

# GENERAL TERMS AND CONDITIONS OF SUPPLY

## PREAMBLE

1. All Cemp Srl supply contracts are drawn up according to the following General Terms and Conditions.

2. Supplies shall only include the items specifically mentioned in Cemp Srl's order confirmation and shall be ruled by these General Terms and Conditions, unless otherwise provided for in an explicit written agreement.

As soon as it receives Cemp Srl's order confirmation, the Buyer shall check all the data therein contained; these shall be understood to have been accepted by the Buyer unless immediately objected by same in writing.

The Buyer shall also undersign these General Terms and Conditions of Supply and specifically approve the clauses referred to below.

Any materials and services that are not explicitly described in the order confirmation shall be invoiced separately.

Any amendments or notices made during the course of the supply shall not represent a contract novation.

3. It is understood that receipt by the Buyer of Products (wherefore the Buyer delegates here and now any of its employees), or of payment or even only of a down payment for the supply, shall amount to its acceptance of these General Terms and Conditions of Supply.

4. The articles/articles to be supplied pursuant to these General Terms and Conditions shall be hereinafter referred to as Product(s).

Whenever the wording "in writing" is used in these General Terms and Conditions, it shall mean a "document undersigned by the parties", or else a "letter, fax, e-mail" or any "other" documentary "means" agreed on by the parties.

## PRICES

5. Prices shall be understood to comply with the payment methods explicitly described in the order confirmation. Unless otherwise agreed in writing, prices shall refer to Products delivered ex Cemp Srl's factory and shall not include packaging, VAT, duties, insurances and, as a rule, tax or financial charges on sale or exportation. Prices shall not cover services or charges that are not mentioned.

## DRAWINGS, DESCRIPTIONS AND TECHNICAL DATA

6. All drawings and technical documents relating to the Product or to its manufacture that are transmitted by one party to the other party, prior to or after drawing up the contract, shall remain the property of the sender.

Of the drawings, technical documents and other information that one of the parties receives from the other, no use other than that for which they were supplied may be made, without the approval of the other party. Without the

approval of the supplying party, it shall be forbidden to use, copy, duplicate, or else transmit or communicate such documentation to third parties.

7. Cemp Srl shall remain the exclusive owner of the drawings required to manufacture the Products supplied. For any Products manufactured by Cemp Srl based on its own designs and technology, the Buyer shall undertake to make sure that, in the use that is made of it no third parties' patent rights are violated and shall exclusively take upon itself any liabilities resulting from any such violations, holding Cemp Srl harmless.

8. Unless otherwise specifically agreed upon in writing, the Products shall comply with the CEI regulations and, if applicable, with the international IEC regulations. Weights and sizes are understood to be mentioned for information only. All the information and data contained in the general Product documentation and in the pricelists, whether in electronic or in any other format, shall only be binding if they are explicitly referred to in the contract.

9. Cemp Srl reserves the right to introduce any minor alterations to its Products that it may deem convenient, and notify the Buyer accordingly should these affect installation.

10. If, upon undersigning the order confirmation or during Product processing, the Buyer suggests technical alterations to the article described by Cemp Srl in the offer or in the drawings produced, these shall only become applicable subject to Cemp Srl's authorisation. In this case, the Buyer shall be informed of the possible changes affecting the prices and delivery time provided for in the order confirmation.

## APPROVAL TESTS

11. Unless otherwise agreed, the approval tests provided for by the contract shall be conducted in the place in which manufacturing takes place and during standard working hours.

Unless the contract specifies technical requirements, the test shall be conducted in compliance with the standard procedure for the applicable industrial sector in the manufacturer's country.

Should the Buyer request special tests, which are accepted by Cemp Srl, the applicable costs shall be borne by the Buyer.

12. Should a final test be agreed on, once this has been successfully conducted, or once 30 (thirty) days have gone by following delivery without the Buyer requesting final testing, the supply shall be understood to have been accepted by the Buyer.

Should functional problems arise or the supply proves non-compliant to the contract upon final testing, the Buyer shall immediately notify Cemp Srl in order to allow it to supply the technical details required to solve the detected inconveniences or eliminate any defects or faults as quickly as possible.

13. All expenses related to final testing, including travelling expenses, labour and transport of the staff in charge, shall be borne by the Buyer; the tests shall be carried out at the Buyer's risk.

## **DELIVERY. TRANSFER OF RISK**

14. Any agreed trading terms and conditions shall be interpreted according to the INCOTERMS in force at the time of drawing up the contract.

Unless specific terms are agreed, delivery shall be ex works.

If, in the event of ex works delivery, Cemp Srl commits upon the Buyer's request to forward the Product to its final destination, the risk shall be transferred to the first carrier no later than the Product is delivered .

15. All risks shall be transferred to the Buyer upon the Product being loaded by the Buyer or by a third party appointed by the Buyer, or by Cemp Srl acting on the Buyer's behalf; risks shall be transferred to the Buyer upon loading even if agreements are made for Cemp Srl to handle transport or if the latter arranges for transport payment or down payment. Products shall always be transported at the Buyer's expense and shall not be insured against transport-related risks unless the Buyer so requires in writing as part of the order. Should the Buyer fail to collect the Products, Cemp Srl shall be entitled to charge to the former an amount equal to 1% (one percent) of the invoice value per month for storage costs (in addition to the applicable default interests).

Storage shall be at the Buyer's risk.

16. It shall be the Buyer's duty to check the Products and report any deficiency before accepting delivery by the carrier and therefore before signing the delivery note by way of receipt. Any defects or damages that may have not been detectable upon delivery shall have to be notified by registered letter to the carrier, with a copy to Cemp Srl, within 8 (eight) days of receiving the Products. Failing this, the applicable Buyer's rights shall be declared to have lapsed.

17. No Products or packaging may be returned unless prior agreement is supplied in writing by Cemp Srl. Also in this case, these shall be transported exclusively at the Buyer's risk.

18. Unless otherwise agreed, partial shipments shall be allowed.

## **DELIVERY TIMES. DELAY**

19. Should the parties, instead of indicating the date of delivery, have referred to a period of time by which delivery is to take place, this period shall start at the time when the parties have entered into the contract, all formalities have been accomplished, payments related to the drawing up of the contract have been made, any applicable guarantee has been supplied and any other preliminary terms and conditions have been met.

20. For the purposes of calculating delivery terms, the parties shall take into account 5 (five) working days per week to the exclusion of midweek holidays. The appointed delivery term shall be automatically extended in the event of anomalous non-availability of materials or labour.

Therefore, in no case and for no reason shall Cemp Srl be held responsible for any direct or indirect damage resulting from deliveries of goods after the agreed timing; the Buyer shall in any case accept to also receive the goods ordered after the agreed deadline.

21. The delivery term shall also be extended in the event that the Buyer fails to timely meet its contractual obligations, and in special way if:

- payments are not timely made;
- the Buyer does not supply, prior to or during processing, the data required at the agreed time;
- the Buyer demands changes during order execution;
- the Buyer delays delivery of materials prior to or during processing.

22. The delivery date is understood by the parties to be the date on which Cemp Srl issues to the Buyer, to the carrier or to the forwarding agent indicated by the Buyer in the order, notice that goods are ready or being shipped, or that goods are ready for final testing.

23. If the delay in delivery is caused by any of the circumstances listed under Clause 45 or by an act or omission by the Buyer, including the suspension provided for by Clauses 28 through 48, delivery times shall be extended for a period that is deemed reasonable in connection with the specific circumstances. This shall apply irrespective of the fact that the reason for the delay occurs prior or after the scheduled delivery date.

24. Any penalties for delays in delivery shall have to be explicitly set out in the order confirmation.

In any event, the Buyer may not request the settlement of the agreed upon penalty amounts for in the following cases:

- if the goods have been replaced by Cemp Srl with other goods;
- if temporary goods suitable for similar purposes have been delivered to Cemp Srl for use until final delivery;
- if no evidence has been provided that the delay in delivery has resulted in damage for the Buyer;
- if the Buyer is not ready to receive the goods;
- if the work falling within the Buyer's responsibilities has not been promptly completed.

25. The settlement of the penalty amounts that have been agreed on shall have to be requested by the Buyer by means of a registered letter to Cemp Srl, within 8 (eight) days of receiving the goods.

## **PAYMENT TERMS**

26. Unless otherwise agreed, payments shall have to be made to the Cash Department of Cemp Srl in compliance with the provisions of the contract or, failing any other agreement, within 30 (thirty) days of date of invoice.

Irrespective of the payment method employed, the payment obligation shall not lapse until a complete and irrevocable payment has been made by crediting Cemp Srl' account.

27. Any partial shipments shall be invoiced according to the payment terms and conditions provided for by the contract. Any claims by the Buyer also for delays in delivery or for the incomplete supply of nonessential parts, shall not entitle to payment suspensions or delays.
28. Should the Buyer fail to pay by the agreed date, Cemp Srl shall be entitled to interest as from the date on which the payment becomes due.
- The interest rate shall correspond to 7 (seven) percentage points above the rate in force for the chief refinancing instruments of the European Central Bank at the time the payment becomes due, unless a different interest rate is agreed on, upon undersigning the order confirmation.
- In the event of delays in payment, Cemp Srl may suspend execution of this contract, or of any other contracts under way, until payment is made.
- Should the Buyer not have paid the amount due within 3 (three) months, Cemp Srl shall be entitled to terminate the contract by notifying the Buyer in writing, as well as to demand compensation for damage. Compensation may not exceed the agreed selling price.

#### **OWNERSHIP RESERVATION**

29. The Product shall remain the property of Cemp Srl until it has been fully paid, insofar as this conditional sale is valid for the ruling law.
- The Buyer shall assist Cemp Srl in taking any necessary step to safeguard ownership of the Product in the country in question.
- Retention of ownership shall not impact the transfer of risk pursuant to Clauses 14 and 15.

#### **LIABILITY IN THE EVENT OF FAULTS**

30. In force of the provisions contained in Clauses 31 through 35 included, Cemp Srl shall have to rectify any defects or non-conformities - hereinafter referred to as defect(s) - resulting from design, processing or unsuitable materials.
31. Cemp Srl's liability shall be restricted to defects arising within one year of delivery. Should the daily use of the Product exceed the agreed use, this period shall be proportionally reduced.
32. Should the defect of a part of the Product have been rectified, Cemp Srl shall be liable for any defects of the repaired or replaced part according to the same terms and conditions applying to the original Product for a one-year period. For the remaining parts of the Product, the terms provided for by Clause 31 shall be extended only for the period of time in which the Product could no be used because of the defect.
33. The Buyer shall have to notify Cemp Srl in writing as to the existence of any defects within 8 (eight) days of their detection. In no case may this notification be made any later than 8 (eight) days following the deadline indicated in Clause 31.
- The notification shall have to contain a description of the defect.
- Should the Buyer fail to notify Cemp Srl in writing about

the defect within the terms laid down in the first paragraph of this Clause, it will no longer be entitled to correction of the defect.

Should the defect be such as to cause damage, the Buyer shall immediately inform Cemp Srl in writing. The Buyer shall take upon itself the risk of any damage resulting from its failure to provide notification.

34. Upon receipt of the notification pursuant to Clause 33, Cemp Srl shall have to correct the defect with no groundless delay and at its own expense, save for the circumstances provided for by Clause 36, as indicated in Clauses 30 through 41 included.
- Any works relating to repairs or replacement under guarantee coverage shall be carried out at Cemp Srl's own discretion, in the Cemp Srl's workshops, by a third party or in situ. Cemp Srl shall be free from any obligations related to defects once it has delivered to the Buyer the duly repaired or replaced part.
35. Should the Buyer have provided the notification referred to under Clause 33, and no defect whose liability may be ascribed to Cemp Srl have been detected, Cemp Srl shall be entitled to compensation for the costs borne as a result of such a notification.
36. The Buyer shall at its own expense see to the uninstallation of the Product from the other equipment and to its reassembly.
37. Unless otherwise agreed, transport of the Product and/or of any part thereof to and from Cemp Srl, that may be required in order to rectify the defects Cemp Srl is responsible for, shall be carried out at the Buyer's risk, and the latter shall arrange for an adequate insurance coverage to this end. Any repaired or replacement Products shall be transported at the Buyer's expense and risk. Any complaint relating to a specific shipment shall have no effect on the remaining part of the supply.
38. Unless otherwise agreed, the Buyer shall bear any additional costs incurred by Cemp Srl for repairs, uninstallation, installation and transport resulting from the fact that the Product is in a place other than the destination laid down in the contract, or else - if the destination is not mentioned - in a place other than the place of delivery.
39. The defective parts that have been replaced shall be put at the disposal of Cemp Srl and shall remain its property.
40. Cemp Srl shall not be liable for any defects resulting from materials supplied by the Buyer, or from a project agreed on by the Buyer, or for which the Buyer has supplied technical information.
41. Cemp Srl shall be exclusively liable for defects arising within the framework of the operating conditions provided for by the contract and of an adequate use of the Product.
- Cemp Srl's liability shall not include defects caused by inadequate maintenance or repairs or by incorrect installation by the Buyer, or else by alterations made without Cemp Srl's written approval.
- Lastly, Cemp Srl's liabilities shall not include ordinary wear and tear.

42. Cemp Srl shall not be liable for any defects other than those provided for by Clauses 30 through 41. This provision applies to any loss that may be caused by defects, including lost production, lost revenue and any other indirect losses, including but not limited to, the arising damage and the loss of income resulting from the shutdown of the plants in which the Products have to operate.

#### **SHARING OF LIABILITIES FOR DAMAGE CAUSED BY THE PRODUCT.**

43. Cemp Srl shall not be liable for any damage that may be caused by the Product after its delivery and during the period in which it is owned by the Buyer. Cemp Srl shall also not be liable for any damage suffered by products manufactured by the Buyer, or by products which the Buyers' products are part of.

Should Cemp Srl incur liabilities towards third parties as a result of damage to property described in the previous paragraph, the Buyer shall have to compensate Cemp Srl, support its defence and hold it harmless from any claims.

Should a third party file a claim for damage towards either party, the party in question shall have to immediately inform the other party in writing.

44. The Buyer hereby undertakes to arrange, in all contractual relations involving the Products supplied by Cemp Srl, for a clause limiting Cemp Srl's liability that is substantially the same as the one provided for in the previous article and undertakes to safeguard Cemp Srl and hold it harmless from any compensation obligations that Cemp Srl may be expected to comply with, thus taking upon itself full and exclusive responsibility for the further circulation of goods supplied by Cemp Srl.

#### **FORCE MAJEURE**

45. Both parties shall be entitled to suspend fulfilment of their contractual obligations inasmuch as one of the following circumstances prevents fulfilment or causes it to be exceedingly onerous: union disputes and any other circumstances getting beyond the parties' control, such as fire, war events, major army mobilization, insurrection, confiscation, seizure, embargo, restrictions in the exercise of power, as well as any inconveniences or delays in delivery by subcontractors resulting from any of the circumstances mentioned in this Clause.

Should any of the circumstances mentioned in this Clause occur, irrespective of whether this occurs prior to or after entering into the contract, entitlement to suspension shall only be granted if its effects on the fulfilment of the contract could not be foreseen upon drawing up the contract itself.

46. The party claiming it has suffered the effects of Force Majeure shall have to immediately provide notification to the other party in writing as to the occurrence and termination of such an occurrence.

Should the Force Majeure event prevent the Buyer from meeting its obligations, the Buyer shall have to reimburse Cemp Srl for any expenses incurred to secure and safeguard the Product.

47. Irrespective of what may separately result from these General Terms and Conditions, both parties shall be entitled to terminate the contract, by notifying the other party in writing, should contractual fulfilment be suspended in force of Clause 45 for over six months.

#### **ANTICIPATION OF NON-FULFILMENT**

48. Without prejudice to the other provisions of these General Terms and Conditions in terms of suspension, both parties shall be entitled to suspend fulfilment of their contractual obligations should circumstances suggest that the other party is unable to meet its own obligations. The party suspending fulfilment of its contractual obligations shall have to immediately notify the other party in writing.

#### **INDIRECT LOSSES**

49. Unless otherwise prescribed in these General Terms and Conditions, neither party shall be held liable towards the other party for lost production, lost income, loss of use, loss of contracts or any other indirect loss.

#### **DISPUTES AND RULING LAW**

50. This contract shall be ruled by the substantive law in force in Italy.

51. Any dispute resulting from this contract shall fall within the exclusive competence of the Milan Judicial Authority; derogation of art. 32 and following articles of the Code of Civil Procedure shall be explicitly provided for, inasmuch as it is allowed.

Therefore, the Buyer may not refer to the Judicial Authority of another place, whereas Cemp Srl, in its capacity as the plaintiff, shall be entitled to take legal steps in the Buyer's place of residence, whether in Italy or abroad.

*In sign of acceptance (customer's date, stamp and signature)*

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*In sign of specific approval of clauses: 1-2-5-15-19-20-21-24-26-28-29-36-37-38-43-44-50-51 (customer's date, stamp and signature)*

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*General Terms and Conditions of Supply*

*Senago, July 2005*

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