

**1. TERMS APPLICABLE**

The Terms and Conditions of Sale listed below are the exclusive terms and conditions applicable to quotations made and order confirmations issued by the ANDRITZ entity supplying the same ("Seller") for the sales of products, equipment and associated parts and/or services relating thereto ("Products"). 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 objected to and shall be of no effect. The term "Agreement" as used herein means collectively (a) the Seller's quotation, (b) the Buyer's purchase order expressly accepted by the Seller and (c) the Seller's order confirmation, together with any attachment hereto, any documents expressly incorporated by reference, (d) and these General Terms and Conditions of Sale.

**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. Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in the Agreement and in accordance with the most current version of INCOTERMS®, in effect at the date the Agreement enters into force.

**3. WARRANTY**

(1) Product Warranty: Seller warrants to Buyer that the Products manufactured by it 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 operation of the Products and 18 months from delivery thereof (the "Warranty Period"). 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 (a) deliver to Buyer, on the same terms as the original delivery was made, according to agreed INCOTERMS®, a replacement part or (b) repair the defect. Any repair or replacement part 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 3(1): (i) if the Products have not been operated and maintained 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 Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) 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 are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(2) 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.

(3) THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 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.

(4) The remedies provided in paragraphs 3 are Buyer's exclusive remedy for breach of warranty.

(5) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

**4. LIMITATION OF LIABILITY**

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

(1) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to Buyer or any third party (a) for loss of profits or anticipated profits, revenue or business opportunity, loss of production, loss of use, loss of goodwill, loss arising from business interruption, loss of anticipated savings or wasted overheads, 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, loss of contracts, claims of customers, cost of money or loss of use of capital, increased capital or financing in each case whether or not foreseeable, or for any fines or penalties or damages (liquidated or otherwise) payable under agreements other than this Agreement and (b) for any indirect, special, incidental, punitive, exemplary, aggravated, nominal or consequential damages of any nature.

(2) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, indemnity or expense resulting from, arising out of or connected with the Products 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 contract price.

(3) The limitations and exclusions of liability set forth in this paragraph 4 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.

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

(5) 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 Products (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of Product by the Buyer against the advice of Seller. 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 shall not be subject to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

**5. CHANGES, DELETIONS AND EXTRA WORK**

(1) Seller shall not make any changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Any such Change Order shall include an appropriate adjustment to the contract price and delivery terms. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order shall include appropriate modifications to this Agreement. If, after the date of this quotation or acknowledgment, new or revised governmental requirements should require a change in the Products, the change shall be subject to this paragraph 5.

(2) The Seller shall be eligible for extension of time and/or cost compensation for events, such as - site risks, unforeseen conditions, Buyer's default, change in law and regulation, change in facilities, force majeure, or any reasons not attributable to the Seller.

**6. TAXES**

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

**7. RETENTION OF TITLE**

The ownership in the Products vests in the Supplier until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such retention of title in Seller and to protect Seller's interest in the Products.

**8. 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.



## 9. DATA COLLECTION – SOFTWARE

(1) Buyer is aware of the fact that parts of the Product generate machine and/or process data (the "Machine Data") that the Seller may use for the optimization of the performance and further improvement of the Product (the "Purpose"). Machine Data related to the Product shall be kept confidential by the Buyer and may be accessed exclusively by the Seller free of charge without prior notice either by direct duplication from the control systems installed at the plant, by direct access via a computer network or by any other means agreed between the parties. The Seller shall only be entitled to use such Machine Data for the Purpose. Seller shall keep confidential all Machine Data, and shall neither publish nor communicate such Machine Data to third parties in a form that personally identifies the Buyer or its clients. In order to ensure the operation of such tools the Buyer will fulfill the system requirements as requested by the Seller in writing. The undisturbed collection of and access to such proprietary Machine Data is an important pre-requisite for the proper fulfillment of Seller's warranty obligations and Seller's possibility to support Buyer operation remotely.

In the event Seller develops new methods, tools, improvements, etc., based on the Machine Data, Seller shall be the owner of all intellectual property rights and shall have title to any patent, trademark, copyright and other intellectual property rights.

(2) The following Software Terms and Conditions apply to any software furnished by Seller, whether separately packaged or embedded in the Products furnished by Seller hereunder.

(a) Seller hereby grants to Buyer a non-exclusive, non-transferable, fully paid-up license to use any computer software delivered to Buyer under this Agreement in machine-readable, object code form and any modifications made by Seller thereto, ("Software"), but only in connection with the configuration of the Products and operating system for which the Software is ordered and for the end-use purpose stated in the related Seller operating documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile, translate, transfer from object code to source code or reproduce the Software, without Seller's prior written consent. Except to the extent that the parties otherwise agree in writing, Buyer's license to use such Software shall terminate upon breach of this license or Agreement by Buyer, including, without limitation, breach of payment or confidentiality obligations.

(b) Buyer may not transfer this software license and warranty to a third party without Seller's previous written consent, signed by a Seller authorized representative.

(c) Seller warrants that on the date of shipment of the Software only to Buyer or Buyer's Seller-authorized transferee hereunder that: (1) the Software media is free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation. Seller disclaims any warranty that the operation of the Software will be uninterrupted or error free and that the programs selected by the Buyer are compatible. Software products from other manufacturers shall be subject only to the warranty conditions of the manufacturer concerned. Any warranty for malfunctions caused by computer viruses is excluded.

(d) If within 6 months from date of initial installation (but not more than one year from date of shipment by Seller to Buyer) of Software, Buyer discovers that the Software is not as warranted above and promptly notifies Seller in writing, within this period of time, of the nonconformity, the Supplier shall at his discretion either supply a new software or modify the existing software. (e) If any infringement and trade secret claims are made against Buyer based on the Buyer's use of the Software in a manner specified or approved by Seller, Seller shall: (i) defend against any suit or proceeding brought by an unaffiliated third party against Buyer to the extent the suit or proceeding is based on a claim that the Software or that the specified or approved use of the Software infringes a copyright or violates a trade secret agreement in which Seller was a party and provided that Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense and settlement of such suit or proceeding (including the sole authority to select counsel and remove the Software or stop accused infringing usage); (ii) Seller shall satisfy any settlement or final judgment (after any appeals) for damages entered against Buyer in such suit; and (iii) if such settlement prohibits or judgment enjoins Buyer from using the Software, Seller shall at its option: (a) obtain for Buyer the right to continue using such Software; (b) eliminate the infringement by replacing or modifying the Software, or (c) take back such Software and refund to Buyer all payments on the purchase price which Seller has received, in which case neither Buyer nor Seller will have any claim against the other under this Agreement or arising out of the subject matter of this Agreement. However, Seller's obligations with respect to infringement and trade secret claims will not apply to the extent that the claim or adverse final judgment is based on: (1) Buyer's running of the Software after being notified to discontinue running due to such a claim; (2) the combination of the Software with a non-Seller software, product, data or process; (3) damages attributable to the value of the use of a non-Seller software, product, data, or process; (4) Buyer's alteration of the Software; (5) Buyer's distributed the Software to, or its use for the benefit of, any third party; or (6) Buyer's acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Seller) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. Buyer will reimburse Seller for any costs or damages that result from these actions 1 to 6. If Seller receives information about an infringement claim related to the Software, Seller may do any of the following, at its expense and without obligation to do so: (i) procure the right to continue use of the Software, (ii) replace the Software with a functional equivalent and (iii) modify the Software to make it non-infringing (including disabling the challenged functionality and under circumstances (ii) and (iii) Buyer will stop running the allegedly infringing software immediately).

(f) This warranty will apply for the period specified in (d) above, provided that: (1) the Software is not modified, changed, or altered by anyone other than Seller or its suppliers, unless authorized by Seller in writing; (2) the Software was installed on goods supplied or authorized by the Seller and that there is no change by anyone other than Seller to the goods for which the Software is ordered; (3) the goods are in good operating order and are installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer or any of their agents, servants, employees, or contractors, or any third party; (5) Buyer promptly notifies Seller in writing, within the period of time set forth in (d) above, of the nonconformity after it is discovered; and (6) All fees for the Software due to Seller have been paid. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

(g) Buyer and successors of Buyer are limited to the remedies specified in this paragraph 9 and shall have no others for a nonconformity in the Software. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether claims arise out of warranties, representations, instructions, operating documentation, installations, or non-conformities from any cause.

(h) Unless otherwise provided in this Agreement, the fees for this Software license are included in the purchase price of the Products. Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee.

## 10. SITE RISKS

(1) Concealed Conditions. 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 for the Buyer's sphere of influence including strikes of personnel not in our employ shall be to Buyer's account. Buyer shall hold Seller harmless for increased costs and grant any necessary schedule extensions if any concealed or hazardous conditions are found.

(2) Environmental Remediation. Buyer acknowledges that Seller is not an expert in environmental remediation and shall not be directed by change order or otherwise to perform any environmental remediation as part of the Product supply, including but not limited to asbestos and lead paint removal. If any environmental remediation becomes necessary, Buyer will contract directly with a qualified third party to perform such work.

## 11. TERMINATION

In general a Party may 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. In case of such termination by the Buyer, the Seller shall be compensated by the Buyer for the expenses and investments incurred to the date of termination for the performance of Agreement. Seller shall have the right to suspend and/or terminate its obligations under this Agreement if any payment is not received within 30 days of due date. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

## 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

(1) Buyer acknowledges that the information which Seller share with the Buyer (whether orally or in written form) in connection with this quotation, acknowledgment or performance of this Agreement includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent.

(2) The intellectual property rights, copyrights and other rights connected therewith, in respect of design, manufacture, supply of the Product, 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 and may be reclaimed by the Seller at any time.



(3) Seller grants to Buyer a non-exclusive, non-transferable, royalty-free, perpetual, paid-up license to use Seller's software, confidential and proprietary information for purposes of this Agreement and the Products that are the subject hereof only. Buyer further agrees that it is not allowed to permit any third party to fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this Agreement. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorney fees).

### **13. END USER**

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent. If the Buyer of the Products is not the end user, the Buyer is obliged to name (i) the end user, (ii) the Product, (iii) the Product number and (iv) the country where the Products are used.

### **14. FORCE MAJEURE**

(1) Force Majeure defined: For the purpose of this Agreement "Force Majeure" will mean all events, beyond the reasonable control of either party, whether foreseeable or not, which affect the performance of this Agreement, including, without limitation, 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.

(2) Suspension of obligations: 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.

(3) Option to terminate: If the period of suspension or reduction of operations will extend for more than four (4) consecutive months, then either Buyer or Seller may terminate this Agreement.

### **15. GENERAL**

(1) If the Buyer decides, whatever the reason, not to take possession of the Product according to the agreed Incoterm at the agreed delivery date, (a) the risk of loss shall pass to the Buyer, (b) the acceptance shall be deemed as achieved, (c) the Seller shall be allowed to invoice any storage costs on the basis of documentary evidence and (d) the mechanical warranty period shall start at the agreed delivery date.

If the storage period exceeds thirty (30) days (a) the Seller shall be entitled to invoice the total amount of the Agreement and (b) the Seller shall be compensated for all costs incurred and duly proved.

(2) If the delivery date mentioned in the order confirmation has been expressly defined as a Seller's obligation to comply with, the following shall apply: (i) Seller's liability for late delivery for reasons attributable only to Seller is limited to the payment of liquidated damages on the basis of 0.5% of the delayed delivery per completed week of delay, limited to 5% of the contract price as Buyer's sole and exclusive remedy.

(3) If performance guarantees are expressly agreed between the parties, the following shall apply: (ii) Seller's liability for failure to achieve performance guarantees expressly agreed is limited to the payment of liquidated damages in accordance with the Seller's acceptance and test protocol. Such liquidated damages shall be limited to 5% of the contract price as Buyer's sole remedy.

(4) The aggregate liability for all liquidated damages (for delay and performance) shall be limited to an amount not exceeding 10% of the contract price.

(5) The Buyer shall notify any claim for damages within ten (10) days from the occurrence date of the event generating the claim. If the Buyer fails to issue a claim for damages within such period of ten (10) days, the Buyer shall not be entitled to obtain any compensation.

(6) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable federal, state and local laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.

(7) 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.

(8) 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 and any prior course of dealings or usage of the trade not expressly incorporated herein.

(9) This Agreement may be modified, supplemented or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition thereof.

(10) This Agreement is governed by Laws of Victoria under exclusion of the Vienna Convention for the International Sale of Goods and its conflict of law rules.

(11) 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 finally settled by arbitration in accordance with the ACICA Arbitration Rules in force on the date on which the notice of arbitration is submitted. (i) The number of arbitrators shall be one or three; (ii) The seat of the arbitration shall be Melbourne, Australia; (iii) The arbitral proceedings shall be conducted in English. (iv) The arbitration award shall be final and binding by the Parties.