

**I. GENERAL**

1. The headquarters of GESMEX Exchangers GmbH is in Germany.  
These General Terms and Conditions are intended for use in supply contracts with GESMEX Exchangers GmbH as Supplier and foreign Purchasers.  
These conditions, unless otherwise agreed, underlie all deliveries of GESMEX for export.  
Deviating these General Terms and Conditions by the Purchaser is not included in the contract, even if the order is accepted.  
A Contract is concluded - in the absence of a special agreement - upon receipt of the written order confirmation by the Purchaser.

**II. DRAWINGS AND TECHNICAL INFORMATION**

2. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
3. The Supplier shall provide one copy free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

**III. ACCEPTANCE TESTS**

4. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.
5. If the Purchaser's representation in the acceptance test was agreed, before the Contract was concluded, the Supplier shall notify the Purchaser of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.
6. If the acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

**IV. DELIVERY. PASSING OF RISK**

7. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract.  
If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place named by the Supplier.  
If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

**V. TRANSPORTATION. PACKAGING**

8. Transport services and methods, such as land, sea or air transport, are only included in the purchase price to the extent that has been agreed before order placement.  
All special arrangements, such as fixed delivery dates, and transport times of forwarding companies are excluded unless explicitly agreed before order placement. If an expedited transport time is required after order placement, and at no fault of the Supplier, the relevant surcharge will be paid to the Supplier.
9. The supplier packages the delivery item according to its standard, in a manner suitable for transport according to the agreed delivery method, so that the primary protection of the delivery item, as well as a loading and transport function are provided and temporary storage indoors, protected from the elements is possible.

**VI. TIME FOR DELIVERY. DELAY**

10. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place,

such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.

In the absence of deviating agreements, the delivery period shall be the time of delivery FCA manufacturing site, or until the delivery item is been ready for shipment.

11. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof in writing, stating the reason and, if possible, the time when delivery can be expected.

If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

12. If delay in delivery is caused by any of the circumstances mentioned in Clause 40, by an act or omission on the part of the Purchaser, including suspension under Clauses 20 and 43, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case.
13. If the Product is not delivered at the agreed time for delivery, due to the sole responsibility of the Supplier, and the Purchaser thereby incurs any damage, the Purchaser shall be entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.1 % of the purchase price for each working day of delay. The liquidated damages shall not exceed 5 % of the purchase price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages shall become due at the Purchaser's demand in writing but not before delivery has been completed or the Contract is terminated under Clause 14.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within one month after the time when delivery should have taken place.

14. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 13 and if the Product is still not delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice in writing to the Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 13, shall not exceed 15 % of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice in writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 13, would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 14.

15. Liquidated damages under Clause 13 and termination of the Contract with limited compensation under Clause 14 shall be the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of Gross Negligence.
16. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith

notify the Supplier in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery, he shall nevertheless pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser.

17. Unless the Purchaser's failure to accept delivery is due to any such circumstance as mentioned in Clause 40, the Supplier may by notice in writing require the Purchaser to accept delivery within a final reasonable period.

If, for any reason which is not attributable to the Supplier, the Purchaser fails to accept delivery within such period, the Supplier may by notice in writing terminate the Contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

## VII. PAYMENT

18. Payment shall be made within 30 days after the date of invoice.

Unless otherwise agreed, the purchase price shall be paid with one third at the formation of the Contract and one third when the Supplier notifies the Purchaser that the Product is ready for delivery. The remaining part of the purchase price shall be paid when the entire Product is delivered.

19. The payment shall not be deemed to have been effected before the Supplier's account has been irrevocably credited for the amount due.
20. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser in writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice in writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this Clause, to claim compensation for the loss he incurs. Such compensation shall not exceed the agreed purchase price.

## VIII. RETENTION OF TITLE

21. The Product shall remain the property of the Supplier until paid for in full.

The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product.

The retention of title shall not affect the passing of risk under Clause 7.

## IX. LIABILITY FOR DEFECTS

22. Pursuant to the provisions of Clauses 23-38, the Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty design, materials or workmanship.

23. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.

24. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

25. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent in writing. The

Supplier shall neither be liable for normal wear and tear nor for deterioration.

26. The Supplier's liability shall be limited to defects which appear within a period of twelve months from delivery.
27. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of twelve months. For the remaining parts of the Product the period mentioned in Clause 24 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.
28. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 26 or the extended period(s) under Clause 27, where applicable.

If the Purchaser fails to notify the Supplier of a defect within these time limits, he shall lose his right to have the defect remedied.

Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Supplier.

29. On receipt of the notice under Clause 28 the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 22-38. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser.

30. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.
31. otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier.
32. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.
33. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.
34. If the Purchaser has given such notice as mentioned in Clause 28 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.
35. If the Supplier does not fulfil his obligations under Clause 29, the Purchaser may by notice in writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

If the Supplier fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Supplier.

Where successful repair work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

36. Where the Product has not been successfully repaired, as stipulated under Clause 35,
- a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 % of the purchase price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice in writing to the Supplier in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 % of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

37. Notwithstanding the provisions of Clauses 22-36 the Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 26 or from the end of any other liability period agreed upon by the parties.
38. Save as stipulated in Clauses 22-37, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

#### **X. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

39. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of Gross Negligence.

#### **XI. FORCE MAJEURE**

40. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause.

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

41. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

42. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under Clause 40 for more than six months.

#### **XII. ANTICIPATED NON-PERFORMANCE**

43. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to

perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof in writing.

#### **XIII. CONSEQUENTIAL LOSSES**

44. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

#### **XIV. DISPUTES AND APPLICABLE LAW**

45. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
46. The Contract shall be governed by the substantive law of the Supplier's country.