

General Conditions of Supply and Warranty

1. General

- 1.1 The present General Conditions of Supply and Warranty (hereinafter the **General Conditions**) apply to deliveries and services (hereinafter the **Delivery**) from Uster Technologies AG, Uster or its subsidiaries (hereinafter the **Supplier**).
- 1.2 Amending or additional arrangements or conditions, including in particular the general purchase conditions of the Purchaser (hereinafter the **Purchaser**), 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. Scope, Content and Performance of Delivery

- 3.1 The content, scope and performance of Delivery shall be determined by the Confirmation of Order.
- 3.2 The Supplier reserves the right to make technical changes for manufacturing purposes.
- 3.3 The cost of all services not included in the Confirmation of Order shall be borne additionally by the Purchaser.

4. Technical Documents

- 4.1 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.
- 4.2 All information about products, technical drawings, know-how, prices and price formation etc. remain the exclusive intellectual property and copyright of the Supplier and may not be exploited, copied or reproduced without his written consent or communicated to third parties. In particular this information may not be used by the Purchaser or third persons to manufacture the Delivery in whole or in part. They may be used for operation and maintenance, provided they are marked accordingly by the Supplier.
- 4.3 Technical documents submitted with offers that do not result in an order being placed, shall be returned at once, on the Supplier's demand.
- 4.4 The Purchaser warrants to be in possession of the intellectual property rights of any technical documents provided to the Supplier.

5. Regulations in Force at Destination

- 5.1 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 production of the Delivery, the transportation to the final destination, 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 Delivery.

6. Price

- 6.1 All prices are ex works ("EXW" address of the Supplier on the first page of these General Conditions according to Incoterms, newest version).
- Any and all additional charges, such as freight, insurances, fees for export, transit, import and other permits and certificates, shall additionally be borne by the Purchaser.
- 6.2 Likewise, the Purchaser shall be liable for all kinds of taxes, fees, customs duties and like charges that are raised in connection with the contract.
- 6.3 Should any additional costs be included in the price by way of exception, the price shall apply subject to the provision that no changes in the rates for such additional costs have occurred during the period between the date of the order and Delivery.
- 6.4 The Supplier reserves the right to adjust the price in the event that (i) the delivery period is extended for any of the reasons set out in Clause 9.1; or (ii) if the nature or the Scope of the Delivery has changed; or (iii) if the documents provided by the Purchaser are not in conformity with the actual circumstances or are incomplete; or (iv) if laws, regulations or generally accepted rules of interpretation are changed after the submittal of the tender; or (v) if the period between conclusion of the contract and Delivery is more than 12 months. Furthermore, such a price adjustment may be made if the Purchaser does not accept delivery of the goods within the fixed delivery period.

7. Terms of Payment

- 7.1 Payments shall be made to the Supplier at his registered address by the Purchaser, without any deductions for cash discount, expenses, taxes, dues, charges or customs duties of any kind, at the terms and conditions stipulated in the Confirmation of Order. If the Confirmation of Order does not contain any specifications concerning the payment date, the payment by the Purchaser has to be made at the readiness for dispatch ex works at the latest. Advance payments which have been made do not carry interest. In the case of partial deliveries, payment must be effected in proportion to the value of the individual deliveries.
- 7.2 The dates of payment shall also be observed even if transport, delivery, installation, commissioning or acceptance of the machinery/equipment is delayed or made impossible due to reasons for which the Supplier is not responsible. The Purchaser shall not withhold or reduce payments on account of complaints or claims not accepted by the Supplier. Payment shall also be made if parts of the machinery/equipment are missing or if post-delivery work has to be carried out on the machinery/equipment, insofar as normal use of the machinery/equipment is not prevented.
- 7.3 If the Purchaser does not observe the agreed dates of payment, he is liable for interest, without a reminder being required, with effect from the date on which payment was due, at an annual rate depending on the interest rate for short-term credits prevailing in the country of destination, but not less than 5% per annum. Payment of such interest shall not release the Purchaser from paying the sums due under the terms of the contract. Moreover, all outstanding receivables of the Supplier shall become due for payment immediately.
- 7.4 If the Purchaser, for any reason, is in arrears with any payment, including any advance payment or agreed payment security, or if the Supplier 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 the contract, then the Supplier, without prejudice to any other claims, may suspend the further performance of the contract and retain any of the Delivery ready for dispatch until new terms of payment and delivery have been agreed and until the Supplier has received sufficient security. If such agreement cannot be reached within a reasonable time or if the Supplier does not receive sufficient security, the Supplier may terminate the contract and claim damages, including compensation for loss of profit.
- 7.5 After a period of 60 days since the payment was due the Supplier may (i) withdraw from the contract or (ii) put the Delivery into storage at cost and risk of the Purchaser. Should the Supplier withdraw from the contract the Purchaser shall still be liable for claims for damages of the Supplier. Should the Supplier store the Delivery, he is entitled to request the Purchaser to pay the higher amount of either (x) the actual costs for storage and insurance or (y) the monthly payment of 1% of the net commodity price.

8. Reservation of Title

- 8.1 The Supplier shall retain exclusive ownership of the Delivery until full payment has been received or, in the case of the presentation of bills of exchange, until these have been paid. The Purchaser shall participate in any measures necessary for the protection of the Supplier's property. The Supplier can order the retention of title to be entered in the competent public registers. The Purchaser is obligated to arrange for this or respectively support the Supplier in this matter on request. The Purchaser shall carry all costs in connection with such measures. The Purchaser shall be fully liable to the Supplier should it fail to arrange for such an entry or to support the Supplier in this matter.

9. Delivery Period

- 9.1 The delivery period arranged in the Confirmation of Order shall commence as soon as the following conditions are cumulatively fulfilled: (i) all official formalities such as import and payment permits are available to the Supplier, (ii) the payments due with the order have been made, and any agreed security given, and (iii) the main technical points for the production and delivery are defined. The delivery date shall be deemed duly observed if the goods are ready for dispatch in the works by such delivery period.

The compliance with the delivery period is conditional upon the Purchaser fulfilling all his contractual duties, especially the duty of payment and the duty to cooperate, without the Supplier incurring any costs.

The delivery period may be reasonably extended:

- a) if the information required by the Supplier for execution of the order is not received in time or is incomplete, or if subsequent changes are made by the Purchaser;
 - b) if impediments arise beyond the control of the Supplier, regardless of whether they occur at the premises of the Supplier or those of a third party, such as epidemics, mobilization, war, revolution, serious breakdowns in the factory, accidents, labour conflicts, late or deficient delivery of raw or other materials or goods by sub-contractors, defects of important work pieces, official actions, natural catastrophes and delays in the transfer of funds used for payment;
 - c) if the Purchaser is behind schedule with the work that he should execute, or with the fulfilment of his contractual obligations, especially if he fails to comply with the terms of payment.
- 9.2 The Purchaser shall not be entitled to claim indemnity, cancel the contract, rescind the contract or have the sale price reduced if delivery is delayed.

10. Inspection and Acceptance of Delivery

- 10.1 Insofar as it is normal practice, the Supplier shall inspect the Supply before dispatch. If the Purchaser stipulates additional tests, they shall be agreed in writing and paid for by the Purchaser.
- 10.2 The Purchaser shall inspect the Delivery within 15 days and shall immediately notify the Supplier in writing about any defects. If the Purchaser fails to do so, the Delivery shall be deemed to be accepted.
- 10.3 To the extent that the Supplier is responsible for the notified defects, the Purchaser shall give the Supplier the opportunity of correcting any deficiency. The Supplier may remedy the defect by a replacement delivery.
- 10.4 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 Delivery to use, places it in his warehouse or impliedly accepts the Delivery in any other way, or (v) if the Purchaser refuses acceptance without being entitled to do so.
- 10.5 The Purchaser shall not be entitled to claim indemnity for deficiencies in the Delivery, in particular damages, rescind the contract, have the sale price reduced or cancellation of the contract.

11. Passing of Benefits and Risk

- 11.1 The right to use the goods and the risk involved are transferred to the Purchaser not later than the date of their leaving the Supplier's works ("EXW" according to Incoterms, newest version).
- 11.2 If dispatch is delayed or prevented by circumstances beyond the Supplier's control, the right to use the goods and the risk involved are transferred to the Purchaser at the time originally intended for the Delivery to leave the works. From this time on, the Delivery shall be stored and insured at the Purchaser's cost and risk.

12. Software and Data

- 12.1 Software and data (particularly USTER® *STATISTICS*) are protected by intellectual property rights. As far as the Delivery is equipped with software and data the Supplier grants the Purchaser a non-exclusive and non-transferable license for the use as intended of this software and data. The use as intended is defined in accordance with the intended use of the Delivery. The Purchaser may neither copy (except for backup purposes), nor modify (except for troubleshooting purposes), nor use the software and data together with other equipment not contained in the Delivery (or the original replacement parts). The Purchaser may not disassemble, decompile, decipher or reverse engineer the software and data without the prior written consent of the Supplier. In the case of a resale of the Delivery the Purchaser commits to contractually transferring the obligations from this license to the next Purchaser of this Delivery. If the Purchaser breaches one of these conditions, the Supplier is entitled to immediately revoke the license to use the software.
- 12.2 The software, the data and, if available, the associated documentation is delivered "as is" and comes without any explicit or implied obligation or warranty. Within the applicable legal permissibility the Supplier disclaims all liability, especially concerning the absence of errors or the non-violation of rights of third parties.
- 12.3 The Purchaser understands that for security and functionality purposes, the software must be regularly maintained and updated. Before any maintenance or update, the Purchaser is asked to either accept or refuse such maintenance or update. The acceptance or refusal is carried out via the user interface of the software and as described in the corresponding product documentation. By accepting such maintenance and update, the Purchaser grants the Supplier the right to update and maintain the software in accordance with these General Conditions and/or, if applicable, the individual terms and conditions contained in each software update. The Purchaser is aware that such maintenance and update may trigger negative consequences, such as the temporary suspension of any services in connection with the software or substantial changes in the use of the software. Should the Purchaser refuse such maintenance or update, the Purchaser assumes any risks in connection with such refusal and the Supplier may terminate any services in connection with the software.
- 12.4 The Purchaser understands that the Supplier must from time to time remotely access the software and the data it contains, in particular, for statistical, product-improvement (telemetry) or customer-support purposes. The right to remotely access the software for customer-support purposes is granted on a case-by-case basis via the user interface of the software and as described in the corresponding product documentation. The right to remotely access the software for statistical and product improvement (telemetry) purposes is hereby granted and activated through the installation of the software. After the grant and activation of the right, the Supplier may remotely access the software and use any data contained in the software for his own purposes in accordance with these General Conditions. The Purchaser may block and de-activate the Supplier's access rights at any time. The Purchaser remains, however, solely responsible for the consequences in the event of a blockage of the Supplier's remote access. In particular, the Purchaser will bear any additional service or maintenance costs arising from the blockage.
- 12.5 The Purchaser will reasonably assist the Supplier in order to carry out his right to maintain, update and remotely access the software and the data it contains and will provide reasonable technical support, if necessary. The Purchaser has, however, no right to request the Supplier to carry out such maintenance, update or remote access, and the Supplier has no obligation whatsoever to do so.

13. Packing

- 13.1 Packing shall be invoiced separately by the Supplier and may not be returned. However, if the packing is expressly designated as the Supplier's property, it shall be returned by the Purchaser, carriage paid, to the place of dispatch.
- 13.2 The Delivery is packed by the Supplier for the place of transport and destination determined in the Confirmation of Order. Should the Purchaser subsequently want to change the place of destination or the mode of transport, then the Purchaser must bear the additional costs incurred for repacking and/or different packaging.

14. Transport and Insurance

- 14.1 The transport takes place for account of and at risk of the Purchaser. Complaints in respect of transport, in particular in the case of damage, shall be submitted immediately by the Purchaser to the last carrier on receipt of the goods and the Supplier must be informed about this.
- 14.2 Special requirements regarding shipping, transport or insurance shall be communicated to the Supplier at the latest when placing the order.
- 14.3 Insurance of the Delivery against risks of any kind is the responsibility of the Purchaser.

15. Installation and Commissioning

- 15.1 If the Supplier carries out the installation or the supervision of the installation of the Delivery, the [General Conditions for Installation and Commissioning](#) of the Supplier shall be applicable.

16. Warranty**16.1 Warranty period**

The warranty period for all Deliveries (except spare parts and repaired or refurbished parts) is 12 months. The warranty period commences when the Delivery is dispatched from the Supplier's works or, if the Supplier also undertakes the installation and/or commissioning, when these are completed; however, the warranty period shall end not later than 18 months after delivery ex works.

The warranty period for new spare parts is 6 months after the date of invoice and for repaired or refurbished parts 3 months after the date of invoice.

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

16.2 Liability for Defects in Material, Design, Workmanship and for Warranted Qualities

Upon written request by the Purchaser, the Supplier shall remedy within a reasonable period any parts of the Delivery which, before the expiry of the warranty period, are proved (i) to be defective or unusable due to defective material, faulty design or poor workmanship, or (ii) to not comply with warranted qualities, provided that the Purchaser has notified the Supplier in writing of the defects during the warranty period and immediately after discovery. The Purchaser shall give the Supplier sufficient opportunity to carry out such remedial works. Replaced parts shall become the property of the Supplier.

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

16.3 Exclusion from the Liability for Defects

The Purchaser shall not have any further remedy for deficiencies in the goods delivered, in particular any indemnity for damages, any right to rescind the contract, reduce the sales price or cancel the contract.

Excluded from the warranty are defects and losses resulting from improper storage, natural wear, improper maintenance, failure to observe the operating instructions, excessive loading, the use of unsuitable media, the influence of chemical or electrolytic action, unsatisfactory building or installation and commissioning work not undertaken by the Supplier, or other reasons beyond the control of the Supplier.

The Supplier's liability shall cease if the Purchaser or a third party undertakes changes or repairs to the goods without the Supplier's written consent, or if such goods are resold without the consent from the Supplier.

16.4 Subcontractors

For materials or goods supplied by third parties the Supplier accepts liability only to the extent of the respective sub-contractor's warranties provided by such third parties.

16.5 Exclusivity of Warranty Claims

Any warranty claims of the Purchaser are expressly and exhaustively regulated by this Clause 16. Other claims and further claims are excluded. This limitation of liability does not apply in the event of gross negligence or wilful misconduct by the Supplier.

17. Limitation of Liability

- 17.1 The Supplier produces equipment that proposes setting parameters for machines. The Purchaser takes note of and agrees that (i) such suggestions cannot always be suitable for the machines, raw materials, products and the like of the Purchaser and that (ii) for this reason entering non suitable setting parameters can cause damages to machines, raw materials, products and the like. The Supplier declines any liability for direct or indirect damages that occur through using unsuitable setting parameters even if these setting parameters are suggested by the Supplier's appliances.
- 17.2 All claims by the Purchaser for damages not affecting the Delivery 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 total liability of the Supplier arising from or in connection with the contract or breach thereof is limited to the sums paid by the Purchaser of the Delivery provided.
- 17.3 Claims by the Purchaser arising out of or in connection with the contract or the breach of the contract are expressly and exhaustively regulated by these General Conditions. Other and further claims are excluded.
- 17.4 This limitation of liability shall not apply in the event of gross negligence or wilful misconduct by the Supplier.

18. Termination of the Contract by the Supplier

- 18.1 The contract shall be amended as appropriate if unforeseen events substantially change the economic effect or the content of the Delivery or substantially affect the fulfilment of the contract by the Supplier, or if the provision of the Delivery 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 those parts of the Delivery which have already been produced. Claims for damages by the Purchaser are excluded.

19. Export Control

- 19.1 The Purchaser agrees to comply with provisions and regulations regarding export control and acknowledges that in some countries the Delivery may not be sold without the necessary import or export permits.
- 19.2 The Purchaser may neither directly nor indirectly use the Delivery in connection with the production, design, use or storage of chemical, biological or nuclear weapons or carrier systems.

20. Data Protection and Privacy Policy

- 20.1 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.

21. Jurisdiction and Applicable Law

- 21.1 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).

22. Translation

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