



#### **1. TERMS APPLICABLE**

The Terms and Conditions of Sale and/or Service listed below are the exclusive terms and conditions applicable to quotations made and orders acknowledged by ANDRITZ ("Seller") for the sale of spare- and wear parts ("Products") and/or for the provision of services ("Services") on the equipment of the Buyer ("Equipment") specified in the Agreement. Any of Buyer's terms and conditions that are in addition to or different from those contained herein, which are not separately agreed to by Seller in writing, are hereby rejected and shall be of no effect. The term "Agreement" as used herein means the quotation and/or the acknowledgment of the purchase order, together with any attachment thereto, any documents expressly incorporated by reference, and these Terms and Conditions of Sale and/or Service.

#### **2. DELIVERY OR PERFORMANCE**

Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance.

(a) Delivery of Products: If not otherwise agreed, delivery of the Products hereunder will be made on the basis FCA according to the most current version of INCOTERMS®, in effect at the date the Agreement enters into force. The risk of loss shall pass from the Seller to the Buyer as per agreed Incoterm clause.

(b) Performance of Service: If not otherwise agreed, place of performance shall be the Buyer's site. In derogation from the latter, the Service is carried out at the Seller's site, the delivery of the Equipment to the Seller's site will be at the risk and account of the Buyer, if not otherwise agreed. The property and the risk of accidental loss or damage to the Equipment shall at all times remain with the Buyer. Upon completion of the Service, the Buyer has to accept the Service within 10 working days, otherwise it shall be deemed to be accepted. In the event of proven non-compliance with regard to the Agreement, it must be mentioned on the acceptance protocol. The Seller has to carry out the appropriate corrective action, within a mutually agreed period and at no additional cost for the Buyer.

#### **3. PAYMENT CONDITIONS**

Unless stipulated otherwise in the Agreement, prices shall be based on FCA, do not include any sales-, use-, excise- or other taxes and payment shall become due at the date of invoice. In case of delays in effecting payments, the Seller shall be entitled to suspend the delivery of the Products and/or performance of the Service and to charge its additional direct costs arising out of such suspension. The ownership of the Products shall be transferred from the Seller to the Buyer upon full payment of the purchase price.

#### **4. WARRANTY**

(a) Product Warranty: Seller warrants to Buyer that the Products will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial installation/use of the Products or 18 months from delivery thereof ("Warranty Period"). If the Products cannot be delivered in time due to reasons caused by the Buyer, the Warranty Period of 18 months shall start with readiness for dispatch. If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, on the same terms as the original delivery was made, according to agreed INCOTERMS®, a replacement part or repair the defect. Any repair or replacement parts furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products under this paragraph 4(a): (i) if the Products have not been used in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if the Products are modified or repaired by someone other than Seller; (iv) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or have by their nature a shorter life time.

(b) Seller further warrants to Buyer that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.

(c) Services Warranty: Seller warrants to Buyer that the Services performed will be free from defects in workmanship and will conform to any mutually agreed specifications. If any failure to meet this warranty appears within 6 months from the date of completion of the Services, on the condition that Seller be promptly notified in writing thereof, Seller as its sole obligation for breach of this warranty will correct the failure by re-performing any defective portion of the Services furnished. Seller does not warrant the accuracy of, or performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the Service provided.

(d) Software Warranty: Seller as license provider shall warrant conformity with the specifications applicable at the time of supply of the software provided the software was used according to the applicable installation requirements and conditions of use and was installed on hardware supplied and authorized by Seller. Software products from other manufacturers (such as Windows) shall be subject only to the warranty conditions of the manufacturer concerned. An error shall be corrected, at the discretion of Seller, either by supplying new software or by modifying the existing software. Any warranty claim of the Buyer in respect of software shall be brought within 6 (six) months after delivery; thereafter any action shall be barred. Seller does not warrant that: (i) the functions of the software meet the Buyer's requirements, (ii) the programs as selected by the Buyer are compatible, (iii) the programs work without interruption and flawlessly or (iv) that all software errors can be removed. Any warranty for malfunctions caused by computer viruses is excluded. The warranty will be excluded if the software or the Equipment for which the software is used has been modified by the Buyer or a third party without Seller's prior written consent.

(e) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 4 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(f) The remedies provided in present paragraph 4 are Buyer's exclusive remedies for breach of warranty. Any performance information mentioned in the Agreement, including technical and design data, are for Buyer's information only and are not subject to any warranty obligation.

#### **5. LIMITATION OF LIABILITY**

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability, indemnity or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to Buyer or any third party for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products and/or Service, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature.

(b) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed 50% of the purchase order price.

(c) The limitations and exclusions of liability set forth in this paragraph 5 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach thereof shall terminate on the third anniversary of the date of this Agreement.

(e) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of Equipment serviced. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to the Agreement, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.



#### **6. CHANGES, DELETIONS AND EXTRA WORK**

Buyer, without invalidating the Agreement, may make changes by altering, adding to or deducting from the general scope of the Products and/or Services by written Change Order. Any such Change Order will include an appropriate adjustment to the Agreement, especially to the purchase order price and delivery terms, as the case may be. Seller will not make changes in the Products and/or Services unless Buyer and Seller have executed a written Change Order for such change. If, after the date of this Agreement, new or revised governmental requirements should require a change in the Products or Services, the change will be subject to this paragraph 6.

#### **7. SET OFF**

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

#### **8. CONDITIONS ON SITE**

(a) Concealed Conditions: If defects are discovered in the course of Service, that were not apparent on initial inspection of the Equipment, the Seller shall inform the Buyer about the additional Service and the costs thereof. The Seller will not perform the additional Service without a Change Order as per paragraph 6. The parties acknowledge and agree that increased costs or schedule extensions due to any concealed conditions at the job site or other events and circumstances coming from the Buyer's sphere of influence including strikes of his personnel shall be to Buyer's account.

(b) Buyer's obligations: Unless otherwise stated in the Agreement, Buyer shall be responsible for: (i) granting access to Buyer's premises during normal working hours (i) providing and instructing the Seller with all employment, health, safety and environment conditions and regulations applicable on site; (ii) physically disconnecting and isolating the Equipment being repaired from existing piping and electrical power before Seller start the Service, and taking adequate precautions that re-connection and resumption of use does not take place until the Service is completed; (iii) emptying the Equipment and freeing it from any toxic or harmful substances before the Service begins so that the Equipment is safe for Service to begin; (iv) maintaining the area entirely free of combustible and toxic substances and providing fire protection service until the Service is completed; (v) determining the prior condition of the portion of the Equipment not involved in the Service, and its ability to withstand the Service and any tests that may be necessary; (vi) protecting and monitoring Seller's materials and supplies used for the Service; (vii) the safety of its own staff working on site; (viii) providing Seller with the history of the Equipment, if requested by Seller. If Buyer does not fulfill its obligations or prevents the Seller from executing the Service, Seller shall have the right to suspend its Services and to charge additional costs incurred by the Seller.

#### **9. TERMINATION**

In general the Parties may only have the right to terminate its obligations under this Agreement if the other Party is in material breach of the Agreement and a period to cure the breach of at least 30 days has been granted to the breaching Party. A termination right for convenience may only be granted to the Buyer upon payment of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expenses incurred, work already executed, commitments already made by Seller and an appropriate profit; provided, that in no event shall Seller's termination charges be less than 25% of the purchase order price.

#### **10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

(a) The parties acknowledge that the information which the disclosing party submits to the receiving party in connection with this Agreement includes disclosing party's confidential and proprietary information, both of a technical and commercial nature. Receiving party agrees not to disclose such information to third parties without disclosing party's prior written consent.

(b) The intellectual property rights, copyrights and other rights connected therewith, in respect of drawings, specifications, documents, data and software made available by the Seller to the Buyer shall be owned solely by the Seller and shall remain its property. Buyer is not allowed to permit any third party to fabricate the Products or any parts thereof.

(c) The Buyer is obliged to inform the Seller of any intellectual property rights that may exist with respect to the Equipment if Services are rendered for Equipment not supplied by the Seller. In case of third-party claims that may be asserted on the grounds of the existence of intellectual property rights on the Equipment or Products not delivered by the Seller, the Buyer shall indemnify and hold harmless the Seller against any such claims.

(d) With regard to software the Seller grants to the Buyer a non-exclusive and non-transmissible right to use the intellectual property right, in machine-readable, object code form, on one system limited to the operation of the agreed Equipment. The software license shall be unlimited in time and free of charge, if not otherwise agreed. Neither the Buyer nor any third party shall modify, reproduce, translate, reverse engineer, transfer from object code to the source code or decompile the Seller's software. The license does not entitle the Buyer to use the software for any equipment other than the agreed Equipment, to grant sub-licenses or to copy the software documents without the Seller's prior written consent. The Buyer is only entitled to make a single copy for backup purposes to be able to reload the system limited to the one agreed Equipment. If the Buyer exchanges the agreed Equipment, new software has to be purchased and installed. In case of termination of the Agreement the license terminates and all copies of the software and the documentation shall be returned to the Seller promptly after termination.

#### **11. END USER**

If the Buyer of the Products is not the end user, the Buyer is obliged to name (i) the end user, (ii) the Equipment, (iii) the Equipment number and (iv) the country where the Products are used.

#### **12. FORCE MAJEURE**

(a) For the purpose of this Agreement "Force Majeure" will mean all events, beyond the reasonable control of either party which affect the performance of this Agreement, whether foreseeable or not, including without limitation, embargos, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, riots, earthquakes, fires, storms, severe weather, floods, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers.

(b) If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

(c) If the period of suspension or reduction of operations will extend for more than four (4) consecutive months either Buyer or Seller may terminate this Agreement.

#### **13. GENERAL**

(a) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.

(b) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, Services and any prior course of dealings or usage of the trade not expressly incorporated herein.

(c) This Agreement may be modified, supplemented or amended only by writing signed by an authorized representative of both parties.

(d) In the event one of the provisions of this Agreement is defined as being invalid, illegal or unenforceable by or as a consequence of the law of the applicable jurisdiction or the act of any governmental authority, the parties shall endeavor to replace the invalid provision with a new provision that reflects and is as closely as lawfully possible related to the original intention of the parties. All other provisions of this Agreement shall remain in full force and effect.

(e) This Agreement is governed by the laws of the Republic of South Africa under exclusion of the Vienna Convention for the International Sale of Goods and its conflict of law rules.

(f) Any dispute, controversy or claim arising out of, or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be settled by the competent national court provided that (i) both parties are located in South Africa or (ii) the legal seat of the Buyer is located in a country which has not signed the New York convention on the Recognition and Enforcement of Foreign Arbitral Awards. In all other cases such disputes, controversies or claims arising out of, or in relation to this Agreement shall be settled by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa in force on the date on which the notice of arbitration is submitted by an arbitrator appointed by the Foundation. The seat of the arbitration shall be Johannesburg, South Africa. The arbitral proceedings shall be conducted in English. The arbitration award shall be final and binding by the Parties.