

## **General Conditions of Installation and Commissioning**

### **1. General**

- 1.1 These General Conditions of Installation and Commissioning (hereinafter the **General Conditions**) apply to installation and commissioning (hereinafter the **Work**) carried out by Uster Technologies AG, Uster or its subsidiaries (hereinafter the **Supplier**). They form an integral part of the Supplier's [General Conditions of Supply and Warranty](#).
- 1.2 Amending or additional arrangements or conditions are valid only if they have been expressly acknowledged and agreed in writing by the Supplier.
- 1.3 Should any provision of these General Conditions prove to be wholly or partially ineffective, then the respective provision shall be replaced by the parties with a new provision that comes as close as possible to the legal and economic effect of the original provision.

### **2. Formation of Contract**

- 2.1 The contract shall be deemed to have been concluded when, on receipt of an order, the Supplier acknowledges acceptance in writing (hereinafter the **Confirmation of Order**).

### **3. Technical Documents**

- 3.1 Information contained in technical documents of the Supplier, such as drawings, descriptions, illustrations, pamphlets and the like are not binding unless these are expressly referred to as binding. The Supplier reserves the right to make any changes considered necessary or advisable in the interest of technological progress.
- 3.2 All technical documents and the information contained therein remain the exclusive intellectual property and copyright of the Supplier and may not be exploited, copied or reproduced, nor may they be communicated to a third party in any way without the Supplier's written consent. They may be used only for installation, commissioning, operation and maintenance of the goods delivered.

### **4. Regulations in Force at Destination**

- 4.1 The Purchaser must inform the Supplier in writing at the latest when placing the order of any regulations or standards which differ from those in the country of production according to the Confirmation of Order and which have to be complied with by the Supplier in relation to the transportation to the final destination of the Work, the installation work, the operation of the machinery/equipment, the health of personnel and the prevention of accidents or otherwise in any way as part of the Work.

### **5. Carrying out of the Work**

- 5.1 The Supplier is entitled to have the Work carried out through third parties as subcontractors.

### **6. Cooperation of the Purchaser**

- 6.1 The Purchaser must take all necessary steps to ensure that the Work can commence on time and can be carried out without hindrance or interruption. The assistance of the Supplier's personnel shall not be requested until all preliminary work has been completed. This date must be communicated to the Supplier as soon as possible.
- 6.2 The Purchaser must ensure that the necessary entry, exit, residence, work and all other permits for installation personnel are granted in good time and remain valid.

- 6.3 The Purchaser shall take the necessary accident prevention measures at his own cost. If the Purchaser fails to take such measures and if the safety of personnel is not guaranteed, the Supplier may at any time refuse or stop the Work or order the return of its personnel. The Supplier may also refuse or stop the Work or order its personnel to return if the safety or health of personnel is not guaranteed for any other reasons. The installation personnel shall be entitled to reject work if their safety is not safeguarded.
- 6.4 In cases of sickness or accident to any of the Supplier's installation personnel, the Purchaser shall render the necessary support, especially in respect of adequate medical treatment, admission to a hospital operated in accordance with modern principles and the possible return to the personnel's home country.
- 6.5 The material to be installed must be stored in such a way that it is protected against harm. It must be examined by the Purchaser for completeness and possible defects in the presence of the installation personnel before work commences. Material which was lost or damaged during storage will be re-supplied or repaired at the Purchaser's cost.
- 6.6 The Purchaser shall insure that the transport routes to the place of installation are in a useable condition, that the place of installation itself is ready for the commencement of work, that the access to the place of installation is ensured without hindrance, and that all necessary rights of way are ensured.
- 6.7 The Purchaser shall provide heatable or air-conditioned lockable workshops, recreation and changing rooms for the Supplier's personnel, including adequate sanitary facilities. The Purchaser shall further furnish a dry lockable place of storage supplied with a lock for the storage of tools, equipment material and the like. All these rooms shall be located in the immediate vicinity of the place of installation.
- 6.8 Unless already specified in the supply contract, the Purchaser shall perform as follows at his cost:
- 6.8.1 Place qualified skilled workers (locksmiths, electricians, masons etc.) as well as auxiliary personnel with the necessary tools at the disposal of the Supplier. These workers are to comply with the instructions of the Supplier. In no event shall any employment or other legal relationship to the Supplier be established by giving instructions. The Supplier recommends that the operating personnel be assigned to assist in installation work in order to gain familiarity with the technical features of the machinery or equipment.
- 6.8.2 Provide cranes and other lifting devices, in good working order, with attendant personnel, appropriate scaffolding and means of transport for personnel and materials, appropriate workshop equipment and measuring equipment as necessary.
- 6.8.3 Provide the necessary consumable and installation material, cleansing agents, lubricants and the like.
- 6.8.4 Provide the necessary electric power and lighting as well as heating, compressed air and so on, including the necessary connections to the installation site.
- 6.8.5 Provide sufficient means of communication such as telephone and fax connections as well as internet connection.
- 6.8.6 Provide any software required by the Supplier.
- 6.9 The Purchaser must ensure that the necessary permits for the import and export of tools, equipment, measuring and testing equipment and materials and all other permits necessary for the Work are granted in good time and remain valid and the Purchaser shall cover all arising costs in this connection.
- 6.10 The Purchaser shall fulfil his obligations in time and correctly and without cost for the Supplier. If the Purchaser does not fulfil his obligations, in whole or in part, the Supplier may, in particular, fulfil such obligations himself at the Purchaser's risk or have the fulfilled by a third party. The costs shall be borne by the Purchaser in such an event. The Purchaser shall release the Supplier from any liability for claims of third parties and indemnify the Supplier for any loss suffered therefrom.
- 6.11 Should the personnel of the Supplier, for reasons the Supplier is not responsible for, be endangered or significantly impeded from carrying out its work, then the Supplier is entitled to order the return of his personnel.

## **7. Work Not Covered by the Contract**

- 7.1 The Purchaser is not authorised to employ the Supplier's personnel for work on products which do not form part of this contract without the Supplier's written consent. The Supplier does not assume any liability for such work even if he grants his consent.

## **8. Working Time**

- 8.1 The normal weekly working time as well as overtime, night work and work on Sundays and public holidays are governed by the agreements between the employers' and employees' associations currently in force in the Swiss machinery industry.
- 8.2 The normal weekly working time is generally spread over 5 working days. If, for reasons beyond the control of the Supplier, it becomes necessary to work shorter hours, the calculation of the payment for installation personnel will be based on the normal working hours.
- The arrangement of the working time for the installation personnel shall be governed by the operational circumstances of the Purchaser and by local conditions. The normal daily working time shall be between the hours of 06.00 and 20.00 local time at the installation site.
- 8.3 Working hours beyond the normal weekly or daily working time are regarded as overtime. Overtime is permitted only with mutual consent. Overtime should, as a rule, not exceed the daily working time by more than 2 hours and the normal weekly working time by more than 10 hours.

## **9. Travelling Time, Waiting Time**

- 9.1 The following is deemed travelling time:
- The time taken for the journey to and from the installation site.
  - The time spent on moving into the place of accommodation at the installation site as well as on registration and departure formalities required by government offices.
- A maximum of 12 hours per day are counted as travelling time.
- 9.2 If it is not possible to obtain suitable accommodation and/or adequate catering facilities near the work place, the time required each day to travel between the accommodation and/or catering facilities and the work place in excess of one half hour per journey shall be charged as working time.
- 9.3 If, for reasons beyond the control of the Supplier, the installation personnel are prevented from carrying out their work or prevented from leaving when the Work is completed, the time thereby lost shall count as waiting time and shall be regarded as working time.

## **10. Rates Charged and Additional Costs**

- 10.1 Work shall be charged according to the time spent and costs incurred or by special written agreement at fixed prices (fixed lump sum basis).
- 10.1.1 *Work as incurred*

The charge is assessed for work done as follows:

### Personnel costs

The amount charged is based on the rates prevailing at the time of the submission of the offer or the formation of the contract. If the rates should change by the time installation commences, the Supplier reserves the right to adjust the charging rates accordingly.

### Travelling costs

Travelling costs are the expenses for the journey to and from, as well as for journeys within, the country where the installation site is located:

- economy class in the case of air travel
- first class in the case of rail or boat travel
- second class in the case of rail travel by installation personnel within Switzerland
- mileage allowance if automobiles are used or effective costs of car rental.

### Accommodation costs (allowance)

To cover the cost of adequate food and single accommodation at the installation site or within its close vicinity, the Purchaser shall pay a daily allowance.

#### 10.1.2 *Work on a Fixed Lump Sum Basis*

The work and services undertaken on a fixed lump sum basis are governed by the present General Conditions for Installation and Commissioning as well as the written special agreements.

The lump sum price shall cover the work and services to be performed by the Supplier under the terms of the contract. It is based on the provisos that the preliminary work to be carried out by the Purchaser shall be completed in good time, that all additional work pursuant to Clause 6 shall be performed and that the installation can proceed smoothly and without hindrance. Additional costs caused by subsequent changes in the nature or extent of the agreed work or by reasons beyond the control of the Supplier are borne by the Purchaser.

#### 10.2 *Taxes, imposts, fees etc.*

Taxes, imposts, fees and the like which have to be paid by the Supplier or his personnel in connection with the contract or with the Work outside Switzerland shall be borne by the Purchaser.

Special insurance coverage required at the installation site shall be at the cost of the Purchaser.

### **11. Terms of Payment**

- 11.1 Unless otherwise agreed, the accrued costs will be charged on completion of the Work. They must be paid by the Purchaser on a net basis within 30 days of the date of invoice.
- 11.2 The Purchaser shall not withhold or reduce payments on account of complaints or claims or of counter-claims not accepted by the Supplier.
- 11.3 Unless expressly arranged otherwise, payment shall not be deemed effected until the sum of the invoice is available to the Supplier in freely convertible currency in Switzerland.

### **12. Completion Period**

- 12.1 A completion period is only binding when accepted in a written agreement that also covers, in particular, the scope of the Work. The completion period begins as soon as, in Supplier's opinion, all preliminary requirements for the commencement of the Work have been fulfilled.
- 12.2 An agreed completion period shall be deemed to have been complied with if, upon its expiry, the Work is ready for their agreed operation, even though individual parts may still be missing or some readjustments may still be necessary.
- 12.3 Compliance with the agreed completion period is conditional upon the Purchaser fulfilling all its contractual and non-contractual obligations to the Supplier.
- 12.4 The completion period shall be extended for a reasonable term if:
  - 12.4.1 the information required for performance of the contract is not made available to the Supplier in time or is incomplete, or if the Purchaser subsequently changes such information; or
  - 12.4.2 the Purchaser or a third party is in delay with work it has to execute, or the Purchaser is in delay in the performance of its contractual obligations; or
  - 12.4.3 impediments exist which the Supplier, despite the use of the required level of care, cannot prevent, regardless of whether such impediments arise at the Supplier's, the Purchaser'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, measures taken or omissions by any state authorities; or
  - 12.4.4 any other circumstances arise for which the Supplier is not responsible.
- 12.5 If the agreed completion period is not complied with, the Purchaser may claim damages for delay if it can be proved that the delay was caused through the Supplier's fault.

Damages for delay shall not exceed 0.5% for each full week's delay and shall in no event whatsoever altogether exceed 5% of the contract price for the services for the part of the machines that could not be put into operation on time due to the delay.

After reaching the maximum damages for delay, the Purchaser shall grant the Supplier a reasonable extension of time in writing. If such extension is not complied with for reasons for which the Supplier is at fault, the Purchaser may terminate the contract. In such an event, Supplier shall only be liable for reimbursement of sums paid for the parts of the Services affected by the termination.

- 12.6 All claims of the Purchaser arising from or in connection with delays in the performance of the contract are regulated expressly and exhaustively by this Clause 12. Other and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by the Supplier.

### **13. Risk**

- 13.1 The Purchaser shall bear the risk of accidental damage to and loss in connection of the Work for all the machines and the materials, spare parts and equipment made available by it. The Supplier may claim payment of the agreed price even when the Work cannot or only partially be carried out due to damage to or loss of the Work.

### **14. Testing and Acceptance of Installed Machinery and/or Equipment**

- 14.1 The installed machinery and/or equipment shall be ready for acceptance when it is able to render useful service. The Work shall also be deemed ready for acceptance if unimportant parts are missing and readjustments still have to be made or if the installed machinery and/or equipment cannot be taken into service for reasons beyond the Supplier's control or if additional work is still to be executed but cannot be commissioned for reasons beyond the control of the Supplier.
- 14.2 As soon as the Purchaser is notified that the installed machinery and/or equipment is ready for acceptance, it shall be inspected without delay in the presence of the person in charge of installation, and any deficiencies shall be immediately reported in writing to the Supplier. If the Purchaser fails to do this, the installed machinery and/or equipment shall be deemed to have been accepted.
- 14.3 Acceptance shall also be deemed as having taken place (i) if the Purchaser or his representative does not participate in a possible acceptance test; or (ii) if the acceptance test cannot be carried out on the date arranged for reasons for which the Supplier is not responsible; or (iii) if the Purchaser refuses to sign the acceptance report; or (iv) as soon as Purchaser puts the Work into operation or impliedly accepts the Delivery in any other way; or (v) if the Purchaser refuses acceptance without being entitled to do so.
- 14.4 If the acceptance tests prove that the machinery and/or equipment does not fulfil the terms of the contract, the Purchaser shall give the Supplier an immediate opportunity of correcting any deficiency as soon as possible.
- 14.5 The Purchaser shall not be entitled to claim indemnity for deficiencies in the Work, in particular damages, rescind the contract, have the price reduced or cancellation of the contract.

### **15. Warranty**

- 15.1 If the Supplier carries out the installation of material delivered by him, he warrants the skilled and careful execution of the work entrusted to him. The terms of the supply contract shall apply to the duration and content of the warranty.
- 15.2 The Supplier shall also be responsible for the careful execution of any other work entrusted to him, but such work shall not be covered by warranty.
- 15.3 The Purchaser shall not be entitled to claim indemnity, have the price reduced or to cancel the contract on account of poor workmanship.

### **16. Limitation of Liability**

- 16.1 The Supplier shall carry out installation in accordance with the terms of the contract and shall fulfil his warranty liabilities. He shall not be liable to the Purchaser for any damage, especially subsequent damage.
- 16.2 This limitation of liability shall not apply in the event of gross negligence or wilful misconduct by the Supplier.

### **17. Termination of the Contract by the Supplier**

- 17.1 The contract shall be amended as appropriate if unforeseen events substantially change the economic effect of the Work or substantially affect the fulfilment of the contract by the Supplier, or if the provision of the Work subsequently becomes entirely or partially impossible. Insofar as such amendment is not economically justifiable, the Supplier may terminate the contract or the individual provisions affected thereby. Should the contract be terminated the Supplier is entitled to payment for the part of the Work that has been carried out. Claims for damages by the Purchaser are excluded.

**18. Data Protection and Privacy Policy**

- 18.1 The Supplier is entitled to collect and process personal data of the Purchaser while performing the contract. The Supplier's [Data Protection and Privacy Policy Statement](#) shall apply for this purpose.

**19. Jurisdiction and Applicable Law**

- 19.1 The place of jurisdiction for both Purchaser and Supplier is Uster, Switzerland (the registered address of the Supplier in Switzerland). The Supplier is entitled to pursue legal action against the Purchaser at the Purchaser's domicile.

The contract between the Supplier and the Purchaser and these General Conditions shall be governed by the Swiss substantive law excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).

**20. Translation**

- 20.1 The English version of these General Conditions is binding. Other versions in other languages are provided for convenience only.