



## **STANDARD TERMS FOR THE PROVISION OF EQUIPMENT AND SUPPLY OF PRODUCTS AND FITTING SERVICES**

### **JF Hillebrand Group AG**

#### **1. Definitions**

- 1.1 "Charges" shall mean all and any monies of whatever nature payable by the Customer to the Company.
- 1.2 "Conditions" shall mean the terms and conditions set out herein.
- 1.3 "Confirmation" shall mean the order confirmation sent by the Company to the Customer confirming the Company's agreement to supply the Products or Services.
- 1.4 "Customer" shall mean any Person at whose request the Company provides Services or Products.
- 1.5 "Company" shall mean JF Hillebrand Group AG of Carl-Zeiss-Strasse 6, Postfach 100254, 55129 Mainz Hechtsheim, Germany and any subsidiary, affiliate or associate company by whom or on whose behalf Products or Services are provided hereunder.
- 1.6 "Company Equipment" shall mean any equipment (such as, but not limited to, bulkheads for use with flexitanks, heater pads and container liners) lent, leased or otherwise supplied by the Company to the Customer in which property is to remain with the Company and which the Customer is to return to the Company in accordance with these Conditions.
- 1.7 "Goods" shall mean any goods (including the packaging thereof) in relation to which the Company provides any Services or any goods which are to be placed within the Products for storage or transport. If the Goods are supplied to the Company in a trailer, container or similar transport unit, "Goods" shall not include such trailer, container or similar transport unit.
- 1.8 "Person" shall mean any person, whether a natural person, body corporate, partnership, limited liability partnership, unincorporated association, similar undertaking or otherwise.
- 1.9 "Products" shall mean any products supplied by the Company to the Customer.
- 1.10 "Services" shall mean any services covered by these Conditions which are provided by the Company to the Customer at the Customer's request whether such Services be gratuitous or not.

#### **2 Application**

- 2.1 These Conditions shall apply to all contracts for the sale or other supply of Products by the Company to the Customer.
- 2.2 If the Company provides any Services ancillary to the sale or other supply of Products (such as, but not limited to, the fitting of Products, training of Customer's staff in the use of Products, supervision of loading, discharge or other use of Products, advice on the use and suitability of Products) such Services shall be provided subject to these Conditions.
- 2.3 Notwithstanding Clauses 1.10, 2.1 and 2.2 above, if the Company offers any services in relation to the transportation or storage of Goods, such services and the supply of any Products or other equipment in relation thereto shall be subject to the Standard Conditions for Logistics Services of JF Hillebrand Group AG (the version current at the time of entering into the contract of carriage and/or storage), a copy which is available on request or available at [www.hillebrand.com](http://www.hillebrand.com)
- 2.4 These Conditions (and if applicable the Standard Conditions for Logistics Services of JF Hillebrand Group AG) shall prevail over any conditions specified in the Customer's purchase order. There shall be no variation to these Conditions unless it is agreed in writing and signed by an Executive Board Member of the Company and the Customer.
- 2.5 If the sale or supply of Products or the Services provided is subject to any compulsorily applicable legislation, regulations or directives, these Conditions shall, in relation to such sale, supply or Services, be read subject to such legislation, regulations or directives.
- 2.6 Insofar as any clause or sub-clause of these Conditions is held by a Court to be contrary to any compulsorily applicable legislation, regulation or directive or otherwise judged by a Court to be unlawful, void or unenforceable such clause or sub-clause shall, to the extent necessary, be severed from these Conditions and rendered ineffective as far as possible without modifying or otherwise affecting the remaining provisions of these Conditions.

- 2.7 The express terms and conditions of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 2.8 Nothing in these Conditions should be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under any compulsorily applicable legislation, regulations or directives.

### **3. Offer and Acceptance**

- 3.1 Each order for Products shall be an offer by the Customer to purchase or lease Products subject to these Conditions.
- 3.2 The Company accepts such an offer by issuing a Confirmation to the Customer. Unless the Customer sends written notice to the Company of any error within the Confirmation or any objection to the terms of the Confirmation before the delivery of the Products or the Services commence, the terms of the Confirmation shall be conclusive evidence of the relevant terms of the contract.
- 3.3 Sales literature, catalogues, and other related documents and literature (whether in hard copy or electronic) are intended as an indication only of price and range of Products offered and do not form part of the description of the Products or otherwise bind the Company. The Company reserves the right to alter such documents and literature without prior notice.

### **4. The Products**

- 4.1 The Company warrants that the Products supplied will, at the time of delivery and subject to the terms below, correspond with the description given by the Company in the Confirmation.
- 4.2 The Company reserves the right to make any changes to the Products which are required to conform with any applicable statutory or regulatory requirements which do not materially affect the quality or the performance of the Products.
- 4.3 The Company reserves the right to supply Products of a materially similar quality, design and purpose if improvements or alterations in design or availability of materials mean that it is not reasonably or economically practicable for the Company to supply Products matching the description given in the Confirmation.
- 4.4 The Company warrants that at the time of delivery the Products shall be free from defects in material and workmanship and, subject to Clauses 4.2 and 4.3 above, conform to the specifications within the Confirmation.
- 4.5 The Products are designed to be used only in accordance with the instructions issued by the Company. Insofar as the Products are used other than in accordance with those instructions or in breach of any of the conditions or warranties herein:
- (i) the warranties at clauses 4.1 and 4.4 shall not apply to the Products so used;
  - (ii) the Company shall be under no liability for any losses suffered by the Customer or any other party by reason of such use; and
  - (iii) the Customer shall indemnify and hold the Company harmless from and against any liability, loss, damage, costs and expenses incurred by the Company (including, but not limited to, claims, demands, proceedings, claims for indemnity, fines, penalties and damages) of whatever nature arising from or in relation to such use.

### **5. Services**

- 5.1 The Company shall provide the Services with reasonable skill and care.
- 5.2 The Company shall have full liberty to subcontract all or any part of the Services.

### **6. The Customer's Warranties**

The Customer Warrants that:

- 6.1 the Customer will not load or permit to be loaded within a flexitank any Goods which exceed a temperature of sixty degrees centigrade or are below a temperature of zero degrees centigrade;
- 6.2 Products will be used by the Customer within 6 months of delivery and will be stored by the Customer in accordance with any instructions issued by the Company;
- 6.3 the Customer will not load any Goods into the Products without first obtaining written confirmation from the Company that those Goods will not damage the Products;
- 6.4 the description and particulars of the Goods and any information supplied by the Customer (including any information supplied by third parties on behalf of the Customer) is full and accurate;
- 6.5 the Customer will strictly adhere to the operation instructions issued by the Company in relation to the Products. Such instructions are available upon request and if they are not provided with the Products the Customer shall ask the Company for a copy thereof;
- 6.6 where the Customer fits or installs the Products itself or arranges for parties other than the Company to fit or install the Products, it will ensure that the employees or parties used to fit or install the Products:
- (a) are competent to do so;
  - (b) have received appropriate training in the fitting and installation of the Products;
  - (c) have read and understood any instructions issued by the Company;

- 6.7 the Customer has obtained all necessary permits, licenses or other permissions or documents required of the Customer necessary for the intended carriage or storage of the Goods and use of the Products;
- 6.8 where the Customer or parties instructed by or on behalf of the Customer (other than the Company) provides containers, trailers or other such equipment into or onto which the Products are to be loaded or provides any equipment with which the Products will be used, such containers, trailers or equipment will be:
- (a) fit for their intended purpose;
  - (b) suitable for use with the Products;
  - (c) in a clean and sound condition;
  - (d) free from any defects which might damage or otherwise affect the Products;
- 6.9 where the Customer or parties instructed by or on behalf of the Customer (other than the Company) loads Goods into the Products, the Customer shall, before any storage and/or carriage commences:
- (a) check the Products for any leaks, holes or defects;
  - (b) check that all valves, doors, taps or other outlets are properly shut, sealed and tight;
  - (c) ensure that the Products are properly secure and stable and that any Goods therein are secured and stable and that the Products and Goods are safe for the intended storage and/or carriage;
  - (d) report any defects or problems under paragraphs (a) to (c) above to the Company immediately upon discovery thereof;
- 6.10 the Goods are not dangerous or liable to become dangerous at any time during the provision of any Services. For the purposes of this Clause "dangerous" Goods shall include any Goods which are or may become a danger to health, the environment, themselves, any other property (whether belonging to the Company or any other party) or any Product.

## **7. Customer's Undertakings**

- 7.1 The Customer agrees not to make any claim against any director, agent or employee of the Company in relation to any Products or Services provided by or on behalf of the Company.
- 7.2 The Customer shall save harmless and keep the Company indemnified from and against all liability, loss, damage, costs and expenses incurred by the Company (including, but not limited to, claims, demands, proceedings, claims for indemnity, fines, penalties and damages) arising out of:
- (i) the Company acting in accordance with the Customer's instructions whether or not caused or contributed to directly or indirectly by any act, omission, neglect or default on the part of the Company and/or its employees or agents; and
  - (ii) any act, omission or default on the part of the Customer or any breach by the Customer of any of the warranties or terms of these Conditions;
  - (iii) the Customer's use of the Company Equipment.
- 7.3 The Customer shall save harmless and keep the Company indemnified from and against all liability, claims, costs, claims for indemnity and demands whatsoever, howsoever arising and by whomsoever made or preferred, in excess of the liability of the Company under these conditions.
- 7.4 In relation to the Company Equipment:
- 7.4.1 Where, under the terms of the Customer's agreement with the Company, the Customer is to return the Company Equipment to the Company
- (a) The Customer shall return the Company Equipment:
    - (i) on the date upon which the Customer has agreed with the Company for the return of the Company Equipment; or
    - (ii) immediately upon completion of the carriage or storage for which the Company Equipment was supplied to the Customer; or
    - (iii) upon expiry of a reasonable period after the Company sends written notice to the Customer demanding the return of the Company Equipment;whichever shall first occur
  - (b) The Customer shall deliver up the Company Equipment by delivering it (at the Customer's cost) to an office of the Company or to the office of an agent of the Company which has been agreed between the Customer and the Company.
- 7.4.2 Where, under the terms of the Customer's agreement with the Company, the Company is to collect the Company Equipment from the Customer, the Customer shall ensure that the Company or its nominated agent or contractor is afforded all reasonable access to the Company Equipment to allow the Company to collect the Company Equipment upon provision of reasonable notice by the Company of its intention to so collect.
- 7.4.3 The Customer shall return all of the Company Equipment in the same condition in which it was handed over by the Company to the Customer (save for reasonable wear and tear);

- 7.4.4 The Customer shall save harmless and indemnify the Company from and against any loss or damage whatsoever and howsoever arising to the Company Equipment from the time at which the Customer or any person acting on behalf of the Customer takes control of the Company Equipment until the time at which the Customer delivers up the Company Equipment to the Company in accordance with the terms of this Clause 7.4.

## **8. Delivery of the Products**

- 8.1 Delivery of the Products shall be made at the address specified in the Confirmation.
- 8.2 The Company shall use its reasonable endeavours to deliver the Products on the date specified in the Confirmation.
- 8.3 Delivery of the Products shall occur:
- (a) where the Company fits or installs the Products, upon the Company tendering the Products to the Customer as ready for loading;
  - (b) where the Company does not fit or install the Products, upon the handing over of the Products to the Customer at the address specified for delivery in the Confirmation.
- 8.4 If the Company arranges transportation of the Products to an address nominated by the Customer, the Customer shall:
- (a) ensure that reasonable access is provided to the address to ensure that delivery can take place; and
  - (b) be responsible for the unloading of the Products from the delivering vehicle and ensuring that sufficient equipment and manpower is available to unload the Products from the delivery vehicle.
- 8.5 Where the Customer is to collect the Products from the Company, the Company has the right at any time to give the Customer 7 days' written notice requiring the Customer to collect the Products. If the Customer fails to collect the Products within the 7 days' notice period:
- 8.5.1 The Products shall be held by the Company at the Customer's sole risk;
- 8.5.2 The Customer shall pay to the Company storage charges calculated at 5% of the Charges for the Products per month or part thereof;
- 8.5.3 Upon the expiry of three months after the notice, the Company may cancel the contract. The Company may claim 50% of the Charges as liquidated damages.

## **9. Charges and Payment**

- 9.1 Unless otherwise stated in writing, any quotations provided by the Company:
- (i) Shall be exclusive of all taxes;
  - (ii) Shall be exclusive of any taxes, levies, imposts, duties or other such costs or expenses raised upon the Products; and
  - (iii) Shall, up to the time of delivery, be subject to variation to take into consideration currency fluctuations, changes in materials or equipment under Clause 4.2 hereof, or other such expenses. If a quotation is so varied, the Company shall advise the Customer as soon as practicable.
- 9.2 The Customer shall save harmless and keep the Company indemnified from and against all and any taxes, levies, imposts, duties or other such costs or expenses which might be raised upon the Products or by reason of the supply or use of the Products.
- 9.3 Unless otherwise agreed in writing and subject to Clause 9.4 below, all Charges shall be paid by the Customer to the Company within the terms and within the currency shown upon the invoice raised by the Company.
- 9.4 The granting of any credit by the Company (including any credit provided in any invoice in accordance with Clause 9.3 above) shall be at the absolute discretion of the Company. The Company may, in its absolute discretion, require the Customer to make payment in full or in part immediately upon presentation of an invoice whether this be before or after the Products or Services have been supplied.
- 9.5 The Customer shall pay all sums due to the Company in cash or as otherwise agreed without reduction or deferment on account of any claim, counterclaim or set-off.
- 9.6 If any sum payable by the Customer to the Company becomes overdue, interest will be charged at a rate of 2% above the SDR Interest base rate from time to time in force and shall accrue at such rate after as well as before any judgment. Furthermore, the Customer shall save harmless and keep the Company indemnified from and against all costs, claims, indemnities, liabilities, expenses, fines, penalties or other losses of whatever nature arising by reason of such late payment
- 9.7 If the Customer fails to make payment on the due date or if the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the Customer and/or the whole or any part of the Customer's assets, or if the Customer makes an assignment for the benefit of, or composition with its creditors generally:
- (a) all and any sums owed by the Customer to the Company shall become immediately payable, whether or not such sums are subject to a credit agreement (which shall, for the avoidance of doubt, include any credit period within any invoice in accordance with Clause 9.3 above); and

- (b) the Company may, without prejudice to any other right or remedy available to it, delay or withhold delivery or cancel any or all orders from and/or contracts with the Customer.

## **10. Title and Risk on the Sale of Products**

- 10.1 Subject to Clause 8.5.1, risk in the Products shall pass on delivery.
- 10.2 If the Customer pays the total of the Charges to the Company upon or before delivery of the Products, title to the Products shall pass on delivery.
- 10.3 If the Customer does not pay the total of the Charges upon or before delivery of the Products, the Company shall retain title in the Products and the Products shall remain the sole and absolute property of the Company until the total of all Charges have been paid by the Customer to the Company.
- 10.4 While title remains with the Company in accordance with Clause 10.3 above:
  - (i) the Customer shall hold such Products on a fiduciary basis as bailee for the Company;
  - (ii) any proceeds of sale or otherwise of the Products shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money
  - (iii) the Customer shall upon request deliver up such of the Products as have not ceased to be in existence. If the Customer fails to do so the Company may enter upon any premises owned occupied or controlled by the Customer where the Products are situated and repossess the Products.
  - (iv) The Customer shall at its own expense insure the Products and keep them insured to the full amount of the Charges against "all risks" to the reasonable satisfaction of the Company duly noting the interest of the Company on any policy of insurance and shall whenever requested by the Company produce a copy of the policy of insurance.

## **11. Liability**

- 11.1 The Company shall, subject to these conditions, be liable for the Customer's direct losses arising from a breach of the Company's obligations under its agreement with the Customer.
- 11.2 The Company shall not be liable for any loss, damage or claims arising from or in relation to:
  - (i) act of God;
  - (ii) consequences of war, invasion, act of foreign enemy, hostilities, civil war, riots, rebellion, insurrection, military or usurped power or confiscation, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
  - (iii) seizure or forfeiture under legal process;
  - (iv) breach by the Customer of a warranty or other obligation provided by the terms of these conditions;
  - (v) any other error, act or omission, misstatement or misrepresentation by the Customer or other owner of the Goods or by servants or agents of either of them;
  - (vi) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
  - (vii) insufficient or improper packing, labelling, addressing, loading, stowage and securing of the Goods or the Products unless the packing, labelling, addressing, loading, stowage or securing has been undertaken by or on behalf of the Company;
  - (viii) strike, lockout, stoppage or restraint of labour from whatever cause;
  - (ix) improper use of the Products or other failure by the Customer or parties instructed by or on behalf of the Customer (other than the Company) to use, fit or install the Products in accordance with the instructions issued by the Company;
  - (x) the condition of any container, trailer or other equipment supplied by or on behalf of the Customer;
  - (xi) ordinary wear and tear of the Products; and
  - (xii) any failure by the Customer to inspect the Products upon loading of any Goods or report any problems or defects in accordance with Clause 6.9 or otherwise.
- 11.3 Except under special arrangements made in writing by an Executive Board Member of the Company and the Customer, the Company gives no warranties or undertakings with regard to collection or delivery dates or times and is under no liability whatsoever for failure to adhere to any collection or delivery dates or times.
- 11.4 The Company shall not in any circumstances be liable for any consequential loss whatsoever, howsoever arising, including, but not limited to, loss of profits (whether direct or consequential), loss of goodwill, loss of market share, loss of future or anticipated sales, loss of production or factory "downtime", damages, costs and expenses incurred or payable by the Customer to any third party or any other indirect or consequential loss.
- 11.5 Any liability of the Company arising from or in relation to a breach of the Company's obligations under its agreement with the Customer whether arising in contract, tort, bailment or otherwise shall be subject to the terms of these conditions.

## **12. Limits of Liability**

- 12.1 If the Company supplies Products in breach of the warranties in Clause 4, the Company's liability for such breach shall be limited to the cost of the replacement or repair of the Products (at the option of the Company).
- 12.2 If the Company's breach of the terms herein directly results in loss of or damage to Goods, the Company's liability for such loss or damage howsoever arising shall not exceed:
- (a) the value of the Goods lost or damaged; or
  - (b) a sum equivalent to 300 SDRs per metric tonne on the gross weight of the Goods actually lost or damaged; or
  - (c) a sum not exceeding 7,300 SDRs for all Goods contained within any one flexitank, Isotank, container or similar transport container,
- whichever shall be the least.

12.3 For all other claims whatsoever, howsoever arising the Company's liability shall not exceed the Charges in respect of the Products or Services which give rise to the claim.

12.4 The Company may, at its discretion and upon receiving a request from the Customer, agree to increase the limits of liability herein. The Company reserves the right to demand an additional charge for the Services or Products if such an increase is to be agreed. Such an agreement must be made in writing and signed by an Executive Board Member of the Company.

### **13. Claims**

13.1 Any claim must be notified to the Company within 7 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to the claim.

13.2 If any claim is not notified to the Company in accordance with Clause 13.1 above, such claim shall be waived and absolutely barred unless the Customer can prove that it was impossible for the Customer to comply with the time limit in Clause 13.1 above and that the Customer made the claim as soon as it was reasonably possible for it to do so.

13.3 Upon the happening of any incident or event which may give rise to a claim, the Customer shall:

- (a) retain the Products and allow the Company or any party instructed by or on behalf of the Company to inspect the Product; and
- (b) retain samples of the Goods taken by an independent and neutral third party competent to take such samples.

Insofar as the Customer fails to comply with the requirements of this Clause 13.3, such failure shall give rise to a presumption that (a) the Products were in good order and condition upon delivery and at all material times and (b) the Goods were in good order and condition at all material times.

13.4 The Company shall, in any event, be discharged from all liability whatsoever and howsoever arising unless suit is bought and written notice thereof is given to the Company within 9 months from the date of delivery of the Products or provision of the Services alleged to give rise to the cause of action against the Company.

### **14. Law and Jurisdiction**

14.1 Any dispute arising from or in relation to these Conditions and any contract or agreement subject thereto (whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) including, but not limited to, any dispute as to the validity or interpretation of the contract or agreement or of these Conditions shall be subject to the exclusive jurisdiction of the courts of the country in which the Hillebrand Group company providing the Products or Services or upon whose behalf the Products or Services are provided has its place of business.

14.2 These Conditions and any contract or agreement between the Customer and the Company which is subject to these Conditions and any dispute arising thereunder (including, but not limited to, disputes as to the validity of and effect of such agreement, these Conditions or any part thereof whether or not such disputes are pursued for breach of contract or duty in tort, bailment or otherwise) shall be construed and resolved in accordance with the law of the country identified in Clause 14.1 above.