time.

The Supply may neither directly nor indirectly be used in any way in connection with the design, production, use or storage of chemical, biological or nuclear weapons or carrier systems.

**18. Data Protection**

GASBANOR may, whilst performing the contract, process personal data of the customer. The customer agrees in particular that GASBANOR may disclose such data to third parties in Switzerland and abroad for the development and cultivation of business relationships.

**19. Limitation of Liability**

**19.1** All claims by the customer for damages not affecting the Supply itself, such as damages for production interruption, loss of usage, loss of orders, loss of profits, claims by third parties or claims for indirect or consequential damage, irrespective of the legal basis for such claims, are excluded. The liability of GASBANOR arising from or in connection with the contract or breach thereof is limited to the sums paid by the customer for the Supply provided.

**19.2** Claims by the customer arising out of or in connection with the contract or the breach thereof are expressly and exhaustively regulated by these conditions. Other and further claims are excluded.

**19.3** This limitation of liability shall not apply in the event of gross negligence or wilful misconduct by GASBANOR .

**20. Right of Recourse by GASBANOR**

In the event of injury to persons or damage to property of third parties as a result of actions or omissions by the customer or its personnel for which GASBANOR is held liable, GASBANOR shall have a right of recourse against the customer.

**21. Installation of Plant and Machinery**

If GASBANOR carries out the installation or the supervision of the installation of the Supply, the General Conditions of Installation of Plant and Machinery of GASBANOR are applicable to such installation.

**22. Miscellaneous Provisions**

22.1 Amendments to the contract must be in writing to become effective.

22.2 If a provision of these General Conditions should prove to be wholly or partially ineffective, the parties shall replace such provision with a new provision that comes as close as possible to the legal and economic effect of the original provision.

**23. Jurisdiction and Applicable Law**

23.1 Place of jurisdiction shall be Zurich/Switzerland. GASBANOR reserves the right, however, also bring an action before the courts at the customer's domicile.

23.2 This contract shall be governed by Swiss substantive law. The "United Nations Convention on the International Sale of Goods" of April 11, 1980, shall not apply.

24. The transfer or the assignment of the present agreement, as well as of rights or obligations from this agreement, requires the previous written consent of the other Party.

CH, Schlieren 20<sup>th</sup> February 2015