

These General Terms and Conditions can be downloaded under www.sulzerinnotec.com

General Terms and Conditions

1. General

- 1.1 The following General Terms and Conditions shall apply to the contract relationship (the "Contract") between Innotec and the Customer (collectively the "Parties").
- 1.2 The Contract shall be deemed concluded when Customer has received the written order confirmation issued by Innotec. Offers by Innotec which do not stipulate an acceptance period shall not be binding.
- 1.3 These General Terms and Conditions shall apply in all cases in which they have been declared applicable in the offer and/or in the order confirmation. Any deviations or changes thereto or any additional or dissenting terms and conditions of the Customer shall only be valid if expressly accepted by Innotec in writing.

2. Definitions

- 2.1 **Customer Materials** shall mean all materials, products, semi-finished goods, testing objects, data, information, tools or other tangible or intangible objects delivered by Customer to Innotec for the purpose of being used for performing the Work.
- 2.2 **Engineering Services** shall mean engineering services, studies, calculations, drafts, designs, measurements, evaluations, investigations, assessments, clarifications, preparation of technical data or corresponding criteria, checks, tests and inspections as well as all other services which may commonly be understood in the industry as "engineering".
- 2.3 **Intellectual Property** shall mean all patents, trade marks, designs, copyrights, know how or any other intellectual property rights, whether registered or unregistered.
- 2.4 **Results** shall mean all documents, reports, findings or other materials containing the results of Services or other activities conducted by Innotec.
- 2.5 **Services** shall mean all Testing Services, Engineering Services as well as diagnostics, analysis, contract R&D, advisory, consultancy, training, surface treatment, repair or any other services performed by Innotec.
- 2.6 **Technical Documents** shall mean all technical documents (such as drawings, operation plans, samples, treatment and control requirements) made available to Innotec by the Customer for the performance of the Contract.
- 2.7 **Testing Services** shall mean tests conducted by Innotec on materials, samples, components or products provided by the Customer or produced or prepared by Innotec on Customer's behalf.
- 2.8 **Work** shall mean all Services provided and any other work done or goods manufactured for the Customer.

3. Technical Documents and Instructions

- 3.1 The Customer shall make available to Innotec, in full and at Customer's costs, all the Technical Documents and instructions in a timely manner. Innotec shall not be responsible for any delay caused by a delayed delivery of Technical Documents or instructions. Innotec shall not be responsible for the accuracy and/or completeness of documents and information made available by the Customer.
- 3.2 Customer confirms that it is fully authorized to use (or have used) the Technical Documents, and Customer shall indemnify Innotec and hold Innotec harmless from any liabilities and damages resulting from the use of the Technical Documents.
- 3.3 For Testing Services the Customer shall be responsible to keep, at his own expense, all the instructions and Technical Documents and information that he makes available to Innotec for not less than five years following completion of the Work.

4. Customer Materials

- 4.1 Customer shall promptly and at its own costs deliver the Customer Materials to Innotec. Innotec shall not be responsible for any delay caused by a delayed delivery of Customer Materials.
- 4.2 Innotec shall, upon arrival of the Customer Materials perform appropriate visual inspection, and shall notify the Customer of any defects, damage or incorrect quantities detected. Unless agreed otherwise in writing Innotec shall not be obliged to conduct any detailed inspection of Customer Materials. The Customer shall promptly replace any defective, damaged or insufficient Customer Materials.
- 4.3 The Customer Materials shall remain the property of the Customer. Innotec shall store such Customer Materials separately and in a suitable professional manner at its own expense.
- 4.4 At the request and expense of the Customer, Innotec shall insure the Customer Materials against the risks specified by the Customer for the period during which they are in Innotec's possession. The Customer shall bear the cost of such insurance coverage.
- 4.5 For Testing Services the Customer shall be responsible to store samples and residue from destructive tests at its own expense during the period for which the tested materials, products or objects will be used.
- 4.6 Unless otherwise agreed in writing Customer Materials which are no longer useable as a result of any Testing Services (e.g. destructive testing) shall remain with Innotec. The Customer shall be entitled to inspect such

Customer Materials. After such inspection, or should Customer fail to carry out such inspection within a reasonable period set by Innotec, Innotec shall be permitted to destroy these Customer Materials.

5. Tools, Testing Devices and Testing Equipment

All tools, testing devices, check and reference blocks or similar equipment specially manufactured or purchased by Innotec for the purpose of fulfilling the Contract shall be owned by Innotec, even if the Customer has paid a portion or all of the costs. However, if Innotec is unable or unwilling to carry out any additional orders for the Customer the Parties shall mutually agree on a transfer of ownership of such tools, devices and equipment to Customer and the price to be paid therefor.

6. Execution

- 6.1 Innotec shall carry out the Work in accordance with the Technical Documents and the requirements specified in the Contract.
- 6.2 Customer shall make available at its own expense all official permits and approvals from public authorities that are required in conjunction with the Work or the use of any Results of such Work.
- 6.3 Customer shall grant Innotec access to all plants and facilities to the extent requested by Innotec for the due performance of the Contract.
- 6.4 If Innotec during execution of the Contract becomes aware of any shortcomings that are the result of faults, defects or omissions in respect of the Customer Materials, the Technical Documents or information provided by the Customer or shortfalls in the quantities of Customer Materials which were not discovered during due visual examination pursuant to Paragraph 4.2, Innotec shall promptly notify this to the Customer. The Customer shall remedy these shortcomings and/or instruct Innotec on the further action to be taken. The costs incurred by Innotec as a result of such shortcomings and the remedy thereof shall be borne by the Customer.

7. Prices

- 7.1 Unless otherwise agreed in writing, all prices shall be understood as charged ex works (EXW as per Incoterms 2000), however, without packaging, in Swiss Francs and without any deduction. In particular, the Customer shall bear the costs of all forms of taxes, charges, fees, customs duties and the like that are imposed in connection with the Contract or, if Innotec has been required to pay such expenses, will reimburse such expenses to Innotec against presentation of the relevant receipts.
- 7.2 Innotec reserves the right to adjust the price in the event that (a) subsequent changes in the type or scope of the agreed work have been made, or (b) the delivery period is subsequently extended for reasons attributable to Customer, or (c) if the Technical Documents supplied or instructions given by the Customer have been incomplete or deficient, or (d) any other additional work becomes necessary due to acts or omissions of the Customer.

8. Terms of Payment

Payments shall be made by Customer within the terms agreed, without any deduction for cash discount, expenses, taxes, levies, fees, customs duties or the like.

9. Delivery Period

- 9.1 Innotec shall perform the Work within the deadline agreed with the Customer.
- 9.2 The agreed period or date of execution shall be extended:
- a) if any of the information and/or Technical Documents necessary for execution of the order is incomplete or is not received by Innotec in time or is subsequently changed by the Customer;
- b) if hindrances arise which Innotec is unable to overcome despite exercising due care, regardless of whether such hindrances affect Innotec, the Customer or a third party. Such hindrances shall include, for example, epidemics, mobilisation, war, riots, serious breakdowns, accidents, labour conflicts, delayed or defective deliveries, defective Customer Materials, measures imposed or omissions made by public authorities, natural catastrophes; or
- c) if the Customer or a third party falls behind in the tasks for which they are responsible or fail to meet their contractual obligations, in particular the terms of payment agreed or the delivery of Customer Materials.
- 9.3 The Customer shall be entitled to claim Liquidated Damages for delay in completion of the order, but only in the event that the Customer can prove that said delay has been caused directly by fault of Innotec and that the Customer has suffered loss or damage as a result of such delay. In the event of such delay, and after a grace period of two weeks, Innotec shall pay Liquidated Damages for each full week of delay at a rate of a half percent (½ %) of the price payable for the relevant contract Work which is in delay. The total aggregate Liquidated Damages shall in no event exceed five percent (5%) of the total price of the Work defined in the Purchase Order. After reaching the maximum amount of Liquidated Damages, the Customer shall grant Innotec an appropriate additional grace period in writing. Should performance not occur within such additional grace period due to reasons for which Innotec is responsible and should the delay be economically unacceptable for the Customer, the latter shall be entitled to

terminate the Contract against payment of that portion of the Work already performed by Innotec.

9.4 Notwithstanding anything to the contrary the payment of Liquidated Damages shall be the sole remedy of Customer with respect to any delay.

10. Inspection and Acceptance

10.1 The Customer shall be entitled to carry out inspections of the Work executed at Innotec's site during normal working hours and subject to reasonable notice in advance.

10.2 Innotec shall inspect the processed objects in a usual manner prior to shipment. Any further or more detailed inspections by Innotec are to be agreed upon and billed separately.

10.3 The Customer shall inspect the Work carried out by Innotec promptly upon delivery and shall immediately notify Innotec in writing of any defects or shortfall in quantities detected. Unless defects or shortfalls are notified to Innotec within ten days from delivery the Work shall be deemed accepted by the Customer.

10.4 Execution of any acceptance test shall be agreed in writing. Acceptance shall also be deemed to have been occurred if a scheduled acceptance test cannot be carried out on the agreed date for reasons beyond Innotec's control, or in the event that the Customer refuses acceptance of the Work without being entitled thereto, or if Customer refuses to sign an acceptance report stating the facts, or if the Customer uses the Work.

11. Packaging and Delivery

Unless otherwise agreed all deliveries shall be ex works (EXW as per Incoterms 2000). To the extent that it has been contractually agreed, Innotec shall ensure that the objects processed are packaged in an appropriate way for delivery to the Customer or a third party agreed. The costs of packaging will be billed to the Customer. All packaging and transportation apparatus provided by the Customer shall be returned to the Customer at Customer's expense.

12. Use of Results, Intellectual Property and Confidentiality

12.1 The Customer shall be entitled to use the Results of the Work for those purposes which have been agreed with and/or communicated to Innotec. Apart from this, such Results of the Work are to be treated as confidential by the Customer and shall not be made available to third parties, either in whole or in part, without Innotec's prior written consent.

12.2 For Results of Engineering Services Customer shall be permitted to use, on a non-exclusive basis, the documentation received for the purpose described in the Contract.

12.3 For Results of Testing Services Customer shall be permitted to use such Results within its organization. If Customer wishes to make available such Results to any third parties, Customer shall obtain Innotec's prior written approval. Customer shall not be permitted to use Results of Testing Services in any publication, correspondence or other documents unless such use has been approved by Innotec in writing.

12.4 Each contracting Party shall fully retain the Intellectual Property and other rights relating to the documents handed over to the other Party. The Party receiving the same shall refrain from making these documents available to third parties, either in whole or in part, without the other Party's prior written consent, or from using such documents for purposes other than those for which they have been handed over, except to the extent that the information concerned is already public knowledge, was already in a Party's possession when communicated by the other Party or was passed to a Party by a third party which is not bound by a confidentiality agreement with the other Party.

12.5 Unless otherwise agreed in the Contract all Intellectual Property belonging to Innotec and used for or developed in the course of the execution of the Contract by Innotec shall remain Innotec's property. Customer is given the right to use such Intellectual Property only for the operation, maintenance and repair of the Work and/or Services delivered under the Contract. If the Parties agree that the Customer becomes the owner of any Intellectual Property arising from execution of the contractual Services or otherwise contained in the Results of the Work, such Intellectual Property shall be owned by the Customer only in respect of the special scope of application for which the product or the Service is foreseen by the Customer according to its order/specification. Intellectual Property lying outside the special scope of application foreseen by the Customer according to its order/specification shall be Innotec's property. However, all rights to general Intellectual Property that are not application-specific, including in particular any rights to methods and processes for interpretation, modelling and review, shall remain or become the property of Innotec, as applicable.

12.6 In the event of any infringement of third party Intellectual Property rights caused by the Technical Documents, the Customer Materials or the use of the Work in conjunction with other products Customer shall indemnify and hold Innotec harmless from any damages and liabilities.

Innotec's copyrighted material shall not be copied by Customer except for archiving purposes or to replace a defective copy.

13. Warranty, Liability, Limitation on Liability

13.1 Innotec warrants that the Work will be of the kind and quality as specified in the Contract. All Services shall be performed by using proper care and skill. Innotec assumes no warranty or representation regarding the fitness of the Work for the purpose for which it is intended to be used or regarding Customer's intended use of any object delivered to Innotec or tested by Innotec or the suitability of said object for such intended use. Innotec assumes no warranty or representation for biocompatibility of goods used for medical purposes.

13.2 Testing Services shall relate (as well as the Test Results shall refer) exclusively to the condition of the tested object at the time testing is

conducted. Testing Services are performed to the extent expressly agreed in the Contract and according to the testing procedures agreed with the Customer. Innotec assumes no liability whatsoever for any use of Results of Testing Services by the Customer.

13.3 The Customer shall be required to inspect the Work immediately upon delivery, and shall promptly, however, within ten calendar days the latest, notify Innotec in writing of any faults or defects therein (hereinafter referred to as "Defects"). In the case of Defects that are discovered in this manner, as well as for additional faults that were not visible to the Customer upon delivery but that are discovered within twelve months of the date of delivery of the Work and which are notified to Innotec in writing by the Customer immediately following discovery of the same, Innotec undertakes to correct or have corrected the relevant Work at Innotec's own expense and at Innotec's discretion by repairing or replacing the defective goods, by re-executing the relevant Services or by re-issuing the Testing Results.

13.4 The warranty period shall be twelve (12) months. It starts when the Work is ready for delivery ex works (EXW). If delivery is delayed due to reasons beyond Innotec's control, the warranty period shall end not later than eighteen (18) months after notification that the Work is ready for dispatch. The Customer shall make the Work available for correction. In no event will Innotec be responsible for providing access to the defective part or parts, or bear the costs of the disassembly, removal or reinstallation of the Work or components thereof.

13.5 For that parts of the Work that have been replaced or repaired under the warranty, the warranty period will commence again and be for a period not to exceed six (6) months after completion of the repair, replacement or re-execution, in any case no longer than for a period of twelve (12) months calculated from the end of the warranty period referred to above.

13.6 The warranty contained in this section will terminate immediately if Customer or a third party undertakes inappropriate or improper modification or repairs or if the Customer, in case of a Defect, does not immediately take all appropriate steps to mitigate damages and notify Innotec in writing of its obligations to remedy such Defect.

13.7 Excluded from Innotec's warranty and liability for Defects are all deficiencies which cannot be proved to have their origin in bad material or poor workmanship of the Work, e.g. deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, deficiencies resulting from the Technical Documents or the Customer Materials or deficiencies resulting from other reasons beyond Innotec's control.

13.8 Correction of nonconformities in the manner and for the period of time provided above shall constitute fulfillment of all liabilities of Innotec to Customer (which liabilities shall not exceed the total Contract price including any rework), whether based on contract, tort (including negligence), strict liability or any other legal basis, with respect to the Work.

13.9 Innotec makes no other warranty or representation with respect to the Work other than specified in this section. All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.

13.10 Notwithstanding anything to the contrary in this Contract, including all documents making part thereof and to the maximum extent permitted by law, in no event shall Innotec be liable to the Customer or Customer's customers for any loss of profits or interruption of production, loss of opportunity or business, any and all costs relating to delay or claims by Customer's customer for such damages, or for any indirect, punitive, special, incidental or consequential damages in connection with the Contract, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability. The remedies of Customer set forth herein are exclusive, and Innotec's liability with respect to any Contract or sale or anything done in connection therewith, whether in contract, tort (including negligence), under any warranty, indemnity, strict liability or otherwise shall not exceed 100 % of the price of the Contract, unless claims arise directly from gross negligence or willful misconduct of Innotec.

14. Place of Performance

The place of performance shall be Winterthur.

15. Place of Jurisdiction and Applicable Law

15.1 The exclusive place of jurisdiction for the Customer and for Innotec shall be Winterthur. Innotec shall be entitled, however, to sue the Customer at the place of the Customer's registered office.

15.2 This contract shall be governed by substantive Swiss law without application of the United Nations Convention on the International Sale of Goods.

16. Severability

If any of the provisions in the above General Terms and Conditions should prove to be invalid, either in whole or in part, the contracting Parties will replace said invalid provision by a wording as similar as possible in respect to the legal and economic import of the invalid provision it is to replace.