

## GENERAL TERMS AND CONDITIONS FOR SALE OF MACHINERY & EQUIPMENT

### § 1 General – Scope of Application

- (1) These General Terms and Conditions shall apply exclusively. Unless otherwise agreed in writing any terms and conditions of the customer which contradict or deviate from these General Conditions will not be accepted by us. 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) Our offers are non binding. The contract shall be deemed to have been entered into upon receipt of our 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 machinery and/or equipment shall become due with receipt of the invoice in advance. In case of the sale of CO2 production plants the following payment terms shall be applicable: 30% of the price shall be paid as an advance payment within one month after receipt of the order acknowledgement by us. The second installment (70%) shall be secured by an irrevocable letter of credit issued by a premium international Swiss bank. There shall be no obligation to send goods to the customer before the receipt of such irrevocable letter of credit.
- (2) Unless otherwise stated in our order confirmation the prices are EX WORKS from our premises in Romanshorn, Switzerland or in case machinery is 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) The customer has no right of set-off, unless the customer's claims are approved by the relevant courts or acknowledged (in writing) by us.

### § 3 Transfer of Risk

The risk of the supplies shall pass to the customer by the date of their leaving the works of **ASCO Carbon Dioxide LTD** in Romanshorn, Switzerland 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 our 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 the risk of the customer.

### § 4 Warranty

- (1) Upon written request of the customer, we undertake at our choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the warranty period, approved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become our property. We shall bear the costs of remedying the defective parts in our works. Unless otherwise agreed, the customer shall send defective supplies or parts thereof back to our premises. Shipping costs will be borne by us unless the returned goods turn out not to be defective. If improvements fail completely or in part, the customer may claim a reasonable reduction of price. If, however, the defects are of such importance that they cannot be remedied with in reasonable time and provided 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 it, to terminate the contract. In such case we can only be held liable for reimbursing the sums which have been paid to it for the parts affected by the termination.
- (2) The limitation period for warranty claims is 12 months, commencing with the date of delivery.

### § 5 Liability

- (1) Our liability to the customer, 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. The maximum financial liability shall be limited to the amount of 500.000,- CHF per event and 1.000.000 CHF in the aggregate per each contract year. Under no circumstances we shall be liable for business interruption 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 in this General Terms and Conditions shall be excluded.

- (2) The limitations of liability set out in this section 5 (Liability) shall not apply to claims or any part of a claim arising out of or relating to: a) fraud, willful misconduct or gross negligence; b) death or personal injury; c) mandatory liability to third parties; d) breach of guarantees.

### § 6 Retention of Title

We retain title to all goods delivered by us until full payment. The customer shall not be entitled to sell or encumberance the goods before full payment without our written approval.

### § 7 Packaging and Freight

- (1) In case we have accepted to send the goods to the customer's premises we will deliver goods properly packed to the carrier. Unless otherwise agreed freight insurance will then be procured by us 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 we have accepted to send the goods to the customer's premises we will also organize the compliance with any export regulations within Switzerland. 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, we may split the machinery system into different components for boxing.

### § 8 Product Documentation and Instruction Manuals

All our products will also enclose a comprehensive documentation with detailed information on the installation, necessary utility specifications as well as instructions on the use of our products. The product documentation will be provided on the customer's request either in German or in English.

### § 9 Setup and Installation of Machinery

- (1) Setup and installation of machinery at customers' premises is not part of our services. Unless otherwise stated within our offers the customers shall be fully responsible for the setup and installation of the machinery in accordance with the instruction and installation manuals. Any damage due to incorrect installation which is not in accordance with our installation instructions will exclude any warranty for the goods in as far as the goods have been damaged by the non-compliance with the installation instructions.
- (2) As far as assistance is provided by our engineers for the commissioning of machinery at the customer's premises our responsibility shall be limited to the following activities: a) to check if the installation of machinery accomplished by customer is correct, b) the supervision of the first start-up of the machinery and c) the initial training of the responsible staff regarding the use of the machinery, regular surveillance of machinery, maintenance and regular checks on purity of production.
- (3) It is in the sole customer's responsibility that any utilities used for the machinery comply with the utility specifications set forth within the provided machinery documentation (such as the compliance with necessary fuel specifications, chemicals and water specifications).
- (4) Our products are engineered and manufactured at highest standards and the installation and use is in compliance with the laws and regulations of Switzerland and/or European standards. It is the sole customer's responsibility that the installation and use of our machinery and equipment does also comply with laws and regulations within other countries. Additional licenses and permits may be necessary due to the local jurisdictions.

### § 10 Place of Jurisdiction and Performance

**Venue shall be Zürich/ 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 Romanshorn/ 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.

## GENERAL TERMS AND CONDITIONS FOR ASCO SERVICES

### § 1 General – Scope of Application

- (1) These General Terms and Conditions shall apply exclusively for onsite services provided by ASCO Kohlensäure AG (“ASCO”) related to the installation, commissioning and maintenance of CO2 machinery and equipment (in the following the “ASCO Services”). Unless otherwise agreed in writing any terms and conditions of the customer which contradict or deviate from these General Conditions will not be accepted by ASCO.
- (2) There exist no oral supplementary agreements. Any amendment of the contract shall be in writing.
- (3) Our offers for ASCO Services are non binding. The contract shall be deemed to have been entered into upon receipt of our written acknowledgement stating the acceptance of the order.

### § 2 Payment Terms

- (1) Payments of the ASCO Services shall become due with receipt of the invoice after completion of the requested works. In case ASCO Services shall be provided abroad (outside of Switzerland), ASCO may request at its discretion either advance payment of the expected service charge or an irrevocable bank guarantee issued by a premium international Swiss bank acceptable to ASCO. There shall be no obligation to provide ASCO Services to the customer before receipt of the advance payment or receipt of such irrevocable bank guarantee.
- (2) Unless otherwise agreed between the parties ASCO will charge ASCO Services at the agreed current daily rate and occurred travel expenses. The purchaser shall bear additional costs of local accommodations, European style meals, local transport and any reasonable incidental expenses incurred locally or en-route.
- (3) 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 Warranty

- (1) ASCO warrants that ASCO Services are performed in a professional and workmanlike manner and with the high degree of care and skill typically exercised by similar professionals under similar conditions. Any damage to machinery and equipment due to a breach of such warranty shall be remedied by removing the damage or by delivering new goods.
- (2) Upon request of the customer, ASCO undertakes at its choice to repair or replace as quickly as possible any spare parts or other deliverables which, before the expiry of the warranty period, are approved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become property of ASCO. ASCO shall bear the costs of remedying the defective parts or deliverables in ASCO's works.
- (3) The limitation period for warranty claims is 12 months.

### § 4 Liability

- (1) ASCO's liability to the customer, 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. The maximum liability shall be limited to the amount of 500.000,- CHF per event and 1.000.000 CHF in the aggregate per each contract year. Under no circumstances ASCO shall be liable for business interruption 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 in these General Terms and Conditions shall be excluded.
- (2) The limitations of liability set out in this section 4 (Liability) shall not apply to claims or any part of a claim arising out of or relating to: a) fraud, willful misconduct or gross negligence; b) death or personal injury; c) mandatory liability to third parties; d) breach of guarantees.

### § 5 Setup and Installation of new Machinery

- (1) Unless agreed otherwise between ASCO and the customer, the customers shall be fully responsible for the setup and installation of purchased ASCO machinery and equipment (in the following the “Machinery”) in accordance with the instruction and installation manuals. Any damage due to incorrect installation which is not in accordance with installation instructions will exclude any warranty for

the goods in as far as the goods have been damaged by the non-compliance with the installation instructions.

- (2) ASCO provides on request services related to the supervision of the set up and installation of Machinery through its engineers at purchaser's premises (in the following the “Installation Services”). The Installation Services shall then enclose the supervision of all site preparations accomplished by the customer and the assembling of the plant enabling the trouble free commissioning.
- (3) Notwithstanding any Installation Services provided by ASCO it is within the sole responsibility of the purchaser that any utilities used for the Machinery comply with the utility specifications set forth within the provided machinery documentation (such as the compliance with necessary fuel specifications, chemicals and water specifications).

### § 6 Commissioning Services for new Machinery

- (1) After the setup and installation of Machinery (§5 Setup and Installation), ASCO will provide commissioning services through its engineers at purchaser's premises for the commissioning of the machinery (in the following the “Commissioning Services”). The Commissioning Services shall enclose the following scope of activities:
  - (a) to check if the installation of machinery accomplished by the purchaser is correct,
  - (b) to check if utility specifications are in compliance with the minimum plant specifications,
  - (c) the supervision of the first start-up of the machinery and
  - (d) the initial training of the responsible staff regarding the use of the machinery, regular surveillance of machinery, maintenance and regular checks on purity of production.
- (2) The Commissioning Services shall be documented by issuing a detailed protocol which shall be signed by ASCO and the Purchaser (the “Commissioning Protocol”).
- (3) Unless Installation Services have been provided by ASCO in accordance with § 5, prior to the Commissioning Services, the purchaser shall return a filled in Checklist provided by ASCO via fax in order to confirm that the requested site preparations have been completed, such as:
  - (a) Process tower foundations, positioned according to agreed layout drawing to be later finalized.
  - (b) Construction of a flat, level concrete floor of industrial grade and having suitable load bearing capacity for all the major units in the system – as detailed in the agreed layout drawing to be later finalized.
  - (c) Suitable weather protection for the units in the system requiring an enclosed building. The building should be of sufficient height to allow practical installation of these units.
  - (d) Reticulation of all the required utilities needed to operate the machinery according to the ASCO's handbook are organized and installed..

### § 7 Place of Jurisdiction and Performance

***Venue shall be Zürich/ Switzerland; this shall also apply to proceedings restricted to documentary evidence (Urkundenprozess). The contractual relationship is governed by the laws of Switzerland. Unless otherwise agreed place of performance shall be Romanshorn/ Switzerland.***

### § 8 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.