

## **INDUSTRY TERMS AND CONDITIONS FOR JOB CONTRACTS**

### **I - GENERAL PROVISIONS**

These terms and conditions for job contracts codify standard practice in this area and are designed to supplement the provisions jointly agreed by the parties for matters that have not been expressly covered by the parties, in particular for the manufacturers of mechanical power transmission gears, elements and instruments, hereinafter referred to as the “Manufacturer”.

All quotes issued constitute a summary of the Manufacturer’s capability at the time the quote is issued. However, its capacity may change between the date of the quote and the date of the order. Accordingly, the job contract will only be concluded when the Manufacturer sends an order acknowledgement. The Manufacturer is not bound by any proposals that may be made by its representatives unless it has confirmed such proposals in writing. Studies and documents of all kinds prepared by the Manufacturer are the property of the Manufacturer and may only be used for its fulfilment of the order.

These industry terms and conditions constitute the legal basis of job contracts, for all matters that have not been specifically agreed in writing.

They shall prevail over any conflicting clauses issued in any format whatsoever by the customer, unless the Manufacturer has accepted them in writing. However, if a customer or group of customers wishes to develop a strong industrial partnership with their sub-contractors, these terms and conditions shall, in conjunction with the general terms and conditions of the said customers, constitute a basis for the production of the specific trading terms and conditions recording the agreement reached between them.

### **II - PARTS DESIGN**

- 1) Unless otherwise expressly agreed, the Manufacturer is not responsible for designing the parts that it produces. It acts as a manufacturing sub-contractor, following the customer’s decision to use the services of a suitable specialist, that the customer considers has the equipment and skills needed to meet its requirements.

The customer shall be personally responsible for any industrial property problems affecting the parts to be manufactured and shall hold the supplier harmless from and against any and all consequences of legal action for infringement.

The customer shall be solely liable for the parts, plans and models that it provides.

However, the design process, leading to the comprehensive definition of a product, may also be sub-contracted, alone or with other tasks, provided that the customer ultimately retains full liability for the industrial result obtained.

This is the case, in particular, when the Manufacturer uses a computer to define parts, at the customer's request, based on terms of reference or a functional plan supplied by the customer.

- 2) If the Manufacturer designs and manufactures parts to be sold to customers from start to finish, a special contract must be entered into as this falls outside the scope of these terms and conditions.

### **III - PROPOSALS AND ORDERS**

- 1) The customer's request for proposals must contain clear terms of reference.
- 2) The Manufacturer's proposal will only be deemed binding if it is issued with an express validity period. In the absence of such a period, proposals will normally be valid for thirty (30) days unless the proposal provides for a specific option period. The same applies whenever the customer makes changes to any terms of reference or specimen parts that may be submitted to it by the Manufacturer.
- 3) The Manufacturer shall only be bound by the terms and conditions of its express acceptance of the customer's order in the form of a letter or by any other means of communication producing documentary evidence.

Blanket orders, involving periodic or regular blanket releases, may only be implemented for a limited period agreed between the Manufacturer and the customer. If no such period is agreed, blanket orders shall be implemented for two (2) years only.

- 4) If a quote is prepared for a repair or maintenance and the proposed quote is not accepted, the person requesting the quote shall be invoiced for the cost of dismantling and reassembling, where applicable, the relevant item, the cost of shipping it back to the relevant person and the cost of preparing the quote, on a time spent basis.

### **IV - STUDIES**

The manufacturing studies produced by the Manufacturer shall remain the property of the Manufacturer even when the parts are sold to the customer.

The same applies to the studies that the Manufacturer proposes by making an original modification to the terms of reference. The customer, if it accepts them, shall agree with the Manufacturer the terms and conditions governing their use for the purposes of the order.

The customer may not, under any circumstances, use the Manufacturer's studies for its own gain or disclose them unless title to the said studies is expressly passed to the customer.

Any assignment of intellectual property rights between the Manufacturer and the customer must be recorded in a written agreement.

## **V - TOOLS**

- 1) If the customer supplies the tools, each tool must be separately marked with the marks and references for assembly or use and must be supplied free of charge, at the site named by the Manufacturer. The customer shall be responsible for ensuring that the tools are suitable in all respects as regards the plans and terms of reference. However, at the customer's request, the Manufacturer may check that the tools are suitable and it reserves the right to invoice the customer for the cost of the said checks.

If the Manufacturer deems it necessary to make changes for the proper production of the parts, the Manufacturer shall inform the customer thereof in writing and the ensuing costs shall then be borne by the customer.

For the purposes of tool capacity validation for mass manufacturing, the customer shall ask the Manufacturer to produce specimen parts to be submitted to it by the Manufacturer for approval after all appropriate controls and tests have been carried out. The customer shall be deemed to have approved the specimen parts unless it issues written observations within fifteen (15) days of the date on which it received the relevant parts. The Manufacturer is not bound by an absolute obligation to achieve a specific result following tool capacity validation.

Moreover, if tools are supplied by the customer with plans and terms of reference on the basis of which it is not possible to fully verify the parts produced, the said parts shall be deemed acceptable based solely on the dimensions that can be measured. In such a case, the customer shall be exclusively responsible for the result produced as regards the said data, provided that the Manufacturer gave it prior notice thereof in writing.

In all cases, if the tools received by the Manufacturer are not fit for the use that it reasonably expected to obtain, the Manufacturer may ask the customer to adjust the originally agreed price for the parts accordingly and an agreement must be entered into with the customer before the Manufacturer commences production of the parts.

- 2) If the Manufacturer is tasked by the customer to build the tools, the Manufacturer shall produce them in agreement with the customer, based on the requirements of its own manufacturing technique. The customer shall pay the Manufacturer for the cost of building the tools and the cost of replacing or repairing the tools owing to wear and tear on top of the cost of supplying the parts.

The Manufacturer shall not bear the cost of replacing tools in excess of the quantities for which the tools were contractually planned or resulting from normal wear and tear.

The customer is required to either supply replacement tools or bear the cost of the production or repair by the Manufacturer, unless previously agreed otherwise with the latter in the form of a price increase to cover the said risk.

- 3) The price paid for manufacturing tools designed by the Manufacturer, whether or not the said tools are also built by the Manufacturer, does not cover the Manufacturer's intellectual property in the said tools, meaning the contribution of its know-how or its patents when studying or finalising the design. The same applies to any adaptations that the Manufacturer may make to tools supplied by the customer to ensure that the parts are produced properly or to increase productivity.

The tools shall remain on the Manufacturer's premises after fulfilment of the order and the customer may only take possession thereof after a written agreement has been entered into on the terms and conditions governing the exploitation of the Manufacturer's intellectual property and after payment of all invoices owed to the Manufacturer on any basis whatsoever.

The Manufacturer shall maintain the said tools in good technical working order and the customer shall bear the consequences of any wear and tear, repair or replacement. Unless otherwise agreed between the parties, 50% shall be paid at the time of the order and the balance when they have been completed or, where applicable, on the date on which specimen parts are submitted for approval.

- 4) If the customer requires the tools to be transferred to another supplier, the customer must first pay all sums owed for the intellectual property held by the designer.
- 5) The Manufacturer undertakes not to at any time use the tools referred to in Clauses V(1), V(2) and V(3) above on behalf of a third party, whether or not the Manufacturer is the owner of the said tools, without the customer's prior written consent.

## **VI - STORAGE OF THE TOOLS**

Whenever the customer owns the tools, the customer, which retains full liability for the tools referred to in Clause "V - TOOLS", shall itself be responsible for arranging insurance covering damage to or destruction of the tools howsoever caused and shall waive any right of recourse against the Manufacturer.

The various tools shall be returned to the customer on request or at the Manufacturer's discretion, in their state at that time, provided that the customer has paid for the tools and the manufactured parts in full. If they remain on the Manufacturer's premises, the Manufacturer shall store them at no extra cost for three (3) years as of the date of the last delivery.

Thereafter, if the customer fails to ask the Manufacturer to return its tools or fails to reach an agreement with the Manufacturer to extend the period of storage and on the terms and conditions thereof, the Manufacturer is entitled to destroy the tools three (3) months after giving formal notice by registered post that goes unheeded.

## **VII - DELIVERY TIMES**

- 1) Delivery times take effect on the date on which the Manufacturer accepts the order or the date on which the customer has provided all production documents, equipment and details and complied with all other preliminary terms and conditions to be fulfilled by the customer, if later.
- 2) The agreed delivery time is an important element that must be stated in the contract, along with the type of delivery time (period within which the parts must be ready for collection, period within which the parts must be submitted for control or acceptance, period within which the parts must be actually delivered etc.). However, the times stated are approximate only and may be adjusted owing to the occurrence of circumstances beyond the Manufacturer's control.
- 3) In the event that the Manufacturer fails to make the parts available for collection within the time stated in the order:
  - if special agreements provide for penalties, they may not exceed 5% of 90% of the value of the contractual price agreed for the equipment that is late,
  - in the absence of any special agreements, a penalty of 0.5% may be charged for each full week of delay as of the end of the third week, capped at 5% of the value of the contractual price,
  - a penalty may only be charged if the delay was caused by an act or omission of the Manufacturer and if it has caused a genuine loss evidenced jointly by the parties.

No late delivery penalty may be charged for sixty (60) days after the date on which the goods were ready for collection owing to a delay in the delivery (transport or chartering or lack of the miscellaneous certificates required for shipping).

## **VIII - PACKAGING AND PROTECTION**

- 1) Unless otherwise previously agreed between the Manufacturer and the customer, packaging for the supplies shall be invoiced to the customer and paid by the customer immediately and in full. The packaging shall become the property of the customer once the payment has been made.
- 2) The customer shall return master containers, pallets and any other permanent equipment owned by the Manufacturer in good condition and carriage-paid, within no more than thirty (30) days of receipt, failing which the Manufacturer shall invoice the customer therefor.  
If the said equipment is owned by the customer, the customer shall deliver it to the Manufacturer in good condition by the date agreed with the Manufacturer and to the site named by the Manufacturer, carriage-paid.
- 3) At the customer's request, the parts may be protected in a specific manner. As the customer is responsible for deciding which protection measures are to be used, the Manufacturer shall pass on the cost thereof to the customer.

## **IX - DELIVERY AND PASSING OF RISK**

- 1) The parts shall always be deemed to have been delivered at the Manufacturer's premises, regardless of the provisions of the contract on the payment of transport costs. The parts are delivered by being handed over directly to the customer or the transporter named by the customer in the contract or, failing this, selected by the Manufacturer. Unless otherwise provided, the customer is liable for the transportation of the parts.

If the customer fails to provide the Manufacturer with instructions on the place of delivery or it is impossible to ship the parts for reasons beyond the Manufacturer's control, the parts shall be deemed to have been delivered by notice sent to the customer that the parts are ready for collection. In such a case, the parts shall be stored at the customer's expense and risk and invoiced to the customer. Unless otherwise provided in the contract, partial shipments are allowed, at the Manufacturer's discretion.

- 2) Risk shall pass to the customer at the time of delivery, as described above, notwithstanding the Manufacturer's retention of title right.

## **X - TRANSPORT**

- 1) Whenever the Manufacturer ships the parts or provides secondary transport services, it acts solely as the customer's agent. If the transport costs have been paid, the customer shall reimburse the shipping fees advanced by the Manufacturer on receipt of the corresponding invoice. Accordingly, the customer assumes all risks associated with the transportation of the parts and is responsible for checking, on receipt, the condition and quantity of the parts and their conformity to the information stated on the shipping note.
- 2) The customer shall immediately inform the Manufacturer of any dispute, without prejudice to the legal action that it is required to take directly against the transporter.
- 3) The customer shall bear the cost and risk of sending and returning the equipment taken back under Clause "V - TOOLS" and the specimen parts to be used as a reference.

## **XI - PRICES**

- 1) Unless otherwise agreed, the contractual prices agreed for the parts are stated per unit, exclusive of taxes and ex works and the parts are to be delivered in the condition stated in the contract.

All prices must be stated in euros (EUR) or in the legal tender used at the time the invoice is issued, exclusive of taxes and ex works. The customer undertakes to comply with the statutory tax obligations for the processing of VAT within the EU (identification number, appointment of a tax representative), failing which, French VAT will be added to the base price in euros (EUR) on the due date.

- 2) Depending on the terms agreed in the contract, prices are either:
  - binding for an agreed period which, unless otherwise specifically agreed, may not exceed six (6) months, or
  - adjustable using appropriate formulae reflecting fluctuations in commodity prices, energy costs, wage rates and ancillary costs connected to the order, between the date of the

contract and the contractual delivery date, unless other dates are given in the contract.

## **XII - PAYMENT TERMS**

### **1) Time for payment**

Pursuant to the French Modernisation of the Economy Act (*Loi de Modernisation de l'Economie* or *LME*) No. 2008-776 of 4 August 2008 (Article L441-6 of the French Commercial Code (*Code de Commerce*)), the time agreed between the parties for payment of the sums owed may not exceed forty-five (45) days end of month or sixty (60) days as of the invoice date. These provisions apply to any contract entered into on or after 1 January 2009 - corresponding to any binding order accepted on or after this date.

For the purposes of these general terms and conditions, all invoices must be paid within forty-five (45) days end of month or net sixty (60), unless otherwise agreed in the form of special terms and conditions, providing for a shorter "EOM" period or a shorter "Net" period. The implementation of the said Act shall not prevent the application of any shorter times for payment previously agreed.

**Down payment:** It is noted that down payments are by definition paid immediately and in full and accordingly, no payment terms apply.

**Mandatory Act, France and export:** The said Act is a mandatory public policy law and cannot be derogated from by the parties. If goods are to be delivered in a country other than France or the customer's registered office or another element of the contract is located outside of France, the said Act shall nevertheless apply if there is a connecting factor linking it to France, such as the supplier's registered office.

Payment is deemed to have been made when the funds are actually made available and not before.

Payment shall be made at the vendor's registered office, and unless otherwise agreed, the net amount should be paid, with no discount.

If the parties are silent on this matter, repairs, maintenance and additional supplies or supplies delivered during assembly shall be invoiced on a monthly basis and the net amount shall be payable immediately in full, with no discount.

As regards special orders based on a separate quote or installations, the following payment terms shall apply:

- a) One third by cheque when the order is placed;
- b) One third during production and, at the latest, when the goods are ready for collection.

## 2) **Late payment**

### **Contractual penalties:**

Pursuant to Article L441-6 of the French Commercial Code, in the event of late payment or a failure to accept and return a bill within fifteen (15) days of the date on which it is sent to the customer, the supplier may, at its own discretion,

- charge late payment interest at the European Central Bank's most recently published refinancing rate plus ten (10) percentage points. It is noted that the said rate may not fall below an amount equal to three (3) times the statutory interest rate,
- terminate the contract, require the customer to immediately pay the balance of the price and all invoices on account, for any supplies, and refuse to accept new orders.

**Debt collection fee.** Pursuant to the twelfth paragraph of Article L441-6 of the French Commercial Code, as amended by French Act No. 2012-387 of 22 March 2012, in the event of late payment, a fixed debt collection fee of forty (40) euros shall become due and payable, by operation of law and on top of the late payment interest, as of the first day following the due date stated on the invoice. The said fee is payable under a provision introduced by the French Act of 22 March 2012, which came into force on 1 January 2013. The amount of the fee is determined in Article D441-5 of the French Commercial Code.

Pursuant to the above-mentioned Article L441-6, if the debt collection costs incurred exceed the amount of the said fixed fee, the supplier is also entitled to demand additional compensation on production of proof.

**Debit notes.** The customer expressly agrees not to automatically debit from the supplier's account or automatically invoice the supplier for any sums that have not been expressly acknowledged by the supplier as payable by it. Any sum automatically debited shall constitute an outstanding amount and the foregoing provisions on late payment shall apply to the said amount and the customer may be liable under the provisions of Article L442-6(I)(8) of the French Commercial Code.

- 3) Without prejudice to the retention of title right set out in Clause "XVI - RETENTION OF TITLE CLAUSE", drafts must always be returned within no more than fifteen (15) days of the maturity date. In the event of a refusal to accept a draft, either:
- the relevant sum shall become immediately payable in full, by operation of law, at the drawee's cost and expense and accordingly, all other sums owed on any basis whatsoever shall become immediately payable in full and all shipments shall be suspended, or
  - all contracts in force shall be terminated, by operation of law, with no refund of the down payments made and no return or provision of the tools and parts held by the Manufacturer until the compensation payable is agreed, if any.



- 4) The customer may not postpone a contractual payment date if the acceptance and/or shipping of the supplies ready for collection at the production site is delayed or cannot be performed for any reason beyond the Manufacturer's control.

The same applies for the payment of the difference between the total amount of the invoice and the price of the parts for which, following a challenge by the customer, the Manufacturer may issue credit or credit notes under Clause "XIV- LIABILITY AND WARRANTY".

The customer may not withhold payment of all or part of a sum owed to the Manufacturer on the ground of any claim the customer may have, in particular under the warranty entitlements, without the Manufacturer's consent.

The Manufacturer reserves the right to assign its accounts receivable to a third party.

- 5) In order to ensure that the Manufacturer is able to collect the sums owed to it, the customer undertakes to procure that the head client accepts the Manufacturer and its payment terms in accordance with the statutory provisions specifically applicable to the subject matter of the contract.

### **XIII - CONTROL AND ACCEPTANCE**

- 1) The customer is fully responsible for the design of the parts based on the industrial result that it wishes to obtain, being the sole party fully familiar with this result.  
Accordingly, the customer shall determine the technical terms of reference setting out the specifications describing all aspects of the parts to be produced and the type of inspections, controls and tests imposed prior to acceptance and the arrangements agreed in relation thereto.  
If the customer accepts suggestions designed to in any way improve the technical terms of reference or changes to the drawings of the parts, this may not in any way be construed as a transfer of liability and the customer shall at all times remain exclusively liable for the design of the parts.
- 2) In all cases, the type and scope of the required controls and tests, the relevant quality standards and classes as well as all kinds of tolerances shall be stated in the plans and terms of reference, which the customer is required to include in its request for proposals, and shall be confirmed in the contract entered into between the Manufacturer and the customer.
- 3) If the customer fails to produce terms of reference covering the controls and tests to be carried out on the parts, the Manufacturer shall merely carry out a visual inspection and sizing controls on the main measurements.
- 4) The controls and tests that the customer deems necessary shall be carried out by the Manufacturer at the customer's request, by the customer or by an independent laboratory or body. This must be decided prior to the conclusion of the contract, along with the type and scope of the said controls and tests.

The scope and terms and conditions governing the acceptance process must be established when the contract is entered into at the latest. The parts shall be accepted at the production

site, at the customer's expense, within no more than one (1) week following the notice sent by the Manufacturer to the customer or the relevant body informing it that the parts are ready for acceptance. By accepting the parts, the customer is deemed to acknowledge that there are no patent or detectable defects. If the customer or the control body defaults, the parts shall be stored by the Manufacturer at the customer's expense and risk for no more than fifteen (15) days. Upon the expiry of the said period, the customer shall be deemed to have accepted the parts and the Manufacturer shall be entitled to ship and invoice them.

As the type of non-destructive controls and the arrangements therefor can only be defined on the basis of the design of the parts, the customer must always state the controls that it has selected, the segments of the parts subject to the said controls and the relevant classes in its request for proposals and its order, so as to determine, in particular, the terms and conditions governing claims made under the warranty set out in Clause "XIV- LIABILITY AND WARRANTY".

In all cases, the said controls and acceptance process shall be carried out within the framework of the appropriate standards, in accordance with the provisions of the plans and technical terms of reference, as decided by the customer and accepted by the Manufacturer.

- 5) Generally, the price of the controls and tests is stated separately from the price of the parts, but may be incorporated into the price of the parts if the Manufacturer and the customer both agree. The said price takes into account the cost of the specific work involved in creating the essential conditions for the proper performance of these controls, in particular for non-destructive controls.
- 6) If the Manufacturer is required to implement a quality assurance system for the manufacturing of the parts, the customer must specify this requirement in its request for proposals and in its order and the Manufacturer must confirm it in its proposal and in its order acceptance, all of the foregoing without prejudice to the provisions of the foregoing clauses.

#### **XIV - LIABILITY AND WARRANTY**

- 1) The Manufacturer has a duty to supply parts that conform to the plans and requirements of the contractual terms of reference but with no regard for the customer's special intended use of the parts.

For mass orders, the customer shall ask the Manufacturer to produce specimen parts to be submitted to the customer by the Manufacturer for approval after all of the required controls and tests. The customer shall send the said approval to the Manufacturer by letter or any other means of communication producing documentary evidence, within thirty (30) clear days of the date on which it receives the said specimen parts.

If the customer has a complaint concerning the delivered parts, the Manufacturer reserves the right to carry out an on-site examination of the said parts.

- 2) In cases where the raw materials are supplied by the Manufacturer and the parts prove to be defective or nonconforming, the Manufacturer is solely required to replace the parts free of charge and shall not be liable

Under the warranty and with the customer's consent, the Manufacturer shall either:

- credit to the customer the value of the parts that it has acknowledged fail to conform to the technical and contractual plans and terms of reference or to the specimen parts approved by the customer,
  - replace the rejected parts, for which a credit note will be issued and the replacement parts shall be invoiced at the same price as the replaced parts, or
  - correct the defects in the parts, directly or through a third party.
- 3) In cases where the raw materials are supplied by the customer and the parts produced fail to conform for a reason other than defects in the raw materials themselves, the Manufacturer shall either, at the customer's choice:
- issue a credit note for the workmanship for the rejected parts, or
  - carry out the work again using the required raw materials or parts made available by the customer.

In such a case, the terms governing the correction of the defects shall be decided jointly by the parties. If the Manufacturer bears the cost thereof, the defects shall be corrected by the Manufacturer or, if the customer decides to correct the defects, the Manufacturer's consent is required and the customer must inform the Manufacturer of the price thereof.

The replacement of the parts or correction of the defects agreed between the Manufacturer and the customer shall not in any way modify the warranty regime.

The parts that have been replaced or corrected by the Manufacturer at the customer's request shall be returned to the Manufacturer, carriage-forward, and the Manufacturer reserves the right to select the transporter to be used.

Unless otherwise expressly agreed in the contract, job-contractors are not liable for the loss of or damage to the raw materials or parts entrusted to them.

- 4) If the customer corrects defects in the parts without obtaining the Manufacturer's consent to such repairs and the cost thereof, the customer's rights under the warranty shall lapse.
- 5) The warranty does not apply in any of the following cases:
- damage caused when a defective part is used, if the customer acted wrongly and rolled out the part without first carrying out the controls and tests required owing to its design, use and the industrial result sought, in particular those set out in Clause "XIII(4) - CONTROL AND ACCEPTANCE", either directly or through a third party,
  - the cost of work carried out on the parts by the customer before they are rolled out, in particular treatments, control machining etc.,
  - damage sustained by the parts owing to an inadequate treatment (surface, thermal or other types of treatment) requested by the customer,

- damage sustained owing to an act or omission of a sub-contractor imposed by the customer,
- the costs incurred by the customer to assemble, dismantle or recall the said parts.

## **XV - FORCE MAJEURE**

The Manufacturer shall be released from its liability if a fortuitous or force majeure event occurs. In any case, the Manufacturer may not be held liable, in particular for a failure to meet delivery times, in the following cases: a failure to comply with the payment terms, the customer's failure to provide the information required to fulfil the order by the required date, if a force majeure or other event occurs, such as: a total or partial strike, lock-out, interruption or disruption to transport, fire, natural disasters, rejects, problems in the supply chain and more generally, any reason beyond the Manufacturer's control.

## **XVI - RETENTION OF TITLE CLAUSE**

- 1) The parts are supplied subject to a retention of title right, in all cases where the said right is permitted under the legislation of the relevant country and all of the conditions needed for the exercise of the said right have been satisfied. If the transaction takes place in France, the retention of title clause shall apply to the extent permitted by law.
- 2) Notwithstanding the fact that title to the ordered parts only passes to the customer once they have been paid for in full, the customer shall become liable for the proper storage thereof upon delivery. Long-term storage conditions shall be recorded in a special agreement.
- 3) The same shall apply to transactions performed abroad to the extent that the retention of title right is permitted under the legislation of the country in which the goods are located at the time the relevant claim is made. In all other cases, the customer shall ensure that the Manufacturer enjoys all of the rights securing transactions in its own country.
- 4) The foregoing provisions may not, under any circumstances, be construed as creating an exception to the choice of forum operated in Clause "XX - DISPUTES".

## **XVII - INDUSTRIAL PROPERTY**

In all cases covered by Clause "II - PARTS DESIGN", the customer shall hold the Manufacturer harmless from and against the consequences of any actions that may be brought against it owing to the fulfilment of an order for parts covered by industrial or intellectual property rights such as patents, trade marks or registered designs, or by any exclusive rights in France or abroad.

## **XVIII - CONFIDENTIALITY**

The parties mutually agree to comply with a general confidentiality obligation covering any and all oral or written information whatsoever, regardless of the form thereof (discussion papers, plans, electronic data interchanges, business activities, installations, projects, know-how, products etc.) shared in connection with the preparation or performance of the contract, other than information

that is general public knowledge or that becomes general public knowledge other than through the fault or an act or omission of the customer.

Accordingly, the parties undertake:

- to maintain the strict secrecy of any confidential information and in particular, not to directly or indirectly disclose or communicate all or part of the confidential information in any manner whatsoever or in any circumstances, to any person whomsoever, without the other party's prior written consent;
- not to use all or part of the confidential information for any purpose or activity other than the performance of the contract;
- not to copy or reproduce all or part of the confidential information.

The customer undertakes to adopt such measures as are necessary to ensure compliance with this confidentiality obligation throughout the term of the contract and after the expiry or termination thereof and shall procure that all of its employees comply with the said obligation, which constitutes an obligation to achieve a specific result and not a mere best efforts obligation.

## **XIX - TERMINATION**

If the performance of the contract is suspended owing to a force majeure or similar event as defined in Clause "XV - FORCE MAJEURE" and the suspension lasts for more than three (3) months, the party against whom the force majeure or similar event has been asserted may terminate the contract by giving the other party written notice thereof.

Likewise, if the performance of the contract is rendered impossible or excessively onerous owing to an act or omission of the customer or one of the force majeure or similar events defined in Clause "XV - FORCE MAJEURE" and the customer refuses to bear the extra costs generated thereby, the Manufacturer may terminate the contract by giving the customer written notice thereof.

If the contract is terminated on the ground of a breach by the customer, the customer shall indemnify the Manufacturer as set out in the next paragraph.

If the customer cancels all or part of its order or postpones the relevant delivery date, it shall indemnify the Manufacturer from and against the entire costs incurred and all direct and indirect consequences arising therefrom.

## **XX - DISPUTES**

Any dispute relating to a supply of parts shall be subject to the exclusive jurisdiction of the court of the place where the Manufacturer's registered office is located, even for third party claims for indemnity or impleader and for cases involving multiple defendants.

8 / 12 Rue de Lisbonne ZAC de NANTEUIL. 93110 ROSNY SOUS BOIS

info@mercier-engrenages.com

[www.mercier-engrenages.com](http://www.mercier-engrenages.com)

However, it is hereby noted that pursuant to Article 1406 of the French Civil Code (*Code Civil*), applications for an order to pay must be filed with the court of the place of the debtor's place of residence.

The rules set out in the foregoing paragraphs are mandatory public policy rules. Any conflicting clauses shall be treated as null and void. The courts shall hold that they lack jurisdiction of their own motion.

**Filed with the Expert Assessments and Industry Practice  
Office (*Bureau des Expertises et des Usages Professionnels*)  
of the Paris Commercial Court,**