

# General Conditions of Sale

(RM GCS 2101 E REV 2012-11-07)



## 1. Interpretation:

- 1.1. „APPLICABLE EXPORT LAWS" means any export control regulations and/or laws in force at the time of export in RENK-MAAG's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported export item.
- 1.2. „CHANGE" means a change in the design, drawings, specifications, shipping instructions, shipment schedules, or any other documents forming part of the contract, including any additions, substitutions, or omissions to the SCOPE OF SUPPLY.
- 1.3. „CHANGE ORDER" means the documents issued by authorized representatives of CUSTOMER and RENK-MAAG in common agreement after a change has been requested by customer or RENK-MAAG, and which documents rule the modification of the contract with respect to the contract price, specifications, shipment schedule, warranty, delivery time, etc.
- 1.4. „CONFIDENTIAL INFORMATION" means proprietary or confidential data including but not limited to pricing, terms, documents, specifications, procedures, plans or drawings that are not generally known to the public.
- 1.5. „CONTRACT" means the GENERAL CONDITIONS OF SALE contained herein, together with (i) such additional terms as are stated within RENK-MAAG's written quotation, (ii) such specifications, drawings or other documents as are incorporated by reference within RENK-MAAG's quotation, (iii) any documents related to a change order, (iv) the purchase order to the extent approved in writing by RENK-MAAG, and (v) the ORDER CONFIRMATION.
- 1.6. „CONTRACT PRICE" means the total sum indicated in the order confirmation or as modified in the change order. The CONTRACT PRICE is always to be considered in accordance with these GENERAL CONDITIONS OF SALE. For services carried out on a time basis, the CONTRACT PRICE shall be determined in accordance with the hourly rates specified in the purchase order.
- 1.7. „CUSTOMER" means the party defined as the CUSTOMER in the purchase order, or, if such definition is missing, the Party issuing the purchase order.
- 1.8. „DAY(S)" means calendar day(s) unless the term „WORKING DAY(S)" is used. WORKING DAYS for the area of Winterthur are defined officially by the Swiss government or the Zurich cantonal authorities.
- 1.9. „DELIVERY DATE" means the date or dates agreed between the Parties with regard to the performance of the scope of supply in the contract or as modified in the change order accordance with these GENERAL CONDITIONS OF SALES.
- 1.10. „DELIVERY PERIOD" is agreed between the Parties with regard to the performance of the scope of supply in the contract or as modified in the change order and in accordance with these GENERAL CONDITIONS OF SALES.
- 1.11. „GENERAL CONDITIONS OF SALE" means the RENK-MAAG General Conditions of Sales.
- 1.12. „GOODS" means any goods, including but not limited to, commodities, hardware, software, services, engineering, documentation, procedures or technology provided by RENK-MAAG that is required to be exported or re-exported under the contract.
- 1.13. „ORDER CONFIRMATION" means the documentation issued by RENK-MAAG and sent to the customer stating the scope of supply, price and conditions under which RENK-MAAG accepts the purchase order.
- 1.14. „PARTY" or „PARTIES" means CUSTOMER or RENK-MAAG or CUSTOMER and RENK-MAAG.
- 1.15. „PRICE" means the individually indicated PRICES per item in the order confirmation or as modified in the change order. For services carried out on a time basis, the PRICE shall be the hourly rates specified in the purchase order.
- 1.16. „PURCHASE ORDER" means the order documents issued by customer for the order of the SCOPE OF SUPPLY in the version confirmed by RENK-MAAG in writing.
- 1.17. „QUOTATION" means RENK-MAAG's written proposal for the delivery of the SCOPE OF SUPPLY.
- 1.18. „SANCTIONS" means any trade or economic sanctions (e.g. embargoes, etc.) in force at the time of export in RENK-MAAG's country of export and/or, in the case of re-export, in force at the time of re-export in the country of origin of the particular re-exported item.
- 1.19. „SCOPE OF SUPPLY " means the goods, documentation, engineering services and/or services to be delivered or performed under the contract.

- 1.20. „SERVICES" means site services such as erection, commissioning, repair or maintenance work.

## 2. General:

- 2.1. These GENERAL CONDITIONS OF SALE shall apply exclusively to all QUOTATIONS made and CONTRACTS accepted. General conditions issued by the CUSTOMER shall only be valid if and to the extent expressly accepted by RENK-MAAG in writing on an individual basis. In case of a conflict between General conditions of the CUSTOMER and these GENERAL CONDITIONS OF SALE, these GENERAL CONDITIONS OF SALE shall always prevail.
- 2.2. The present GENERAL CONDITIONS OF SALE also apply to all further business transactions with the CUSTOMER.
- 2.3. QUOTATIONS which do not stipulate a validity period shall not be binding upon RENK-MAAG.
- 2.4. In order for RENK-MAAG to be obligated hereunder to the CUSTOMER, RENK-MAAG shall have issued its written ORDER CONFIRMATION stating its acceptance of the CUSTOMER'S PURCHASE ORDER. The CUSTOMER is requested and obliged to check the ORDER CONFIRMATION and the related documentation and notify RENK-MAAG within 5 (five) WORKING DAYS in writing of any findings. Otherwise our ORDER CONFIRMATION is considered to be accepted with out reservation.
- 2.5. Only written agreements and statements by and between the PARTIES are binding.
- 2.6. In the event that a provision of these GENERAL CONDITIONS OF SALE proves to be wholly or partly invalid or unenforceable the PARTIES to the CONTRACT shall jointly seek and agree to an arrangement having a legal and economic effect which will be as similar as possible to the invalid or unenforceable provision.

## 3. Scope of Supply:

- 3.1. The SCOPE OF SUPPLY shall be specified in precise and complete detail in the ORDER CONFIRMATION and in the appendices attached thereto. RENK-MAAG, however, shall be entitled to make any improvements to the SCOPE OF SUPPLY, provided such improvements do not result in CONTRACT PRICE increases.

## 4. Technical Documents:

- 4.1. Unless otherwise expressly so agreed, brochures, catalogues and other marketing documents are not binding and do not form a part of any agreement between the PARTIES. Data provided in technical documents is only binding if expressly so stipulated in the QUOTATION.

## 5. Intellectual Property Rights:

- 5.1. RENK-MAAG retains all rights to and regarding technical documents, including but not limited to drawings and procedures provided to the CUSTOMER. The CUSTOMER expressly recognizes these rights and shall not (without previous written consent of RENK-MAAG) make these documents available to any third party either in whole or in part, nor shall the CUSTOMER use the technical documents for purposes other than those for which they were provided to the CUSTOMER.
- 5.2. The CUSTOMER shall not, under any circumstances acquire any right in or to any of the Intellectual Property Rights (including, without limitation, inventions (patents), trademarks, industrial designs, and copyright) subsisting in, resulting from or relating to the SCOPE OF SUPPLY, or any plans, procedures, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto supplied by or on behalf of RENK-MAAG to the CUSTOMER in connection with the delivery of the SCOPE OF SUPPLY, unless expressly agreed otherwise by RENK-MAAG in writing. If the CUSTOMER shall by any means acquire any such rights, the CUSTOMER shall immediately inform RENK-MAAG and shall forthwith take such steps as may be required by RENK-MAAG to assign such rights or vest such title in RENK-MAAG.
- 5.3. RENK-MAAG shall have the right to apply any trademarks, trade names and/or service marks to the SCOPE OF SUPPLY. The CUSTOMER acknowledges that no rights are granted to the CUSTOMER by the use of such trademarks, trade names and/or service marks by the CUSTOMER. The CUSTOMER shall not deface, remove or obliterate any trademarks, trade names or logos applied by RENK-MAAG on or in relation to the SCOPE OF SUPPLY.
- 5.4. The CUSTOMER shall keep confidential and not use, without the prior written consent of RENK-MAAG, all or any information including without limit, those supplied by RENK-MAAG to the CUSTOMER or disclosed to or obtained by the

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CUSTOMER pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the CUSTOMER, or disclosure of the same is required by law or by any other governmental or other regulatory body.

- 5.5. In the event that RENK-MAAG bases the production of the SCOPE OF SUPPLY on its own specifications, RENK-MAAG shall under the exclusion of any further liability warrant that such SCOPE OF SUPPLY does not infringe Intellectual Property Rights published in the USA and/or by the European Patent Office. This warranty shall not apply if RENK-MAAG has manufactured the SCOPE OF SUPPLY in accordance with drawings, models or other equivalent descriptions or information provided by the CUSTOMER. To the extent RENK-MAAG is not liable pursuant to this Clause 5.5, the CUSTOMER shall release RENK-MAAG from all third-party claims. If an infringement of such third parties' Intellectual Property Rights appears to emerge, the PARTIES will enter into negotiations with due consideration of such situation and jointly agree on the consequences.

**6. Confidentiality:**

- 6.1. RENK-MAAG and CUSTOMER (as to information disclosed, the disclosing party) may each provide the other PARTY (as to information received, the receiving PARTY) with CONFIDENTIAL INFORMATION in connection with the CONTRACT. CONFIDENTIAL INFORMATION shall not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the receiving PARTY, its representatives or its affiliates, or (ii) is or becomes available to the receiving PARTY or its representatives or affiliates on a non-confidential basis from a source other than the disclosing PARTY when such source is not, to the best of the receiving PARTY's knowledge, subject to a confidentiality obligation to the disclosing PARTY, or (iii) has been or is subsequently independently developed by the receiving PARTY, its representatives or affiliates, without reference to the CONFIDENTIAL INFORMATION, or (iv) is required to be disclosed by order of a competent court or government agency.
- 6.2. The receiving PARTY agrees, except as otherwise required by law, (i) to use the CONFIDENTIAL INFORMATION only in connection with the performance of the CONTRACT or installation, operation, maintenance and use of the SCOPE OF SUPPLY sold hereunder, and (ii) to take reasonable measures to prevent disclosure of the CONFIDENTIAL INFORMATION to third parties, except to its employees for the purpose of performance of the CONTRACT, or installation, operation, maintenance or use of the SCOPE OF SUPPLY sold hereunder. Further, if disclosure of CONFIDENTIAL INFORMATION to a third party is required, the receiving PARTY agrees to use its best efforts to require proprietary or confidential treatment of the information by such third party.

**7. Minimum Standard Requirements:**

- 7.1. Unless otherwise expressly so agreed, the SCOPE OF SUPPLY shall comply with the regulations and minimum standards in effect in Switzerland at the time of delivery. Alternative or additional safety devices shall be supplied only if expressly so agreed by RENK-MAAG.

**8. Prices:**

- 8.1. Unless expressly stated otherwise in the QUOTATION or ORDER CONFIRMATION, all PRICES shall be deemed to be NET EX WORKS Winterthur as per INCOTERMS, excluding packaging, in freely available Swiss Francs without any deduction whatsoever.
- 8.2. Any additional charges, including but not limited to freight charges, insurance premiums, fees for export, transit, import and other permits as well as for certifications, shall be borne by the CUSTOMER. Likewise, the CUSTOMER shall bear any and all taxes, fees, levies, custom duties and the like which are levied out of or in connection with the CONTRACT, or shall reimburse RENK-MAAG in the event that RENK-MAAG is held liable for any or all such charges.
- 8.3. Appropriate adjustments of conditions and PRICES after the CONTRACT has been entered into shall apply to the extent that
- a) the DELIVERY PERIOD has been subsequently changed;
  - b) the nature or scope of the agreed SCOPE OF SUPPLY has changed;
  - c) the materials to be utilized or method of manufacture or performance have undergone modifications because specifications furnished by the CUSTOMER to RENK-MAAG were incomplete or inconsistent with the nature, function or objective of the SCOPE OF SUPPLY;
  - d) any other changes to the conditions of the CONTRACT were requested by or attributable to the CUSTOMER.

**9. Terms of Payment:**

- 9.1. Payments shall be made to RENK-MAAG's account in accordance with the conditions as set forth in the ORDER CONFIRMATION, without any deduction for cash discounts, expenses, taxes, levies, fees, duties, and the like. If partial deliveries are specified and subsequently so invoiced, payments shall be made separately for each delivery, according to the terms of payment as set forth in the ORDER CONFIRMATION. In the event the payment by draft is specified, the CUSTOMER shall pay the cost of discounting such draft and the CUSTOMER shall pay any taxes and collection charges.
- 9.2. The dates of payment shall be observed regardless of whether the transport, delivery, installation, commissioning or receipt of the SCOPE OF SUPPLY is delayed or prevented due to reasons beyond RENK-MAAG's control, and notwithstanding that unimportant parts which do not interfere with the use and function of the SCOPE OF SUPPLY may be missing, or post delivery work which does not interfere with the use and function of the SCOPE OF SUPPLY remains to be performed.
- 9.3. If the advance payment or the contractually agreed upon securities are not provided in accordance with the conditions of the CONTRACT, RENK-MAAG shall be entitled to enforce or to terminate the CONTRACT, and shall in either case be entitled to claim damages.
- 9.4. If the CUSTOMER is in default with respect to any payment, or if RENK-MAAG has reason to believe that it will not receive payments in full or when due because of circumstances which arise subsequent to the commencement of the CONTRACT, RENK-MAAG, without prejudice to its rights provided by law, shall be entitled to suspend further performance of the CONTRACT and to withhold the SCOPE OF SUPPLY ready for dispatch until new terms of payment and delivery will have been agreed upon by the PARTIES and until RENK-MAAG will have received satisfactory collateral. If such an agreement cannot be reached within a reasonable time, or in the event that RENK-MAAG does not receive adequate collateral, RENK-MAAG shall be entitled to enforce or to terminate the CONTRACT, and shall in either case be entitled to claim damages.
- 9.5. If the CUSTOMER is in default with respect to the agreed terms of payment, it shall be liable, without further notice, for interest at the rate of 1.25% per month on the amounts due. The right to claim further damages is reserved.
- 9.6. The CUSTOMER may not retain or set off its payment or any part thereof against claims not expressly recognized by RENK-MAAG.
- 9.7. Payments are due 30 days after issuing the invoice.

**10. Reservation of Title:**

- 10.1. RENK-MAAG shall retain title to all SCOPE OF SUPPLY until RENK-MAAG receives full payment therefore in accordance with the terms of payment.
- 10.2. The CUSTOMER shall cooperate in any measures necessary for the protection of RENK-MAAG's title. In particular upon entering into the CONTRACT it authorises RENK-MAAG to enter or notify the reservation of title in the required form in public registers, books or similar record, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at CUSTOMER'S cost.
- 10.3. For so long as RENK-MAAG retains title to the SCOPE OF SUPPLY but while the CUSTOMER has possession of the SCOPE OF SUPPLY, the CUSTOMER shall, at its own cost, store the SCOPE OF SUPPLY according to RENK-MAAG's specification, maintain the SCOPE OF SUPPLY and insure the SCOPE OF SUPPLY for the benefit of RENK-MAAG against theft, breakdown, fire, water or any other risks. It shall further take all reasonable measures to ensure that RENK-MAAG's title is in no way prejudiced.

**11. Delivery Period:**

- 11.1. The DELIVERY PERIOD shall not start until the CONTRACT is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the ORDER have been made, any agreed collateral given and the main technical points settled. The DELIVERY PERIOD shall be deemed to be complied with if within such period RENK-MAAG has sent a notice to the CUSTOMER informing the CUSTOMER that the SCOPE OF SUPPLY is ready for dispatch.
- 11.2. The DELIVERY PERIOD shall be reasonably extended if:
- a) the information and specifications required by RENK-MAAG for performance of the CONTRACT are not timely received by RENK-MAAG, or if the CUSTOMER subsequently changes such information and specifications thereby causing a delay in the delivery of the SCOPE OF SUPPLY;
  - b) events or circumstances occur which are beyond the control of RENK-MAAG and which prevent or delay the delivery of the SCOPE OF SUPPLY. Such events may include, but shall not be limited to, epidemics mobilisation, war,

revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes or force majeure; or  
c) the CUSTOMER or a third party fails to timely perform its contractual obligations, in particular if the CUSTOMER fails to observe the terms of payment.

## 12. Damages for Delayed Delivery:

- 12.1. The CUSTOMER shall have a right to claim damages due to late delivery only in case it can be proved that the delay has been caused through gross negligence of RENK-MAAG and only insofar as the CUSTOMER can prove a loss suffered as a result of such delay. If substitute material can be supplied to accommodate the CUSTOMER, the CUSTOMER is not entitled to claim any damages.
- 12.2. Damages for delayed delivery shall amount to 0.5% (zero point five per cent) of the PRICE of the delayed part of the SCOPE OF SUPPLY per each full week of delay and shall not exceed 5% (five per cent) of the PRICE of the part of the SCOPE OF SUPPLY in delay.
- 12.3. A delay of the SCOPE OF SUPPLY described in Clauses 12.1 and 11.2 hereof shall not entitle the CUSTOMER to claim damages or to cancel the CONTRACT.

## 13. Termination for Cause:

- 13.1. CUSTOMER shall have the right to terminate the CONTRACT (or any portion thereof) for cause in the event that RENK-MAAG:  
a) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or  
b) commits a material breach of the CONTRACT which does not otherwise have a specified contractual remedy, provided that CUSTOMER shall first provide RENK-MAAG with written notice of the nature of such breach and of CUSTOMER'S intention to terminate the CONTRACT as a result of such breach, and RENK-MAAG shall have failed, within 3 (three) weeks after receipt of such notice (or such extended period as is considered reasonable and agreed by the PARTIES), to either (i) commence to cure such breach and diligently thereafter to pursue such cure, or (ii) provide reasonable evidence that no such breach has occurred.
- 13.2. If CUSTOMER terminates the CONTRACT under Clause 13.1 hereof, or any portion thereof, CUSTOMER shall pay to RENK-MAAG that portion of the CONTRACT PRICE allocable to the SCOPE OF SUPPLY completed and accepted by CUSTOMER. If the PARTIES cannot agree on the value for such portion of SCOPE OF SUPPLY so terminated, a neutral expert to be determined by both PARTIES shall fix the PRICE, and this PRICE shall be accepted by both PARTIES. For the determination of the PRICE, RENK-MAAG'S cost related to the partial SCOPE OF SUPPLY and the value said partial SCOPE OF SUPPLY has for the CUSTOMER shall be taken into consideration on a fair and true basis.
- 13.3. RENK-MAAG shall have the right to terminate the CONTRACT (or any portion thereof) for cause in the event that:  
a) CUSTOMER becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or  
b) CUSTOMER materially breaches the CONTRACT, including but not limited to, failure to make any payment when due or to fulfil any payment conditions.  
c) APPLICABLE EXPORT LAWS and/or SANCTIONS in the country of registration of RENK-MAAG or of its parent companies or in the country of origin of the SCOPE OF SUPPLY do not allow for the shipment of the SCOPE OF SUPPLY to CUSTOMER or END-CUSTOMER.
- 13.4. If RENK-MAAG terminates the CONTRACT, or any portions thereof under Clause 13.3 hereof, RENK-MAAG shall be paid for all SCOPE OF SUPPLY completed or partially completed prior to the date of termination, plus extra costs and other damages incurred by the termination, including but not limited to cancellation costs under subcontracts and/or expenses for non-cancellable procurement.

## 14. Termination for Convenience:

- 14.1. CUSTOMER shall have the right to terminate the CONTRACT upon 15 (fifteen) WORKING DAYS' prior written notice to RENK-MAAG, and RENK-MAAG shall stop its performance upon the receipt of such notice except as otherwise agreed with CUSTOMER. If CUSTOMER terminates the CONTRACT for convenience, it shall pay RENK-MAAG:  
a) the agreed unit price for SCOPE OF SUPPLY completed and delivered, plus  
b) additional material and labour costs incurred, and for engineering services supplied by RENK-MAAG with respect to the cancelled items, which shall be

charged to CUSTOMER at RENK-MAAG'S rates in effect at the time of cancellation, but which shall not exceed the CONTRACT PRICE for such items, plus  
c) six percent (6%) of the costs and expenses referred to in (b) above in lieu of profit, plus  
d) such other costs and expenses, including cancellation charges under subcontracts, storage costs, etc., as RENK-MAAG may incur in connection with such cancellation or termination; or  
e) in the event a cancellation schedule is included as part of the CONTRACT, the amount specified on such cancellation schedule.

## 15. Suspension:

- 15.1. If CUSTOMER decides to suspend the CONTRACT, RENK-MAAG shall be entitled to be compensated for any proven costs caused by the suspension. If the suspension lasts for more than two (2) months, the CONTRACT shall be deemed to be terminated for convenience in accordance with Clause 14 hereof.
- 15.2. In case of suspension according to Clause 15.1 hereof, RENK-MAAG shall resume work upon written instruction from CUSTOMER, receipt of payments due and owing by CUSTOMER under the CONTRACT, and written agreement between the PARTIES of CHANGES as may be requested, as soon as the required workshop capacity is available.

## 16. Export Control:

- 16.1. RENK-MAAG shall export and/or re-export any export item in accordance with all APPLICABLE EXPORT LAWS.
- 16.2. CUSTOMER and/or END-CUSTOMER expressly acknowledges and agrees that it will not:  
a) divert, use, export or re-export any export items contrary to any APPLICABLE EXPORT LAWS; and/or  
b) export, re-export, or provide any export items to any entity or person within any country that is subject to any SANCTIONS; and/or  
c) export, re-export, or provide any export item to entities and persons that are ineligible under APPLICABLE EXPORT LAWS.
- 16.3. If an export license is required, upon receipt of the PURCHASE ORDER, RENK-MAAG shall prepare an application on CUSTOMER'S behalf and submit it to the appropriate authorities. As to any export license, CUSTOMER shall advise RENK-MAAG of the validity, number, date of issue and expiration date. RENK-MAAG'S performance hereunder shall be subject to RENK-MAAG'S prior receipt of evidence satisfactory to RENK-MAAG that an appropriate export license has been granted. CUSTOMER assumes all responsibility for reimbursing Supplier for all expenses incurred by RENK-MAAG with respect to any export license.

## 17. Packaging, Transportation, Insurance:

- 17.1. Packaging shall be charged separately by RENK-MAAG and is not returnable. However, if any such packaging is required to be returned to RENK-MAAG, such packaging shall be returned CIF INCOTERMS by the CUSTOMER.
- 17.2. Special requests with respect to transportation and/or insurance shall be timely submitted to RENK-MAAG and may lead to PRICE or DELIVERY PERIOD adjustments.
- 17.3. The transportation and delivery of SCOPE OF SUPPLY shall be at the CUSTOMER'S expense and risk.
- 17.4. The CUSTOMER shall be responsible for obtaining insurance against all risks related to the performance of the CONTRACT and the delivery and receipt of the SCOPE OF SUPPLY.

## 18. Passing of Benefit and Risk:

- 18.1. The CUSTOMER shall collect SCOPE OF SUPPLY at the latest 2 (two) weeks after the announcement for readiness of shipment.
- 18.2. The benefit and the risk of the SCOPE OF SUPPLY shall pass to the CUSTOMER on the date of the dispatch from RENK-MAAG'S place of business.
- 18.3. If dispatch is delayed at the request of the CUSTOMER or due to reasons beyond RENK-MAAG'S control, the responsibility for all risks related to the SCOPE OF SUPPLY shall pass to the CUSTOMER at the DELIVERY DATE. From that date, the SCOPE OF SUPPLY shall be stored and insured on the account of and at the risk of the CUSTOMER. Any costs incurred shall be borne by the CUSTOMER.

## 19. Inspection of the Scope of Supply:

- 19.1. To the extent that it is required to do so by standard commercial practice, RENK-MAAG shall inspect the SCOPE OF SUPPLY before dispatch. Special re-

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quests for further testing must expressly be agreed upon in writing and shall be paid for by the CUSTOMER.

- 19.2. The CUSTOMER shall inspect the SCOPE OF SUPPLY within a reasonable period and shall immediately notify RENK-MAAG in writing of any deficiencies. If the CUSTOMER fails to notify RENK-MAAG, the SCOPE OF SUPPLY shall be deemed to be approved and accepted.
- 19.3. RENK-MAAG shall promptly remedy any deficiency about which it is notified pursuant to Clause 19.2 hereof as soon as possible. The CUSTOMER shall cooperate with RENK-MAAG to the extent necessary to permit RENK-MAAG to remedy any such deficiencies.
- 19.4. Deficiencies of any kind in SCOPE OF SUPPLY supplied shall not entitle the CUSTOMER to any rights and claims other than those expressly stipulated in Clauses 19 and 20 hereof.
- 19.5. Any costs for additional acceptance certificates, third party charges, hold points, witness points, services and further testing beyond standard commercial practice shall be borne by the CUSTOMER.

**20. Warranty:**

- 20.1. The warranty period is 12 months. The warranty period starts when the GOODS supplied hereunder are ready for dispatch or, if RENK-MAAG also undertakes the installation, upon completion thereof. In any event, the warranty period shall end not later than 18 months after RENK-MAAG's announcement for readiness of shipment.  
For parts replaced or repaired by RENK-MAAG the warranty period is the shorter of 6 months after installation or 24 months after the warranty period for the GOODS supplied hereunder has started.  
The warranty period for separately furnished spare parts is 12 months, provided such spares are installed by RENK-MAAG specialists, and such warranty period lasts not longer than 18 months after announcement for readiness of shipment.
- 20.2. The warranty period shall immediately terminate if the CUSTOMER or a third party modifies, replaces or repairs any machinery, equipment or part thereof delivered by RENK-MAAG without the written consent of RENK-MAAG, or if the CUSTOMER, in case of a defect, does not immediately take appropriate steps to mitigate the damage and give RENK-MAAG the opportunity to remedy such defect.
- 20.3. Where a valid claim in respect of any of the delivered GOODS which is based on a defect in the quality or condition of the GOODS or their failure to meet specification is notified to RENK-MAAG in writing in accordance with these GENERAL CONDITIONS, RENK MAAG's sole liability shall be to promptly repair or replace any parts of the delivered GOODS at its sole discretion. Such defective parts shall become RENK-MAAG's property once replacement occurs.
- 20.4. Only if RENK-MAAG is not able to rectify the defects within a reasonable period of time may the CUSTOMER, with the written authorization of RENK-MAAG, employ third parties to rectify the defects at reasonable costs or ask for a refund for the reduced value of the defective GOODS, whatever is the more cost-effective solution.
- 20.5. Any payments of damages due to defects are excluded.
- 20.6. RENK-MAAG shall not bear the costs of any work performed by third parties unless such third parties have been authorized in writing by RENK-MAAG to repair, replace or manipulate defective parts.
- 20.7. Excluded from RENK-MAAG's warranty are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. but not limited to those resulting from normal wear and tear, improper maintenance or storage, failure to observe the operating instructions, incorrect or excessive use, influence of damaging chemical(s) or electrolytic action, electric current, water, sand or other solids, incrusting or polluted oil, incorrect oil properties, corrosion, erosion, cavitation or the like, defective foundation, construction and installation work not performed by RENK-MAAG, as well as other reasons beyond RENK-MAAG's control.
- 20.8. With respect to machining orders, RENK-MAAG warrants proper performance. In the event of a defect in the machining process the machining will be re-performed free of charge upon delivery of new materials supplied by the CUSTOMER to RENK-MAAG at no cost to RENK-MAAG. The CUSTOMER shall have no further remedy for such defects in the machining process.
- 20.9. RENK-MAAG does not provide any warranty unless all conditions as to the utilization of the SCOPE OF SUPPLY are known by RENK-MAAG at the time of the acceptance of the ORDER.

- 20.10. With respect to subcontractors selected by the CUSTOMER, RENK-MAAG provides a warranty against defects in the goods supplied by such contractors only to the extent of such subcontractors' warranty for such SCOPE OF SUPPLY.

**21. Limitation of Liability:**

- 21.1. With respect to defects in material, design or workmanship as well as to any failure to fulfil express warranties, the CUSTOMER shall not be entitled to any contractual or extra-contractual rights and/or claims other than those expressly stipulated in Clauses 20.1 to 20.10 hereof.
- 21.2. With respect to claims arising out of faulty advice or assistance to the CUSTOMER, RENK-MAAG is liable only to the extent of wilful misconduct, bad faith or gross negligence.
- 21.3. THE REMEDIES OF CUSTOMER SET FORTH IN THESE GENERAL CONDITIONS ARE EXCLUSIVE. RENK-MAAG'S LIABILITY HEREUNDER SHALL NOT EXCEED 100% (HUNDRED PERCENT) OF THE CONTRACT PRICE, EXCEPT TO THE EXTENT REQUIRED BY LAW.**

As used herein "gross negligence" shall mean reckless disregard of, or wanton indifference to, harmful and avoidable consequences and "wilful misconduct" shall mean conduct that is committed with an intentional disregard for the safety of others and/or the safety of another's property. "Gross negligence" and/or "wilful misconduct" shall not include any act or omission or any error of judgment or mistake made in good faith.

**22. Exclusion of Further Liability:**

- 22.1. RENK-MAAG agrees to perform in accordance with the CONTRACT and to fulfil its warranty duties. Any further liability in favour of the CUSTOMER or any third party for any damages is excluded.
- 22.2. Any claims of the CUSTOMER other than those expressly stipulated in these GENERAL CONDITIONS OF SALE are excluded, irrespective of the legal grounds upon which they are based (contract or torts). This refers in particular to damage, reduction of PRICE and termination of CONTRACT claims.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, INCLUDING ALL DOCUMENTS MAKING PART THEREOF, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, RENK-MAAG SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER, BY WAY OF INDEMNITY, OR BY REASON OF ANY BREACH OF CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), FOR PAYMENT OF DAMAGES DUE TO DEFECTS, INJURY TO PERSON AND THE LIKE, AS WELL AS ANY LOSS OF PROFIT, LOSS OF CONTRACTS OR EARNINGS, DELAY DAMAGES, INTERRUPTION OR LOSS OF PRODUCTION, LOSS OF USE, LOSS OF OPPORTUNITY OR BUSINESS, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER THAT MAY BE SUFFERED BY CUSTOMER. CUSTOMER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS RENK-MAAG FROM ANY CLAIM MADE BY END-USER OR CUSTOMER'S CUSTOMERS FOR SUCH LOSSES.**

**23. Place of Fulfilment:**

- 23.1. Place of fulfilment for both the CUSTOMER and RENK-MAAG is Winterthur, Switzerland, even if the delivery is made pursuant to CIF, FOB or similar INCOTERM clauses. If RENK-MAAG has also undertaken the installation, the place of installation is deemed to be the place of fulfilment only with respect to RENK-MAAG's obligation of installation.

**24. Jurisdiction and Applicable Law:**

- 24.1. The place of jurisdiction for both the CUSTOMER and RENK-MAAG shall be Winterthur, Switzerland. RENK-MAAG shall, however, remain entitled to sue the CUSTOMER at the latter's registered address.
- 24.2. The CONTRACT shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall not be applicable.

RENK-MAAG GmbH

Alex Freihofer  
Managing Director

Erich Schreier  
Head of Administration & Finance

Winterthur, 10<sup>th</sup> November 2012

**RENK-MAAG GmbH**

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