



## Value Chain ⇒ Sales

### General terms and conditions for sale and delivery

#### 1. General

1.1 The contract shall be deemed to have been entered into upon receipt of Sauter, Bachmann AG's ("SABA") written acknowledgement stating acceptance of the order. Tenders which do not stipulate an acceptance period shall not be binding.

1.2 These general conditions shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these general conditions shall only be valid if expressly acknowledged by SABA in writing.

1.3 All agreements and legally relevant declarations of the contracting parties must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.

1.4 Terms and conditions of written agreements, binding offers and order confirmations of SABA shall prevail these general conditions in case of contradictions.

1.5 Should a provision of these general conditions prove to be wholly or partly invalid, the parties shall jointly seek an arrangement which has a legal and economic effect as similar as possible to the invalid provision.

#### 2. Scope of supplies and services

The supplies and services are exhaustively specified in the order acknowledgement and in appendices thereto. SABA shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.

#### 3. Plans and technical documents

3.1 Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documents are only binding if they have been expressly stipulated as such.

3.2 Each party retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

#### 4. Regulations in force in the country of destination and safety devices

4.1 The customer shall, at the latest when placing the order, draw the attention of SABA to the standards and regulations applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.

4.2 Unless otherwise agreed in accordance with Clause 4.1, the supplies and services shall comply with the regulations and standards at SABA's place of business. Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

#### 5. Prices

5.1 Unless otherwise agreed, all prices shall be deemed to be net ex works, excluding packing, in freely available Swiss francs without any deductions whatsoever.

5.2 Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like as well as the related administrative costs which are levied out of or in connection with the contract or its fulfilment. If such costs, taxes etc. are charged to SABA or to persons employed or appointed by SABA to perform any of her obligations, they shall be refunded by the customer upon presentation of the receipts.

5.3 SABA reserves the right to adjust the prices in case cost factors (especially wage rates; raw material prices; currency parities; state or regulatory taxes, fees, duties, charges and customs; etc.) and other circumstances vary between the submission of the tender and the contractually agreed performance. In such case the adjustment shall be made at discretion of SABA under consideration of the development of the prices and the cost factors of the last years.

In addition, an appropriate price adjustment shall apply in case

- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
- the nature or the scope of the agreed supplies or services has changed, or
- the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete, or
- an amendment has been made to laws, regulations or the principles of interpretation or application.

#### 6. Terms of payment

6.1 Payments shall be made by the customer at SABA's domicile according to the agreed terms of payment within 30 days from the invoice data, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

Unless otherwise agreed, the price shall be paid in the following instalments:

- one third as advance payment within one month after receipt of the order acknowledgement by the customer,
- one third on expiry of two thirds of the agreed delivery time,
- the remainder within one month after SABA's advice that the supplies are ready for dispatch.

Payment shall be deemed to be effected when Swiss francs have been made freely available to SABA at its domicile. If payment by bills of exchange or Letter of Credit is agreed, the customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of issuing, notifying and confirming the Letter of Credit.

6.2 The dates of payment shall also be observed if transport, delivery, installation, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond SABA's control, or if unimportant parts are missing, or if post-delivery work is to be carried out which does not prevent the supplies from being used.

6.3 If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, SABA shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages.



If the customer, for any reason whatsoever, is in delay with a further payment, or if SABA is seriously concerned that she will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, SABA, without being limited in her rights provided for by law, shall be entitled to refuse further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until SABA will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or if SABA does not receive adequate securities, SABA shall be entitled to terminate the contract and to claim damages.

6.4 If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current 3-month CHF-LIBOR target. The right to claim further damages is reserved.

#### 7. Reservation of title

SABA shall remain the owner of all supplies until she has received the full payments in accordance with the contract.

The customer shall cooperate in any measures necessary for the protection of SABA's title. In particular, upon entering into the contract he authorizes SABA to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with the relevant national laws, and to fulfil all corresponding formalities, at the customer's expense.

During the period of the reservation of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of SABA against theft, breakdown, fire, water and other risks. He shall further take all measures to ensure that SABA's title is in no way compromised or rescinded.

#### 8. Delivery time

8.1 The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time SABA has sent a notice to the customer informing him that the supplies are ready for dispatch.

8.2 Compliance with the delivery time is conditional upon the customer's fulfilment of his contractual obligations.

8.3 The delivery time shall be reasonably extended:

- a) if the information required by SABA for the performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
- b) if hindrances occur which SABA cannot prevent despite exercising the required care, regardless of whether they affect SABA, the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilization, war, civil war, acts of terrorism, riots, political unrest, revolutions, sabotage, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, fire, explosion, natural catastrophes;
- c) if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.

8.4 The customer shall be entitled to claim liquidated damages for delayed delivery insofar as it can be proven that the delay has been caused through the fault of SABA and that the customer has suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the latter is not entitled to any damages for delay.

8.5 Damages for delayed delivery shall not exceed 0.5 per cent for every full week's delay and shall in no case whatsoever altogether exceed 5 per cent of the contract price of the part of the supplies in delay. No damages at all shall be due for the first two weeks of delay.

8.6 After reaching the maximum liquidated damages for delayed delivery, the customer shall grant SABA a reasonable extension of time in writing. If such an extension is not observed for reasons within SABA's control, the customer shall have the right to reject the delayed part of the supplies or services. If a partial acceptance is economically not justified on the part of the customer, the latter shall be entitled to terminate the contract and to claim refund of the money already paid against return of the deliveries supplied.

8.7 In case a specific date is fixed instead of a delivery period, this date shall correspond to the last day of a delivery period; Clauses 8.1 to 8.4 apply by analogy.

8.8 Any delay of the supplies or services does not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 8. This limitation does, however, not apply to unlawful intent or gross negligence on the part of SABA, but does apply to persons employed or appointed by SABA to perform any of her obligations.

#### 9. Packing

Packing shall be charged at best, invoiced separately by SABA and shall not be returnable (Exception: Reusable packaging). However, if it is declared as SABA's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

#### 10. Passing of benefit and risk

10.1 The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works at the latest.

10.2 If dispatch is delayed at the request of the customer or due to reasons beyond SABA's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored and insured on the account and at the risk of the customer.

#### 11. Forwarding, transport and insurance

11.1 SABA shall be notified in good time of any special requirements regarding forwarding, transport and insurance. Transportation shall be at the customer's expense and risk.

11.2 Objections regarding forwarding or transport shall be immediately submitted by the customer to the last carrier upon receipt of the supplies or of the shipping documents.

11.3 The customer shall be responsible for taking out insurance against damage of any kind.



## 12. Inspection and taking-over of the supplies and services

12.1 As far as being normal practice, SABA shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

12.2 The customer shall inspect the supplies and services within a reasonable period of time and shall immediately notify SABA in writing of any deficiencies. If the customer fails to do so, the supplies and services shall be deemed to have been taken over.

12.3 If SABA has been notified of deficiencies in accordance with Clause 12.2, she shall remedy them as soon as possible, and the customer shall give SABA the possibility to do so. After remedy of such deficiencies, a taking-over test in accordance with Clause 12.4 will be carried out at the request of the customer or SABA.

12.4 Subject to Clause 12.3, the execution of a taking-over test as well as the stipulation of the conditions related thereto require a special agreement. In the absence of such an agreement the following shall apply:

- SABA shall advise the customer of the execution of the taking-over test in good time so that the customer or his representative can attend.
- A taking-over report shall be prepared which shall be signed by both the customer and SABA or by their representatives. Such report shall either state that the taking-over has taken place, or that it has taken place under reservations, or that the customer has refused it. In the last two cases, the deficiencies shall be listed individually in the report.
- In case of insignificant deficiencies, in particular those which do not substantially hinder the efficient functioning of the supplies or services, the customer shall not be entitled to refuse taking-over of the supplies or services and refuse to sign the taking-over report. SABA shall remedy such deficiencies without delay.
- In case of significant deviations from the contract or serious deficiencies, the customer shall give SABA the possibility to remedy these within a reasonable time. Thereafter, a further taking-over test shall take place.

If during this test significant deviations from the contract or serious deficiencies appear again, the customer shall be entitled to claim either a price reduction or an indemnity or other compensation from SABA, provided this has been agreed beforehand. If, however, the deviations and deficiencies which appear during the test are of such significance that they cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or such use is considerably impaired, then the customer shall be entitled to refuse taking-over of the defective part or, if partial taking-over is economically not justified, to terminate the contract. In this case, SABA can only be held liable for reimbursing the sums which have been paid to SABA for the parts affected by the termination.

12.5 Taking-over shall also be deemed completed,

- if the customer does not participate in the taking-over despite being requested in advance to do so;
- if the taking-over test cannot be carried out on the date provided for due to reasons beyond SABA's control;
- if the customer refuses the taking-over without being entitled to do so;
- if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;
- as soon as the customer uses the supplies or services.

12.6 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (guarantee, liability for defects).

## 13. Guarantee, liability for defects

### 13.1 Guarantee period

The guarantee period is 12 months, or 6 months in case of a multi-shift system. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking-over have been agreed upon beforehand, or, if SABA undertakes the installation, upon completion thereof. If dispatch, taking-over or installation are delayed due to reasons beyond SABA's control, the guarantee period shall end not later than 18 months after SABA's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts 6 months from the replacement or completion of the repair or taking-over, but not longer than the expiry of a period double the guarantee period stipulated in the preceding paragraph.

The guarantee expires prematurely if the customer or a third party undertakes modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give SABA the possibility to remedy the defect.

### 13.2 Liability for defects in material, design and workmanship

Upon the written request of the customer, SABA may choose to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proven to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become SABA's property if she does not explicitly renounce this. Under restriction of proportionality, SABA shall bear the costs of remedying the defective parts provided that they do not exceed the customary costs of transport, personnel, travelling, accommodation, dismantling and reassembly of the defective parts.

### 13.3 Liability for explicit warranties

Explicit warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An explicit warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant characteristics.

If the explicit warranties are not or only partially achieved, the customer may first require SABA to carry out the improvements immediately. The customer shall give SABA the necessary time and possibility to do so.

If these improvements fail completely or in part, the customer may claim compensation as agreed beforehand for such case, or, if such an agreement has not been made, a reasonable reduction of price. If, however, the defects are of such significance that they cannot be remedied within a reasonable time and provided that the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for him and he communicates this immediately, to terminate the contract. In this case SABA can only be held liable for reimbursing the sums which have been paid to SABA for the parts affected by the termination.

### 13.4 Exclusions from the liability for defects

All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from



normal wear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or installation work not undertaken by SABA, or resulting from other reasons beyond SABA's control are excluded from SABA's guarantee and liability for defects.

#### 13.5 Supplies and services of subcontractors

For supplies and services of subcontractors requested by the customer, SABA assumes the guarantee and liability for defects, only to the extent of the subcontractors' guarantee and liability obligations.

#### 13.6 Exclusivity of guarantee claims

With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 13.1 to 13.5.

If the customer reports a defect and no defect is found for which SABA is liable, the customer is responsible for compensating SABA for the work undertaken and other expenses and costs.

#### 13.7 Liability for additional obligations

SABA is only liable for unlawful intent or gross negligence for claims arising out of inadequate advice and the like or out of breach of any additional obligations.

### 14. Non-performance, bad performance and their consequences

14.1 In all cases of bad performance or non-performance not expressly covered by these general conditions, in particular if SABA, without valid reasons, starts the execution of the supplies and services so late that punctual completion is unlikely to be foreseen, or if execution contrary to the terms of the contract can be clearly foreseen due to SABA's fault, or if the supplies and services have been executed contrary to the terms of the contract due to SABA's fault, then the customer shall be entitled to grant a reasonable additional period for the supplies or services affected thereby simultaneously warning to terminate the contract in case of non-compliance. If such additional period lapses due to SABA's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services.

14.2 In such case, Clause 19 shall apply with regard to any claims for damages on the part of the customer and with regard to the exclusion of any further liability, and any claim for damages shall be limited to 10 per cent of the contract price for the supplies and services affected by the termination.

### 15. Termination of the contract by SABA

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of SABA, or if performance subsequently becomes impossible. If such an adaptation is economically not justifiable, SABA shall be entitled to terminate the contract or the parts affected thereby.

If SABA wishes to terminate the contract SABA shall – after having recognized the consequences of the event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed beforehand. In case of termination of the contract, SABA shall be entitled to payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

### 16. Export control

The customer recognizes that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

### 17. Data protection

SABA is entitled to process the personal data of the customer in order to perform the contract. Furthermore, the customer consents in particular to SABA transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the parties.

### 18. Software

If the supplies and services delivered by SABA include software, the customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of SABA. In case of infringement, SABA may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as SABA, may also assert a claim in the event of infringement.

### 19. Exclusion of further liability on SABA's part

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage. Liability is also excluded for compensation claims from third parties against the customer for infringements of intellectual property rights.

This exclusion of further liability on SABA's part does not apply to unlawful intent or gross negligence on the part of SABA, but does apply to persons employed or appointed by SABA to perform any of her obligations.

This exclusion of liability does not apply as far as it is contrary to compulsory law.



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**20. Right of recourse of SABA**

If personal injury or damage to the property of third parties occurs through actions or omissions of the customer or of persons employed or appointed by him to perform any of his obligations, and if a claim is made against SABA, then the latter shall be entitled to take recourse against the customer.

**21. Gear cutting and gear grinding**

Crown and hub surfaces of gear blanks which have been supplied to SABA for gear cutting and/or gear grinding must be machined based on concentricity and precisely in accordance with the required quality. Non-conform gear blanks will be reworked, if possible. Rework costs are charged to SABA of the non-conform gear blanks. The material used to produce the gear blanks must be adequate for use on gear milling and shaping machining equipment. The maximum hardness permitted for gear blanks made of steel alloys, provided no other requirements are specified, is  $R_m = 800 \text{ N/mm}^2$ .

**22. Replacement of rejects**

In the event that partially machined gears are rejected due to a supplier error, SABA will perform the machining free of charge of the originally subcontracted machining operations only.

Partial machining operations may include gear milling, gear shaping or gear flank grinding and similar operations on gear blanks supplied to SABA. The supply of any additional services, e.g. replacement and/or machining of the provided gear blank on which the partial machining was foreseen, must be agreed at the moment of issue of the purchase order and must be confirmed in writing by SABA at that time.

If the replacement of a rejected and partially machined gear is required, SABA reserves the right to purchase raw material and to perform the machining operations which precede the originally contracted operations.

**23. Installation**

If SABA undertakes installation or supervision of the installation, the General Conditions of Installation of Swissmem shall apply.

**24. Place of performance, jurisdiction and applicable law**

24.1 The place of performance shall be at the registered office of SABA in Glarus, Switzerland.

**24.2 The place of jurisdiction for both the customer and SABA shall be at the legal seat of SABA in Glarus, Switzerland.**

24.3 SABA shall, however, be entitled to sue the customer at the latter's registered address or another legally appointed venue.

24.4 The contract shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11. April 1980 is excluded for this contractual relationship.