

# GENERAL TERMS AND CONDITIONS OF ASCO CARBONDIOXIDE LTD

## PART A / SALE OF MACHINERY & EQUIPMENT

### § 1 General – Scope of Application

- (1) These General Terms and Conditions shall apply for all sales of machinery and equipment (the "Goods") by ASCO Carbondioxide LTD ("ASCO"). Unless otherwise agreed in writing any terms and conditions of the customer which contradict or deviate from these General Conditions will not be accepted. Unless otherwise provided for in these General Conditions the statutory law shall apply.
- (2) There exist no oral supplementary agreements. Any amendment of the contract shall be in writing.
- (3) Offers of ASCO are non binding unless otherwise agreed. The contract shall be deemed to have been entered into upon receipt of the written acknowledgement stating the acceptance of the order. In the event of immediate delivery the order confirmation may be substituted by the delivery of the Goods.

### § 2 Prices – Payment Terms

- (1) Payments for the Goods shall become due with receipt of the invoice in advance.
- (2) Unless otherwise agreed the prices are EX WORKS from the premises stated in the order confirmation or in case the Goods are shipped from any other authorized production location EX WORKS from the respective production location. The EX WORKS prices do not include cost for packaging.
- (3) ASCO sources many of its products or parts thereof from international suppliers which may be affected by events beyond ASCO's and such supplier's control. Consequently, ASCO reserves the right to reasonably adjust prices by notifying the customer in writing about the adjusted price and the reason for such adjustment if the adjustment is in ASCO's view commercially necessary. If the customer objects to such adjusted terms, the customer may cancel the affected part(s) of his order by written notice within five business days of receiving ASCO's notification. Neither a price adjustment by ASCO nor a (partial) cancellation by the customer pursuant to this section shall give rise to any liability of either party towards the other.
- (4) The customer has no right of set-off, unless the customer's claims are approved by the relevant courts or acknowledged (in writing) by ASCO.

### § 3 Transfer of Risk

The risk of the Goods shall pass to the customer by the date of their leaving the works of ASCO, or any other place of loading, in case the parties have agreed on the delivery from such other location. If dispatch is delayed at the request of the customer or due to reasons beyond ASCO's control, the risk of the Goods shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the Goods shall be stored on the account and the risk of the customer.

### § 4 Warranty

- (1) ASCO warrants that upon delivery the Goods comply with the specifications stipulated in the offer and the order confirmation.
- (2) ASCO shall, upon written request of the customer (the "Notification of Defects"), undertake at its choice to repair or replace as quickly as possible any parts of the goods which, before the expiry of the warranty period approved to be defective due to bad material, faulty design or poor workmanship. Unless otherwise agreed, customer shall send defective supplies or parts thereof back to ASCO. Customer shall bear the costs for the deliveries.
- (3) Notification of Defects must be given immediately upon discovery. If customer gives Notification of Defects and no defect is found for which ASCO is liable, ASCO shall be entitled to compensation for the costs incurred as a result of the Notification of Defects.
- (4) ASCO shall not be liable for damage due to (i) natural wear and tear, (ii) application for other than the intended purpose, (iii) incorrect set up and installation, (iv) deviations from the installation instructions or Product documentation, (v) improper handling or inadequate maintenance, or (vi) failure to observe the operating instructions. Moreover, ASCO's liability shall not cover defects which result from errors or omissions in documentation, material or work which has been supplied or performed by the customer.
- (5) If the corrections of defects fail completely or in part, customer may claim a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied within reasonable time and provided the Goods cannot be used for their specified purpose, or if such use is considerably impaired, customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically not justified for it, to terminate the contract. In such case ASCO can only be held liable for reimbursing the sums which have been paid to him for the parts affected by the termination.
- (6) The limitation period for warranty claims is 12 months, commencing with the date of delivery of the Goods. The limitation period for repaired or exchanged

parts is 12 months from the date of repair or replacement, but not longer than 12 months after expiry of the warranty period.

### § 5 Liability

- (1) ASCO's liability, regardless of the legal basis of such liability, whether in contract or in tort, shall be limited to direct loss of or damages to physical property and personal injuries caused by ASCO's fault.
- (2) The maximum liability shall be limited to the contract value. ASCO shall not be liable for business interruptions and financial losses, such as loss of profit or revenue, payment of interest and other financing expenses or loss of use. Any further liability not expressly stated shall be excluded.
- (3) The limitations of liability shall not apply to claims or any part of a claim arising out of or relating to: (i) fraud, willful misconduct or gross negligence, (ii) death or personal injury, (iii) mandatory liability to third parties.

### § 6 Retention of Title

ASCO retains title to all goods delivered until full payment. Customer shall not be entitled to sell or encumbrance the goods before full payment without ASCO's written approval.

### § 7 Packaging and Freight

- (1) In case ASCO has accepted to send the Goods to the customer's premises, ASCO shall deliver the Goods properly packed to the carrier. Unless otherwise agreed freight insurance will then be procured by ASCO for any delivery. Costs of freight and freight insurance will be invoiced to the customer in addition to the EX WORK prices.
- (2) In case ASCO has accepted to send the Goods to the customer's premises ASCO shall also organize the compliance with any export regulations. Import and transit regulations including any related costs shall be within the responsibility of the customer.
- (3) Insofar as machinery is over-large for shipment in one piece, ASCO may split the machinery system into different components for boxing.

### § 8 Product Documentation and Instruction Manuals

The Goods will enclose a comprehensive Product documentation with detailed information on the installation, necessary utility specifications as well as instructions on the use of the Goods including maintenance instructions.

If not stipulated otherwise in the offer or the order confirmation, setup and installation of the goods is not within the responsibility of ASCO. For set up and installation, customer shall use only such utilities for the goods which comply with the utility specifications set forth within the provided Product documentation (such as the compliance with necessary fuel specifications, chemicals and water specifications).

### § 9 Acts of God

- (1) All acts of God, not within the reasonable control of the Parties, such as but not limited to, war, insurrection, strikes, lockout, earthquake, fire, explosion, storm, flood, energy shortage, etc., will release the Party affected by an act of God from fulfilling its contractual obligations for the duration and extent of the consequences of such acts of God. The Party affected by an act of God under the terms of this provision shall in any event endeavor to the best of its ability to remove the disruptions hindering the fulfilment of its contractual obligations.
- (2) In any event of Act of God the party affected by such event shall immediately inform the other party of such occurrence. The notification shall include an estimate how long such event of outage will remain.

### § 10 Place of Jurisdiction and Performance

Venue shall be St. Gallen / Switzerland; this shall also apply to proceedings restricted to documentary evidence (*Urkundenprozess*). The contractual relationship is governed by the laws of Switzerland. The regulations of the Convention for the International Sales of Goods (CISG) shall be applicable. Unless otherwise agreed place of performance shall be Wittenbach, Switzerland.

### § 11 Miscellaneous

If a specific provision of these General Terms and Conditions of Sale is or becomes invalid, the remaining provisions shall remain valid. The parties agree to replace the void provision with a legally valid provision which will serve the commercial purpose of the former invalid provision as closely as possible. In case of a loop-hole in the contract the parties agree to proceed accordingly.

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