



# DYNAMIC COMPLETION S E R V I C E S

## GENERAL TERMS AND CONDITIONS

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### I. Scope of application

The following General Terms and Conditions shall apply to any also future delivery transactions, services and repair orders, including consulting, provision of information or similar services, unless they have been excluded on the basis of Company's explicit written approval.

The General Terms and Conditions shall be deemed to be acknowledged by contract award or acceptance of deliveries/services by the customer. Deviating terms of the customer shall not be binding for Company unless Company has acknowledged these explicitly and in writing. This shall apply even if a Company performs deliveries/services being aware of contradicting terms.

### II. Contract conclusion, scope of supply and services

Oral side agreements, exceptions, amendments or supplementations of an agreement as well as warranties shall not be binding unless these have been confirmed by Company in writing or in text form (email). The confirmation of an order given by Company shall be subject to a positive appraisal of creditworthiness.

### III. Plans and documents, industrial property rights

1. In so far as the customer provides documents, including documents in electronical format, at Company's disposal for the performance of Company's contractual obligations, the following terms and conditions shall apply:

a) The customer is obliged to procure all information necessary for the Company's contractual performance in form of documents or otherwise at his own expense and to make these available to Company in due time. All information shall include exact details of the scope of delivery stating article, type, quantity and order number.

b) If the Company's contractual scope includes research, construction, developments, drafts or similar services, the documents to be submitted shall in particular comprise design and production drawings, as well as documentation, user manuals etc.

c) Unless individually and expressly agreed otherwise in writing or in text form, Company is granted the exclusive timely and regionally unlimited right to use the development results gained by Company during the research, construction or and/or development of products for the customer in any way. Any utilization, duplicating, reproduction, distribution or handing over of the results to third parties, publication and presentation does require the express confirmation by Company. If appropriate, and if there are no conflicts with prior rights of the customer or a third party, the Company shall in particular be authorised to register industrial property rights.

d) The customer shall be held liable for any violation of third party industrial property rights as a result of construction details, drawings, models or any other specifications which have been submitted to the Company by the customer. In the event of any infringement of industrial property rights of third parties, the customer shall indemnify and hold the Company harmless.

2. In so far as Company has made documents and information available to the customer in relation to an order, the following provisions shall apply:

a) The customer shall be obliged to treat any information made available to him or any information





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becoming known to him in connection therewith or within the scope of an order as confidential even beyond the order fulfilment and to refrain from utilising any such information itself.

**b)** Any items, in particular models, tools, samples, drawings, plans as well as other documents of any kind which are submitted to the customer, including the know how contained, shall remain Company's

property unless expressly agreed otherwise in writing. The customer shall protect such items and documents including any know how contained therein against the access, insight or use by third parties and shall return these items and documents any time on Company's request. Customer may neither reproduce nor utilise any such items or documents for other purposes than those contractually agreed.

**c)** Alterations of the items and documents mentioned in Clause 2.a) and b) above may only be made with the Company's express approval. It shall be deemed to be agreed that Company shall retain the ownership in the above mentioned items and documents and that these shall be stored free of charge and appropriately on behalf of the Company while being used by the customer unless otherwise expressly agreed in writing.

**d)** The customer is obliged to insure the items stated in III. b and c against material damage, loss etc. while being in the customer's possession.

#### IV. Prices

If, after the quote has been submitted or after confirmation of the order and up to the delivery date the decisive cost factors for material, energy or human resources alter by more than 5%, each party shall be entitled to demand an adaptation of the prices. This adaptation shall depend on the extent to which the decisive cost factor has influenced the total price.

#### V. Offsetting

**1.** The customer shall only be entitled to offset a possible claim in so far as the claim to be offset can be considered as undisputed between the parties or has been established as legally binding. This does not apply to counterclaims originating from the same order as the Company's principal claim.

**2.** Beyond the regulation stipulated in par. V.1, the Company shall be entitled to offset with Companies' claims against customer claims, as well as against claims of companies affiliated with the customer. In addition thereto offsetting of claims with various payment dates shall be deemed permissible in the event of default in payment or compromise of assets.

#### VI. Force majeure

**1.** In the event of any act of God (force majeure) which shall include the occurrence of unforeseeable or exceptional circumstances arising through no fault of one's own, for example, but not limited to, difficulties in connection with material procurement, sabotage, strike, lock out, delayed self delivery (reservation of self supply), lack of transport mean, official intervention, extraordinary weather conditions, lack or outage of power supply etc., including such events occurring in the sphere of pre suppliers, the delivery period shall be extended in an appropriately if the Company has been prevented from complying with its obligations in due time.





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2. If performance of the obligation becomes impossible or unacceptable as a result of the afore mentioned circumstances, the Company shall be released from its delivery commitment. If the delay in delivery lasts for a period exceeding two months, the customer shall be entitled to rescind the agreement. If the delivery time is extended or if the Company is released from its obligation in cases of force majeure, the customer shall not be entitled to claim any damages arising therefrom.

#### **VII. Transfer of perils, delay in delivery, partial delivery**

1. Unless otherwise agreed between the parties, in particular in absence of agreement one of the most recent INCOTERM, the risk shall pass on to the customer at the point of time at which the item to be delivered is ready for dispatch and customer has been informed accordingly. In the case of delivery "carriage paid, freight prepaid, cif, fob" the risk shall also pass on to the customer if shipment is delayed for reasons which the Company is not responsible for.

2. In the case of default of acceptance the Company shall be entitled to charge the delivery in full and to send it to the customer at its expense and risk resp. to place it in the customer's or a third party stock. Further damage or other claims of the Company shall not be affected thereby.

3. After having given the customer the opportunity to render a statement with reasonably notice period, the Company shall be entitled to make partial deliveries, unless it must be deemed to be unreasonable on the part of the customer.

#### **VIII. Acceptance and inspection**

A formal acceptance must be explicitly agreed on. The customer shall bear the costs for such an acceptance unless agreed otherwise between the parties.

#### **IX. Warranty**

1. If the delivered items are defective, Company shall be obliged but also entitled, at its discretion and excluding further warranty claims on the part of the customer, to eliminate the defect or to replace the defective part. Company must be informed in writing of any identifiable defects latest within 14 days as of receipt of the goods, in case of any hidden defects immediately upon identification thereof. The statutory period of limitation for warranty claims is 18 months as from the date of delivery or 12 months as from the date of implementation, whatever term expires earlier. Company's shall gain the ownership of any replaced part. Failure to timely notify a defect as well as the consumption, the dilution and processing of the delivered goods shall be deemed to be understood as unconditional approval of the goods.

2. Warranty shall neither cover defects which arise from unsuitable or improper use, faulty assembly resp. operation by the customer or third party, natural wear and tear, faulty or negligent treatment, nor shall warranty apply to consequences of improper modifications or repair work on the part of the customer or any third party performed without the Company's approval.

3. If Company fails to comply with its obligation to perform a replacement delivery resp. to perform remedial measures twice within a reasonable deadline, the customer shall be entitled to reduce the remuneration or at its discretion to rescind the agreement. Claims for damages shall be asserted





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exclusively according to fig. X of these General Terms and Conditions.

4. The customer's right to enforce warranty claims shall lapse after a period of two months as from the date of the written rejection of the defect by Company.

#### **X. Other damage claims, limitation and scope of liability**

1. For damages having occurred separately from the delivered item (including indirect damages, consequential damages etc.) and regardless of the legal ground, the Company shall only be liable

- a) In case of deliberate action
- b) In case of grossly negligent action of the Company's owners/ organs or senior executives
- c) In cases of negligent infringement of life, body or health
- d) In cases of defects having been deliberately kept back by the Company
- e) In case of an expressly agreed guarantee
- f) In cases of defects of the delivered item, as far as the ProdHaftG (German Produkthaftungsgesetz) provides liability for personal or other damages to items used for private use or consumption (§ 1 par. 1 .2 ProdHaftG)

In case of a culpable breach of material contractual obligations, the Company shall also be liable for gross negligence of other employees than senior executives and in case of slight negligence; in the latter case the Company's liability shall be limited to damages which are typical for similar kind of contracts and reasonably foreseeable. As far as the Company's general liability insurance does not provide coverage for such kind of damage, the Company's liability shall be limited to 50.000 € respectively to 50% of the relevant contract price, depending on which figure is lower. This limitation does not apply to damages to body, health, or life or if insurance coverage is rejected because of delayed premium. Further claim for damages shall be excluded.

2. The customer shall indemnify the Company in connection with the following circumstances and irrespective of the legal ground (statutory regulations and other terms):

- Loss of control over the borehole
- Sealing or instoration of control over the borehole
- Damage to, destruction or restricted usability of the borehole
- Damage to or destruction of a deposit site, formation or subterranean materials or structures
- Uncontrolled flow of gas and fluids from or within the deposit (blowout), fire, explosions, crater formation
- Environmental pollution of any kind

The indemnification shall also include claims imposed by third parties against the Company. In the event of the customer's liability for loss of property, the Company shall be compensated as follows:

As far as the repair of the damaged item is technically and commercially reasonable, the Company shall be compensated for the necessary costs. In case of underground loss, the assessed value of the item lost downhole or, if the value cannot be assessed, then the current replacement value minus write offs, calculated on the basis of initial utilisation or last maintenance of the respective item. In case that rental equipment is contaminated during the use downhole, the customer shall bear the





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reasonably necessary costs for the cleaning.

3. If the equipment provided by the Company deteriorates at an accelerated rate because of corrosion, erosion, wear and tear or high temperatures, well fluid, waste water or due to other particular conditions in the borehole, the customer shall reimburse the costs for repair or replacement purchase, unless this is due to normal wear and tear.

The customer shall be responsible for the recovery of items lost in the borehole. If the Company in this respect advises the Customer or grants support or provides equipment upon the Customer's request, this shall be performed at the customer's responsibility and expense and the Company does not take responsibility for the success of the relevant measure. The customer shall indemnify and hold harmless the Company in this respect from any and all third party claims.

4. The customer agrees to indemnify the Company irrespective of the legal ground from any liability due to or in connection with the application of radioactive material during the fulfilment of the Company's obligation. This shall include liability for any environmental pollution, containment, elimination or restoration of the original condition. The customer shall bear the risk and the costs and take over responsibility for the loss or the dumping of radioactive material, tools or equipment in a borehole and is obliged to salvage the material, tools or equipment. The customer agrees to inform the Company continuously on any attempts to salvage these items.

5. The customer shall bear the sole geological risk and shall release the Company from any and all damages to property and bodily injuries including claims by third parties regardless of the underlying legal ground. The same shall apply to cases of mining damage.

6. The customer shall not permit any third party to utilise the Company's equipment without obtaining the Company's explicit written approval thereto in advance. If approval is granted to use the Company's equipment, the customer shall indemnify the Company from any liability arising therefrom. This does not apply if the ProdHaftG provides a mandatory liability.

#### **XI. Title retention**

1. The Company shall retain ownership of the goods delivered to the customer until all accounts receivable resulting from the order and from the business relationship between the Company and the customer have been settled. In the case of running accounts the reserved ownership shall be deemed as payment security for the Company's outstanding balance claim. Payment shall only be deemed to be effected at the point of time the equivalent amount has been fully credited to the Company's account.

2. A processing of the reserved goods by the customer shall be deemed to take place by order of the Company and free of charge so that the Company shall generally be classified as manufacturer in compliance with § 950 BGB and shall at any point of time and with any degree of processing retain ownership in the products. In this case the customer's expectant right with regards to the reserved goods shall extend also to the treated or processed goods. In the case of bonding, dilution or mixing of the reserved goods with other goods not belonging to the Company, the Company shall acquire co ownership in the relevant goods at the ratio of the invoice value of the reserved goods to the other processed goods at the point of time the goods have been of, bonded, diluted or mixed







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any such. If the customer acquires sole ownership in the new goods, the Company and the customer agree that the customer shall grant the Company co ownership in the new goods at the ratio of the invoice value of the bonded, diluted or mixed reserved goods to the new goods and shall store these free of charge on the Company's behalf.

3. The customer is authorised to sell the reserved goods within the scope of normal business transactions, however, shall not be authorised to pledge goods or transfer goods by way of security. The customer shall be obliged to protect the Company's rights with regard to the reserved goods in the case of further sale on credit. The customer shall assign with immediate effect any of the customer's accounts receivable resulting from further sale of the conditional goods to the Company for the purpose of securing all accounts receivable resulting from the business relationship. Irrespective of the collection rights to which the Company will be entitled due to the assignment, the customer shall be authorised to collect outstanding monies as long as the customer fulfils its obligations vis à vis the Company. Upon Company's request the customer shall be obliged to provide any information required in connection with the assigned receivable for the purpose of collection by the Company and to inform the debtor of the assignment.

4. If the reserved goods are resold no matter whether with or without having been processed, bonded, or mixed with other goods, the assignment of the receivables in advance as delineated above shall only extend to the amount of the invoice value of the reserved goods. The customer shall immediately inform the Company of any third party enforcement measures in the reserved goods or the claims assigned in advance surrendering all necessary documents required for the defence against these measures. If the value of the existing securities exceeds the secured accounts receivable in total by more than 15 % the Company shall be obliged upon the customer's request to release securities at the Company's discretion accordingly.

5. If the Company is assigned by the customer against reimbursement to manufacture certain products using the Company's moulds, tools, etc. by order of the customer, the Company retains ownership of the manufactured products until these are fully paid by the customer. If the customer makes any payments before the items have been completed, the customer gains ownership of goods of the half finished product.

#### **XII. Special issues in renting equipment and services**

1. In so far as Company lends equipment to the customer, these Terms and Conditions (clauses I XI) shall apply accordingly with the following modification:

In the event of damage of the rented equipment, the customer shall bear the costs reasonably necessary for the repair. If a repair is technically not possible or commercially unreasonable, the customer shall pay compensation corresponding to the current market value of the rented item, regardless of his negligence or default, plus 15% of this amount as lump sum for the replacement efforts. The Company's entitlement to claim higher damages shall remain unaffected.

2. In so far as the Company renders services by making Company's personnel available to the customer, this shall be performed exclusively based on a service contract pursuant to §§ 611 ff. German Civil Code BGB ), unless the relevant agreement fulfils the conditions of agency work according to the German Arbeitnehmerüberlassungsgesetz (AÜG) AÜG).

The Company shall warrant vis à vis the customer only for providing technically suitable and quali-





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fied personnel. For service agreements the limitation of liability and maximum liability amount pursuant to clause X shall apply whereby the Company shall solely warrant for errors of the Company's personnel in the event of gross negligence or intention. This limitation shall not apply to damage arising out of death or injury to body or health.

### **XIII . Place of jurisdiction and applicable law**

1. Exclusive place of jurisdiction for legal disputes shall be the competent court at the registered seat of the Company. Company shall, however, also be entitled to file a suit at the customer's registered seat.

2. Any legal agreement concluded under these Terms and Conditions shall be governed by German law excluding the CISG (UN Kaufrecht).

**Version 01 vom 23/08/01**

