

Addtech, General Terms and Conditions – Machinery

- 1. Purview**
 - 1.1. These General Terms and Conditions shall govern the delivery of Machinery to the Customer by the Supplier. Any written agreement between the parties regarding terms and conditions that differ from these terms and conditions shall apply in such regard between the parties. The Supplier is obligated to perform entry into operation only if the parties explicitly have agreed thereto.
 - 1.2. In these General Terms and Conditions, "Machinery" means machinery identified in detail and specified in each individual Agreement.
 - 1.3. In these General Terms and Conditions, "(the) Agreement" means every individual agreement with respect to delivery of Machinery. These General Terms and Conditions constitute an integral part of each individual Agreement.
- 2. Drawings, descriptions and other documents**
 - 2.1. Information regarding the Machinery is binding where the Agreement expressly makes reference thereto. The information provided in catalogues, prospectuses, etc. is approximate. Technical data is provided subject to a proviso with respect to design modifications.
 - 2.2. Sole title to all intellectual property rights related to the Machinery shall remain vested in the Supplier. Drawings, descriptions, software and other technical information provided by one party to the other may not be used for purposes other than those for which the information is provided. Nor may the material be copied or in any other manner reproduced without the consent of the party providing the material.
 - 2.3. Not later than the date of delivery, the Supplier shall provide the Customer, free of charge, with a copy or larger agreed number of drawings and/or other technical documents required to enable the Customer to attend to the installation, entry into operation, operation, and maintenance (which term includes regular repairs) of all parts of the Machinery. Other documents, such as measurement records and certificates, shall be provided subject to agreement in exchange for payment. The Supplier shall not be obligated to provide drawings and documents regarding the manufacture of the Machinery or spare parts.
- 3. Delivery test**
 - 3.1. Agreed delivery tests shall be carried out at the Customer at the Supplier's cost, however not insofar as such relates to the Customer's participation.
 - 3.2. Where the parties have not agreed in detail regarding the technical requirements and the manner in which the delivery test shall be carried out, the delivery test shall be carried out in accordance with normal practice within the relevant industry in the country of the Supplier. The Supplier shall prepare a delivery test report which shall be received by the Customer. In the event the Machinery does not comply with the agreement the Supplier shall, as soon as possible, ensure that necessary corrections are carried out insofar as the deviation is not immaterial for use of the Machinery. Thereafter, the Customer shall be entitled to a new delivery test
 - 3.3. The Customer shall give notice whether the delivery test has been approved within five days of performance of the test. A delivery test shall be approved in the delivery report. The test shall be deemed approved upon the occurrence of any of the following circumstances:
 - a) the Customer approves the delivery test;
 - b) the Customer should reasonably have approved the test;
 - c) five days have elapsed since performance of the test and the Customer has not raised any justified objections to the test; or
 - d) the Machinery may be used as intended.
- 3.4. The Customer shall at all times be deemed to have approved the delivery test where a deviation from the agreed condition exists but the deviation is irrelevant to the intended use.
- 3.5. The Customer's payment obligations shall not be affected by his approval or otherwise of the delivery test.
- 4. Price and payment**
 - 4.1. Sales shall take place at the prices applied by the Supplier at the time of execution of the Agreement. All prices are exclusive of value added tax and other public charges. Where an exchange rate changes by more than 2% after the Customer has received the Supplier's bid or equivalent, the Supplier shall be entitled to adjust the price. The aforesaid shall apply irrespective of whether a particular price has been specifically agreed upon between the parties.
 - 4.2. Payment shall be made against invoice within 30 days of the invoice date. Under no circumstances, such as in the event of delay or defect, shall the Customer be entitled to withhold payment. In the event of delay in payment, penalty interest shall accrue commencing on the due date. Penalty interest shall be charged at the rate of interest in force from time to time in accordance with the main refinancing facility of the European Central Bank plus eight percentage points.
 - 4.3. Where, after the purchase, the Customer's actions or economic circumstances are such that it may reasonably be assumed that he will fail to make payment in full, the Supplier shall be entitled to suspend performance and withhold delivery. Where the Supplier has already shipped the Machinery and circumstances as referred to in the preceding sentence exist with respect to the Customer, the Supplier shall be entitled to prevent the Machinery from being delivered to the Customer. The Supplier shall immediately notify the Customer in writing regarding a decision to suspend performance.
 - 4.4. The Supplier shall be entitled to terminate the Agreement in writing in the event all or any part of the purchase price has not been paid within three months of the due date. In such case, the Supplier shall be entitled to compensation for the damage incurred. However, the compensation shall not exceed the purchase price for the Machinery.
- 5. Delivery and delivery time**
 - 5.1. Delivery clauses shall be interpreted in accordance with INCOTERMS as worded at the time of execution of this Agreement. Where no delivery terms have been agreed upon, delivery shall be Ex Works. In the event the Customer attends to transport or actually transports the Machinery, the Customer shall be liable for damage

- to the Machinery incurred in connection with such transport.
- 5.2. Where delivery is to take place within a specific period of time, such time shall be calculated commencing on the date of execution of the Agreement. However, calculation of the period shall not commence before the Supplier has received either payment, where such is to be paid prior to the commencement of manufacture, necessary notices regarding licences and permits, or necessary technical data and instructions.
- 5.3. Where delivery is delayed due to any of the circumstances constituting *force majeure* in accordance with 11.1 below or due to any act or omission by the Customer, the delivery period shall be extended by such a period as is reasonable in light of the circumstances. The delivery period shall also be extended where the cause of the delay arises after the expiry of the originally agreed delivery period.
- 5.4. The Supplier shall immediately notify the Customer with respect to actual or probable delays in delivery. Where possible, the Supplier shall also state the time at which it is estimated delivery will take place.
- 5.5. Where delay occurs due to circumstances that do not constitute *force majeure* in accordance with 11.1 below nor due to any act or omission by the Customer, the Customer shall be entitled to liquidated damages. However, delivery shall at all times be deemed to have occurred where the Machinery may be brought into use for the intended purpose irrespective of whether any defect may be deemed to exist. The Customer shall be entitled to liquidated damages commencing on the agreed delivery date provided he gives the Supplier written notice of the delay not later than 15 days from the agreed delivery date. Where the Customer provides notice at a later date, liquidated damages for delay shall be payable commencing on the date of notification. Liquidated damages shall be payable for each entire seven-day period of delay in the amount of 0.5% of the price for the delayed Machinery and for Machinery or parts of the Machinery to be delivered pursuant to the agreement and which, as a consequence of the delay, cannot be placed into use (calculation basis). Where the calculation basis exceeds EUR 100.000, liquidated damages shall be payable on the excess amount at a rate of 0.25% per week. Liquidated damages may not exceed 7.5% of the calculation basis.
- 5.6. Where entitled to maximum liquidated damages, the Customer may demand in writing delivery by a reasonable final deadline, which may not be less than 30 days. Where the Supplier fails to deliver by the deadline, the Customer may terminate the Agreement in writing with respect to the delayed Machinery and the Machinery parts which, as a consequence of the delay, cannot be placed into intended use.
- 5.7. The Customer shall immediately notify the Supplier in the event he is unable to accept or collect the Machinery on the delivery date. Where possible, the Customer shall also state the time at which it is estimated such might occur. The Customer shall bear the risk for the Machinery where he is unable to accept or collect the same on the agreed date. A failure as referred to above or otherwise to assist in the purchase shall not affect the Customer's payment obligations.
- 5.8. The Supplier shall be entitled to demand in writing that the Customer accept or collect the Machinery by a reasonable deadline which may not be less than seven days, where the Customer has failed to do so on the agreed date. Where the Customer fails to accept or collect the Machinery by the deadline, the Supplier shall be entitled to terminate the Agreement in writing. In such case, the Supplier shall be entitled to compensation corresponding to the purchase price less any amount saved by Supplier as a consequence of non-performance of the Agreement. The Supplier shall be obligated to attempt to sell the Machinery to a third party.
- 5.9. Where placement into operation is rendered more difficult or delayed as a consequence of the Customer's failure to fulfil his obligations, the Supplier shall be entitled to compensation for additional expenses, extra work, and waiting time. Unless otherwise agreed, such compensation shall be charged in accordance with the rules applied by the Supplier at the time in question.
- 6. Liability for defects**
- 6.1. Where the Machinery deviates from the specification agreed upon between the parties, it shall be deemed defective unless the deviation is immaterial for the intended use. The Supplier shall be liable for defects due to deficiencies in design, materials, or manufacture, however not for defects attributable to materials or designs provided by the Customer. Where the Supplier has produced a prototype or manufactured Machinery in accordance with such a prototype at the request of the Customer, the Supplier shall bear no liability for defects in the prototype or first series products manufactured in accordance therewith.
- 6.2. The Supplier shall only be liable for defects that arise under the work conditions assumed in the agreement and in conjunction with correct use. The Supplier shall not be liable for defects resulting from erroneous, ambiguous, or incomplete information provided by the Customer. Liability shall not cover defects due to circumstances arising after the risk for the Machinery has passed to the Customer such as, however not limited to, defects due to normal wear and tear or deterioration. The Supplier's liability shall relate solely to defects which become apparent during a period of one year calculated from the day on which the risk for the Machinery passed to the Customer, however a maximum of 1,760 hours of operational time (warranty period). However, the warranty period shall not apply to consumable parts the normal durability of which is less than one year.
- 6.3. Where the parties have agreed that placement into operation shall be performed by the Supplier after the Customer has installed the Machinery, the Supplier shall notify the Customer in respect of defects in the installation that the Supplier discovered or should have discovered in connection with placement into operation. Notice must be received by the Customer within a reasonable time after the defect was or should have been discovered. In the event the Supplier fails to notify the Customer in the aforesaid manner, the Supplier shall be obligated to rectify the defect in the installation, subject to the limitations set forth in this Agreement. The Supplier shall be liable for defects arising in conjunction with placement into operation where the Supplier has been negligent.
- 6.4. Unless otherwise prescribed in this Agreement, the Supplier shall rectify defects within reasonable time following a notice of complaint in accordance with 6.10 by, at its own cost and election, repairing or replacing

- the defective Machinery or part thereof. The Supplier's obligation to rectify does not include an undertaking to defray the cost of replacement agents or replacement liquids e.g. cooling agents. Rectification shall take place either at the Supplier or at the Customer, depending on which is deemed most appropriate by the Supplier. Replacement Machinery or replacement parts provided by the Supplier to the Customer shall be subject to the warranty period set forth in 6.2. Where the Supplier demands title to replace parts or replace Machinery, title thereto shall vest in the Supplier. Any destruction costs shall be borne by the Customer
- 6.5. The Supplier shall be deemed to have fulfilled its obligation to rectify defects upon delivery to the Customer of a duly repaired or replaced part or parts, unless special professional expertise is required for dismantling and installation of the part(s). Where any dismantling and installation results in interference other than with the Machinery, the Customer shall be liable for the work and costs occasioned thereby.
- 6.6. The Customer shall bear the cost and the risk of shipment of defective parts or Machinery to the Supplier, and the Supplier shall bear the cost and the risk of shipment of replacement or repaired parts of Machinery to the place of delivery. Where the Supplier carries out rectification at the Customer, the latter shall pay travel costs and *per diem* expenses with respect to travel and work times for the Supplier's personnel. The Customer shall bear the additional costs incurred as a consequence of the Machinery being located other than at the place of delivery.
- 6.7. In the event the Supplier fails to fulfil its obligations within a reasonable time, the Customer shall be entitled, through written notice, to provide the Supplier with a final reasonable deadline therefor. Where performance does not take place by the deadline, the Customer may:
- a) cause necessary repairs to be carried out and/or provide new parts at the Supplier's risk and cost, provided that in so doing the Customer exercises due care. The Supplier's obligation to compensate the Customer for such costs may not, however, exceed 10% of the agreed price for the Machinery to which the repair relates;
 - b) demand a price reduction not exceeding 10% of the agreed price for the defective Machinery; or
 - c) where the defect is material, the Customer may terminate the Agreement in writing with respect to the defective Machinery.
- 6.8. The Supplier shall be entitled to refund the purchase price in lieu of rectification or redelivery. The Customer shall thereupon return the Machinery in an essentially unchanged condition. Where such is not possible, when calculating the purchase price the Supplier shall be credited with an amount equal to the value of that which is retained.
- 6.9. The Customer shall inspect the Machinery immediately upon delivery in accordance with generally accepted business practices.
- 6.10. The Customer may not invoke defects where the Customer fails to provide the Supplier with written notice of a defect within 15 days of the date on which the defect was or should have been discovered, however not later than one year from the agreed delivery date or such later date on which the Supplier fulfilled his obligations in accordance with the agreed delivery terms. Where the Customer submits a notice of complaint in respect of a defect and it transpires that the Supplier is not liable for the defect, the Supplier shall be entitled to compensation for costs incurred as a consequence of the notice of complaint.
- 7. Liability for personal injury and property damage**
- 7.1. The Customer shall indemnify the Supplier to the extent the Supplier is held liable to any third party for such damage or losses in respect of which the Supplier is not liable to the Customer in accordance with 7.2, 7.3, and 8.2
- 7.2. The Supplier shall not be liable for damage caused by the Machinery to real or personal property which occurs whilst the Machinery is in the Customer's possession, or to goods manufactured by the Customer or goods in which the Customer's goods are incorporated, or for damage to real or personal property caused by such goods as a consequence of the Machinery.
- 7.3. The Supplier's liability for injury or damage caused by the Machinery to persons or real or personal property belonging to the Customer or any third party shall under no circumstances exceed EUR 500.000 per occasion of loss. The Customer shall indemnify the Supplier for all liability exceeding the aforementioned amount.
- 7.4. Where a third party brings a claim against the Supplier or the Customer for compensation for damage or loss as referred to in 7.2 or 7.3, the other party shall be immediately notified thereof.
- 7.5. The Supplier and the Customer shall be obligated to submit to the jurisdiction of the court or arbitration tribunal adjudicating a claim for damages against any of them where the claim is based on damage or loss allegedly caused by the delivered Machinery. The relationship between the Customer and the Supplier *inter se* shall, however, at all times be determined in accordance with the provisions of this Agreement.
- 8. Liability in damages and limitation of liability**
- 8.1. Where the Customer is entitled to terminate the Agreement due to delay or defect, the Customer shall be entitled to compensation for damage incurred as a consequence of the delay or defect subject to the limitations set forth in 8.2 and 8.3 below. In addition thereto, the Customer shall be entitled to damages subject to the limitations set forth in 8.2 and 8.3 below where, in lieu of rectification of the defect, the Supplier elects to refund the purchase price in accordance with 6.8. Where the Supplier has developed the Machinery at its own cost in collaboration with the Customer pursuant to an agreement between the parties, under no circumstances shall the Supplier be liable for delays in delivery or defects in the Machinery. The aforesaid shall apply to Machinery that the Supplier has transferred or lent to the Customer free of charge.
- 8.2. Under no circumstances shall the Supplier be liable for loss of production, loss of profits, or other economic consequential loss.
- 8.3. The Customer's right to damages in the event of delay or defect shall at all times be limited to an amount not exceeding 10% of the purchase price for the Machinery.
- 8.4. Other than the sanctions provided for in this Agreement, each and every claim by the Customer as a consequence of defect or delay is excluded. However,

- this limitation on the Supplier's liability shall not apply in the event of gross negligence of the Supplier.
- 8.5. The Supplier's liability shall be limited in accordance with the above irrespective of whether or not this Agreement is terminated.
- 9. Retention of title**
- 9.1. The Supplier shall retain title in the Machinery until such time as payment therefor has been made in full.
- 10. Confidentiality**
- 10.1. A party may not disclose documents to a third party without the other party's consent, nor in any other manner disclose information of a confidential nature regarding the Agreement or regarding the other party, other than to the extent required for the performance of the Agreement. A party shall ensure that confidentiality is observed by means of confidentiality undertakings with personnel or in any other appropriate manner. The confidentiality obligation shall not apply to information that a party can demonstrate has duly come to the attention of such party other than as a consequence of the Agreement, or information, which is in the public domain. The duty of confidentiality shall survive the termination of this Agreement.
- 11. Force majeure**
- 11.1. Circumstances that obstruct or significantly aggravate the performance of any of the parties' undertakings pursuant to this Agreement and which are beyond the control of a party including, however not limited to, lightning, fire, earthquakes, flooding, war or mobilisation or large-scale military conscription, riot or revolt, requisition, seizure, currency restrictions, decisions of governmental authorities, restrictions on fuel, general shortages of transport, goods, or power or strikes, blockades, lockouts or other labour conflicts, irrespective of whether the contracting parties are parties to the conflict, as well as defects or delays in delivery by subcontractors due to the aforementioned circumstances, shall constitute *force majeure* and entitle a party to an extension of time and release from liquidated damages and other sanctions. The other party must be given written notice of such *force majeure* immediately upon a party becoming aware, or where it should have been aware, of the existence of the *force majeure*.
- 11.2. Where the performance of the Agreement is prevented for a period in excess of six months due to circumstances as referred to in 11.1, either party shall be entitled to terminate this Agreement without any liability to compensate for damages or otherwise.
- 12. Export and import licences, certification, etc.**
- 12.1. The Supplier's obligation to deliver the Machinery is conditional on the Supplier receiving and maintaining necessary export, import and re-export licences. Where such licences are not held, or where granted licences are revoked other than as a consequence of the Supplier's negligence, the Supplier shall be discharged from the obligation to deliver the Machinery and, in such case, the Customer shall not be entitled to raise any claims for liability against the Supplier.
- 12.2. The Customer undertakes, to the extent necessary, to assist in the acquisition of export or import licences for the purchased Machinery and, in the event of any re-export of the Machinery or other products in which the purchased Machinery is included, in whole or in part, to obtain the necessary licences and comply with applicable provisions.
- 12.3. The costs for any certification of the Machinery shall be borne by the Customer.
- 13. Applicable law and disputes**
- 13.1. This Agreement shall be governed by Swedish law with the exception of its choice of law provisions. The language to be used in arbitral proceedings shall be that chosen by the Supplier.
- 13.2. In the event of default in payment, the Supplier shall be entitled to collect payment through an application for an expedited payment procedure. Where such claim relates to an amount of less than fifteen times the statutory base amount in accordance with the National Insurance Act (1962:381), the dispute may be adjudicated by the Stockholm District Court (Stockholms tingsrätt). Other disputes relating to this Agreement shall be conclusively determined by arbitration in accordance with the applicable Arbitration Act. The arbitration proceedings shall be held in Stockholm.
- 14. Limitations**
- 14.1. Claims against the Supplier shall be forfeited in the event the litigation or arbitration procedure in accordance with 13.2 is not commenced within two years from the date of delivery of the Machinery